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LAND USE NEWS

CALIFORNIA'S LITTLE HOOVER COMMISSION RELEASES POLICY RECOMMENDATIONS RELATING TO DATA CENTER DEVELOPMENT AND REGULATION

As more-and-more of society's tools rely on internet connectivity to function, these devices and applications, along with the explosion in artificial intelligence, require a major expansion in computing power. This consequently requires the rapid development of data centers to accommodate the computing power. These data centers are extremely energy intensive, requiring massive amounts of electricity to power the computer systems, but also require significant resources (usually water) to cool the centers.

In March 2026, California's Little Hoover Commission released its report titled "Data Centers and California Electricity Policy." The report intended to identify areas of concern and ideas for policy development with regard to the rapid growth of, and often controversial, data centers. The Little Hoover Commission is an independent and bipartisan state oversight agency that is charged with "promoting economy and efficiency" in state government. The Little Hoover Commission will often study critical issues facing the state and make recommendations to the Governor and Legislature for policy consideration.

Background

As data center development is sure to grow in California, and as communities begin to oppose their development (*see* "Grassroots Data Center Opposition Moves Forward" elsewhere in this issue), the Little Hoover Commission report is intended to provide state legislators with a suite of recommendations for addressing many of the major concerns surrounding data centers, including: electrical grid capacity and reliability, development oversight, land use concerns, and environmental concerns.

The Report and Key Land Use and Environmental Concerns

The report identifies the California Energy Commission's estimate that peak data center electricity load could rise to 7.5 gigawatts (about three times the entire generating capacity of the Diablo Canyon nuclear power plant). Sources cited in the report explain that the average data center land transaction is 224 acres, with AI data centers typically requiring at least 200 acres to accommodate the necessary footprint to support AI workloads. Meanwhile, advantageous locations for data centers remain to be areas with "proximity to major clients, access to fast fiber networks, local governments accustomed to supporting large technology infrastructure, and utilities willing and able to provide the substantial electricity and water needed to support operations" (*i.e.* the state's urban centers). Though many data center developers are shifting their focus to rural areas where land is cheaper.

At least with respect to land use and environmental concerns, the following issues are most salient for communities and practitioners:

- Large facility footprints that can disturb the natural environment;
- Data centers do not generate sales tax revenue or provide a meaningful jobs base, thus data center proposals can compete with other tax-generating and job-creating business for limited land area;
- Noise from cooling systems can disturb neighboring communities;
- Diesel from backup generators can cause air quality impacts for the surrounding community;
- Significant amounts of water are used for cooling systems.

Potential Upsides

The report does explain that new data centers can support upgrades to the electric transmission network, at a time where much of the state's electricity infra-

structure (*e.g.* power plants, substations, transmission lines) has aged long past its expected useful life. However, any tech market correction or AI bubble burst could leave stranded many of these data center projects, and their requisite infrastructure improvements.

Consequently, the report recommends requiring data center developers to provide collateral and impose certain fees on developments, to ensure that developers carry the financial burden of the project and infrastructure development, so that ratepayers are not left with the losses. Ensuring that data center developers remain liable for improvements, and transparency around these requirements, could reduce some public opposition to these projects.

Local Planning

While much of the report discusses statewide policy recommendations, the Little Hoover Commission alludes to authority traditionally vested in local government. Namely, this involves "intelligent siting." Local governments should consider adding "data center" uses to their permissible use tables in the zoning code. This could allow for "clustering" data centers that could "control costs, make effective use of existing grid capacity, and limit environmental and community impacts."

Not only does this sequester deleterious impacts from non-industrial uses, but this also supports efficient infrastructure planning. Utilities can expand the necessary electric transmission and fiber optic networks targeting areas where demand is the greatest, limiting the need for such line extensions to disparate areas of a community. Concentrating data centers in (presumably) industrial areas also can reduce community opposition. Impacts from noise and diesel generator emissions would be limited to areas away from sensitive uses.

Conclusion and Implications

Despite the Little Hoover Commission report, the state legislators have already introduced several bills aimed at addressing the growth of data centers. Some of these bills (SB 887 and AB 2170) target the California Environmental Quality Act (CEQA) process for data centers, with SB 887 eliminating the use of categorical exemptions for data centers and AB 2170 lowers the CEQA review threshold for data center projects near "overburdened communities." Other bills do propose to address some of the recommendations from the commission report, including special tariffs (rates) on data centers (SB 886) and comprehensive reporting requirements on data center water usage (AB 2619).

Obviously, local land use planning changes occur on a jurisdiction-by-jurisdiction basis, but such changes will be shaped by state policy (*e.g.* CEQA applicability) and the residents of those communities. (Braeden Mansouri)

GRASSROOTS DATA CENTER CONCERNS MOVE FORWARD IN CALIFORNIA AND ACROSS THE NATION

Next month, voters in the San Gabriel Valley City of Monterey Park will be voting on Measure NDC. Measure NDC proposes to amend the City General Plan to completely prohibit data centers citywide. The City Council voted to place the resolution on the ballot following intense community pushback to a proposed data center.

Data Center Impact Concerns

As discussed elsewhere in this issue, data centers can cause several impacts on a community. Their physical space is often bulky, usually requiring several hundred thousand square feet of space. Data centers generate no sales tax revenue and offer very few permanent jobs for a city. This footprint, consequently, crowds out other businesses that may contribute to sales tax revenue or may otherwise offer permanent jobs for community residents.

Data centers require massive amounts of electricity to power their servers, but as a result also require a substantial amount of water to cool these computer systems. Opponents often argue that demands could strain local utilities and result in infrastructure improvement costs being passed on to the utilities' ratepayer base. Cooling systems that run 24 hours a day can cause major noise impacts. Further, because

data centers must meet a 99.999 percent reliability standard, they must also be supported by an extensive number of diesel-powered generators to power the data center in the event of outages. These generators are both loud and also emit harmful particulates, resulting in air quality impacts affecting the surrounding community.

The Monterey Park Issue

In Monterey Park, HMC Capital had purchased the proposed site in order to develop a 218,400 square foot data center, which included a new electrical substation and two dozen diesel generators. This action provoked a major response from community members, inspiring a grassroots effort from several groups, arguing that the data center's impacts will outweigh any benefit caused by the small number of permanent jobs. The developer alleged that the data center would generate more than $5 million annually in tax revenue and would include the construction of a public park.

The neighborhood group "No Data Center in Monterey Park" began organizing in December 2025, collecting 5,300 signatures opposing the development. Early project meetings at the City Council lasted over six hours, following extended public comments. The Council unanimously approved a 45-day hold on the project, than a ten and half month moratorium on data center approvals, before ultimately placing a permanent ban on the June ballot.

The Growing National Data Center Revolt

California communities (long known for their activist opposition to any number of development projects) are not alone in the opposition to these types of projects. A report by the group Data Center Watch identified $98 million in data center projects that were rejected or delayed over a three-month period in early 2025 alone! The group also pointed to a marked increase in the number of cancelled projects in the last two quarters of 2025.

This points to a nascent but growing resistance to these types of projects. Dozens of localities nationwide have imposed moratoria or complete bans on data centers, while four states have imposed moratoria, and 29 other states considering moratoria or bans. Virginia and Georgia are leading the movement, where data center development has reached a breaking point.

Moreover, these opposition movements are being spearheaded by strange bedfellows, with groups on both the left and right of the political spectrum uniting to oppose such projects. Environmentalists oppose the immense consumption of resources at each facility, conservatives opposed to utility subsidies and impacts to community land values, and populists of the left and right opposed to giveaways to corporate interests.

Monterey Park poses even more unique set of circumstances, where approximately 66 percent of residents identify as Asian-American and nearly 29 percent identify as Hispanic or Latino, and around 44 percent of city residents report having an education level of less than high school completion. Consequently, the Monterey Park opposition has also taken a racial and social justice element as well, where these residents view the corporate developers as locating these projects in disadvantaged communities.

Conclusion and Implications

This year is shaping up to be a pivotal year for data center development. As many of these bans and moratoria proceed, data centers should be considering additional community benefit measures to assuage local concerns. One option could be to offer to fund major infrastructure improvements to the electrical grid.

Many sections of the electrical grid have far exceeded their expected useful life, with a substantial number of operating transmission facilities dating back to the early days of electric generation. These lines have been the cause of numerous destructive wildfires, most notably the 2018 Northern California Camp Fire which decimated the Town of Paradise and remains the deadliest wildfire in California history. That fire was caused by the failure of a single steel hook that was purchased and installed on the PG&E high voltage line around 1919.

Data center developers could offer or otherwise be required to aid with upgrading these facilities, bringing our electrical grid into the 21st Century. For more information on Measure NDC, *See:* https://ballotpedia.org/Monterey_Park,_California,_Measure_NDC,_Prohibit_Data_Centers_Measure_(June_2026)

(Braeden Mansouri)

REGULATORY DEVELOPMENTS

ENDANGERED SPECIES ACT "GOD SQUAD" EXEMPTS GULF OIL AND GAS EXPLORATION—FIRST "NATIONAL SECURITY" EXEMPTION IN GOD SQUAD'S HISTORY

On March 31, 2026, the "God Squad," a group high-ranking government officials including the administrators of the United States Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA), the secretaries of the Army and the Department of the Interior, and the chairman of the Council of Economic Advisers, voted unanimously to exempt all oil and gas drilling activities in the Gulf from the federal Endangered Species Act (ESA).

Background

The federal Congress passed the Endangered Species Act in 1973 which generally allows the secretaires of interior and commerce to list species as endangered or threatened, requires federal agencies to consult with the National Marine Fisheries Service (NMFS) or the Fish and Wildlife Service (FWS) before acting in a manner that may threaten such species, and forbids the "taking" of listed endangered species. After a series of high-profile energy projects were stunted by the ESA in the years following its passage, senators from Iowa and Tennessee introduced a bill in 1978 to create a committee of high-ranking government officials that could exempt certain projects from the ESA. That group became known as the "God Squad" on account of their powers of extirpation. Within a few months of that bill receiving President Carter's signature, the God Squad issued its first project-specific ESA exemption to the Grayrocks Dam in Wyoming. Since then, the God Squad has only convened once to exempt a timber harvesting program in Oregon in 1992. Notably, the God Squad has never invoked "national security" to expedite their process.

Procedurally, if NMFS or FWS concludes ESA consultation with a lead federal agency by issuing a biological opinion concluding a particular project would violate the ESA, the agency, applicant, or associated governor may seek an exemption. Within 20 days of receipt of the exemption application, the relevant Secretary must determine whether the applicant and agency: (1) acted in good faith during consultation, (2) fairly considered project modifications and reasonable project alternatives that would avoid violating the ESA, (3) completed the requisite biological assessment, and (4) avoided making irreversible commitments of resources during the process.

If the relevant secretary determines the exemption applicant and associated agencies pass this threshold test, that secretary must hold a hearing on the exemption application and prepare a report within 140 days detailing (1) the availability of reasonable and prudent alternatives, (2) a summary of the evidence pertinent to determining whether project approval is in the public interest and whether the project is of national or regional significance, (3) a list of reasonable mitigation and enhancement measures which should be considered by the God Squad, and (4) a finding regarding whether the lead agency and exemption applicant refrained from making any irreversible commitment of resources.

Within 30 days of the completion of the Secretary's report, the God Squad must issue the exemption if at least five of the Committee's seven members determine, based on the Secretary's hearing and subsequent report, that (1) there are no reasonable and prudent alternatives to the project, (2) the project is in the public's interest and its benefits "clearly outweigh" the benefits of alternatives which may conserve the species or its critical habitat, (3) the project is of regional or national significance, and (4) neither the lead federal agency nor the exemption applicant have made any irreversible commitment of resources. The God Squad also has a duty to implement "reasonable mitigation and enhancement measures … as are necessary and appropriate to minimize the adverse effects of the [project] upon the endangered species, threatened species, or critical habitat." The God Squad must also specify mitigation and enhancement measures tied to the ESA exemption.

Biological Opinion and National Security Concerns

Here, the Bureaus of Ocean Energy Management (BOEM) and Safety and Environmental Enforcement (BSEE) are the federal agencies responsible for the Outer Continental Shelf Oil and Gas Program, which governs oil and gas leases in the Gulf. On May 15, 2025, as part of the ESA consultation process for the portion of that program within the Gulf, NMFS issued a Biological Opinion (BiOp) which analyzed impacts to several species of whales, fish, turtles, corals, conch, and more. The BiOp concluded that after all avoidance and minimization measures were applied, the only ESA violation caused by the project would be potential vessel strikes to Rice's whales.

Secretary Hegseth asked Secretary of Interior Burgum to convene a meeting of the God Squad to exempt the Gulf portion of the Outer Continental Shelf Oil and Gas Program from the ESA despite NMFS's BiOp due to national security concerns. According to Hegseth and Burgum, the invocation of national security concerns means that none of the procedural and substantive requirements associated with a God Squad exemption discussed above apply, including the requirement to make certain findings and to impose avoidance and mitigation measures as a condition of the exemption.

Notably, Hegseth's "national security" rationale is that domestic energy supply disruption is a national security concern and active ESA litigation against oil and gas exploration in the Gulf could result in a pause on some of that work. Notably, the same administration has recently initiated a war which halted approximately 20 percent of the world's oil supply and 25 percent of the world's natural gas supply. Equally notable is Hegseth's rationale that if we don't exempt Gulf oil and gas exploration from the ESA, "Russia and Iran will generate more revenue from their own oil exports," which would in turn "blunt U.S. sanctions efforts and bolster these countries' economies and geopolitical standing." The day before Hegseth made these arguments, Secretary Bessent paused sanctions on Russian oil through April 11. Secretary Bessent continued that pause on April 17, effective through May 16.

Conclusion and Implications

The President, through the Secretary of "War," has unilaterally exempted all oil and gas exploration in the Gulf of "America" from the Endangered Species Act on the ground that disruption in domestic supply resulting from hypothetically successful ESA litigation could increase fossil fuel prices. The same administration started a war that throttled 20 percent of the world's oil supply and 25 percent of the world's natural gas supply, then responded by revoking sanctions on Russian oil. This use of "emergency" authority to consolidate power in the office of the executive is consistent with the broader mandates of the Unitary Executive Theory. Several environmental organizations have pledged to sue the federal government to stop this overreach.

The God Squad's Committee Order can be found here: https://www.doi.gov/sites/default/files/documents/2026-03/endangered-species-committee-order.pdf

Secretary Hegseth's Letter of March 13 to Secretary Burgum, including the supporting rationale for his national security findings, can be found here: https://www.doi.gov/sites/default/files/documents/2026-03/act-exemption-osd070136-26-res-final.pdf

NMFS's Biological Opinion date May 20, 2025, can be found here: https://repository.library.noaa.gov/view/noaa/71211

(Blaine R. Dyas)

CALIFORNIA DEPARTMENT OF WATER RESOURCES RELEASES FINAL LAND SUBSIDENCE BEST MANAGEMENT PRACTICES: KEY REGULATORY SHIFTS AND LIABILITY EXPANSIONS FOR GROUNDWATER SUSTAINABILITY AGENCIES

The California Department of Water Resources (DWR) has officially finalized its updated guidance on land subsidence, transitioning from the Draft Subsidence Best Management Practices (BMP) of July 2025 to the Final Land Subsidence BMP issued in January 2026. The final document introduces substantial operational and legal changes. The Final BMP reflects a strategic tightening of regulatory standards, an expansion of liability triggers, and a refined approach to how subsidence metrics like "Critical Head" are defined and applied by

The Final Land Subsidence BMP: Groundwater Sustainability Agencies

Refining "Critical Head" and Zonal Management

The most significant technical and legal shifts in the Final BMP revolve around the definition, application, and certainty of "Critical Head," which is the threshold below which permanent, inelastic subsidence begins. A major shift occurs in how this metric is applied geographically and geologically. While the Draft BMP suggested that critical head could be estimated broadly for entire "aquifer units," the Final BMP refines this approach. Specifically, Section 4.3.2 allows critical head to be estimated for "aquifer units, or vertical intervals of aquifer units, at specific locations." This change is significant for Groundwater Sustainability Agencies (GSAs) managing multi-zoned aquifers, as empowering them to set thresholds for specific "vertical intervals" encourages management by zones. Consequently, pumping in deep aquifers can be subjected to different critical head thresholds than shallow aquifers, limiting broad-brush liability and allowing for more targeted regulatory action.

Furthermore, the Final BMP softens the standard of certainty surrounding critical head, moving away from the Draft BMP's presentation of the metric as a strict "quantitative target." The finalized guidance, found in Section 5.3, explicitly requires that critical head "should be communicated as a relative indicator with associated uncertainty conveyed to stakeholders." This shift officially recognizes the inherent uncertainty associated with using critical head as a metric for subsidence. To ground these estimates, the Final BMP anchors the critical head definition to a state-specified dataset, noting in Section 4.3.2 that representative critical head has been estimated for "a total of 50 sites in Bulletin 118 Appendix I." This establishes a baseline for "best available science," meaning GSAs located near these 50 sites will likely have their localized critical head estimates judged against DWR's published figures.

The End of Proxy Monitoring in Subsiding Basins

Regarding monitoring practices, the Final BMP imposes a strict prohibition on the use of water level proxies in certain contexts. The Draft BMP previously contained permissive language suggesting groundwater levels could be used as a proxy for subsidence. However, Section 6.8 of the Final BMP explicitly bans this practice in basins actively experiencing land subsidence. The document states that the use of groundwater levels as a proxy is not appropriate because subsidence can be measured and monitored directly. As a result, GSAs in subsiding basins may no longer rely solely on groundwater level data to prove Sustainable Groundwater Management Act (SGMA) compliance regarding subsidence and are now mandated to invest in direct subsidence monitoring technologies, such as InSAR, extensometers, or continuous GPS.

Expanded Liability: Inclusion of Well Casings

The scope of infrastructure liability is notably expanded in the new document. While the draft guidance primarily focused on surface infrastructure such as canals, bridges, and levees, the Final BMP explicitly adds "well casings" to the list of infrastructure heavily impacted by subsidence. Adding well casings dramatically broadens the scope of potential damages. GSAs must now consider the collapse of private agricultural and domestic wells as a direct "undesirable

result" of subsidence, opening the door for localized damage claims from individual well owners.

Hardening Cross-Basin Legal Standards

The updated guidance also hardens the legal framework for cross-boundary disputes by adding explicit statutory citations regarding a GSA's duty to its neighboring subbasins. Section 7.2 of the Final BMP notes that DWR is required to evaluate whether a Plan "adversely affects the ability of an adjacent basin to implement their groundwater sustainability plan," explicitly citing Water Code § 10733(c) and 23 CCR § 355.4(b)(7). If pumping in one basin causes a drop in critical head and subsequent subsidence in an adjacent basin, the offending GSA is on clear notice that DWR will evaluate this under specific statutory authority.

Conclusion and Implications

Ultimately, the January 2026 Final Land Subsidence BMP requires GSAs to be more precise in their depth-specific management while simultaneously forcing them to acknowledge the inherent uncertainty in their models by explicitly defining critical head as a "relative indicator" rather than a strict target. Furthermore, the explicit prohibition of water level proxies in subsiding basins and the inclusion of well casings as protected infrastructure significantly raises the compliance requirements for GSAs across the state.

For more information, *see:* https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/Land_Subsidence_BMP.pdf
(David Boyer)

GOVERNOR NEWSOM AND THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ISSUE NOTICES OF VIOLATION TO 15 JURISDICTIONS FOR FAILURE TO ADOPT COMPLIANT HOUSING ELEMENTS

On March 25, 2026, Governor Newsom and the Department of Housing and Community Development issued a final warning to 15 local jurisdictions across California: either adopt a compliant housing element or risk losing funding, paying fees, and facing legal action from the state.

Background

Under the Planning and Zoning Law (Gov. Code, § 65000 *et seq.*), cities and counties must prepare a general plan that outlines how each jurisdiction will use its land for the foreseeable future. One element of the general plan is the housing element, in which each jurisdiction must designate and zone enough land to accommodate its regional housing need allocation (RHNA) which is set by the Department of Housing and Community Development (HCD) every eight years for each of the state's regional councils of governments, which in turn allocate percentages of their RHNA to each of their member jurisdictions. This is an inherently political process over which the Governor has significant authority.

Each local jurisdiction must then explain, via their housing element, which land they will pre-zone for housing to satisfy their RHNA. These housing elements must be deemed "substantially compliant" with state housing law by HCD before they can be adopted. HCD maintains a compliance dashboard, which shows the compliance status of all 539 local jurisdictions in California.

Notices of Violation

Governor Newsom's tenure has been marked in large part by his willingness to bring state power into local housing fights which too often bend to local opposition (*i.e.*, NIMBYism, or "Not in My Backyard"). In fact, Governor Newsom strengthened HCD by funding their new Housing Accountability Unit in 2021, which has the power to refer noncompliant jurisdictions to the Attorney General's office for litigation, and which has "unlocked" 12,486 housing units to date.

In furtherance of his pro-housing agenda, Governor Newsom (via HCD) has recently issued notices

of violation to 15 local jurisdictions who have not produced a substantially compliant housing element during the ongoing 6th cycle and have not demonstrated a 60-day path to compliance. According to HCD's dashboard, the following jurisdictions do not have a substantially compliant housing element, the first 15 of which link to HCD's recent notices of violation: Atwater, Avenal, California City, Corcoran, Escalon, Half Moon Bay, Hanford, Kings County, Lemoore, Merced County, Montclair, Oakdale, Patterson, Ridgecrest, Turlock, Calexico, Maricopa, Compton, Madera, Dos Palos, Livingston, Merced, Monterey County, Pacific Grove, Costa Mesa, Huntington Beach, Hollister, Colton, Grand Terrace, Rialto, Tracy, Hughson, Riverbank, Waterford, Live Oak, Exeter, and Tulare.

Notably, all jurisdictions which do not have a substantially compliant housing element by their respective statutory deadlines are subject to the Builder's Remedy under the Housing Accountability Act (HAA, Gov. Code § 65589.5) which prevents those jurisdictions from denying certain affordable housing projects even if those projects violate local zoning standards. Additionally, noncompliant jurisdictions lose access (or delay access) to several funding and grant sources related to housing and transportation infrastructure. Noncompliant jurisdictions also face significant fines which accrue so long as the housing element remains noncompliant. Finally, they could be referred to the Attorney General's office for direct litigation.

Conclusion and Implications

The overwhelming majority of jurisdictions have complied with state law by adopting substantially compliant housing elements which collectively aim to reduce home prices and rents across the state by increasing the housing stock. The rest may soon face the full force of the Department of Justice. HCD's announcement can be found here: https://www.hcd.ca.gov/about-hcd/newsroom/HAU-15-NOV
(Blaine R. Dyas)

LAWSUITS FILED OR PENDING

CALIFORNIA FILES SUIT AGAINST THE CITY OF POWAY ALLEGING CEQA VIOLATIONS RELATED TO DISCOVERY OF TRIBAL CULTURAL RESOURCES

On April 21, 2026, California Attorney General Rob Bonta announced that his office, on behalf of the State of California, filed suit against the City of Poway alleging violations of the California Environmental Quality Act (CEQA) related "new and substantial" discoveries of multiple burials of ancestral human remains and related cultural resources stemming from construction of "luxury housing." The action was filed in San Diego County Superior Court. [*People of the State of California Ex Rel Rob Bonta Attorney General v. City of Poway and Poway City Council*, and *Real Parties in Interest Shea Homes Limited, et al.*]

The lawsuit alleges violation of CEQA by:

> . . .failure to conduct additional CEQA review at a development site which the City recently authorized construction despite the unexpected discover of multiple ancestral human remains and thousands of tribal cultural resources unearthed to date.

Background

The City certified an Environmental Impact Report (EIR) pursuant the CEQA in 2003. The City authorized construction at the site. The EIR:

> . . .acknowledged that a discovery of human remains on the site would be considered significant [but] did not adopt any mitigation measures for the possibility of discovering ancestral human remains or associated grave goods.

The lawsuit alleges that in the many years since 2003 the developer's consultant "without any tribal monitoring" unearthed an:

> . . .enormous trove of more than 8,000 tribal resources including hundreds of pottery fragments, dozens of specialized tools. . .and a variety of semi-precious stones, carved bones and arrowheads.

In 2003, the city certified the EIR for this project, but in the more than 20 years since obtaining CEQA approval from the city, the original landowner did not commence ground-disturbing activities. Decades later, Shea Homes acquired the land and prepared for construction while Tribes in the area began to raise concerns.

The allegations claim that the public was never notified of the "significance" of those findings. Ancestral human remains were discovered on October 21, 2025, and since then more have been discovered.

CEQA

Section 21166 of CEQA provides that, after an EIR has been prepared and certified, the lead agency must conduct additional environmental analysis when "substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report." (Pub. Resources Code, § 21166, subd. (b); see also CEQA Guidelines, § 15162, subd. (a)(2).)

Similarly, the lead agency must conduct additional environmental analysis if "[n]ew information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available." (Pub. Resources Code, § 21166, subd. (c); see also CEQA Guidelines, § 15162, subd. (a)(3).)

Under the California Environmental Quality Act subsequent events that rise to the occurrence of substantial changes in circumstances or emergence of significant new information requires that the lead agency on the project conduct additional analysis when discretionary approvals remain. (Pub. Resources Code Sec. 2166) This may be the case even after an EIR has been certified prior to such emergence.

The lawsuit alleges that the City failed to require additional analysis or conduct further CEQA review when it issued "multiple subsequent discretionary approvals. It alleges that the City "abdicated" its role to analyze the newfound resources and to develop enforceable mitigation measures for significant discoveries, "deferring to a voluntary and unenforceable plan adopted unilaterally by Shea Homes on October 24, 2025."

The AG's office alleges that City failed to engage with Shea Homes or the San Pasqual Band to revise the EIR and the City violated CEQA by failing to reopen review of the project before taking recent action to allow construction at the site. Bonta's office stated:

> Project development, environmental compliance, and appropriate community consultation should go hand-in-hand. The discovery of an apparent burial site that served as a final resting place for some of California's first inhabitants warrants appropriate caution and respect. . . .This lawsuit, due to the ancestral remains and important Tribal cultural resources on site, calls on the City of Poway to adhere to the rule of law and ensure that California's development does not come at the expense of Tribal communities. Let's be clear: We're not stopping projects unnecessarily; we are asking cities and developers to comply with the law. At the California Department of Justice, we're dedicated to elevating the voices of communities too often overlooked and ensuring environmental justice and Tribal justice. We will continue to uphold laws such as CEQA as a cornerstone of both.

Conclusion and Implications

Trbal cultural resources were codified by Assembly Bill 52, which was approved over a decade following the original EIR for this project. Notwithstanding, the complaint alleges failure to comply with AB 52.

The lawsuit's injunctive relief and writs direct the City to (1) vacate and set aside recent discretionary project approvals; (2) comply with CEQA; (3) refrain from the grant of any further discretionary project approvals until full CEQA compliance.

The lawsuit filed in the Superior Court for San Diego County is available online at: https://oag.ca.gov/system/files/attachments/press-docs/Final%20CEQA%20Petition%20%2B%20Complaint%20-%20signed.pdf
(Robert Schuster)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT LARGELY SIDES WITH NMFS AND THE CENTER FOR BIOLOGICAL DIVERSITY IN THE AGENCY'S ASSESSMENT OF CRITICAL HABITAT UNDER THE ESA FOR THREATENED SEAL SPECIES

State of Alaska v. National Marine Fisheries Service; Center for Biological Diversity v. State of Alaska, ___F.4th___, Case Nos. 24-7276, 24-7377 (9th Cir. Mar. 25, 2026).

This appeal to the Ninth Circuit marks, what the court referred to as a "culmination of the National Marine Service's (NMFS) decade-long efforts to conserve two species of Arctic seal." The agency's efforts began in 2012 with its listing a subpopulation of the Pacific bearded seal and the Arctic subspecies of the ringed seal as threatened under the federal Endangered Species Act (ESA). This listing triggered NMFS's statutory obligation to designate "critical habitat" for those seal species, completed in 2022. Alaska opposed those efforts and filed suit in the U.S. District Court, which mostly agreed that the habitat designations were unlawful which resulted in vacating the rules and remanding the matter back to NMFS. The Center for Biological Diversity intervened and appealed. In the end the Ninth Circuit found that it had jurisdiction over CBD's appeal and entered judgment in favor of CBD and NMFS.

Background

The Endangered Species Act, in its role to "conserve endangered species and threatened species and their habitats placed the responsibility to accomplish this role jointly with the Secretaries of Commerce and of the Interior through NMFS and Fish and Wildlife Service (FWS) (jointly referred to as the Services. The seal species at issue fall within NMFS's jurisdiction. The Services "core responsibility is to determine whether species within their respective jurisdictions are endangered or threatened." Once listed as endangered or threatened NMFS must concurrently designate critical habitat.

Before designating critical habitat NMFS must consider the "economic. . .national security and. . .other relevant impacts of the proposed designation" The agency "may exclude any area from critical habitat if the agency concludes that the benefits of such exclusion outweigh the benefits. . ."

In 2012 NMFS listed two species of Arctic seal as threatened: the ringed seal and the bearded seal. Litigation over the threatened-species listings concluded in 2017 after the Ninth Circuit upheld the listings. By 2019 NMFS had not yet designated critical habitat for either seal. That prompted the CBD to file another lawsuit "which spurred NMFS to issue critical habitat designations in two final rules in 2022. . ."

As part of designation of critical habitat NMFS prepared Regulatory Impact Reviews assessing the economic, national security and other relevant impacts as well as their benefits. NMFS exercised its discretion to exclude from critical habitat designation a portion of the Beaufort Sea with the U.S. Navy conducts training exercises:

> But NMFS declined to exclude other areas—including a twenty-mile buffer zone proposed by Alaska—because its analysis did not indicate that "significant economic impacts" would result from those areas' inclusion.

Alaska challenged the rules under the ESA and Administrative Procedure Act (APA) and the CBD intervened as a defendant.

At the District Court

The U.S. District Court granted summary judgment to Alaska agreeing with its contention that the critical habitat designations violated the ESA's termas as well as the statute's "reasoned decision-making requirement." The District Court found that the ESA required NMFS to find that the entire designated area of occupied critical habitat "itself is essential to the conservation of the species," not just that the are contains "essential features." The District court "faulted NMFS for failing to explain "why the entirety of each designated area is necessary to the seals'

survival" and "why a similar area" would not suffice.

Ultimately, the District Court found NMFS actions as arbitrary and capricious for failure to account for foreign nation conservation efforts and the existence of foreign habitat. It concluded that NMFS abused its discretion in declining to consider exclusion of the coastal buffer zones for oil and gas activities.

NMFS and the CBD appealed to the Ninth Circuit and Alaska filed a cross-appeal with respect to the prudency issue. During briefing before the Ninth Circuit NMFS moved to voluntarily dismiss its appeal and concurrently to dismiss the CBD's appeal arguing the Ninth Circuit lacked jurisdiction over "non-agency litigant's appeal of a District Court remand order."

The Ninth Circuit's Decision

Jurisdiction and Considerations of Finality

The Ninth Circuit granted NMFS's motion to voluntarily dismiss but denied its motion to dismiss the CBD's appeal without prejudice and the Ninth Circuit permitted the parties to move forward and brief on the issue of the Ninth Circuit's jurisdiction.

The Ninth Circuit concluded that the remand order by the U.S. District Court is "final" providing the Court of Appeals with jurisdiction over the CBD's appeal. The Court of Appeals' found that the District Court's order "contains several distinct legal rulings, the application of which would be entirely unnecessary if the court was incorrect." Further, the Ninth Circuit found that ". . .It is highly unlikely that the Center would be able to obtain a favorable outcome in the remand proceedings ordered by the district court."

The Ninth Circuit referenced that in the past the court has held that finality considerations favor exercising jurisdiction over appeals by agencies form remand orders. For example, the court found that allowing appeals of such orders permits resolution of discrete "questions of law" that will guide the proceedings on remand and that application of the incorrect standard would "result in a totally wasted proceeding below" and that the lack of an "immediate appeal may foreclose review because an agency cannot challenge its own post-remand rule." The court also pointed out that an agency cannot obtain a "favorable outcome on remand—as the party on the losing end of the district court's decision, the agency will be forced to adhere to a legal standard with which it disagrees."

The court went on to discuss that finality considerations may "shake out differently where the party seeking review is not an agency litigant."

The Ninth Circuit's concluded that in determining whether it had jurisdiction over the CBD's appeal:

> . . .we focused on the third finality consideration and found it dispositive. We observed that future judicial review was not foreclosed because the organization could bring suit to challenge any unlawful post-remand rule. . .critically however, we also emphasized that the organization could obtain "all the relief if it seeks" in the remand proceedings. NMFS could revise its regulations and list the species as threatened again, thereby reaching the same result as before.

Finally, the court held that in past rulings and under similar circumstances it has emphasized that "meaningless remands are "anathema to judicial economy and support[s] appellate jurisdiction."

The Merits of the Designations—Occupied Critical Habitat

The CBD contended that NMFS's designations were consistent with the ESA's definition of occupied critical habitat. On the CBD's view, to designate occupied critical habitat, the agency is only required to find that the occupied areas "include 'physical or biological features' that are 'essential to the conservation of the species.'" The CBD maintained that the ESA does not separately require the agency to find that the entire designated area is itself "essential" to the species, nor does the statute require an explanation of why a smaller area would not suffice. The Ninth Circuit agreed. The court found that the statute defines "critical habitat" to include the "specific areas," occupied by a species, "on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations." That language, the court found, is straightforward: "all that [the ESA] requires" is for NMFS to identify "physical or biological features" that meet those two criteria. Once NMFS identifies such features within a threatened species' occupied range, the agency generally

must designate the areas containing those features "as critical habitat."

The court rejected Alaska's interpretation to the contrary, finding that the "critical habitat" definition refutes Alaska's argument that the word "essential" requires a separate determination about a "specific area[']s" conservation value. The adjective "essential" modifies "physical or biological features" that the "specific areas" *contain*; it does not modify the "specific areas" themselves. The court found it would "stretch the modifier too far" by applying "essential" to the latter, "disconnected phrase." Accordingly, the court found that NMFS complied with the ESA by identifying essential physical and biological features and designating a "single specific area" that contains all of those features. 87 Fed. Reg. at 19189; *id.* at 19241.

Alaska also urged the court to consider that the designations—which cover nearly 160 million acres—were simply too vast to constitute a "specific area" within the meaning of the ESA. The court found Alaska "misreads the statute" as [despite the vast acreage involved in the designations] the term "specific area" does not provide any inherent limitation on the size of a designation.

Foreign Nation Conservation Efforts and Habitat

The court was faced with the issue of whether NMFS was required to account for foreign nation conservation efforts or the existence of foreign habitat in making its designations. The court found it did not for purposes of critical habitat designations and that by virtue of the fact that the ESA *does* expressly require such an analysis for decisions to *list* a species, such language's absence in critical habitat decision-making was conspicuous by its omission.

Exclusions from Final Designations

The issue of whether NMFS acted appropriately when it decided to consider excluding certain coastal areas which Alaska sought express exclusion, the court sided with NMFS finding it acted well within its discretion. The court found that CBD's argument that the ESA requires the agency to "consider" relevant impacts, "the ultimate decision whether to exclude areas from critical habitat is discretionary." The court found that because exclusion decisions are discretionary its review was "narrow." In the end, in court found that NMFS review of all relevant factors with "reasonable explanation for declining to consider [certain geographic areas] meant NMFS "cleared that low hurdle."

Prudency

On cross-appeal Alaska argued that the designations erred because they failed to comply with the ESA's prudency requirement. The court found that in response to public comments it adequately explained why the "not prudent" exception was inapplicable. The court found that NMFS emphasized in its analyses that habitat destruction from climate change, oil and gas activity marine shipping, etc., is one of the primary threats to the seals' survival and that designation would not "increase the degree of threat. . . . under any circumstances." The court declined to read into this "rare exception" factors that "Congress clearly did not intend to require the agency to consider." The court supported NMFS again, here on this point

Conclusion and Implications

After a multi-issue analysis and extensive discussion of the various issues on appeal the Ninth Circuit held as follows:

> Because the district court's remand order resolved discrete legal issues; the court's conclusions, if erroneous, could result in a "wasted proceeding"; and the Center may not obtain a favorable result on remand, the order constitutes a final, appealable judgment as to the Center. On the merits, we reverse the district court's rulings that the designations are unlawful and affirm the district court's ruling as to the ESA's "prudent" requirement. We reinstate the critical habitat designation for each seal species and we remand with instructions to enter judgment in favor of the Center and NMFS.

The court's opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/03/25/24-7276.pdf
(Robert Schuster)

JUDICIAL CONFIRMATION AND FEDERAL WATER DELIVERY: DISTRICT COURT GRANTS SUMMARY JUDGMENT MOTIONS IN FAVOR OF DEFENDANTS AND WESTLANDS WATER DISTRICT

North Coast Rivers Alliance v. U.S. Department of the Interior, ___F.Supp.4th___, Case No. 1:16-cv-00307 (E.D. Cal. Mar. 26, 2026).

On March 26, 2026, the United States District Court for the Eastern District of California issued a ruling between a coalition of environmental organizations and the federal government regarding water distribution in California's Central Valley. U.S. District Judge Jennifer L. Thurston granted summary judgment in favor of the U.S. Department of the Interior and various local water agencies, effectively dismissing the remaining claim in a case that has spanned several years.

Background

The litigation originated from a challenge by the North Coast Rivers Alliance and other environmental groups (plaintiffs) against the U.S. Bureau of Reclamation's (Reclamation) management of the Central Valley Project (CVP). The CVP is one of the largest water infrastructure systems in the United States, supplying water to more than 20 million agricultural and domestic consumers through central and southern California.

The specific legal controversy focused on the conversion of "water service contracts" into "repayment" contracts under the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016. Under the WIIN Act, water contractors were permitted to request the conversion of their existing contracts to allow for the accelerated repayment of their share of CVP construction costs. Westlands Water District, (Westlands) defendant-intervenor in this case, was among more than 70 contractors that sought such a conversion.

The plaintiffs' primary contention was that Reclamation violated 43 U.S.C. § 423e. The statute stipulates that water shall not be delivered from a "new project or new division of a project" until the relevant water contracts have been confirmed by a decree of a court of competent jurisdiction.

The plaintiffs argued that because Westlands had unsuccessfully attempted to secure a validation judgment in the Fresno County Superior Court, Reclamation was legally barred from delivering water under the converted contracts. The environmental coalition maintained that the CVP qualified as a "new" project because it did not exist when the 1926 law was enacted.

The District Court's Decision

The court's analysis focused narrowly on the language and timing of the statutory triggers found in 43 U.S.C. § 423e. The court's decision rested on several key legal determinations.

First, the court rejected the plaintiffs' argument that the CVP remains a "new" project indefinitely for the purposes of the 1926 Act. The court noted that the statutory language is specifically tied to the completion of a project. The court found that the specific language triggering the statute's restrictions "upon the completion of any new project" refers to a specific, singular point in time: after the construction is finished but before the first delivery of water. The court concluded that the CVP was completed for the purposes of the law decades ago, and nothing in the evidentiary record suggested the project should still be categorized as new.

Second, the court rejected plaintiffs' argument that prior failed validation attempts by Westlands in state court triggered section 423e. The plaintiffs argued that these attempts were "tacit recognition" that federal law required validation. The court found that while Westlands' own contracts included terms requiring validation, these were contractual obligations, not federally mandated under section 423e. The court emphasized that a failure to meet a contractual condition for validation does not automatically invoke a federal statutory bar to water delivery.

The court also addressed the plaintiffs' changing legal strategy. The plaintiffs had previously invoked 43 U.S.C. § 511, which concerns the validity and enforceability of contracts, but later abandoned these section 511 claims during the briefing process. The court observed that section 511 provides that con-

tracts Reclamation enters into shall not be "binding" until validated, whereas section 423e—the only remaining claim—imposes a specific bar on the delivery of water. The court found that arguments made by the plaintiffs could only be premised upon section 511 and did not advance any viable theory of liability under section 423e.

In sum, the court did not find section 423e to preclude the delivery of water under Westlands' WIIN Act Repayment Contracts because of the lack of validation. The court granted Reclamation and defendant-intervenors motions for summary judgment.

Conclusion and Implications

The granting of the summary judgment in favor of the U.S. Bureau of Reclamation represents a substantial victory for California water agencies and federal authorities. The decision provides administrative certainty to Reclamation and more than 250 water contractors. By ruling that a judicial validation is not a federal statutory prerequisite for water delivery in established projects, the court has removed a potential obstacle to the Central Valley Project under the WIIN Act. Moreover, the court's narrow interpretation of "new project" limits the ability of litigants to use nearly century-old statutes to challenge current operations of long-completed infrastructure. The ruling also clarifies that while a water district may be contractually required to seek validation under state law, a failure to achieve that validation does not necessarily empower federal courts to halt water deliveries under federal law, provided that the project is not "new." The District Court's order/ruling is available at: https://www.courthousenews.com/wp-content/uploads/2026/03/reclamation-water-contracts-ruling.pdf (Miles Krieger)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT DENIES REVIEW IN DELTA PROGRAM BOND VALIDATION CASE, CLEARS WAY FOR DELTA CONVEYANCE PROGRAM BOND VALIDATION CASE

Department of Water Resources v. Metropolitan Water District of Southern California, 117 Cal.App.5th 751 (3rd Dist. 2025), as modified on denial of reh'g (Jan. 28, 2026), review denied (Apr. 15, 2026)

On April 15, 2026, the California Supreme Court denied review of the Court of Appeal's decision that upheld the denial of validation to its Delta Program Bond resolution.

Background

The Delta Conveyance Project

The Delta Conveyance Project (DCP) is the latest in a series of proposed projects to increase water exports from the Sacramento-San Joaquin Delta into the State Water Project (SWP). In the 1960s, the state proposed to build the Peripheral Canal for that purpose, and ultimately the legislature passed a bill to construct that facility in 1980. However, a statewide referendum on the 1982 ballot repealed that legislation, effectively scuttling the Peripheral Canal project.

Later efforts included the Bay Delta Conservation Plan (BDCP) and eventually Governor Jerry Brown's proposed "California WaterFix," which would have constructed two large underground tunnels to move water underneath the Delta from the north, bypassing the environmentally sensitive estuary entirely. When Governor Newsom took office, he put an end to that project and substituted in its place what is now known as the DCP, a single-tunnel alternative.

DWR is currently involved in a variety of court and regulatory proceedings to implement the DCP, including proceedings before the Delta Stewardship Council, a petition to add points of diversion before the Administrative Hearings Office of the State Water Resources Control Board, eminent domain proceedings to do geotechnical work, and others.

The Delta Program Bond Validation Case

A validation proceeding under Code of Civil Procedure section 860 is a case filed by a government agency to confirm the validity of a contract, bond resolution, or some other matter that the law allows to be validated in this way. Any party that disputes the validity of the matter can answer the complaint and make its case, and the final judgment of the court is binding on everyone, thus giving the agency certainty about its authority to proceed. Validation is particularly important in bond issuance, because bond purchasers need to be assured that the bonds are legally valid.

Prior to the completion of its Environmental Impact Report for the DCP, DWR initiated proceedings to validate its authority to issue bonds. However, the bond resolution it sought to validate was not expressly tied to the DCP. Instead, it approved bonds for a broadly defined "Delta Program," with the specific facilities to be determined later.

The Trial and Court of Appeal's Decisions

The trial court and Court of Appeal both held that this broadly defined program could not be validated, because they could not determine from its vague description whether it was authorized as part of the SWP. DWR's argument was that the Delta Program was authorized as a "modification" of the Feather River Project, a component of the SWP defined in Water Code section 11260. The trial court and the Court of Appeal concluded that the definition of the Delta Program was too broad and uncertain to determine whether it would be a mere modification of that existing project. According to the Court of Appeal, DWR's authority to "modify" a unit of the SWP "is not so broad as to permit DWR to add entirely new and different 'units'" and that "at minimum, any 'further modifications' must be consistent with the Feather River Project's features and tethered to its purposes, objectives, and effects." (117 Cal.App.5th at p. 780.)

Next Chapter: The Delta Conveyance Program Bond Validation Case

After the trial court ruled against the Delta Program Bond validation, while the appeal was pending, DWR filed a separate action to validate a more specific "Delta Conveyance Program," which includes the specific facilities constituting the DCP. (*DWR v. All Persons Interested*, Sacramento County Case No. 25CV000704.) That action was apparently initiated as a "backup" option in the event DWR did not prevail on appeal. On January 27, 2026, after the Court of Appeal denied rehearing, the trial court stayed this second validation case pending the Supreme Court's potential review. Now that review has been denied, that case will resume.

Conclusion and Implications

The DCP is an extremely consequential project in California's current water landscape (for good or ill, depending on your perspective). This litigation over the validation of bonds implicates the broader question of whether the project is authorized under existing statutes and existing contracts. It is only one front in a multi-front battle over the potential future of the DCP, but it is one that proponents and opponents of the project both should be watching. The Third District Court of Appeal's opinions are available online at: https://www4.courts.ca.gov/opinions/documents/C100552M.PDF
(Brett Stroud)

Editor's Note: The author represents clients that receive water from the State Water Project and participated in the trial and appeal in this case.

SIXTEEN YEARS, THREE LAWSUITS, ONE MILE OF HIGHWAY 101: IMPROVEMENTS ARE COMING. FIRST DISTRICT COURT PRECLUDES RELITIGATING CEQA CLAIMS

Bair v. Department of Transportation, ___Cal.App.5th___, Case No. A172681 (1st Dist. Mar. 26, 2026).

In *Bair v. Department of Transportation* (*Bair II*) the First District Court of Appeal held that opponents of Caltrans' proposed modifications to a one-mile stretch of Highway 101 through Richardson Grove State Park in Humbolt County could not continue relitigating their California Environmental Quality Act (CEQA) claims following discharge of the original writ petition by the trial court.

Background

Litigation on this matter began in 2010 in *Lotus v. Dept. of Transportation*, 223 Cal.App.4th 645 (1st Dist. 2014) with a challenge to Caltrans decision to approve improvements to a one-mile stretch of Highway 101 to accommodate truck travel and improve safety and operations of Highway 101. The Court of Appeal directed the trial court to issue a writ of mandate requiring Caltrans to correct deficiencies identified in the analysis for the project. (*See:* https://caselaw.findlaw.com/court/ca-court-of-appeal/1656299.html)

Following the *Lotus* decision, Caltrans completed additional review and analysis of the project under CEQA culminating in the preparation and circulation of an addendum to the original Environmental Impact Report (EIR) for the project.

In the second round of litigation *Bair v. Dept. of Transportation*, Case No. CV170543 (Humbolt Super. Ct.) (*Bair I*) on this project, the trial court determined Caltrans made a procedural error in not circulating the addendum to the prior EIR for the project. Notably, a decision on the substantive claims made was not part of the trial court's consideration. (*See:* https://www.biologicaldiversity.org/programs/public_lands/forests/saving_Richardson_Grove/pdfs/Richardson-Grove-Bair-v-Caltrans_June-5-Ruling.pdf

Caltrans proceeded to circulate the addendum to the EIR and respond to public comments. In 2023, Caltrans again approved the project and certified the EIR and addendum. Following the EIR and addendum certification, Caltrans asked the trial court to discharge the writs issued in both the *Lotus* and *Bair I* cases. That motion to discharge was granted and none of the parties appealed that discharge decision.

At the same time that Caltrans filed its motion to discharge the writs, the project opponents filed the *Bair II* petition.

The Court of Appeal's Decision

The Court of Appeal, in describing the case history as a "15-year litigation odyssey that . . .is about as labyrinthine as the root systems of the redwood trees" draws a (possibly inadvertent) parallel between Odysseus's journey home and the existing route of Highway 101—long, circuitous and beset by detours. In the end, however, it was a procedural choice that dictates the court's decision.

In *Bair II*, petitioners argued the EIR addendum still failed CEQA because it did not use a legally adequate significance threshold when evaluating potential impacts to redwood trees. Petitioners further argued that Caltrans' no-significant-impact conclusion was not supported by substantial evidence, particularly given the tree-rating methodology employed by the certified arborist who evaluated the potential impacts to the roots of the trees that may be impacted by the project.

At the Superior Court

The Superior Court rejected those arguments as barred by the discharge of the prior writs, and the Court of Appeal agreed. The panel held it did not need to decide whether *Bair I* itself had claim-preclusive effect, because the discharge of the *Lotus* writ alone conclusively established the addendum's substantive adequacy. Once that discharge became final without an appeal, claim preclusion barred relitigation of the same CEQA adequacy challenge in the third action.

The Importance of Precedent

The court's discussion of precedent is likely the part of the opinion CEQA lawyers will cite most often. The panel relied heavily on *Silverado Modjeska Recreation & Park District v. County of Orange*, 197 Cal.App.5th 282 (2011) where a party that challenged a revised EIR in a second CEQA action was barred once the original writ proceeding ended in a discharge order. *See:* https://caselaw.findlaw.com/court/ca-court-of-appeal/1573772.html

By contrast, the court declined to follow *Central Delta Water Agency v. Dept. of Water Resources*, 69 Cal.App.5th 170 (2021) to the extent the two cases conflict. In the First District's view, *Central Delta* asked the wrong question by focusing on whether the revised EIR could have been litigated before entry of judgment in the first case. The correct question, the court here said, is whether the revised CEQA document's adequacy could have been adjudicated when the agency later sought discharge of the original writ. On that point, the court found *Silverado* "better reasoned."

The panel also rejected petitioners' effort to avoid preclusion by arguing that the *Lotus* discharge order was too summary, or too thinly supported by the record, to count as a merits determination. Looking to the whole record rather than the brevity of the ruling itself, the court concluded the adequacy of the Addendum was plainly the central issue in the return-to-writ proceedings. Petitioners themselves had argued below that discharge depended on whether the Addendum complied with CEQA "period." In that setting, the court held, discharge necessarily resolved the CEQA adequacy issue. And if petitioners believed the trial court erred in discharging the *Lotus* writ, their remedy was straightforward: appeal the discharge order. They did not, and that failure proved fatal.

Conclusion and Implications

The practical lesson is clear. *Bair II* is a finality case for CEQA litigators. The First District Court of Appeal assumed without deciding that filing a new writ proceeding to challenge compliance with an earlier CEQA writ may be procedurally permissible. But it warned that pursuing parallel proceedings over the same revised CEQA document creates confusion and a classic "race to judgment."

Here, petitioners lost the first case to reach finality and, in the court's words, "lost the race." For lawyers handling remand proceedings after a CEQA writ, Bair II underscores three points: treat return-to-writ proceedings as merits-critical; appeal a discharge order if you intend to preserve a challenge to the revised document; and think seriously about consolidation if related CEQA cases are proceeding on separate tracks. In the First District's view, CEQA litigation cannot remain a perpetual loop, and in the case of this road, the loop has come to its end. The court's published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A172681.PDF
(Kelly Black, Darien Key)

SECOND DISTRICT COURT FINDS CEQA FEE AWARDS SURVIVE PRO-HOUSING POLICY ARGUMENTS IN INGLEWOOD HOUSING APPEAL

Supporters Alliance for Environmental Responsibility v. City of Inglewood, et al., *Unpub.*, Case No. B345195 (2nd Dist. Mar. 19, 2026).

In *Supporters Alliance for Environmental Responsibility v. City of Inglewood* the Second District Court of Appeal, in an *unpublished* decision, affirmed an attorney fee award in favor of a California Environmental Quality Act (CEQA) petitioner that successfully challenged the City of Inglewood's approval of a housing development through a Mitigated Negative Declaration (MND) rather than an Environmental Impact Report (EIR). The trial court had awarded Supporters Alliance for Environmental Responsibility, or SAFER, $165,072.50 in attorney fees under Code of Civil Procedure section 1021.5 after granting its writ petition.

Background

Project Approval and Writ Proceedings

The underlying project involved a 5.07-acre site in Inglewood near Interstate 105. Prairie proposed a 440-unit apartment development consisting of three buildings, with 40 units restricted for lower- and moderate-income households. Because the site's general plan designation did not allow newly constructed residential uses without amendments, the City's approvals required discretionary actions that triggered CEQA review. Rather than preparing an environmental impact report, the City circulated and adopted a revised initial study and mitigated negative declaration, concluding impacts would be less than significant with mitigation.

SAFER challenged that determination during the administrative process. Although its earlier comments generally urged preparation of an EIR, its counsel later submitted a detailed letter and expert reports identifying allegedly significant unmitigated impacts, including indoor formaldehyde emissions, diesel particulate matter exposure from the nearby freeway, biological resource impacts, greenhouse gas emissions, and energy impacts. The appellate opinion emphasized that the record did not show meaningful substantive consideration of those concerns by the City before approval.

SAFER then filed a petition for writ of mandate. The City and Prairie focused on procedural defenses, including standing and exhaustion, rather than rebutting the merits of the environmental claims. The trial court granted the petition, finding substantial evidence of a fair argument that the project could have significant adverse impacts relating to biological resources, greenhouse gas emissions, and indoor emissions. It ordered the City to vacate its approvals and to prepare and circulate an EIR if it reconsidered the project.

The Attorney Fee Dispute

After prevailing on the writ, SAFER sought attorney fees under section 1021.5, invoking the private attorney general doctrine. The statute permits a fee award to a successful party when the litigation enforces an important public right, confers a significant benefit on the public or a large class of persons, and private enforcement was necessary and financially burdensome enough to make a fee award appropriate. SAFER requested more than $330,000 in lodestar fees and a multiplier, but the trial court reduced the request substantially and awarded $165,072.50.

Prairie's opposition raised two issues that framed the appeal. First, it argued the suit did not confer a significant public benefit because the Housing Accountability Act required the trial court to give due weight to the City's approval of a housing project that furthered state housing policy. Second, Prairie argued SAFER's alleged relationships with LIUNA-affiliated labor organizations gave it a sufficient pecuniary incentive to litigate, supposedly because CEQA litigation could be used to pressure developers into project labor agreements. The trial court found the statutory prerequisites satisfied and concluded Prairie had not produced admissible evidence showing the kind of concrete financial interest that would preclude a fee award.

The Court of Appeal's Decision

The Court's Treatment of the Housing Accountability Act

The court ruled that Government Code section 65589.5, subdivision (p)(1), requires courts to consider section 1021.5 fees in housing project cases and to give due weight to the extent the approval furthers Housing Accountability Act policies, the suitability of the site for housing, and the reasonableness of the local agency's decision. Prairie argued the trial court effectively disregarded the first two factors and treated any CEQA violation as automatically unreasonable.

The Court of Appeal disagreed. It held that there was no indication that the trial court had ignored the Housing Accountability Act. Rather, the appellate court presumed the trial court understood the relevant statutory framework and found that the City's unreasonable handling of the environmental record outweighed the project's pro-housing features. Importantly, the court did not say every CEQA violation makes a local agency unreasonable for fee purposes. Instead, it emphasized the facts here showed a deeper problem: SAFER presented expert-supported evidence that an EIR was required, repeated those concerns at the hearing, and the administrative record showed no meaningful engagement by the City with those issues. In that context, the trial court acted within its discretion in finding the City's conduct unreasonable despite the project's housing benefits.

That aspect of the opinion matters because it preserves room for fee awards in CEQA housing litigation where the record supports a conclusion that local officials did not seriously grapple with substantial environmental objections. The Housing Accountability Act narrows the path to fees, but it does not eliminate them where a court finds the agency's approval process was unreasonable.

Financial Interest, Union Ties, and Speculative Benefits

Prairie's second argument was more fact intensive. It contended that SAFER served as a proxy for labor unions and that unions could derive significant economic benefits from CEQA challenges by securing leverage for project labor agreements. Prairie submitted corporate documents, tax materials, public filings concerning SAFER's leadership, and a declaration from counsel describing what other attorneys had allegedly said about settlement practices in unrelated cases. It also sought judicial notice and, alternatively, limited discovery.

The Court of Appeal held the trial court did not abuse its discretion in rejecting that showing as insufficient. The key problem was not merely the existence of some relationship between SAFER and unions. The problem was the absence of evidence that this litigation produced, or was reasonably expected to produce, a concrete financial benefit substantial enough to make attorney fee shifting unnecessary. The opinion repeatedly characterized any such benefit as speculative. There was no evidence that SAFER sought a project labor agreement in this case, no evidence that Prairie was likely to settle on those terms, and no evidence that requiring an EIR would necessarily change the project or generate a definable monetary return to SAFER or its alleged backers. Under section 1021.5, speculative future leverage is not enough.

The court also upheld the denial of judicial notice and discovery. Even assuming the documents showed organizational ties between SAFER and labor, they did not establish the kind of concrete financial benefit required to defeat fee eligibility. That reasoning significantly limits attempts to defeat CEQA fee motions through generalized allegations about labor-backed environmental litigation unless those allegations are tied to admissible proof of an actual expected monetary gain in the case at hand.

Conclusion and Implications

The decision reinforces three practical points for CEQA and land use litigants. First, courts will continue to treat successful CEQA actions requiring fuller environmental review as conferring a significant public benefit, even in housing cases, though that conclusion must now be weighed against the Housing Accountability Act's pro-housing directives. Second, local agencies defending fee motions in housing disputes will need more than the abstract value of housing production. They will need a persuasive record showing the approval was reasonable in the face of the environmental objections actually presented. Third, developers opposing fees on the ground that a petitioner had a financial motive must produce non-

speculative evidence that the plaintiff or its backers stood to obtain a sufficiently concrete economic benefit from the litigation. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B345195.PDF
(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 1699 (Rogers)—This bill was referred to the Committee on Appropriations and placed on suspense on April 22, 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 Appropriations and placed on suspense on April 22, 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 read a second time and amended by the Committee on Natural Resources and re-referred to the Committee on Appropriations on April 23, 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. The bill includes a sunset date of January 1, 2030.

AB 2569 (Hart)—This bill was referred to the Committee on Appropriations and placed on suspense on April 29, 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 referred to the Committee on Appropriations on April 29, 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. As amended, the bill authorizes a lead agency for a land use project to require that an application contribute to the fund if certain cost conditions are met and the Department of Housing and Community Development and Office of Land Use and Climate Innovation have validated the reductions in vehicle miles traveled that are attributable to the project.

SB 887 (Padilla)—This bill was referred to the Committee on Appropriations and set for hearing on April 24, 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 re-referred to the Committee on Appropriations and set for hearing on April 24, 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 read a second time and re-referred to the Committee on Appropriations on April 23, 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 ND/MND. 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 re-referred to the Committee on Appropriations and set for hearing on April 24, 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 re-referred to the Committee on Appropriations on April 23, 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/Wicks)—This bill was re-referred to the Committee on Appropriations on April 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 re-referred to the Committee on Appropriations on April 28, 2026. As amended, this bill would require a lead agency to approve or disapprove a housing development project where 90 percent of the units are affordable to very low or extremely low-income households within 30 days of certifying an Environmental Impact Report (EIR). This bill would also require the Department of Housing and Community Development and Office of Land Use and Climate Innovation to establish a working group to make recommendations on the most effective ways to expedite the development of housing.

AB 2074 (Haney)—This bill was re-referred to the Committee on Appropriations on April 21, 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 by right 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 ordered to a third reading in the Committee on Local Government on April 27, 2026. This bill would require that an application for a proposed housing development containing no more than 2 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 Appropriations on April 23, 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 read a second time and re-referred to the Committee on Appropriations on April 23, 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 re-referred to the Committee on Appropriations on April 22, 2026. This bill would amend Planning and Zoning law requirements for accessory dwelling units 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 re-referred to the Committee on Housing on April 13, 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 Committee on Appropriations on April 20, 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 State Department of Public Health, State Water Resources Control Board, regional water 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.

Sustainable Communities Strategies

SB 1087 (Cabaldon)—This bill was re-referred to the Committee on Appropriations on April 22, 2026. The bill would make numerous changes to existing Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) guidelines and requirements, including how greenhouse gas emissions (GHG) reduction targets are set, the timeline for updating the plans, and how GHG reduction strategies are evaluated. It would also extend GHG reduction targets to 2045 and make changes to certain transportation funding programs to support implementation of the strategies. This bill would also exempt the preparation and adoption of RTPs/SCSs from the requirements of CEQA.

California Coastal Act

AB 1740 (Zbur)—This bill was re-referred to the Committee on Appropriations on April 28, 2026. The bill would exempt several specified activities and developments in the City of Santa Monica from the requirement to obtain a Coastal Development Permit (CDP) under the California Coastal Act. The exemption would apply notwithstanding any provision of an existing certified Local Coastal Program (LCP) or certified land use plan. The bill further provides that development qualifying for the exemption does not require an amendment to a certified LCP or certified land use plan, with limited specified exceptions.

SB 963 (Laird)—This bill was ordered to the Assembly on April 30, 2026. This bill would set certain time limits for the California Coastal Commission to identify and review necessary information and hold a de novo and public hearing when a coastal development permit issued by a local jurisdiction is appealed to the commission and the commission determines a substantial issue exists, as provided.
(Amy Higuera)

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