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FEATURE ARTICLE

LAWSUITS CHALLENGING SAN FRANCISCO'S 'FAMILY ZONING PLAN' COULD PAVE THE WAY FOR GREATER DENSITY

By Braeden Mansouri

As one of the most expensive cities in the world, and with a prominent wealth disparity, the City of San Francisco has long been the embodiment of the negative consequences of poor housing policy. A diverse coalition of interests has for decades enjoyed dominance over housing policy, such that new housing density was usually concentrated in sparsely populated parts of the city, but that powerful neighborhood groups often challenged (and succeeded at) slowing, shrinking, or completely eliminating new housing development.

So fraught are the Bay Area's housing development politics, that the region gave birth to the global "Yes in my backyard" (YIMBY) pro-housing movement. Even San Francisco's state senator, Senator Scott Wiener, was one of the first members of the State Legislature to push for major changes to the state's housing policies. To that end, many of Senator Wiener's bills (and those authored by other YIMBY legislators) impose strict requirements on jurisdictions and how they may plan for and process applications for housing development projects.

San Francisco's Family Zoning Plan

In January 2026, the City of San Francisco's zoning amendments (Family Zoning Plan) went into effect. Following three years of community outreach, the zoning update finally implements the City's 6th Cycle Housing Element, which plans for approximately 82,000 units of housing. Consistent with state law requirements, the zoning plan concentrates much of this new housing in "neighborhoods with better access to economic opportunities and essential services" (*e.g.* public transit, parks, shops, and community facilities). These "opportunity" areas are primarily located in the northern and western parts of the city—areas generally with higher median incomes and characterized by low density development:

> The Family Zoning Plan allows for more housing options in neighborhoods with greater access to economic opportunities and services that can support growth, such as public transit, parks, retail, and community facilities.
>
> The Plan is one of the key implementation actions of San Francisco's Housing Element. By adopting the Family Zoning Plan in December 2025, San Francisco met its state law obligations to approve a compliant rezoning plan by January 31, 2026.
>
> Some goals of the project include (1) Begin to reverse housing segregation in compliance with state requirements; (2) Strengthen our communities by adding new neighbors and resources; and (3) Coordinate new development with investments in infrastructure and services (4) Add more Affordable and diverse Housing. (*See:* https://sfplanning.org/sf-family-zoning-plan)

"Not in my backyard" (NIMBY) anti-housing neighborhood groups promptly filed lawsuits challenging the Family Zoning Plan, utilizing familiar arguments, including that the zoning plan relied upon a deficient environmental analysis under the California Environmental Quality Act (CEQA). Interestingly, three *pro*-housing YIMBY groups also filed a lawsuit, alleging that the zoning plan does not meet the state's housing requirements. The YIMBY groups claim that the SF Controller's Office projected that the zoning plan would only result in 14,600 homes over the next 20 years—a fraction of the 36,000 units the plan

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purportedly allows for. Because of other state legislative changes, the outcome of these cases matters less to the city's zoning plan than the lack of an outcome. [*Neighborhoods United SF et al. v. City and County of San Francisco* (filed Jan. 2026); *California Housing Defense Fund; Californians for Homeownership v. City and County of San Francisco* (filed Feb. 2026).]

Senate Bill 79 (2025)

SB 79 generally upzones certain parcels around high-quality transit in counties meeting certain transit criteria. Depending on the quality of transit stop and the distance from that stop, allowable maximum densities could range from 80 to 120 units per acre, with maximum building heights ranging from 55 to 75 feet. (*See*: https://legiscan.com/CA/text/SB79/id/3059553)

Senat Bill 79:

> Existing law, the Planning and Zoning Law, requires each city, county, or city and county to prepare and adopt a general plan for its jurisdiction that contains certain mandatory elements, including a housing element. Under existing law, a part of the housing element is an assessment of housing needs, which includes the locality's share of the regional housing need. Under existing law, the appropriate council of local governments, or for cities without a council of governments, the Department of Housing and Community Development, adopts a final regional housing need plan that allocates a share of the regional housing need to each locality in the region. Existing law requires the Board of Directors of the San Francisco Bay Area Rapid Transit District to adopt by ordinance transit-oriented development (TOD) zoning standards for each station that establish minimum zoning requirements for height, density, parking, and floor area ratio that apply to an eligible TOD project, as provided, and authorizes developers of certain eligible TOD projects to submit an application for a development that is subject to a specified streamlined, ministerial approval process, as provided.
>
> This bill would declare the intent of the Legislature to enact legislation that would make housing more affordable for California families, reduce greenhouse gas emissions, and enhance public transit systems by, among other things, requiring the upzoning of land near rail stations and rapid bus lines to encourage transit-oriented development. The bill would make related findings and declarations. (*Ibid*)

At issue here, however, is that the law allows local agencies to adopt a "transit-oriented development alternative plan" that maintain at least the same total net zoned capacity, in terms of both total units and residential floor area, as provided for in the statute across all transit-oriented development zones within the jurisdiction. This offers localities a degree of local discretion at designating where and how the jurisdiction would like this transit-oriented density to be located.

In San Francisco, with a rich network of high-quality transit lines (BART, Muni, Caltrain, *etc.*), SB 79's default zoning provisions could dramatically change the shape and feel of the city's neighborhoods—many with several SB 79-qualifying stops. The city's Family Zoning Plan allows the city to spread out that density to address local concerns.

At issue with the legal challenges to the zoning plan, is that if either challenge results in a judge striking down the plan, SB 79's unilateral transit-oriented zoning plan may take effect. This could upend the zoning plan that the city crafted based on significant community outreach.

Builder's Remedy Implications

In recent years, the State Legislature has provided teeth to the long dormant Builder's Remedy contained in State Housing Element Law. These new changes impose severe penalties on jurisdictions that do not adopt a housing element compliant with state law by given deadlines, or that otherwise maintain a housing element that becomes noncompliant with state law. In jurisdictions subject to the Builder's Remedy, that locality essentially loses the ability to enforce its zoning laws with respect to certain qualifying residential projects. This generally means that the project provides a certain percentage of affordable units and that the project meets specified density criteria.

The consequence of a court striking down the Family Zoning Plan is that San Francisco's zoning and housing element could fall out of compliance with state law, also triggering the Builder's Remedy. This could occur, mainly as a result of the YIMBY aligned

groups' lawsuits, which allege that the zoning plan would generate far fewer homes than the plan estimates, which is far fewer units than is required under state housing law. While SB 79 applies only around certain high-quality transit stops, the Builder's Remedy could essentially eliminate zoning restrictions for certain residential projects citywide.

Conclusion and Implications

Approval of the Family Zoning Plan by the Board of Supervisors amounted to a significant achievement for the new Mayor Daniel Lurie, who was sworn in less than a year prior. Moreover, adoption of the zoning plan required the Board of Supervisors to delicately thread the needle in order to appease various interest groups in a city known for its bare-knuckle politics. Reflecting the "moderate" majority of the Board of Supervisors, neither YIMBYs nor NIMBYs achieved all that they demanded in the zoning plan. The zoning plan carefully identified sites across the city for greater density, consistent with state law requirements and the city's commitment to community equity outcomes.

While the motivation behind the NIMBY groups' lawsuit is well known (to reduce overall development across the city), YIMBY groups' intentions with their challenge are less clear. Are these groups legitimately pushing for an increase in citywide housing capacity, or is this a tactical suit to threaten the NIMBY groups with a far denser outcome under Senate Bill 79 and the Builder's Remedy? In any case, new state laws appear to be having their intended effect—increasing density in one of the most housing constrained cities in the country.

Editor's Note: The author, while previously residing in San Francisco, served on the Castro LGBT Cultural District Advisory Board and chaired the District's Land Use Committee. As a neighborhood group, the committee were consulted and provided feedback on multiple drafts of the Family Zoning Plan.

Braeden Mansouri is an associate with Jackson Tidus and a member of the firm's Land Use Group. Braeden focuses his practice on land use and environmental issues, including real estate development, zoning, permitting, and California Environmental Quality Act (CEQA) compliance. His practice includes assisting a broad range of private and public sector clients with due diligence review, land use entitlements, permitting, the approval of both affordable and market rate housing developments, and land use litigation. His practice additionally includes election law matters, especially with respect to land use planning initiatives and referenda. Braeden serves in the Editorial Board of the *California Land Use Law & Policy Reporter*.

REGULATORY DEVELOPMENTS

CALIFORNIA FISH AND GAME COMMISSION EXPANDS PROTECTIONS FOR MOUNTAIN LIONS ON CALIFORNIA'S CENTRAL COAST AND SOUTHERN REGIONS

On February 12, 2026, California has extended protections to certain mountain lion populations under the California Endangered Species Act (CESA), marking a significant development in wildlife conservation policy. The decision reflects growing concerns about habitat fragmentation, genetic isolation, and long-term species viability in heavily developed regions. The extended protections were generated by the California Fish and Game Commission.

Background

Mountain lions (Puma concolor) are native to California and play a critical role in the state's ecosystem. In recent years, conservation groups have raised alarms about the declining mountain lion population along the Central Coast and in Southern California.

In 2022, the California Fish and Game Commission voted to designate several distinct populations of mountain lions as candidates for listing under CESA. This designation applies to populations in the Central Coast, Southern Coast, and portions of the Sierra Nevada foothills. Candidate status triggers interim legal protections while the state conducts a formal status review.

The protections apply to four identified population segments: the Central Coast North, Central Coast South, Southern Coast, and Eastern Peninsular Range. These regions are characterized by increasing urban development, road infrastructure, and barriers that limit wildlife movement.

In Southern California, major freeways and suburban expansion have significantly restricted mountain lion migration corridors. Similarly, Central Coast populations face pressures from agriculture, land use changes, and infrastructure projects. The geographic specificity of the designation allows regulators to tailor conservation strategies to each region's unique challenges.

Regulatory Implications for Development Projects

Under CESA, a species may be listed as endangered or threatened if it faces risks such as habitat loss, declining population numbers, or reduced genetic diversity. The candidate designation reflects a preliminary finding that these mountain lion populations may meet those criteria. The candidate designation under CESA carries immediate legal consequences for development and infrastructure projects within the affected regions. Most notably, it prohibits the "take" of mountain lions, which includes actions that may kill, harm, or otherwise adversely affect the species.

As a result, developers undertaking projects in designated habitats must carefully assess whether their activities could result in a prohibited take. Where impacts are anticipated, project proponents may be required to obtain an Incidental Take Permit (ITP) from the California Department of Fish and Wildlife (CDFW). The ITP process typically requires applicants to minimize and fully mitigate impacts to the species, which can affect project timelines, costs, and feasibility. Mitigation measures may include preserving wildlife corridors, incorporating wildlife crossings, or modifying project footprints to reduce habitat disruption. In some cases, conservation easements or off-site mitigation may be required to offset impacts.

In practice, this designation introduces an additional regulatory layer for projects already subject to environmental review under the California Environmental Quality Act (CEQA). Agencies and applicants must now account for potential impacts to protected mountain lion populations during project planning and environmental analysis.

The Interaction with Existing Land Use and Environmental Laws

The CESA designation intersects with existing land use and environmental regulatory frameworks,

such as the California Environmental Quality Act. For example, CEQA analyses must now consider whether a project could result in a significant impact to a candidate species, potentially triggering additional mitigation or alternatives analysis.

Local governments may also begin to incorporate these protections into general plans, zoning decisions, and habitat conservation strategies. Over time, this could influence where and how development occurs within the affected regions.

Conservation Strategies and Policy Responses

The candidate listing has prompted increased focus on conservation strategies designed to improve habitat connectivity. Wildlife crossings, such as the Liberty Canyon Wildlife Crossing in Los Angeles County, are among the most prominent initiatives aimed at reducing fragmentation.

Land use planning and conservation easements also play a role in preserving critical habitats and corridors. Public agencies and nonprofit organizations have collaborated to identify priority areas for protection and restoration.

In addition, ongoing research and monitoring efforts are essential to inform the final listing decision. Genetic studies, population tracking, and mortality data contribute to a more comprehensive understanding of the risks facing these populations.

Broader Legal and Policy Context

California's action reflects a broader trend of using state-level endangered species laws to address localized conservation challenges. While mountain lions are not federally listed under the Endangered Species Act, the state-level designation allows for more targeted protections tailored to regional conditions.

The decision also highlights the intersection of wildlife conservation with land use policy, transportation planning, and climate adaptation strategies. As California continues to grow, balancing development with ecological preservation remains a central policy challenge.

Conclusion and Implications

The extension of CESA protections to mountain lions along the Central Coast and in Southern California underscores the state's proactive approach to conservation in the face of increasing environmental pressures. While the candidate designation is an interim measure, it signals a recognition of the complex challenges posed by habitat fragmentation and human development. Developers and landowners operating in affected regions may need to incorporate additional due diligence, early agency coordination, and project design considerations to address potential impacts to protected populations. Moving forward, the effectiveness of these protections will likely depend on coordinated efforts among regulators, developers, and conservation stakeholders to maintain connectivity and support long-term population viability. For more information, *see:* https://wildlife.ca.gov/News/Archive/california-fish-and-game-commissionfinds-cesa-protections-warranted-forsouthern-californiaandcentral-coastmountain-lion
(Christina Suarez, Darien Key)

LAWSUITS FILED OR PENDING

ENVIRONMENTAL ADVOCACY ORGANIZATIONS CHALLENGE U.S. DEPARTMENT OF THE INTERIOR'S DELAY OF ESA MONARCH BUTTERFLY LISTING

On February 12, 2026, the Center for Biological Diversity and Center for Food Safety (together, the Centers) filed a complaint for declaratory and injunctive relief in the Northern District of California, seeking a declaration that the U.S. Fish and Wildlife Service (USFWS) violated the federal Endangered Species Act (ESA)—namely, Section 4(b)(6)(A)—in failing to issue a final rule listing the monarch butterfly as a threatened species and designating its critical habitat within one year of publishing its proposal to do so in the Federal Register. The Centers request that the court order the USFWS to issue its final rule by a specific deadline. [*Center for Biological Diversity, et al. v. U.S. Fish and Wildlife Service, et al.*, Case No. 3:26-cv-01281 (N.D. Cal.).]

Endangered Species Act Section 4

Under Section 4 of the ESA, citizens can petition the USFWS to list a species as endangered or threatened. If the agency subsequently determines that a listing may be warranted, it must publish a review of the species' status. Within a year of the publication of this status report, the USFWS is then required to decide whether the listing is warranted and publish that finding in the Federal Register along with the proposed regulation to list the species and designate its critical habitat. Section 4(b)(6)(A) (16 U.S.C. § 1533(b)(6)(A)) provides that the USFWS must publish its final rule in the Federal Register within one year of the proposal's publication.

Initial Proposal

In 2014, the Centers were among several entities that petitioned the USFWS to list the monarch butterfly under Section 4. Upon conducting its status report, the USFWS agreed with the petitioners and concluded that listing the species was warranted, but the action was precluded by higher agency priorities at that time. Data shows that Western monarch butterfly populations have declined by 99 percent and Eastern monarchs fare only slightly better—seeing an 80 percent decline since the 1990s. The USFWS identified the conversion of grassland habitats to agriculture, the widespread application of pesticides and herbicides, urban development, improper management of overwintering sites, and the effects of climate change as the main drivers for monarch butterfly population decline.

Despite these dire statistics, the USFWS failed to promulgate a proposal to list the monarch butterfly as threatened for a decade, finally doing so on December 12, 2024. The proposed rule would also designate over 4,000 acres of land in California, where monarch butterflies either overwinter or reside year-round, as critical habitat.

Department of the Interior's Delay

However, a few months later, the Department of the Interior published its Spring 2025 Agency Rule List, which designated the promulgation of the final rule as a "long-term action." This new status means that the USFWS does not have a set deadline for the publication of its final rule—placing the listing of the monarch butterfly on hold indefinitely. As of March 2026, the rule's official status has been deemed "To Be Determined," and as time draws on, it becomes increasingly likely that 2026 could conclude without any rule whatsoever. The monarch butterfly joins several other at-risk species also facing indefinite delays. These actions—or more so a lack thereof—tracks with the Trump administration's aim of prioritizing construction and economic growth over environmental protection and preservation. A listing and designation of additional species and their critical habitat could serve as additional hurdles to human development.

The Centers' Complaint

In response to the USFWS's inaction, the Centers filed suit, emphasizing the need for timely action due

to the high risk of extinction monarch butterflies currently face. Specifically, the Centers are seeking an order that would declare USFWS violated Section 4(b)(6)(A) of the ESA in failing to issue a rule for listing the monarch butterfly and direct the USFWS to issue a final rule by a specified date. The Centers allege that, by rule, USFWS's deadline to issue a final listing rule and critical habitat designation needed to be published by December 12, 2025, and its failure to do so is in violation of the ESA.

Conclusion and Implications

The implications surrounding *Center for Biological Diversity v. U.S. Fish and Wildlife Service* and the USFWS's designation of the monarch butterfly as a listed species are hefty in scale. The USFWS itself acknowledged that the monarch butterfly population is at great risk of extinction over a decade ago—with its decline credited heavily to the destruction of its habitat. To allegedly prevent further degradation of these crucial areas and reverse substantial monarch population decline, the Centers allege the USFWS must abide by Section 4 of the ESA and promulgate its final rule designating it as a threatened species. However, doing so would stifle the Trump administration's objectives of prioritizing urban, agricultural, and industrial development.

The Centers' complaint can be found here: https://biologicaldiversity.org/species/invertebrates/pdfs/Monarch_final_rule_deadline_complaint_2025_02_12.pdf
(Adam Nir, Blaine Dyas, Hannah Rider)

ENVIRONMENTAL GROUPS FILE LAWSUIT CHALLENGING TRUMP ADMINISTRATION'S IMPLEMENTATION OF 'ACTION 5' PLAN FOR THE CENTRAL VALLEY PROJECT

On March 2, 2026, three environmental non-government associations (NGOs)— San Francisco Baykeeper, Center for Biological Diversity, and Friends of the River—filed a lawsuit in the United States District Court for the Eastern District of California against the United States Bureau of Reclamation (USBR), the federal government agency responsible for California's Central Valley Project (CVP). The complaint claims that the USBR has violated the federal Endangered Species Act (ESA) and the terms of the 2024 Biological Opinion (BiOp) issued by the National Marine Fisheries Service (NMFS) in consultation with USBR, which sets operational requirements on the CVP to protected endangered and threatened species in the Sacramento-San Joaquin Delta (Delta). [*San Francisco Baykeeper, et al. v. U.S. Bureau of Reclamation, et al.*, Case No. 2:26-cv-00671 (E.D. Cal.)]

Background

The CVP is one of the largest water projects in the world, built during the Great Depression as a collaborative public works project between the state and federal governments. It provides an annual average of more than 5.6 million acre-feet of water to more than 250 contractor agencies throughout a large portion of the state—for municipal and industrial use, irrigation use, and environmental uses such as wildlife refuges. (USBR, Central Valley Project, https://www.usbr.gov/mp/cvp/.)

The operation of the CVP is intertwined with the operation of the State Water Project (SWP), and both projects are constrained in their ability to deliver water by the strictures of the ESA. In particular, operations in the Delta are restricted due to the effects of diversions on endangered and threatened fish species. Under the ESA, a project operated by a federal agency that might impact a protected species must be supported by a BiOp evaluating the impact, which may include an Incidental Take Statement (ITS) allowing the project to impact the species at certain levels or subject to certain measures that mitigate the harm. The BiOps and ITS governing the operations of the CVP have been the subject of extensive controversy and litigation for decades.

The Trump Administration's Policy and Action 5

On the day of his inauguration for his second term, President Trump issued a memorandum declaring his policy goal "to route more water from the Sacramento-San Joaquin Delta to other parts of the state for

use by the people there who desperately need a reliable water supply." (Pres. Memo., Putting People over Fish: Stopping Radical Environmentalism to Provide Water to Southern California (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/putting-people-over-fish-stopping-radical-environmentalism-to-provide-water-to-southern-california/.) Later that month, he issued an executive order that directed several cabinet departments to "take all measures, consistent with all applicable authorities, to ensure adequate water resources in Southern California." (Exec. Order No. 14181, 90 Fed.Reg. 8747 (Jan. 31, 2025), https://www.federalregister.gov/documents/2025/01/31/2025-02174/emergency-measures-to-provide-water-resources-in-california-and-improve-disaster-response-in-certain.) It also included a directive "to operate the CVP to deliver more water and produce additional hydropower … notwithstanding any contrary State or local laws." (*Id.*, § 2(c).)

The order also directed USBR to reconsider the plan for long-term operations of the CVP, which it proceeded to do in 2025. (USBR, Long-Term Operations of the Central Valley Project and State Water Project, https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=54661.) USBR formulated a new set of operational criteria, referred to as "Action 5," which it approved and adopted on December 4, 2025. (USBR, Record of Decision: Long-Term Operations of the Central Valley Project and State Water Project (Dec. 2025), https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=57167.)

The Complaint

The NGOs allege that CVP operations in 2026 have exceeded the take limits set in the 2024 BiOp. They also allege that USBR has failed to take mitigation actions required by the 2024 BiOp—specifically, adjusting Delta exports to achieve certain flow targets in the San Joaquin River when certain take thresholds are met. In addition to these claimed ESA violations, the NGOs claim that the Action 5 operations violate D-1641, the water rights decision issued by the State Water Resources Control Board (SWRCB) that places conditions on the operations of the CVP. The SWRCB submitted extensive, negative comments on the Action 5 proposal. (Assistant Deputy Director Diane Riddle, SWRCB, to Acting Regional Director Adam Nickels, USBR, Nov. 10, 2025, https://www.documentcloud.org/documents/26331183-2025-11-10-swrcb-letter-to-us-bureau-of-reclamation-regarding-action-5/.)

Finally, they claim that implementation of Action 5 will result in further violations and that it should not be implemented without further consultation and a revised BiOp.

Conclusion and Implications

This lawsuit by the NGOs has the potential to significantly impact operations of the CVP. In addition to seeking an injunction against further violations of the 2024 BiOp, the NGOs are also seeking a court order requiring a new consultation that would result in a new—perhaps more restrictive—BiOp.

But this case also represents a broader clash between state and federal authorities over Delta policy and may be only one front in that conflict. The complaint is available online at: (Complaint for Declaratory and Injunctive Relief, https://storage.courtlistener.com/recap/gov.uscourts.caed.483097/gov.uscourts.caed.483097.1.0.pdf
(Brett Stroud)

RECENT FEDERAL DECISIONS

FEDERALISM AND CALIFORNIA HOUSING LAWS— U.S. SUPREME COURT DENIES WRIT OF *CERTIORARI* LEAVING THE LOWER COURT DECISIONS STAND UPHOLDING CALIFORNIA'S HOUSING LAWS REGIMEN

City of Huntington Beach v. Gavin Newsom, et al., ___F.4th___,
Case No. 23-3694 (9th Cir. Oct. 30, 2024); Case No. 8:23-cv-00421-FWS-ADS (C.D. Cal.).

The U.S. Supreme Court's recent denial of *certiorari* in Huntington Beach's challenge to California's housing laws in *City of Huntington Beach v. Gavin Newsom, Governor of California,* Docket No. 25-337 marks a decisive endpoint—at least in federal court—to one of the most closely watched clashes between local control and state housing mandates. The U.S. District Court dismissed Huntington Beach's lawsuit and the Ninth Circuit upheld that decision. Now the U.S. Supreme Court is also denying relief via denial of the writ of cert. All of this leaves intact rejection the city's constitutional claims and, more broadly, reinforced the legal durability of California's aggressive housing regime.

Background

Huntington Beach has been resisting the state's attempts to override local control on a number of issues, including but not limited to mandates to increase production of housing, since electing a Republican majority city council in 2022. The city has already lost a number of cases in state courts addressing local control issues but had high hopes for a federal challenge to the requirement that the city adopt a housing element which meets state law requirements.

The Federal Case: A Dead End

In this case, the city argued that California's housing laws, particularly those requiring compliance with the Housing Element Law and Regional Housing Needs Allocation (RHNA), violated constitutional principles, including First Amendment protections and the autonomy afforded to charter cities under California law.

While the Ninth Circuit's opinion itself turned largely on threshold and doctrinal issues—particularly the inability to sustain the constitutional theories advanced—the practical takeaway was straightforward: federal courts were not going to serve as a vehicle for undoing state housing mandates. [*See* the U.S. District Court's ruling here: https://clearinghouse.net/doc/148138/]

The Supreme Court's denial of certiorari now affirms that underlying result. As a technical matter, the denial carries no precedential weight. But as a practical matter, it ends Huntington Beach's federal anti-housing litigation strategy.

The Parallel State Litigation: Where the Real Action Is

The federal case was only one front in a larger legal battle between Huntington Beach and the state. The more consequential proceedings have unfolded in California state court, where the state successfully sued Huntington Beach in 2023 for failing to adopt a housing element that complied with state law.

Under state law, the city must plan for more than 13,000 housing units to comply with state RHNA requirements, including nearly 6,000 units restricted to low and very-low income households.

In December 2025, after the California Supreme Court refused to hear the city's appeal of an earlier decision upholding the applicability of state housing element law requirements, a San Diego Superior Court judge ordered Huntington Beach to adopt a compliant housing element within 120 days and to adopt all zoning changes required to make the city's zoning consistent with the housing element within 120 days after adopting the housing element, and imposed significant constraints on the city's land use authority until it does so. (*See:* https://oag.ca.gov/system/files/attachments/press-docs/Order%20-%20Article%2014%20Remedies.pdf)

Those constraints effectively shift control over certain permitting and zoning decisions away from the city, creating a form of judicially supervised compliance. The city is prohibited from enforcing planning and zoning provisions to deny projects or reduce density on sites identified in its RHNA analysis. The City is also prohibited from processing zoning changes, granting variances or approving subdivision maps on those sites unless necessary to achieve compliance. The court further mandated expedited processing of qualifying projects, including so-called "builder's remedy" applications. The court's order establishes firm approval timelines and holds that failure to meet those deadlines would result in automatic project approval. The order also requires fast-track approval of projects that would have qualified for by-right treatment under the city's draft housing element.

Failure to comply with the requirement to adopt the housing element in a timely manner could expose the city to escalating penalties under the housing element law, including potential loss of control over land use decisions altogether.

Charter City Autonomy Versus State Preemption

At the heart of Huntington Beach's argument in both state and federal court was a familiar proposition: as a charter city, it retains constitutional authority over municipal affairs, including zoning and land use. That argument has intuitive appeal, especially in California, where the "home rule" doctrine has historically afforded charter cities significant autonomy.

But housing has increasingly been treated as a matter of statewide concern. Courts have repeatedly held that when a statewide interest is sufficiently strong, such as addressing a housing shortage, state law may preempt local control.

Huntington Beach attempted to reframe that conflict as a federal constitutional issue, invoking free speech and structural principles. The federal courts were unpersuaded, and the Supreme Court's refusal to hear the case effectively confirms that this is not the kind of case that invites federal constitutional intervention.

Conclusion and Implications

The immediate consequence is clear: Huntington Beach has lost its ability to challenge the housing element requirements in federal court. The longer-term implications are more significant.

First, the decision reinforces a trend: courts are increasingly reluctant to entertain constitutional challenges to state housing mandates. Cities seeking relief will have to look elsewhere—likely to the political process or to narrower state-law arguments.

Second, the case strengthens the enforcement hand of states, particularly California. By prevailing in both federal and state courts, the state has demonstrated that it can compel compliance not only through legislation but through litigation-backed remedies.

Third, the outcome may deter similar challenges. Other jurisdictions considering constitutional attacks on housing mandates now have a clear signal: federal courts are unlikely to be receptive.

The U.S. Supreme Court's denial of certiorari in the Huntington Beach case is not a landmark decision in the traditional sense. There is no opinion, no doctrinal innovation, no sweeping constitutional pronouncement. By leaving the Ninth Circuit's ruling intact, the court has effectively closed the federal courthouse doors to this line of attack. Combined with the state court's enforcement orders, the result is a comprehensive legal defeat for Huntington Beach.

More broadly, the case illustrates a shifting balance of power. In the face of a statewide housing crisis, courts appear increasingly willing to uphold state authority—even at the expense of local autonomy. With the denial of cert, the Ninth Circuit's decision, not published, of October 2024, stands. The Ninth Circuit's memorandum opinion is available here: https://law.justia.com/cases/federal/appellate-courts/ca9/23-3694/23-3694-2024-10-30.html
(Neal A. Parish, Darien Key)

NINTH CIRCUIT FINDS EPA VIOLATED SECTION 7 OF THE ESA BY FAILING TO CONSULT WITH FISH AND WILDLIFE SERVICE BEFORE PROMULGATING CLEAN WATER ACT WATER QUALITY CRITERIA FOR CADMIUM

Center for Biological Diversity v. United States Environmental Protection Agency, ___F.4th___, Case No 23-2946 (9th Cir., Mar. 3, 2026).

On March 3, 2026, the Ninth Circuit Court of Appeals held that the U.S. Environmental Protection Agency (EPA) violated section 7 of the federal Endangered Species Act (ESA) by failing to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (together, the Services) before promulgating its Clean Water Act (CWA) section 304(a) water quality criteria recommendation for cadmium. Center for Biological Diversity (CBD) sufficiently met the relatively low threshold for establishing Article III standing to challenge an agency action by showing it suffered harm that traceable to the EPA's recommendation, which could be redressed via consultation.

Facts and Procedural Background

Under Section 304 of the CWA, the EPA is required to develop and publish water quality criteria recommendations for about sixty individual pollutants, including cadmium. Once published, states must review and modify their water quality standards and revise them to match the new recommendations or explain to the EPA why they declined to do so. If the EPA deems a state's proposed criteria inconsistent with the CWA's requirements, it will directly promulgate that state's criteria for the relevant pollutant.

In 2016, the EPA promulgated new recommendations for cadmium without first consulting with the Services to further evaluate its potential impacts on ESA-listed species or their critical habitats. The EPA reasoned that because the recommendations weren't binding requirements imposed on the states, it was not undertaking a formal agency action—consultation would only be required before it actually decided on each individual state's water quality standards.

Plaintiffs, CBD, filed suit to invalidate the 2016 cadmium recommendations and compel the EPA to complete section 7 consultation. The trial court agreed that publication of the Section 304(a) recommendations constituted an agency action that may affect listed species under ESA section 7 and ultimately granted summary judgment in CBD's favor. The court vacated the EPA's chronic freshwater cadmium recommendation and remanded the remainder of its recommendations to the EPA for consultation with the Services. The EPA appealed.

The Ninth Circuit's Decision

Standing

The court first grappled with the EPA's argument that CBD lacked standing and concluded that CBD satisfied each element. To establish standing, a plaintiff must show: (1) an injury in fact that is concrete and particularized and actual or imminent; (2) the injury is traceable to the defendant's challenged action; and (3) it is likely the injury will be redressed by a favorable decision.

CBD's members had a concrete interest harmed by the recommendation as they routinely engaged in educational and recreational activities revolving around the enjoyment of the listed species. CBD established that elevated cadmium concentrations would harm those species and diminish their members' ability to participate in those activities.

The court also concluded this harm was traceable to the EPA's actions as it was foreseeable that states, which routinely adopt the EPA's recommended criteria, would loosen their water standards related to cadmium and thereby harm listed species. Consultation would have likely resulted in the issuance of a biological opinion that required the EPA to impose more stringent criteria on the states. States could either adopt these more stringent standards or have the EPA do so in their place.

Finally, the court held that CBD's injuries were redressable as consultation would likely lead to more protective section 304(a) recommendations, which

the states would adopt in response. These heightened standards would then benefit the listed species CBD members seek to observe and enjoy.

ESA Section 7

Upon shifting to the merits of CBD's claim regarding the EPA's alleged ESA violations, the court held that the EPA's publication of Section 304(a) recommendations constituted an "agency action" that necessitated consultation. Under ESA Section 7(a)(2), this consultation requirement is triggered when an agency action "may affect" a listed species.

The court concluded the EPA's conduct fell within that definition of "agency action" as the promulgation of section 304(a) recommendations is a congressionally mandated activity that is authorized, funded, and carried out by the EPA. Though not necessarily binding on states, the recommendations influence water quality standards nationwide, and the EPA will directly implement the criteria in noncompliant states and tribal lands. Because of this, it was reasonably foreseeable that states would adopt these less stringent cadmium standards and affect listed species. Therefore, the recommendations were considered by the court to be an "agency action" that "may affect" listed species, and the EPA violated the ESA by failing to consult with the Services prior to their publication.

Conclusion and Implications

The Ninth Circuit's holding in *Center for Biological Diversity v. Environmental Protection Agency* underscores that the threshold for an "agency action" that "may affect" a listed species is a relatively low bar to clear if a plaintiff can make some showing of causation and redressability. The EPA's Section 304(a) recommendation for cadmium, though technically nonbinding, effectively directed states to adopt their water quality standards, and thus clearly qualified as an agency action. This decision places a hefty responsibility on the EPA to engage in consultation for each Section 304(a) recommendation it routinely makes; however, it also serves to protect ESA-listed fish species nationwide from any water quality standards that states may take pursuant to these EPA actions. The Ninth Circuit's published opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/03/03/23-2946.pdf
(Adam Nir)

U.S. DISTRICT COURT REJECTS TAKINGS CLAIMS AGAINST CITY BY HOMEOWNER CLAIMING ADJACENT RESIDENTIAL DEVELOPMENT SUBJECTED THE CITY TO LIABILITY BY VIRTUE OF ITS APPROVAL OF THAT PROJECT

De La Cruz v. City of Los Angeles, ___F.Supp.4th___, Case No. CV-24-____ (C.D. Cal. Feb. 5, 2026).

In a decision addressing inverse condemnation and constitutional takings claims, the U.S. District Court for the Central District of California dismissed claims brought against the City of Los Angeles arising from alleged property damage caused by adjacent private development. The court held that the plaintiff failed to state a viable claim under the U.S. Constitution's Fifth Amendment Takings Clause and related state law theories because the alleged harms were not attributable to a governmental taking or public use. The opinion provides important guidance on the limits of inverse condemnation liability and the distinction between private construction impacts and government action for purposes of constitutional takings claims.

Factual and Statutory Background

The case arose from the construction of a multi-story residential development adjacent to the plaintiff's property in Los Angeles.

The plaintiff alleged that the neighboring project, a six-story apartment building, caused substantial physical impacts, including structural damage, loss of lateral support, and interference with the use and enjoyment of her property. That adjacent project was approved by the City of Los Angeles via state mandates for the city to provide additional "affordable" housing within a transportation corridor.

The plaintiff asserted that the City of Los Angeles approved and permitted the development without

adequate safeguards, thereby facilitating the alleged harm. Based on these allegations, the plaintiff brought claims under the U.S. Constitution's Fifth Amendment Takings Clause, as well as related state-law theories of inverse condemnation and nuisance. The claims were premised on the theory that the City's approval and regulatory oversight of the project effectively resulted in a taking or damaging of private property for public purposes.

Procedural History

The plaintiff filed a complaint in federal court asserting constitutional and state-law claims against the City. The City moved to dismiss, arguing that the complaint failed to allege facts sufficient to establish a taking attributable to government action. Specifically, the City contended that the alleged damages resulted from private construction activity, not from any public project or government appropriation of property rights.

The District Court evaluated the sufficiency of the pleadings under federal standards governing motions to dismiss and considered whether the alleged facts, if true, could support a viable takings or inverse condemnation claim.

The U.S. District Court's Decision

Takings Clause and Government Responsibility

The court began by outlining the fundamental requirements of a Fifth Amendment takings claim, emphasizing that liability attaches only where a plaintiff demonstrates that the government has taken or damaged private property for public use. The court noted that not all government approvals or regulatory actions give rise to takings liability; rather, there must be a sufficiently direct causal connection between governmental conduct and the alleged property deprivation.

Government Action Versus Private Conduct

The plaintiff argued that the City's approval of the adjacent development constituted sufficient government involvement to support a takings claim. The court rejected this theory, holding that the City's role as a permitting authority did not transform the private developer's construction activities into government action.

The court emphasized that constitutional takings liability cannot be premised solely on a municipality's approval of private development, even where that development results in physical impacts to neighboring properties. Because the alleged damage stemmed from private construction rather than a public project or government-directed activity, the plaintiff failed to establish the threshold requirement of government action.

Public Use Requirement

The court further explained that a valid takings claim requires that the alleged property deprivation occur for a public use. Here, the development at issue was a privately constructed residential project, and the complaint did not plausibly allege that the City appropriated the plaintiff's property or caused damage in furtherance of a public use.

Absent allegations that the City itself occupied, controlled, or intentionally damaged the property for public purposes, the court concluded that the Takings Clause was not implicated.

Inverse Condemnation and Causation

Turning to the plaintiff's inverse condemnation theory, the court reiterated that such claims require a showing that the government substantially caused or participated in the damaging of property. The court found that the complaint failed to allege facts demonstrating that the City's conduct, beyond standard regulatory approval, was a substantial factor in causing the alleged harm.

The court distinguished cases involving public works or government construction projects, where inverse condemnation liability is more readily established, and concluded that the allegations here fell outside that framework.

In the end, in evaluating plaintiff's federal taking claims, the court found as follows:

> When one purchases a residential property, that property is subject to the zoning decisions of the local government. Plaintiffs have cited to no case in which a property owner has successfully maintained a takings claim involving the approval of a development on a neighboring parcel. The second *Penn Central* factor therefore does not support Plaintiffs' federal takings claim.

The court went on to state:

> Here, as the Complaint alleges "because the State of California . . . generally and the City of Los Angeles specifically have prioritized. . .the approval of certain high density housing projects that are built near public transportation hubs such as the [neighboring project]. . . at issue in this lawsuit" . . . the Complaint . . . admits that the approval of the development on the neighboring parcel advances the important public good of providing additional affordable housing. . . .Plaintiffs have therefore admitted. . .that the third *Penn Central* factor weighs against them.

And as to the plaintiff's state law claims of inverse condemnation, the court held:

> The mere appearance of a lawful structure on neighboring property cannot give rise to an action in inverse condemnation. . .which requires that the property "taken or damaged for public use" . . . unless we are to do violence to the words "taken or damaged" in the constitutional provision upon which such claims are founded. There is no authority for te proposition. . .that plantiff's are entitled to compensation merely because a large, unattractive structure went up next door.

Conclusion and Implications

The U.S. District Court dismissed the plaintiff's claims, concluding that the alleged harms arising from adjacent private development did not constitute a compensable taking under the Fifth Amendment or support an inverse condemnation claim against the City. The decision underscores the principle that government permitting and regulatory approval, without more, do not give rise to takings liability for impacts caused by private actors.

For practitioners and local agencies, the opinion clarifies the limits of municipal exposure in land use contexts, particularly where disputes arise from private development projects. It reinforces that constitutional and inverse condemnation claims require a clear nexus between government action and property damage, as well as a demonstrable connection to public use, rather than generalized allegations of regulatory involvement. The U.S. District Court's opinion is available online at: https://www.eminentdomainreport.com/assets/htmldocuments/NewBlogs/EminentDomain/De%20La%20Cruz%20v.%20City%20of%20Los%20Angeles%202026%20U.S.%20Dist.%20LEXIS%2026413.pdf
(Miguel Mauricio)

RECENT CALIFORNIA DECISIONS

SECOND DISTRICT COURT ADDRESSED THE INTERSECTION OF THE CALIFORNIA EMERGENCY SERVICES ACT AND MUNICIPAL CODE: UPHOLDS MAYOR'S AUTHORITY TO DECLARE A HOUSING AND HOMELESSNESS EMERGENCY IN LOS ANGELES

Fix the City, Inc. v. City of Los Angeles, et al., ___Cal.App.5th___, Case No. B339464 (2nd Dist. Feb. 27, 2026).

On February 27, 2026, the Second District Court of Appeal denied appellant Fix the City, Inc.'s request for a writ vacating the City of Los Angeles' emergency declaration of a "local housing and/or homelessness emergency," as well as associated directives, rules, and regulations.

Factual and Procedural Background

On July 7, 2023, City of Los Angeles Mayor Karen Bass declared a local emergency pursuant to Section 8.33 of the City of Los Angeles Administrative Code (LAAC). This provision confers various mayoral powers upon the declaration of "a local housing and/or homelessness emergency." The Los Angeles City Council affirmed and renewed the state of emergency twice during the following months. Mayor Bass lifted the emergency declaration on November 4, 2025.

On September 23, 2023, Fix the City sought writ and declaratory relief against the City and City Council challenging the emergency declaration. Fix the City alleged that: (1) the declaration was not properly ratified by the City Council as required by the California Emergency Services Act (CESA), (2) LAAC section 8.33 conflicts CESA, and (3) LAAC 8.33 is inconsistent with the definition of "local emergency" in LAAC section 8.22.

CESA

In CESA:

> . . .the Legislature expressed its intent to coordinate the emergency responses of the state, its political subdivisions, the federal government, and "private agencies"; to provide state assistance to its political subdivisions; and to facilitate "the rendering of mutual aid" by the state and political subdivisions "to the end that the most effective use may be made of all manpower, resources, and facilities for dealing with any emergency that may occur.

CESA establishes three "degrees of emergency": a state of war (§ 8558 (a)); a state of emergency (§ 8558(b)) and a local emergency (8558 (c).).

The court addressed the local emergency degree.

The City demurred, contending CESA does not apply to Los Angeles since it is a charter city, and even if it did, LAAC section 8.33 addresses municipal affairs and is therefore enforceable regardless of any conflict with CESA. The trial court sustained the demurrer without leave to amend, concluding CESA does not apply to charter cities and the definition of "local emergency" in LAAC section 8.22 does not apply to LAAC section 8.33. Fix the City timely appealed.

The Court of Appeal's Decision

The Second District upheld the trial court's ruling, finding Fix the City's arguments meritless.

First, the Court of Appeal held that it need not resolve whether CESA applies to charter cities, because even if it did, LAAC section 8.33 does not conflict with CESA. LAAC section 8.33 is a "municipal affair" because it is limited to conditions exclusively within the City's territory. Further, it does not conflict with CESA because CESA does not limit political subdivisions from declaring emergencies other than those addressed by the Act. The court disagreed with Fix the City's argument that CESA preempts the field of local emergencies, holding that the Legislature did not express an intent to occupy the entire field of local governmental response to emergencies. Since no conflict exists, the declaration, issued according to LAAC section 8.33, did not need to comply with CESA's procedural requirements.

Second, the court held that LAAC section 8.22 does not render LAAC section 8.33 invalid. Considering established rules of statutory construction, the court pointed out that Section 8.33 was enacted after Section 8.33, suggesting that the Legislature intended Section 8.33 to either fit within, or add to, Section 8.22. The court held that either way, no conflict exists between the two provisions.

In the end, the court found that Fix the City failed to show how it could amend its allegations to state a viable claim, thereby, the trial court's sustaining of respondents' demurrer without leave to amend was proper.

Conclusion and Implications

While this case is based on a specific Los Angeles ordinance, it upholds charter cities' authority to regulate and respond to municipal affairs within their boundaries. As many California cities struggle with similar conditions as those facing Los Angeles, this case may bolster other jurisdiction's ability to enact local emergency regulations related to housing and homelessness. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B339464.PDF
(Hannah Rida, Blaine Dyas)

THIRD DISTRICT COURT CLARIFIES USE OF CATALYST THEORY IN OBTAINING FEE AWARDS

Physicians for Social Responsibility Los Angeles v. Department of Toxic Substances Control, 118 Cal.App.5th 1071 (3rd Dist. 2026).

On March 4, 2026, the Court of Appeal for the Third District issued a second opinion in the case *Physicians for Social Responsibility Los Angeles v. Department of Toxic Substances Control*. This California Environmental Quality Act (CEQA) case came back up on appeal to evaluate the award of attorney's fees under the private attorney general doctrine (Code of Civil Procedure section 1021.5).

Background

The litigation involved the cleanup of the contaminated site at the Santa Susana Field Laboratory in southeastern Ventura County, where Boeing had leased 90 acres to the federal government for the testing and manufacturing of rocket engines, nuclear reactors, and other various nuclear applications. While the federal government is responsible for the cleanup of radioactive contamination, the California Department of Toxic Substances Control (DTSC) is responsible for regulating chemical contamination cleanup. DTSC's selection of the contamination remediation activities is subject to environmental review under CEQA.

Boeing had previously notified DTSC of its intent to demolish four structures onsite, of which the petitioner physician group raised environmental concerns. Petitioners asserted that the demolition and disposal activities are subject to CEQA and that DTSC failed to consider the consequent environmental impacts of that demolition. The Court of Appeal disagreed with petitioners, concluding that, though the remediation programs are subject to CEQA, the demolition activities were not a discretionary activity subject to CEQA review. After that decision, DTSC issued a Final Environmental Impact Report (FEIR) for the remediation effort, in which it also included an analysis of the four building demolition impacts.

Because of this, petitioners alleged that they obtained the primary objective of the litigation (DTSC conducting CEQA review of the demolition), arguing that this warrants them the award of attorney's fees. The trial court rejected the petitioners' arguments and petitioners appealed.

Private Attorney General Attorney's Fees

To qualify for fees, the litigant must show: (1) that it is a successful party; (2) that the action resulted in the enforcement of an important right affecting the public interest; (3) a significant benefit was conferred on the general public or a large class of person; and (4) the necessity of private enforcement and the attendant financial burden make the award of fees appropriate.

The Court of Appeal's Decision

Though the physician group did not obtain judgment in its favor in the initial challenge, it claimed it was successful under a "catalyst theory." This theory allows for the award of attorney fees, even when the plaintiff does not obtain a favorable judgment, if the defendant changes its behavior substantially because of and in the manner sought by the litigation.

The Court of Appeal explained that petitioners could not meet their burden of demonstrating that their lawsuit had merit and achieved its catalytic effect by threat of victory. This requires inquiry into the action's objective legal merit, similar to an judicial evaluation when asked to issue a preliminary injunction.

The Court of Appeal rejected petitioners' argument that the catalyst theory applied (petitioners had claimed that they obtained early litigation successes, such as DTSC agreeing that the Final Environmental Impact Report will evaluate the building demolition and by defeating DTSC's motion for summary judgment). The Court of Appeal clarified that, under the catalyst theory, the defendant's voluntary action must occur without any judicial resolution of the issues. The court concluded that, because the lawsuit lacked merit, then award under the catalyst theory was unwarranted.

Moreover, the court explained how the release of the FEIR which included the demolition environmental impact analysis, was based on several detailed factors unrelated to petitioners' lawsuit.

Finally, the court determined that the denial of attorney fees does not run counter to public policy. Public policy supports the catalyst theory rewarding a plaintiff when the plaintiff discontinues litigation once a defendant acquiesces to the remedy, preserving judicial resources. Accordingly, the catalyst theory should reward a plaintiff when its litigation is successful and the opposing party provides the requested relief under the threat of judicial compulsion. Here, DTSC was under no threat of judicial compulsion when it voluntarily included the building demolition in the FEIR.

Thus, petitioners did not achieve success based on the catalyst theory. Consequently, they could not recover attorney fees.

Conclusion and Implications

Petitioners in *Physicians for Social* Responsibility present an interesting theory: that despite judgment being issued in favor of the respondent, petitioners were still entitled to attorney fees. The decision here provides further guidance for when CEQA litigants under the private attorney general theory may seek attorney fees. This decision details how and when the catalyst theory may apply in the context of enforcing a public right. It provides that an unsuccessful CEQA litigant cannot try to seek attorney's fees in a roundabout manner, using the catalyst theory of success. Just because a defendant acquiesces to the remedy a plaintiff is demanding, is not enough to support the use of the catalyst theory.

This decision should be helpful for government agencies and other real parties in interest defending a challenged project, when those parties are defending against the reward of attorney fees in CEQA litigation. The court's published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C100487.PDF

(Braeden Mansouri)

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 1699 (Rogers)—This bill was referred to the Committee on Emergency Management on March 24, 2026. This bill would establish the Good Fire Act to extend the Prescribed Fire Liability Pilot Program and facilitate continued beneficial burning to meet the state's forest treatment goals. Among other things, this bill includes an exemption from the requirements of the California Environmental Quality Act (CEQA) for actions taken by CAL FIRE to assist in implementation of prescribed fire or cultural burning projects that do not otherwise require environmental review.

AB 2234 (Papan)—This bill was referred to the Committee on Natural Resources on March 9, 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 was referred to the Committee on Natural Resources on March 9, 2026. The bill would exempt critical fuels reduction projects, as defined, done in communities in high fire threat districts or very high fire hazard severity zones from the requirements of 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 referred to the Committee on Natural Resources on March 9, 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 Environmental Impact Report (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 referred to the Committees on Natural Resources and Housing and Community Development on March 16, 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 read a second time, amended, and re-referred to the Committee on Energy, Utilities and Communication on March 19, 2026. As amended, 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. Nor would data centers be eligible for use of other categorical exemptions under CEQA. The bill provides; however, that the Jobs and Economic Improvement Through Environmental Leadership Act of 2021, which allows for certain CEQA streamlining benefits, would apply to data centers, subject to certain conditions.

SB 954 (Blakespear)—This bill was amended and re-referred to the Senate Rules Committee on March 25, 2026. This bill would revise the definition of "natural and protected lands" under CEQA to include habitats for protected species identified as candidate, sensitive, or species of special status by State or federal agencies. This bill would also exempt projects consisting exclusively of a family day care home, as defined, if those homes are not located in an area zoned for industrial use or within 3,200 feet of a facility that actively extracts or refines oil or natural gas. The bill would also revise the exemption for advanced manufacturing facility projects to require those projects meet certain requirements and for the governor to certify the project, as provided. An advanced manufacturing facility subject to the exemption would be required to enter into a community benefits agreement and comply with specified labor requirements. The bill would further require the lead agency to hold at least one public hearing on the project to ensure compliance with the community benefits agreement and labor requirements. Finally, the bill would revise the CEQA exemption for rezoning actions that implement an approved housing element to not apply to rezoning that would allow for construction of a tourism facility, as defined, and would repeal the exception from the exemption for rezoning that would allow for construction of oil and gas infrastructure.

SB 1085 (Durazo)—This bill was referred to the Committees on Natural Resources and Water, and Local Government on March 11, 2026. This bill would extend the requirements of SB 610 (2001) and SB 221 (2021), often referred to as the "show me the water" bills, which require identification of a public water supply and preparation of a water supply assessment as part of preparation of an EIR or Negative Declaration/Mitigated Negative Declaration. This bill would apply those requirements to projects that rely on a CEQA exemption or ministerial approval process intended to streamline permitting for housing, commercial, and industrial development projects. The bill would require a local agency to identify any water system whose service area includes the project site and any water system adjacent to the project site that is a public water system that may supply water for the project at the time it determines whether CEQA applies, and if the local agency is not able to identify any public water system, a water supply assessment must be prepared.

SB 1326 (Wahab)—This bill was referred to the Committee on Environmental Quality on March 4, 2026. The bill would modify the definition of tribal cultural resource to, among other things, include a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is identified by the Native American Heritage Commission as a sacred place, as provided, or included in a local tribal register. The bill would also revise and recast existing provisions of CEQA that require public agencies to avoid damaging effects to tribal cultural resources when feasible and provide avoidance and minimizations measures for consideration to instead require a public agency to adopt mitigation measures to avoid or minimize the significant adverse impacts to tribal cultural resources. The bill would require avoidance and preservation of the resource in place to be considered when requested by the consulting California Native American tribe, and if avoidance and preservation are determined to be infeasible, the bill would require the lead agency to demonstrate and document the basis for that determination with substantial evidence and to incorporate other measures to avoid or minimize significant adverse impacts to the resource. The bill would authorize the consulting California Native American tribe to identify culturally appropriate mitigation measures, which the bill would require the lead agency to consider and incorporate, to the extent feasible, in developing mitigation and treatment measures. This bill would also require the lead agency, if it elects not to use tribal methods and standards or tribal traditional knowledge in the identification of, and the adoption

of avoidance, mitigation, and treatment measures for, tribal cultural resources, to explain its decision, supported by substantial evidence, in the environmental documents for the project.

Density Bonus Law

AB 2433 (Alvarez)—This bill was read a second time and amended on March 26, 2026. This bill aims to ensure that projects receiving a density bonus deliver affordable units as part of the project. As amended, the bill would revise and recast the provisions of Density Bonus Law to require a density bonus, incentive, or concession, or waiver or reduction, on sites that are the subject of one housing development application, as specified. If the local government notifies the applicant that the application is deemed complete, this bill would require the city or county to provide the applicant with a determination that the project is eligible for a density bonus. The bill would make revisions to the calculations related to 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 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 3 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 referred to the Committees on Local Government and Housing and Community Development on March 9, 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 amended on March 19, 2026, and re-referred to the Committee on Housing and Community Development on March 23, 2026. As revised, this bill would require major transit cities, as defined, to designate one or more regional transit hub districts, as specified. The bill would require a downtown housing development to be an allowed use within a regional transit hub district and would prescribe requirements for downtown housing developments, including requiring specified labor standards and requiring the developments to be eligible for streamlined ministerial approval, as specified. The bill would establish the Downtown Revitalization Loan Fund and continuously appropriate funds to the California Housing Finance Agency to make loans for downtown housing developments, as specified.

AB 2601 (Lee)—This bill was referred to the Committees on Housing and Community Development and Local Government on March 9, 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 re-referred to the Committee on Housing and Community Development on March 25, 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 where housing is an allowable use 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 1014 (Grayson)—This bill was 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 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 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 (ADUs) to make it less costly to build ADUs by removing the ability to impose financial penalty on ADUs over 750 square feet.

SB 1216—This bill was referred to the Committee on Housing on March 4, 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.

SB 1258 (Wiener)—This bill was re-referred to the Senate Rules Committee on March 26, 2026. The bill would revise provisions that allow a streamlined, ministerial approval process for multifamily housing developments for projects that meet certain requirements, including that they not be located on a hazardous waste site unless the site has been cleared for residential use. The bill would instead authorize a multifamily development to be located on a hazardous waste site if an applicant takes certain actions before issuance of the first post-entitlement phase permit, including obtaining a determination by the California Department of Public Health, State Water Resources Control Board, Regional Sater Quality Control Boards, Department of Toxic Substances Control, or a local agency that the site is suitable for residential use or residential mixed uses. The bill would also authorize a development subject to these provisions to be located on a hazardous waste site if an applicant takes certain actions before the issuance of certificate of occupancy, as specified.
(Amy Higuera)

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