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LAND USE NEWS

GOVERNOR'S OFFICE OF LAND USE AND CLIMATE INNOVATION RELEASES DRAFT GUIDANCE FOR VEHICLE MILES TRAVELED MITIGATION PROGRAM

The Governor's Office of Land Use and Climate Innovation (LCI) has released draft guidance for a statewide Vehicle Miles Traveled (VMT) mitigation program established under 2025's Assembly Bill (AB) 130. The proposed VMT Mitigation Program, which would allow a development project to mitigate any significant VMT impact under California Environmental Quality Act (CEQA) by paying into a fund supporting transit-proximate affordable housing projects, has the potential to radically reshape the landscape of CEQA mitigation for transportation impacts.

Background

Shift to VMT Analysis under CEQA

Since July 1, 2020, pursuant to Senate Bill (SB) 743, transportation impacts under CEQA have been analyzed using a VMT methodology, essentially requiring projects to demonstrate that the miles driven by project users will be less than regional averages. This shift to VMT has created challenges for projects with significant transportation impacts to mitigate those impacts to a less-than-significant level. Typical VMT mitigation strategies include public transit subsidies, public transit shuttles or connectors, installation of bike infrastructure, and transportation demand management programs. However, for many projects, these measures may have marginal VMT reductions, and for projects located outside of urban centers or far from existing public transit, these potential mitigation measures may be wholly infeasible. These challenges have been compounded by the recent decision in *Cleveland National Forest Foundation v. County of San Diego,* 110 Cal.App.5th 948 (2025), which has raised uncertainties about local jurisdictions relying on statewide VMT screening thresholds to determine that projects have a less-than-significant transportation impact.

Assembly Bill 130

When AB 130 made headlines in July 2025, it was largely related to the bill's creation of a new CEQA exemption for dense, infill housing projects throughout the State. However, AB 130 also added sections 21080.43 and 21080.44 to the Public Resources Code (PRC), establishing a program for projects to mitigate significant VMT impacts by contributing funds to the Transit Oriented Development Implementation Fund (TDIF) administered by the Department of Housing and Community Development.

The core idea underlying sections 21080.43 and 21080.44 is that affordable housing generates fewer and shorter vehicle trips than market-rate housing, and therefore can produce quantifiable VMT reductions to offset the VMT impacts of projects throughout the State. PRC section 21080.44(c) directs TDIF funds received pursuant to the VMT mitigation program to be allocated pursuant to a strict statutory prioritization hierarchy. First priority is given to affordable housing or related infrastructure projects located in "location-efficient areas" within the same metropolitan planning organization (MPO) region (or regional transportation planning agency territory if the project is outside an MPO) as the project using the mitigation program, with second priority given to affordable housing or related infrastructure projects within the same region that are *not* in "location-efficient areas." Lowest priority is given to affordable housing or related infrastructure projects located in "location-efficient areas" outside the region of the project using the mitigation program. PRC section 21080.44(b)(1)(B) makes clear that AB 130's VMT mitigation program is not a mandated mitigation strategy – lead agencies retain the discretion to use other mitigation strategies.

While AB 130 sets forth the general parameters for a statewide VMT mitigation program, it leaves much of the key implementing details to LCI. PRC section 21080.44(d) directs LCI to issue guidance detailing:

The methodology for determining the amount of payment a project must make to the TDIF to mitigate significant transportation impacts and the anticipated reduction in VMT associated with affordable housing project or related infrastructure funded by the TDIF;

The definition of "location-efficient areas" for the purposes of administering TDIF funds; and

The process for validating that use of the statewide VMT mitigation program satisfies CEQA requirements for mitigation measures.

Governor's Office of Land Use and Climate Innovation Draft Guidance

On April 8, 2026, the LCI released its Draft AB 130 Statewide Vehicle Miles Traveled Mitigation Program Guidance. (Draft Guidance). The Draft Guidance sets forth a proposed, region-specific methodology for each region to calculate the cost of mitigation under the program. Under the proposed methodology, the State is split into several regions, largely tracking MPO territories, with some smaller MPOs and regional transportation planning agency territories aggregated into larger regions. A project in a particular region utilizing the statewide VMT mitigation program will need to purchase a VMT Mitigation Credit specific to that region for each mile of VMT that the project needs to mitigate. The price of each VMT mitigation credit is based on a calculation taking into account the cost of construction of an affordable housing unit in a particular region and the expected reduction in VMT attributable to constructing affordable housing as compared to market-rate housing in that region, along with a 3 percent administrative cost and adjustments over time to account for inflation. This methodology results in region-specific VMT Mitigation Credit prices. For instance, a project in the Association of Bay Area Governments region has a VMT Mitigation Credit price of approximately $4,268 per daily VMT, while the neighboring San Joaquin Council of Governments region has a VMT Mitigation Credit price of approximately $2,403 per daily VMT.

Location Efficient Areas

The Draft Guidance also sets forth a methodology to determine "location-efficient areas" when prioritizing the disbursement of TDIF funds, defining the terms to mean project sites that: (1) are in an area where VMT is 15 percent below regional average; (2) have an existing major transit stop or high-quality transit corridor within ½ a mile; (3) have at least two existing transit routes with a stop within ½ a mile, and (4) are within an urban area and have been previously developed by urban uses or have at least 75 percent of the site perimeter adjoining parcels developed with urban uses.

Analysis of Proposed Program's Compliance with CEQA Mitigation Requirements

Lastly, the Draft Guidance includes a lengthy analysis of the proposed program's compliance with CEQA mitigation requirements, highlighting the proposed methodology's focus on regionally specific calculations to ensure that nexus, proportionality, and measurability requirements are met, a proposed mitigation monitoring program to ensure that enforceability and certainty requirements are met, and an affordable housing project funding verification and credit retirement program to ensure additionality and anti-double-counting requirements are satisfied.

Conclusion and Implications

LCI's Draft Guidance sets forth a statewide VMT mitigation program that has the potential to provide lead agencies with a compelling alternative to traditional VMT mitigation measures, or the prospect of approving projects with a finding of significant and unavoidable transportation impacts. The proposed program could prove particularly useful for rural or suburban jurisdictions that lack the proximity to public transit typically needed for traditional VMT mitigation measures.

However, once finalized, the proposed program may face resistance from two fronts. Despite the Draft Guidance's analysis, opponents of the program may scrutinize the methodology's compliance with CEQA given the off-site nature of the proposed mitigation, which could involve mitigation projects in wholly different cities or counties than the project creating a VMT impact. Meanwhile, proponents of projects subjected to the program by reviewing agencies may view the proposed program as akin to another development exaction and attempt to raise arguments regarding its constitutionality under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

Following a public comment period, LCI's final guidance is set to be released by July 1, 2026. LCI expects to commence a formal statewide VMT mitigation program rulemaking on or before January 1, 2028. LCI's draft guidance is available here: https://www.lci.ca.gov/wp-content/uploads/20260407-Final-DraftGuidance-ADA.pdf.
(Niran Somasundaram)

CEQA REFORM INITIATIVE MEASURE LIKELY TO APPEAR ON STATEWIDE CALIFORNIA BALLOT IN NOVEMBER

The white fritillary, a flower not found in southern California, plays a major role in Season 3 of the HBO drama ®*Euphoria*, where its status as an endangered plant very much endangers an Los Angeles County seaside senior living project being developed by the character portrayed by Jacob Elordi. The flower's presence on the project site causes the (ambiguous) planning and zoning commission to halt construction, pending the requisite environmental studies and mitigation.

Notwithstanding the plot's backwards land use and environmental review timeline, the impact that the California Environmental Quality Act (CEQA) can have on development projects has entered the pop culture consciousness. CEQA's notoriety may be short lived, however.

In April 2026, the proponents of the "Building an Affordable California Act" submitted over 945,000 signatures (nearly twice the 546,651 required) to place on the November ballot the most far-reaching reforms to the CEQA in the environmental statute's 56-year history. Sponsored by the California Chamber of Commerce and other business and utility organizations, the measure proposes to simplify the environmental review process for certain "essential projects" and to streamline legal challenges to such projects.

The Current CEQA Regime

Signed into law by Governor Ronald Reagan in 1970, CEQA was drafted to apply to "public" projects, requiring the government to conduct an environmental study to examine a project's impacts. Subsequent judicial decisions interpreted "public" to mean any project that requires governmental approval. The California Legislature subsequently amended CEQA to apply only projects that require discretionary approval (i.e. those projects that the local agency retains the discretion to revise the project to mitigate for potential environmental impacts). The Legislature also tasked the Natural Resources Agency to devise several categories of projects that are exempt from CEQA review (i.e. the categorical exemptions).

CEQA's notoriously low threshold for challenging a development project has allowed almost anyone to file a lawsuit against a project. The consequence of this, resulting in a CEQA-industrial complex of sorts, whereby law firms, special interest groups, and other consultants file environmental challenges against projects, seeking special benefits from developers (e.g. inclusion of public facilities for neighbor uses, or project labor agreements to satisfy labor union demands). Not only does each change to a project increase overall costs, but the time spent negotiating or defending a CEQA challenge extends the overall project timeline, in addition to increases in attorney and consultant fees. Consequently, reforming CEQA to eliminate avenues for abuse has become a major goal of housing and public transit advocates.

The Building an Affordable California Act

The proposed statute would make significant changes to CEQA, applying to the environmental law many of the same strategies that recent state housing laws apply to streamlining of housing projects. Broadly speaking, the proposal will establish timelines and limitations for challenges to qualifying projects.

The proposal creates a new class of "essential" projects, which are defined to include: essential housing, water, clean energy, public health, public safety, broadband Internet access, education facility, or transportation. Essential project is defined to include "all related and ancillary public, private, and utility infrastructure and public service facilities required by a utility or public agency or included in an essential project application as part of the "whole of the project."

The definitions section additionally includes discrete definitions for each specific class of essential project. For example, an "essential housing project" is defined to include a project that includes only residential units, mixed-use development (as that term is defined), transitional housing, supportive housing, emergency shelters, farmworker housing, group living accommodations, student housing units, and senior housing units.

An Initial Application

Similar to project applications under Senate Bill 330 (2019) this measure would allow a project applicant to file an "initial application," which allows the lead agency to make a determination of application completeness. The lead agency must make its completeness determination within 30 days. Within 30 days of determining the application to be complete, the lead agency must decide whether the project requires an Environmental Impact Report (EIR), a Negative Declaration (ND) or Mitigated Negative Declaration (MND), or any other environmental review documentation (e.g. CEQA exemption, EIR addendum, etc.). The lead agency must certify an EIR within one year of determining the application complete, approve an ND or MND within 180 days of application completeness, or otherwise make a final CEQA determination for any other CEQA document within 90 days of determining the application complete.

If approved, the law would provide timelines for challenging a lead agency's failure to approve a project consistent with the law, but also provide strict timelines for circulating documents for public comment. An applicant may also request a preliminary scoping process and streamlined alternatives analysis, provided the applicant has notified the lead agency of its intention to proceed with this process.

Judicial Review Process

Probably most consequential is the measure's reform of the judicial review process under CEQA. The ballot measure will limit a petitioner's claims to whether the public agency complied with "objective existing laws" and whether the project's approval complies with those laws. The measure would require that a judicial action be complete (including any appellate proceedings) within 270 days, requiring application of the judicial streamlining procedures applicable to environmental leadership development projects. A court, in its own discretion, may extend the deadline by up to 90 additional days. If the court finds that the approval of the project does not comply with applicable law, the remedy will be limited only to prohibiting commencement of the noncompliant part of the project. The remaining compliant portion of the project can continue. Upon completion of corrective action, the court will dismiss the action and the project will not be subject to further challenge. A court may only order a halt to a project if the project will have a specific, adverse impact upon public safety with no feasible method for mitigating or avoiding that impact.

Providing for More Expeditious or Advantageous Review

The act allows an applicant to elect use of none, some, or all of the new law, and to use any other state statute that would "provide for more expeditious or advantageous review and approval." A prevailing wage requirement applies only to housing projects over 85 feet in height—generally these taller projects are more complicated, for which the skilled labor requirements can sometimes be a beneficial consideration. However, all other essential projects (i.e. essential projects that are not housing projects) must comply with the labor requirements contained in Section 21183.5 (from the Jobs and Economic Improvement Through Environmental Leadership Act of 2021).

Tribal Consultation

The act would still require tribal consultation to occur as is required currently under CEQA. However, the lead agency must conduct an initial screening to identify and evaluate tribal cultural resources, upon the earlier of the submittal of a preliminary application, the applicant's written notice to invoke the act, or the application for the essential project. This allows the applicant to participate in early discussions, through a meet and confer process with the tribe, as applicable.

Conclusion and Implications

The Secretary of State's office still needs to confirm the validity of signatures, but given the overwhelming

volume in signatures submitted with the petition, the measure will likely appear on the November ballot. Language protecting tribal consultation and imposing prevailing wage and labor standards on most essential projects appear to be attempts by the Chamber of Commerce at forestalling any funded opposition by some of the state's major special interest groups: labor unions and the native tribes. The measure's streamlined CEQA provisions would only preclude union lawsuits against non-housing projects that comply with labor standards. Thus, the measure would not offer much protection to non-housing essential projects that do not comply with the required labor provisions. The measure could, however, streamline the production of mid-size housing developments under 85 feet in height.

If approved by the voters, the Building an Affordable California Act would provide the most comprehensive reform to CEQA, building on the momentum achieved by the Legislature's adoption of AB 130 in 2025. Still, the ballot measure plays into CEQA's deficiencies, by mostly allowing the reform measures but only after a project largely meets certain (and often costly) requirements. Nevertheless, the measure could put a stop to frivolous lawsuits by "concerned" NIMBYs seeking to block new housing in the neighborhood. While *Euphoria*'s Season 3 wrapped up this May, the next chapter of this CEQA drama unfolds this November. For more information on the proposed act, *see*: https://oag.ca.gov/system/files/initiatives/pdfs/25-0023A1%20%28%26quot%3BEssential%20Projects%26quot%3B%29.pdf.
(Braeden Mansouri)

ANOTHER TAX LIMITATION MEASURE LIKELY HEADED TO THE NOVEMBER 2026 CALIFORNIA STATEWIDE BALLOT: "LOCAL TAXPAYER PROTECTION ACT TO SAVE PROPOSITION 13"

California voters this November 2026, may be deciding on a number of consequential questions. In addition to the ballot measure that proposes to reform the California Environmental Quality Act (CEQA), the perennial sponsor of taxation ballot measures—the Howard Jarvis Taxpayer Association (HJTA)—is now taking aim at real estate transfer taxes. The HJTA was the group responsible for placing Proposition 13 on the ballot in 1978, forever changing the ability for the state and local governments to raise revenue and causing a cascade of fiscal crises. Very generally, Prop. 13 capped property tax assessments and imposed a two-thirds vote requirement for legislatively imposing and raising taxes.

HJTA alleges that this ballot measure, the "Local Taxpayer Protection Act to Save Proposition 13," is necessary to reverse "court-created loopholes" in Prop. 13. At issue purportedly is the California Supreme Court decision in *California Cannabis Coalition v. City of Upland*, 3 Cal.5th 924 (2017).

The *California Cannabis* Decision

The Supreme Court in *California Cannabis* evaluated the ability of the voters to impose taxes via their initiative authority or whether Article XIII(C) of the State Constitution (added via Prop. 218 (1996) restricts that power. The plaintiff coalition had circulated a petition to place a local measure on the ballot repealing the city's ban on cannabis dispensaries and imposing on new dispensaries an annual $75,000 "inspection and licensing fee." The measure was placed on the November 2016 ballot, where it was soundly defeated.

The Court in *California Cannabis* ultimately concluded that Prop. 218's two-thirds vote requirement does not apply to a tax measure placed on the ballot by the voters. The corollary of this was that an advocate for imposing or raising a tax could circumvent the two-thirds legislative approval requirement (e.g. what is otherwise required of a local city council) by circulating a petition and placing the measure on the ballot, requiring a simple majority vote. HJTA consequently views the Court's conclusion as an affront to its past efforts to impede any efforts to raise taxes in California.

This has since resulted in numerous "citizen-led" ballot measures to raise taxes (anymore, almost every ballot measure has significant political and financial

backing by some special interest group), including the Measure ULA (2022) in the City of Los Angeles, otherwise known as the "Mansion Tax". Measure ULA enacted a 4 percent tax on the sale or transfer of properties (i.e. a real property transfer tax) valued at more than $5 million and a 5.5 percent tax on the sale or transfer of properties valued at more than $10 million. Other cities, many in the Bay Area, rely significantly on property transfer taxes.

The "Local Taxpayer Protection Act to Save Proposition 13"

HJTA's one-page ballot measure takes specific aim at Measure ULA and claims that "court-created loopholes have allowed special interests to pass billions in new and higher taxes, including real property transfer taxes . . . ." This measure would require any citizen-let tax increase to obtain a two-thirds majority vote of the electorate before enactment.

Second, this measure repeals any previously enacted "tax upon any parcel of real property or upon any person as an incident of real property ownership" that does not comply with the provisions of the measure. Any such tax would sunset on the first December 31 two years following the enactment of the measure.

Conclusion and Implications

Measure ULA, which sought to raise revenue for affordable housing projects, has resulted in some adverse consequences, despite raising more than $1 billion in three years. However, many academics studying the impact of ULA have concluded that, because the transfer tax applies to apartments, condos, mixed-use, and commercial developments (in addition to single family "mansions"), the measure has resulted in a downturn in new construction, including new affordable housing projects. Given the sweeping language of the HJTA ballot measure, the proposition would impact future tax-raising measures. Existing and proposed non-real estate taxes (e.g. L.A. County Measure ER, which is on the June 2026 ballot and proposes a 0.5 percent sales tax increase to fund health services that face funding cuts by the Trump Administration) would not be repealed.

If approved, the measure would undo many streams of revenue for increasingly cash-strapped localities, and also frustrate the ability for citizens to raise revenue in the future. While L.A. Mayor Karen Bass (up for reelection) and the L.A. City Council have attempted to address ULA's shortcomings, these efforts were conditioned upon HJTA removing its measure from the ballot. Now, state leaders in Sacramento are attempting to negotiate with HJTA while the group still has the ability to remove the measure from the ballot. HJTA supposedly remains resolute in keeping the measure on the ballot.

The ULA reform track is broadly supported by a coalition of housing advocates, developers, and the trade unions. Despite HJTA's refusal to remove the measure from the ballot, it remains to be seen whether legislative leaders can strike a deal with the group to reform some existing transfer tax measures and avoid a further expansion of Prop. 13. Initiative sponsors have until June 25 to remove the measure. For more information on the "Local Taxpayer Protection Act to Save Proposition 13," *see:* https://www.hjta.org/saveprop13_initiative_text/.
(Braeden Mansouri)

REGULATORY DEVELOPMENTS

CALIFORNIA DEPARTMENT OF INSURANCE FILES ORDER TO SHOW CAUSE SEEKING PENALTIES AGAINST INSURER FOR ALLEGED MISHANDLING LOS ANGELES WILDFIRE CLAIMS

On May 4, 2026, the California Department of Insurance initiated a legal action against State Farm General Insurance Company after an investigation allegedly found the company significantly mishandled insurance claims filed by survivors of the 2025 Palisades and Eaton wildfires in Los Angeles. The Accusation and Order to Show Cause alleges over 400 violations of the Unfair Insurance Claims Practices Act and related regulations and seeks millions of dollars in penalties, considered the largest amount pursued this century in relation to a wildfire disaster.

Factual and Procedural Background

During the first week of January 2025, two of the most destructive wildfires in California's history engulfed the cities of Altadena and Pacific Palisades in Los Angeles County. The Eaton Fire and Palisades Fire, respectively, destroyed over 18,000 structures, many of which were single-family homes.

Governor Newsom declared and signed a Proclamation of State of Emergency on January 7, 2025. Shortly thereafter, affected homeowners submitted approximately 38,835 wildfire related claims across all insurers. Of those, approximately 11,300 residential claims were filed by State Farm General Insurance Company (State Farm) policyholders.

In the months that followed, the California Department of Insurance's (Department) Consumer Services Division (CSD) received and investigated numerous complaints from State Farm policyholders related to the company's handling of their fire claims. CSD's Commissioner responded on June 12, 2025, by authorizing a formal Market Conduct Examination (MCE) to investigate how State Farm handled claims in the wake of the fires.

The MCE reviewed 220 randomly selected claims: 70 closed claims, 70 open claims, 70 smoke and ash claims, and ten claims with corporate complaints (i.e., filed directly with State Farm and not with the Department). Its review of these claims discovered 398 violations of the Unfair Insurance Claims Practices Act, and other related provisions of the Insurance Code. Among those violations, the MCE found that State Farm mishandled claims through: (1) slow and inadequate investigations; (2) underpayment of claims; (3) constant and numerous reassignment of claims adjusters over short periods of time; (4) failure to promptly investigate and process claims; and (5) delayed and inadequate communication with policyholders. The MCE concluded that these practices failed to comply with applicable laws that regulate the fair handling of claims, which, in turn, imposed an unfair and unlawful burden on policyholders during a declared state of emergency.

The Department adopted the final examination report on May 1, 2026, and filed the related Accusation and Order to Show Cause against State Farm on May 4, 2026.

The Department's Accusation and Order to Show Cause

The Department's Accusation and Order to Show Cause cites specific examples to summarize State Farm's nearly 400 violations across several key areas.

Slow and Inadequate Investigation of Claims

The Department and MCE determined State Farm's investigation of submitted claims violated Insurance Code, section 790.03(h)(2)–(4) and California Code of Regulations (CCR), sections 2695.5(e)(3), 2695.7(b), (c)(1), and (d). The Department found multiple claims where, after submittal, State Farm failed to accept or deny them within the statutorily-required 40-day period. State Farm further failed to provide claimants with requisite written notice that it needed additional time to review every 30 days. Finally, upon receiving notice of a claim, State Farm failed to initiate an investigation into the statutorily required 15-day period.

In one instance, State Farm waited 88 days to initiate its investigation into a claim, and only did so after the claimant followed up on the lack of activity. During the delay, State Farm failed to advise the insured claimant why a determination could not be made or when the claimant could expect an estimate. When State Farm did finally investigate the claim, they partially denied multiple parts without providing any written legal justification. Thereafter, State Farm attempted to settle the claim by proposing a settlement offer that was unreasonably low. Moreover, while the claim was open, State Farm reassigned it more than three times within a six-month period yet still failed to provide the insured with a written status report or establish a primary point of contact. Finally, when State Farm closed the claim, it improperly informed the insured claimant that they only had one year—instead of the statutorily required two-year-period—to file a suit against the company.

Underpayment of Claims or Delay in Timely Settlement

The Department also found multiple claims where State Farm failed to lawfully settle a claim by offering unreasonably low settlement offers, failed to document adjustments, and/or failed to timely pay accepted claims within 30 days, as required by Insurance Code, sections 790.03(h)(3), (h)(5), 2051, 2051.5, 10103.7(b)(1), and CCR, section 2695.7(g), (h).

For example, one insured claimant's home was completely destroyed, thus requiring additional living expenses to pay for alternative accommodations. When the claimant sent State Farm a lease agreement to validate their claim for alternative living expenses, State Farm failed to promptly furnish payment that was due under the policy. Instead, over a four-month span, State Farm sent multiple letters requesting additional time to review the claim but failed to explain why the claim was not accepted or justified additional review.

Reassignment of Multiple Claims Adjusters Causing Confusion

The Department and MCE also found State Farm's assignment of claims adjusters created excessive confusion and miscommunication. In particular, State Farm consistently reassigned multiple adjusters to one claim but failed to timely assign one adjuster to be the primary point of contact and have that adjuster timely communicate with the policyholder, in violation of Insurance Code, sections 790.03(h)(3) and 14047.

One insured's claim, for example, was reassigned six times, five of which occurred between January 13, 2025, and May 2, 2025. Moreover, six other individuals purportedly assisted the primary claims handler during this period, thus forcing the insured to interact with twelve different handlers within a four-month period. After reassigning the claim for a third time, State Farm failed to timely provide the insured with written notice of who their primary point of contact and means of communication would be. These shortcomings were compounded by State Farm failing to provide the insured with a prompt written explanation as to why their claim was ultimately denied and later making an unreasonably low settlement offer.

Lack of Reasonable Standards

Lack of Reasonable Standards for Promptly Investigating and Processing Claims, including Smoke Damage Claim Denials and Delays, Creating an Undue Burden on Policy Holders

The Department and MCE also found multiple claims where State Farm failed to adopt and implement reasonable standards to promptly investigate and process claims, in violation of Insurance Code section 790.03(h)(3), (5), and (13), and CCR, section 2695.7(b). These shortcomings included instances where State Farm: failed to provide requisite written denials of claims for the cost of hygienist and environmental testing in cases of smoke damage; failed to promptly, fairly, and equitably settle claims in which liability had become reasonably clear, including in instances of smoke damage and restoration; failed to treat payments for hygienist and environmental testing as loss adjustment expenses and not as against the policy limit; denied hygienist and environmental testing as not covered without citing applicable policy language as to why; and falsely represented to policyholders that the "right to inspect" provision justified denying claims for the costs of hygienist testing.

In one case, an insured claimant contacted State Farm to express concerns about cleaning items without hygienic testing. State Farm verbally denied the claimant's request for hygienic testing without stating the policy reason for why and without including

those reasons in writing. The claimant subsequently sent State Farm an e-mail requesting hygienic testing, to which State Farm replied only that such testing was not covered by the insured's policy. The claimant thus conducted hygienic testing at their personal expense and sent the bill to State Farm, along with a copy of the Commissioner's March 7, 2025, press release ordering insurers to fully investigate consumers' smoke damage claims. State Farm, again, verbally denied the testing and suggested the insured take the matter up with their landlord.

Inadequate and Delayed Communication with Policyholders

The Department and MCE also found State Farm engaged in inadequate and delayed communication with policyholders who submitted claims, in violation of Insurance Code, sections 395, 790.03(h)(13), and 14046(b), and CCR, sections 1871.2(a), 2695.5(b), (e)(2), 2695.7(b)(1), (b)(3), (c)(1), and (f). These violations included State Farm's failure to: timely respond to policyholders regarding their submitted claims; provide requisite written notices; consistently send statutorily-required status updates; or notify policyholders of additional time needed to make determinations regarding their claims.

In another case, the representative of an insured claimant sent State Farm a detailed communication that included remediation and pack-out estimates from the insured's contractor. State Farm, however, failed to respond within the statutorily-required 15-day period. Moreover, the Department found that State Farm only partially or never addressed multiple estimates provided by the insured's representatives.

Proposed Suspension and Order to Show Cause

The Department contends these repeated violations evidence grounds to suspend State Farm's authority under Insurance Code, section 704(b). The Department also maintains that these violations provide the Commissioner with good cause to believe that State Farm willfully committed unfair claims settlement practices and has been engaged in or is currently engaging in an unfair method of competition or any unfair or deceptive act or practice as defined in section 790.03 of the Insurance Code. The OSC thus demands that State Farm show cause as to why the Commissioner should not issue an order that State Farm may the monetary penalties imposed by Insurance Code section 790.035, and to cease and desist in engaging in unfair and deceptive practices.

The Commissioner will review these claims and assess the scope of penalties at a forthcoming hearing. The penalties, if imposed, would range anywhere from $5,000 to $10,000 per willful violation.

Conclusion and Implications

The Department of Insurance notes that it has directly intervened in claims filed by survivors of the Eaton and Palisades fires to recover more than $280 million from all insurance companies. And, as of March 3, 2026, insurers have paid out more than $23.7 billion to affected residential, commercial, and auto policyholders. The fractured insurance claim process, however, has also prompted the Department to sponsor new legislation to strengthened disaster-related consumer protection laws. For example, SB 876 (The Disaster Recovery Reform Act) would require insurers to maintain disaster recovery plans, double penalties during emergencies, mandate restitution for policyholders, and address delays caused by claims adjuster reassignments. Similarly, AB 1795 (The Smoke Damage Recovery Act) would establish the state's first enforceable public health and insurance standards for smoke-damaged homes, including testing and restoration requirements.

As these changes unfold, the 2025 Los Angeles Fires will arguably be remembered as a turning point for the homeowners' insurance industry—an already fragile industry grappling with losses worsened by increasingly destructive natural disasters fueled by the climate crisis. A copy of the Accusation and Order to Show Cause can be accessed via the Department of Insurance's related press release at: https://www.insurance.ca.gov/0400-news/0100-press-releases/2026/release019-2026.cfm.

(Bridget McDonald, Blaine Dyas)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT CLARIFIES COASTAL COMMISSION'S APPELLATE JURISDICTION

Shear Development Co., LLC v. California Coastal Commission, ___Cal.5th___, Case No. S284378 (April 23, 2026; *modified*, May 14, 2026).

The California Supreme Court reviewed the denial of a coastal development permit to construct single family homes in a developed part of Los Osos, an unincorporated community in San Luis Obispo County in *Shear Development Co., LLC v. California Coastal Commission*.

Background

Shear purchased lots in Los Osos zoned as "Residential Single-Family," for which there are three principal permitted uses, including "Single-Family Dwellings." The lots were in an existing developed area bounded on three sides by residential development.

The County approved a coastal development permit authorizing Shear to build one residence on each of eight lots in two phases. In the first phase, Shear could build a total of four homes. In the second, which would occur only after completion of the Los Osos community sewer, the remaining residences could be built. Shear later applied for a permit to build the four homes planned for the second phase of development. These homes would be located between the homes built during the first phase. The board of supervisors (Board) voted tentatively to uphold Shear's appeal from an adverse hearing officer's decision. It directed staff to return to the Board with an environmental determination, findings for approval, and conditions for approval. Shear deleted one lot from his application due to the presence of protected snails. The Board upheld Shear's appeal as to the remaining three lots.

The Board's decision was appealed to the California Coastal Commission. Shear defended the Board's decision but also challenged the Commission's jurisdiction to consider the appeal. The Commission denied the permit. It identified two bases for its jurisdiction: (1) the proposed residences were in a sensitive coastal resource area (SCRA) under the County's local coastal program (LCP); and (2) the proposed development was not for the sole principal permitted use for the area, but rather for one of several principal permitted uses. On the merits, the Commission concluded that no adequate wastewater service was available due to Special Condition 6, which provided that wastewater service to undeveloped properties within the service area was prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, including proof that adequate water is available to support development; and the development did not protect adequately the environmentally sensitive habitat area (ESHA) and therefore violated ESHA policies. The Superior Court denied a petition for writ of administrative mandate, and the Court of Appeal affirmed.

The Supreme Court's Decision

The Commission's Appellate Jurisdiction

Regarding the Commission's first jurisdictional ground, the Supreme Court ruled that the proposed development site is not in an SCRA. The issue turned on interpretation of the LCP, a legal issue. The Court exercises independent judgment when reviewing an agency's interpretation of the law, applying any appropriate deference to the agency's legal interpretation. Here the County and the Commission disagreed over interpretation of the law. When multiple agencies that administer a statute have provided conflicting interpretations, a court should apply the factors articulated in *Yamaha Corp. v. State Board of Equalization*, 19 Cal.4th 1 (1998) to each agency to determine not only whether either would be entitled to deference, but also whether either has a stronger claim to deference than the other. If one agency is

better situated than the other to provide a definitive statutory interpretation to which a court should defer, then the court may assign greater weight to that agency's interpretation. If not, and the agencies offer incompatible interpretations, then the court should perform its interpretive task without deference to either agency. The pertinent question for deference is whether either entity's position bears clearly superior indicia of being correct compared to the other. Here, neither did. The Commission did not properly exercise appellate jurisdiction under the theory that the proposed development is in an SCRA.

The Commission's second asserted basis for appellate jurisdiction was its jurisdiction over "[a]ny development approved by a coastal county that is not designated as the principal permitted use." Pub. Resources Code § 30603, subd. (a)(4)(A). The County designated three principal permitted uses for the proposed development site: passive recreation, coastal accessways, and single-family dwellings. Shear proposed to build single-family dwellings, one of the three principal permitted uses. The Commission argued, however, that this is not "the" principal permitted use—that is, the sole principal permitted use—so the Commission had appellate jurisdiction under subdivision (a)(4)(A). The Supreme Court ruled that the Commission lacked appellate jurisdiction on that ground on these facts. The Commission's appellate jurisdiction is limited to developments that are not designated as any of the principal permitted uses:

> Ultimately, the policy arguments that the parties make are not so decisive that we are persuaded to deviate from the plain text. Under the plain text, the Commission has appellate jurisdiction under subdivision (a)(4)(A) of section 30603 only when the development is not designated as the principal permitted use—or uses—under the local government's LCP. Shear's proposed development is for one of the principal permitted uses of the site. The Commission has no appellate jurisdiction over Shear's permit application under subdivision (a)(4)(A) of section 30603.

Conclusion and Implications

The California Supreme Court reversed the judgment of the Court of Appeal and remanded with directions to reverse the order of the trial court denying the petition for writ of administrative mandate and remand with directions to issue the writ of administrative mandate. The writ is to direct the Coastal Commission to vacate its decision and dismiss the appeal for lack of jurisdiction. The Court's opinion is available online at: https://pacificlegal.org/wp-content/uploads/2024/06/Shear-v.-CCC_Opinion-of-the-Court_4.23.26.pdf.
(Lauren J. Caster, Darien Key, Derek Hoffman)

FIRST DISTRICT COURT UPHOLDS SAN RAMON INFILL HOUSING APPROVAL AND CLARIFIES LIMITS OF GENERAL PLAN CONSISTENCY CHALLENGES

Citizens Against Marketplace Apartment/Condo Development v. City of San Ramon, et al., ___Cal.App.5th___, Case Nos. A170988/A172221 (1st Dist. April 24, 2026).

In *Citizens Against Marketplace Apartment/Condo Development v. City of San Ramon, Marketplace at San Ramon, LLC*, Real Party in Interest, Case Nos. A170988/A172221, April 24, 2026, the California Court of Appeal, First Appellate District, Division Five, affirmed the denial of writ petitions challenging San Ramon's approval of an infill housing project at the Marketplace Center. The opinion was certified for partial publication, with the published portion addressing General Plan and zoning consistency.

Background

Marketplace at San Ramon, LLC, doing business as TRC Retail, owned a 12.47-acre shopping center designated and zoned for mixed use. After an earlier, larger proposal met public opposition and was withdrawn, TRC submitted a revised project to redevelop 3.91 acres. The approved project involved demolition of a former grocery store building, construction of 40 detached condominium units and four junior acces-

sory dwelling units, and renovation of an existing Starbucks.

Procedural Posture

Citizens opposed the project before the planning commission and city council, arguing that the project conflicted with San Ramon's General Plan and zoning ordinance and was improperly exempted from CEQA review. Citizens first sought writ relief before final approval, including a temporary restraining order aimed at compelling a notice of inconsistency under the Housing Accountability Act. The trial court denied that request.

After the planning commission approved the project and the city council denied Citizens' administrative appeal, Citizens filed a second writ petition under Code of Civil Procedure section 1094.5 and sought to set aside the final project approval and CEQA exemption. The actions were consolidated. The trial court denied both petitions, entered judgment for the city and TRC, rejected the CEQA claim, and awarded record preparation costs to the city. Citizens appealed from both the judgment and the post-judgment costs order.

The Court of Appeal's Decision

The principal *published* issue was whether the city abused its discretion in finding the project consistent with the General Plan. Citizens argued that a General Plan policy required preparation of a coordinated "Master Plan" for the Marketplace Center and adjacent Orchard Supply Center before any residential redevelopment could proceed.

The Court of Appeal rejected that reading. The relevant policy stated that the city should "encourage" joint redevelopment through a master plan where feasible and described planning objectives such as improved circulation, access, visibility, and a broader mix of uses, including residential uses. The court emphasized that the General Plan did not define "Master Plan" or "feasible," and that the policy used discretionary and aspirational language rather than a concrete prohibition.

Applying the deferential substantial evidence and abuse of discretion framework, the court held that San Ramon reasonably interpreted its own General Plan. The project advanced several stated policy goals by replacing vacant retail space with housing and by adding circulation and pedestrian improvements. Because General Plans often contain broad and sometimes competing policies, the relevant inquiry was whether the project, considered as a whole, furthered the plan's objectives and did not obstruct their attainment. Citizens did not show that no reasonable decisionmaker could have reached the city's conclusion.

Mixed-Use Zoning Issue

Citizens also argued that the project could not qualify as horizontal mixed use because the residential component was not located "behind" street-fronting nonresidential uses. The General Plan and zoning ordinance recognized both vertical and horizontal mixed-use configurations. In a horizontal mixed-use project, residential uses may be located at ground level behind street-fronting nonresidential uses.

The court found sufficient evidence supporting the city's conclusion that the project met that standard. The site abutted multiple streets, and from certain vantage points, the residential units were behind the Starbucks® and other retail uses within the larger Marketplace Center. The record maps also showed street-fronting commercial uses. Although Citizens offered a competing interpretation based on other street perspectives, that disagreement did not establish an abuse of discretion. The court treated the issue as another local land-use interpretation entrusted primarily to municipal officials.

CEQA Exemption and Costs

In the *unpublished* portion of the opinion, the court rejected Citizens' challenge to the city's reliance on the California Environmental Quality Act (CEQA) categorical exemption for infill development under Guidelines section 15332. Citizens argued that the project failed the exemption because it was inconsistent with the General Plan and zoning ordinance and because the city lacked substantial evidence that the project would not cause significant traffic impacts.

The court's CEQA analysis followed from its land-use holding. Because substantial evidence supported the city's consistency findings, the CEQA inconsistency argument failed. On traffic, the record included two expert analyses showing reductions in trips and vehicle miles traveled. Citizens' theory that former Nob Hill Foods shoppers would drive farther to other stores was deemed speculative, particularly given the

presence of several grocery stores within two miles. The city's no-significant-traffic-impact finding was therefore supported by substantial evidence.

The court also affirmed the award of $38,568.62 in record preparation costs to the city. Citizens had elected to prepare the administrative record, but the court held that the city could still recover reasonable costs actually incurred in connection with record preparation. Citizens' challenge to the amount failed because it did not provide an adequate appellate record, including the city's memorandum of costs.

Conclusion and Implications

The decision reinforces substantial deference to local agencies when they interpret General Plan policies and zoning provisions in the course of approving housing projects. For California practitioners, the published discussion is most significant where opponents rely on broad General Plan language as though it imposed mandatory development prerequisites. Undefined terms, feasibility qualifiers, and verbs such as "encourage" will generally support agency discretion unless the plan contains a clear, objective command.

The case also illustrates the limits of using CEQA to relitigate local consistency disputes. Where the same General Plan and zoning consistency findings support an infill exemption, a challenger must do more than restate its land-use objections. Technical traffic objections likewise require evidence, not speculation, particularly when expert studies support the agency's conclusion.

Finally, the costs ruling is a useful procedural reminder in CEQA and administrative mandamus litigation. A petitioner's election to prepare the record does not necessarily insulate it from record-related costs incurred by a prevailing public agency. Appellants challenging such awards must provide a complete record sufficient to show abuse of discretion. The court's *partially* published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A170988.PDF.
(Darien Key)

PUBLIC FISHING, CEQA, AND DRINKING WATER PROTECTION: FIRST DISTRICT COURT CLARIFIES RESERVOIR ACCESS OBLIGATIONS

Dummer v. City and County of San Francisco et al.,
___Cal.App.5th___, Case No. A172588 (1st Dist. May 29, 2026).

In *Dummer v. City and County of San Francisco et al.* the California Court of Appeal, First Appellate District, Division, on May 29, 2026, affirmed a judgment denying Timothy James Dummer's petition for writ of mandate against the City and County of San Francisco (City) and the San Francisco Public Utilities Commission.

Background

Dummer, a licensed California fisherman, sought public fishing access to Calaveras Reservoir. The City owns the reservoir, which lies in Alameda and Santa Clara Counties and supplies drinking water to approximately 2.7 million Bay Area residents. The reservoir is governed by the Alameda Watershed Management Plan, which currently prohibits public access and fishing at the reservoir.

The appeal concerned whether the City had a clear, present, ministerial duty to obtain an amended water supply permit from the State Water Resources Control Board and immediately open the reservoir to public fishing in its natural condition. The Court of Appeal held that no such ministerial duty existed.

Prior Proceedings

The case followed an earlier writ proceeding filed by Dummer in 2019. In that action, the trial court recognized that the public right to fish in a reservoir is qualified and that the operative question was whether fishing could occur without affecting the purity and safety of the domestic water supply. The court ordered the City to determine whether fishing at Calaveras Reservoir could be accomplished without affecting the purity and safety of the water, but it did not order

the City to open the reservoir or immediately seek a permit amendment.

The City responded by adopting Resolution 22-0135. The resolution determined that shoreline fishing by the public could occur without affecting water purity and safety, but only after review under the California Environmental Quality Act (CEQA), analysis by the State Water Resources Control Board's Office of Drinking Water, and terms to be set by the San Francisco Public Utilities Commission's General Manager. The City also authorized development of a fishing program, environmental review, a request to amend the drinking water permit, and proposed amendments to the watershed management plan.

Dummer then filed the present action after learning that the reservoir would not open immediately. He sought a writ requiring the City to obtain the amended water supply permit and provide fishing access during open season. The trial court denied the petition, concluding that Dummer had not identified any breach of a ministerial duty. After Dummer voluntarily dismissed his damages claim, final judgment was entered, and he appealed.

The Court of Appeal's Decision

Governing Legal Framework

The Court of Appeal analyzed the interaction among the Fish and Game Code, the Health and Safety Code, CEQA, and implementing regulations. Fish and Game Code section 5943 requires a dam owner to accord public access to impounded waters for fishing during open season, subject to Fish and Game Commission regulations. Health and Safety Code section 115830 provides that water supply reservoirs of public agencies shall be open for recreational use, but subject to state health regulations.

Health and Safety Code section 117045 provides that before opening a domestic water supply reservoir to public fishing, the public owner must determine that fishing will not affect the purity and safety of the water and must obtain a valid water supply permit setting forth the terms and conditions on which fishing may occur. Title 17 regulations also prohibit recreational use on and around a domestic water supply reservoir unless specifically authorized in a water supply permit. Those regulations require a permit application to include detailed information concerning public access areas, sanitary facilities, the type and extent of recreational use, and the owner's program for controlling that use.

The court also noted that CEQA may apply when a watershed management plan must be amended or when public works, access improvements, or land use changes are proposed. The court rejected any reading of the reservoir access statutes that would displace CEQA or other regulatory requirements.

Mandamus Analysis

The court applied the ordinary mandamus standard under Code of Civil Procedure sections 1085 and 1086. Dummer was required to show a clear, present, ministerial duty and a corresponding beneficial right to performance. A ministerial duty exists only when the agency must perform a specific act in a prescribed manner without exercising significant judgment.

Dummer argued that once the City determined fishing could occur without impairing water purity and safety, the City had a ministerial duty to apply immediately for an amended permit and open the reservoir. The court disagreed. The City had not determined that fishing could occur immediately or without further conditions. Its resolution made fishing contingent on CEQA review, State Water Resources Control Board analysis, and site-specific terms to be developed by the San Francisco Public Utilities Commission.

The court further held that Health and Safety Code section 117045 gives the State Water Resources Control Board ultimate authority over permit terms, but it does not deprive the public owner of discretion to develop and propose terms in the first instance. Because Title 17 requires the owner to submit programmatic and operational information with the application, the statutory scheme necessarily allows the owner to evaluate access, facilities, public safety, water quality, and environmental compliance before applying.

Fishing Rights and Constitutional Claims

Dummer relied on the Fish and Game Commission's 2020 regulations authorizing year-round catch-and-release fishing at Calaveras Reservoir with artificial lures and barbless hooks. The court held that those regulations addressed statewide sport-fishing rules, including seasons, gear restrictions, and biological management. They did not resolve site-specific issues such as access roads, parking, sanitary facilities,

surveillance, watershed protection, infrastructure security, or drinking water safeguards.

Dummer also invoked article I, section 25 of the California Constitution, which recognizes a right to fish, and article X, section 4, concerning access to navigable waters. The court assumed without deciding that those provisions applied but held that they did not create an unrestricted right to fish without regard to water quality, CEQA, public safety, and other regulatory requirements.

The court relied on *State of California v. San Luis Obispo Sportsman's Association*, which recognized that reservoir fishing access must be reconciled with protection of domestic water supplies. That precedent supported the conclusion that public access may depend on a managed fishing program, sanitary facilities, surveillance, and limits on the extent of access.

Conclusion and Implications

The Court of Appeal affirmed because Dummer did not establish that the City failed to perform a clear, present, ministerial duty. The City and County of San Francisco had made the threshold water-quality determination required by the prior writ proceeding and was taking steps toward a CEQA-compliant fishing program and amended water supply permit. No statute required immediate submission of an incomplete permit application, and mandamus could not be used to control the City's discretion over the proposed program's terms.

For California practitioners, it confirms that statutory public access rights may be enforceable, but they remain qualified where implementation requires technical, environmental, operational, and public-health judgments. It also reinforces that mandatory statutory language does not automatically create a ministerial duty when the agency must exercise judgment to comply. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A172588.PDF.

(Darien Key, Derek Hoffman)

FIRST DISTRICT COURT ADDRESSES WHEN INTERVENTION CREATES EXPOSURE: ATTORNEY FEE LIABILITY FOR TRADE ASSOCIATIONS UNDER CEQA

Raptors Are the Solution v. CropLife America,
___Cal.App.5th___, Case No. A171537 (1st Dist. April 29, 2026).

A recent decision from the California Court of Appeal for the First Judicial District clarifies that trade associations and other economically interested intervenors may face attorney fee liability under California's private attorney general statute when they actively participate in CEQA litigation. In *Raptors Are the Solution v. CropLife America*, the court affirmed a substantial fee award against pesticide industry associations that intervened to defend pesticide registration decisions challenged under the California Environmental Quality Act (CEQA).

Background

The dispute arose after environmental organization Raptors Are the Solution challenged the California Department of Pesticide Regulation's renewal of several anticoagulant rodenticides without reevaluation under CEQA and related pesticide regulations. The case ultimately resulted in reevaluation proceedings for several rodenticides and related legislative action imposing a moratorium on the use of diphacinone pending reevaluation.

Section 1021.5 and the Definition of "Opposing Parties"

The Court of Appeal's Decision

The primary issue before the Court of Appeal was whether intervening trade associations qualified as "opposing parties" under Code of Civil Procedure section 1021.5, California's private attorney general statute. The statute permits courts to award attorney fees to successful parties who enforce important pub-

lic rights and confer a significant public benefit.

The intervenors argued that they could not be liable for fees because they neither enacted nor enforced the challenged regulatory decisions. According to the associations, only the Department of Pesticide Regulation, the governmental entity responsible for the pesticide registration decisions, could properly bear fee liability.

The court rejected that argument, emphasizing that section 1021.5 is not limited to governmental defendants. Instead, the statute may apply to parties that actively litigate to protect direct economic interests affected by the challenged action. In doing so, the court relied heavily on prior California authority recognizing that fee liability may extend beyond agencies and formal defendants where a party has a substantial stake in the outcome of the litigation.

The decision reinforces that "opposing party" status under section 1021.5 depends less on formal party designation and more on the practical role the participant plays in the litigation.

The Importance of Direct Economic Interest

A central aspect of the court's analysis was the intervenors' own description of their interests in the case. In their motion to intervene, the trade associations emphasized that their members manufactured, marketed, and distributed the challenged rodenticides and would face significant economic harm if the products were subject to reevaluation or market restrictions.

The court repeatedly cited these representations in affirming the fee award. According to the opinion, the associations characterized their interests as "immediate, direct and substantial" and identified potential loss of product sales and disruption to pesticide registrations as core concerns motivating intervention.

Those statements ultimately undermined the intervenors' later argument that they were merely participating to advance broader policy concerns regarding pesticide regulation. The court concluded that the associations' participation was driven by concrete commercial interests rather than generalized ideological advocacy.

The opinion therefore serves as a reminder that intervention papers and litigation strategy may later shape fee exposure under section 1021.5.

Distinguishing *Connerly* and Limiting the "Advocacy Group" Defense

The intervenors relied heavily on the California Supreme Court's decision in *Connerly v. State Personnel Board*, 92 Cal.App.4th 16 (2001), which held that certain advocacy groups participating as amici curiae were not liable for attorney fees under section 1021.5. The Court of Appeal distinguished *Connerly* on several grounds.

First, the organizations in *Connerly* participated as amici rather than formal intervenors. Second, the *Connerly* groups were motivated primarily by ideological and policy concerns rather than direct economic interests. By contrast, the trade associations in *Raptors Are the Solution* intervened as parties and expressly asserted pecuniary interests tied to the continued viability of their members' products.

The court emphasized that *Connerly* recognized two paths to "opposing party" status: responsibility for the challenged governmental action, or active participation in litigation to protect direct interests affected by the dispute. The intervenors in *Raptors Are the Solution* fell squarely within the second category.

The opinion narrows the ability of industry participants to rely on *Connerly* where intervention is tied to protecting commercial or regulatory interests.

Joint and Several Liability Under Section 1021.5

The Court of Appeal also affirmed the trial court's decision to impose joint and several liability on the Department, the real parties in interest, and the intervening associations. The intervenors argued that any fee award should have been apportioned according to the relative extent of each party's participation.

The court rejected that argument, relying on prior authority recognizing that joint liability promotes the purposes of section 1021.5 by ensuring successful public interest litigants can fully recover awarded fees without engaging in extensive collection efforts against multiple parties. The opinion further noted that disputes regarding contribution or indemnity among opposing parties may be resolved separately and do not necessarily require judicial apportionment at the fee-award stage.

The ruling reinforces that courts retain broad discretion in structuring fee awards under section 1021.5, particularly in complex CEQA litigation involving multiple parties and intervenors.

Implications for CEQA Intervenors and Regulated Industries

The decision may have significant implications for trade associations, developers, permit applicants, and other regulated entities considering intervention in CEQA and environmental litigation. While intervention often provides parties with an opportunity to protect commercial or regulatory interests directly affected by agency action, *Raptors Are the Solution* demonstrates that intervention may also create substantial fee exposure if the plaintiff ultimately prevails.

The opinion also reflects California courts continued broad application of the private attorney general doctrine in environmental and public interest litigation. Courts may be increasingly willing to look beyond formal party status and focus instead on the practical realities of litigation participation, economic motivation, and the extent to which intervenors contribute to the costs incurred by successful public interest plaintiffs.

Conclusion and Implications

Raptors Are the Solution v. CropLife America expands upon existing California authority addressing attorney fee exposure under section 1021.5 and provides important guidance regarding intervention strategy in CEQA litigation. The decision confirms that intervenors with direct economic interests who actively litigate to defend agency decisions may be treated as "opposing parties" for purposes of California's private attorney general statute, even where they neither enacted nor enforced the challenged action themselves.

The ruling is likely to influence how industry groups, regulated entities, and trade associations evaluate participation in future environmental litigation, particularly in matters involving regulatory approvals, pesticide registration decisions, and other agency actions subject to CEQA scrutiny. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171537.PDF.
(Christina Suarez, Darien Key)

SANTA BARBARA BUILDER'S REMEDY APPLICANT LOSES WRIT CHALLENGE OVER APPLICATION COMPLETENESS REVIEW, BUT PROJECT MOVES FORWARD

Mission LLC. v. City of Santa Barbara,
Case No. 25CV03180 (Santa Barbara County Super. Ct. 2026).

In *The Mission LLC. v. City of Santa* the Santa Barbara County Superior Court has issued a minute order denying a Builder's Remedy applicant's claims that the City of Santa Barabara issued a de-facto denial of its Builder's Remedy application and otherwise improperly required a general plan and zoning amenment in the application-completeness phase in violation of the Housing Accountability Act (HAA). The Project application will now move forward with environmental review.

Background

The dispute in The Mission LLC v. City of Santa Barbara concerns a proposed Builder's Remedy housing project at 505 East Los Olivos Street in Santa Barbara, behind the Old Mission and near the Santa Barbara Museum of Natural History and Rocky Nook Park. The Project consists of an eight-story residential project with approximately 270 units, including more than 50 affordable units, and a height of roughly 112 feet. The project has drawn significant local attention because of its size, proximity to historic and cultural resources, location near environmentally sensitive areas, and departure from the City's generally applicable 30-foot height limit.

The applicant, The Mission LLC, contends the project is protected by the Housing Accountability Act's Builder's Remedy provisions because it submitted its preliminary application while the City's housing element was not in substantial compliance with state law. Under the Builder's Remedy, a local agency without a compliant housing element generally may not deny certain affordable housing projects based on inconsistency with zoning or general plan land use designations.

The application history was lengthy. The Mission LLC submitted several preliminary applications for the property in 2023, proposing as few as four units and as many as 320. It later proceeded with the development application at issue, asserting Builder's Remedy protections. According to the applicant, the City initially imposed requirements that were improper for a Builder's Remedy project, including requiring a General Plan Amendment and zoning amendment, along with associated applications and fees. The applicant argued those requirements directly conflicted with Government Code section 65589.5, which provides that qualifying Builder's Remedy projects need not apply for or receive approval of a general plan amendment, rezoning, or other legislative approval.

The City eventually withdrew those requirements for purposes of determining whether the application was complete, but continued to reserve those points for purposes of a final determination. The applicant viewed that reservation as continuing to violate state housing law, while the City characterized it as preserving issues for later review rather than imposing a present completeness requirement.

The applicant also challenged the City's repeated incompleteness determinations. After the City issued it's fourth incompleteness letter in May 2025, the applicant's counsel sent a May 13 letter asserting that the City's determination lacked a factual basis, was part of a pattern of delay, and improperly increased the cost of the project. Shortly thereafter, the applicant launched this lawsuit. The letter asked the City to rescind the incompleteness determination and deem the application complete or institute the process under former Government Code section 65589.5, subdivision (h)(6)(D), later renumbered as subdivision (h)(6)(E). The applicant shortly thereafter submitted another revised application, which the City deemed complete.

The first amended petition asserted five causes of action. The applicant sought writ relief based on the City's alleged refusal to process the application without improper requirements and fees, challenged additional alleged completeness requirements, sought declaratory and injunctive relief on parallel theories, and alleged the City failed to comply with the HAA process triggered by the May 13 letter. If granted, the result would imply the City improperly denied the Builder's Remedy application.

The Superior Court's Decision

The court denied writ relief on the first, second, and fifth causes of action. At the outset, the court noted that the applicant's briefing did not address the governing standard of review. The court applied writ principles under Code of Civil Procedure section 1094.5, including whether the City proceeded without or in excess of jurisdiction, denied a fair hearing, or committed a prejudicial abuse of discretion.

General Plan Amendment and Zoning Amendment

On the General Plan Amendment (GPA) and zoning amendment issue, the court concluded the claim was not presently justiciable in the way the applicant framed it. The City was no longer requiring those applications or related fees as a condition of finding the application complete. Nor had the City made a final project decision requiring those approvals as a condition of final approval. Instead, the City had reserved the question for later in the process. Because the City had deemed the application complete and had not yet finally approved, denied, or conditioned the project on a GPA or rezoning, the court found the writ claim moot in part and unripe in part.

Completeness

The court reached a similar conclusion as to the applicant's broader challenge to earlier completeness requirements. Once the City deemed the application complete, the requested writ relief concerning completeness no longer presented an active controversy. Although the applicant could theoretically later pursue catalyst attorney's fees based on the City's change in position, the court did not treat that possibility as preserving the writ claims themselves.

HAA's Notice and Response Procedure

The court also rejected the applicant's argument that the May 13 letter triggered the HAA's statutory notice-and-response procedure. The court emphasized that the statute requires written notice detailing the challenged conduct and explaining why it constitutes a "disapproval." The May 13 letter criticized the City's incompleteness determination and requested that the City either deem the application complete or begin the statutory process, but the court found it did

not clearly explain why the City's conduct constituted a statutory disapproval. The applicant's later submittal also mattered: by submitting a revised application that addressed several items identified by the City, the applicant undercut its position that the May 13 letter had established a completed application and a statutory disapproval as of that date.

Declaratory Relief

Finally, the court noted that remaining declaratory relief claims were not resolved through the writ proceeding. If the parties could not resolve those issues, the City was directed to proceed by motion for judgment on the pleadings.

Conclusion and Implications

The decision is a narrow but meaningful procedural win for the City. It does not decide whether the project ultimately qualifies for Builder's Remedy protection, whether the City may deny or condition the project, or how the California Environmental Quality Act (CEQA) and public safety issues will be resolved. Instead, the ruling mostly rests on mootness and ripeness concerns.

For Builder's Remedy applicants, the case highlights the importance of drafting HAA notice letters with precision. A letter challenging delay or incompleteness should expressly identify the challenged conduct, explain why it constitutes a statutory disapproval, and clearly invoke the relevant HAA procedure. For local agencies, the ruling suggests that withdrawing disputed items from completeness review while reserving issues for later final action may reduce immediate writ exposure, although it does not eliminate future HAA challenges once a final decision is made. For more information on the court's ruling, *see:* https://www.santabarbara.courts.ca.gov/tentativeruling/25cv03180-0.
(Blaine R. Dyas)

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 ordered to the Senate on May 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 ordered to the Senate on May 27, 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 ordered to the Senate on May 27, 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 held under submission on May 14, 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 re-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 ordered to the Assembly on May 26, 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 ordered to the Assembly on May 26, 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, thereby excluding such lands from a number of CEQA exemptions. 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 specified 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 ordered to the Assembly on May 18, 2026, and referred to the Committees on Water, Parks, and Wildlife and Local Government on May 26, 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 ordered to the Assembly on May 22, 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 ordered to the Senate on May 27, 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 ordered to the Senate on May 21, 2026. The bill, called the "Missing Middle Townhome Ownership Act," would establish a new ministerial approval process for townhome development projects that meet specified objective planning standards. The bill would define "townhome" as a single-family dwelling unit of no more than 3 stories that shares a common wall or is separated from neighboring units by an air gap, and would define "townhome development project" to mean a housing development project consisting entirely of residential dwelling units that satisfy this definition of townhome. The bill would authorize a local agency to disapprove a townhome housing development project only if it makes written findings that the proposed townhome project would have a specific, adverse impact on public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the impact. The bill would authorize a local agency to adopt an ordinance to implement its provisions and would provide that the adoption of such an ordinance is not a project under CEQA.

AB 1997 (Lee)—This bill was ordered to the Senate on May 26, 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 ordered to the Senate on May 28, 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 the Senate and referred to the Committees on Housing and Local Government on May 13, 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 ordered to the Senate on May 28, 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 a 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 3-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 ordered to the Assembly on May 19, 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 ordered to the Assembly on May 20, 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 ordered to the Assembly and referred to the Committees on Housing and Community Development and Local Government on May 26, 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 held under submission on May 14, 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 ordered to the Assembly on May 27, 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 ordered to the Senate on May 27, 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 and referred to the Committee on Natural Resources May 18, 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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