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LAND USE NEWS

GOVERNOR NEWSOM DECLARES STATE OF EMERGENCY DUE TO WILDFIRES—EXEMPTS CERTAIN PROJECTS FROM CEQA AND THE COASTAL ACT

Governor Newsom recently issued an Executive Proclamation declaring a state of emergency due to wildfire conditions in California. The proclamation exempts certain fuel reduction and fuel management projects from the requirements of the California Environmental Quality Act (CEQA) and the California Coastal Act.

Background

On March 1, 2025, Governor Newsom issued an Executive Proclamation (EP) declaring a State of Emergency due to wildfire conditions in the state. The declaration suspends certain statutes and regulations that fall under the jurisdiction of the California Environmental Protection Agency (CalEPA) and the California Natural Resources Agency (CNRA), including the California Environmental Quality Act and the California Coastal Act, for qualifying projects.

The EP cites deteriorating forest conditions causing increased fire risk across California. Vast tree die-off, combined with increasingly irregular and extreme weather pattens, have resulted in a catastrophic accumulation of fuels in California's forests. This threatens the millions of housing units that exist in the Wildland Urban Interface (WUI), as demonstrated by the recent firestorms in Los Angeles County.

Executive Orders and EPs declaring States of Emergency based on wildfire conditions have been relatively common over the past decade in California. As recently as January of 2025, Governor Newsom issued two EPs in response to wildfires in Los Angeles and Ventura Counties. Where many past actions have either suspended regulations in particular counties, or restricted qualifying projects to post-fire recovery efforts, this suspension's application is state-wide.

Emergency Proclamation

The EP suspends certain environmental statutes and regulations that fall under the purview of CalEPA and CNRA, including CEQA and the California Coastal Act. To qualify for the suspension, a project must be initiated in 2025 and include at least one of the following: elements: (a) removal of hazardous, dead, and/or dying trees, (b) removal of vegetation for the creation of strategic fuel breaks as identified by approved fire prevention plans, (c) removal of vegetation for community defensible space, (d) removal of vegetation along roadways, highways, and freeways, (e) removal of vegetation using cultural traditional ecological knowledge for cultural burning and/or prescribed fire treatments for fuels reduction, or (f) maintenance of previously established fuel breaks or fuels modification projects.

The term "initiated" is not defined in the order. "Initiated" projects may include projects that are submitted to and approved by the CalEPA or CNRA in 2025, or it may apply more broadly to projects approved or funded by local agencies in 2025 and later submitted to or approved by CalEPA or CNRA.

The EP notes that the Board of Forestry and Fire Protection developed the California Vegetation Treatment Program (CalVTP) in 2019 to streamline environmental review of vegetation management projects. While 106 CalVTP projects have been approved so far, more are needed. This suspension aims to expedite critical fuels reduction projects necessary to address these conditions.

The suspension is not self-executing; projects must be approved by the appropriate agency Secretary. Project proponents seeking to operate under the suspension must make a request to the applicable Secretary. The EP directs the Secretaries to balance the interests of accelerating critical fuels reduction projects while also protecting public health and the environment in their decision-making. Each approved project is then listed on the applicable agency's website.

The EP notes that all activities performed under the suspension shall be in accordance with the State Environmental Protection Plan (EPP), or a com-

parable plan that balances the need for expeditious fuels reduction as well as environmental protection. In general, EPPs provide Best Management Practices (BMPs) and other direction for the agencies tasked with implementing the corresponding EPs. In the past, the State has released an EPP within a few weeks or months after an EP, so it is likely that the agencies will release an EPP directed at vegetation management in the near future.

While further guidance on the implementation of this EP is expected, the order establishes a program for more rapid streamlining and implementation of projects that include an element of vegetation management across the state.

Conclusion and Implications

The EP streamlines certain fuel reduction and fuel management projects across the state by bypassing CEQA and Coastal Act requirements. While Executive action addressing wildfire conditions in California is not uncommon, the statewide applicability of this EP marks an escalation in the Governor's efforts to expedite fuel reduction and fuel management projects. The Executive Proclamation is available online at: https://www.gov.ca.gov/wp-content/uploads/2025/03/2025-3-1.-Forest-Management-Proc.ATTESTED.pdf
(Hannah Rider, Blaine Dyas)

GOVERNOR NEWSOM EXPANDS PROGRAM TO CREATE AFFORDABLE HOUSING OUT OF UNUTILIZED STATE LAND

In late February, California Governor Gavin Newsom expanded a program which is the first of its kind in the United States. The program functions to convert underutilized state land into affordable housing (Excess Sites Program).

Background

As housing prices in the state of California have steadily increased over the years, many residents have been priced out of their homes, and with the housing crisis at an incredible high, Governor Newsom has tried to address growing concerns. In 2019, Governor Newsom signed an executive order with the intent to scale up the state's response to the mounting housing crisis. The executive order called on the Department of General Services and the Department of Housing and Community Development to prioritize state-owned property that was underutilized to create more affordable housing in the state.

The Excess Sites Program

Since Governor Newsom issued the executive order, the Department of General Services and the Department of Housing and Community Development have collectively assembled a statewide pipeline. The pipeline includes roughly 4,300 housing units and spans across 32 projects. The projects are currently in various stages of development.

The newly revamped Excess Sites Program will further the executive order by releasing all state land identified as suitable and vacant for the development of affordable housing. Government Operations Agency Secretary, Amy Tong, explained that the state is "harnessing technology and innovation to help accelerate the rate of affordable housing construction in the Golden State" and will be accepting "proposals from creative and resourceful developers whose efforts will give more Californians a place to call home."

The new improvements of the Excess Sites Program also allow developers to simultaneously review all available sites on the State Excess Sites map and to continuously submit proposals until an awardable submission is received and a deadline is decided for that site. The Department of General Services Director, Ana Lasso, stated that this "streamlined processes will help to ensure valuable resources are utilized effectively for growth and community development."

As part of the Excess Sites Program, California has announced three sites that will be developed, including a 58-unit community in Sacramento, a 48-unit project in Fresno County, and a 248-unit community in South Lake Tahoe.

Conclusion and Implications

The Excess Sites Program exemplifies California's commitment to encouraging development to address the dire housing issues burdening the state. With

the new web portal, the program will streamline the development process by offering an efficient way for developers to bid on and build housing projects. With 23 new sites open for development under the Excess Sites Program, the state is hopeful that it will have affordable housing available for Californians at an accelerated rate. For more information on the Excess Sites Program, *see:* https://www.hcd.ca.gov/planning-and-community-development/public-lands-affordable-housing-development
(Mona Goodarzi)

MENDOCINO COUNTY DECLINES PROPOSED GROUNDWATER EXTRACTION ORDINANCE

On February 25, 2025, the Mendocino County Board of Supervisors (Board) declined to pass an ordinance that would have regulated groundwater extraction and hauling for commercial purposes. The ordinance was initially proposed in response to growing concerns over water scarcity, particularly in light of ongoing drought conditions and the illegal extraction of groundwater for non-permitted cannabis cultivation.

Discussions regarding water extraction regulations began back in March 2022 when the Board of Supervisors directed the Drought Ad Hoc Committee to develop a draft ordinance. In July 2022, the Board requested a legal analysis of the regulation of water extraction and water hauling.

However, multiple delays and legal, logistical, and administrative concerns prevented the ordinance from moving forward. Despite efforts to refine the proposal, the Board ultimately declined to adopt the ordinance due to financial constraints, enforcement challenges, and uncertainties regarding the scope of its applicability.

The Need for Regulation

The proposed ordinance was primarily intended to address concerns regarding the depletion of local groundwater resources, mitigating adverse effects on neighboring well owners, and minimizing the environmental impacts of water hauling. Reports from residents indicated that excessive groundwater extraction and hauling, often for illicit purposes, had led to the drying of wells and potential aquifer depletion. Additionally, the transportation of large quantities of water by heavy trucks was reported to have caused damage to roads and bridges not designed for such traffic.

Water scarcity has been an increasing issue in Mendocino County due to prolonged drought conditions and growing demand for water, especially in agricultural and cannabis-growing regions. Local officials and residents voiced concerns about unregulated water sales, arguing that without oversight, the county's groundwater resources would continue to be overexploited, leading to long-term ecological and economic consequences.

What the Ordinance Would Have Regulated

The ordinance sought to establish a framework for overseeing groundwater extraction and water hauling. Specifically, it aimed to:

- Require permits for commercial groundwater extraction for bulk sale, defining such activity as a form of mining under the county's zoning code.

- Mandate environmental impact assessments under the California Environmental Quality Act (CEQA) for extraction projects requiring use permits.

- Impose reporting requirements on well owners engaged in large-scale water extraction to monitor groundwater levels and ensure compliance with sustainable use limits.

- Establish rules regarding the metering and monitoring of water extraction to ensure accurate reporting and limit overuse.

- Introduce penalties for unauthorized extraction and hauling to deter illegal activity.

By incorporating these regulatory measures, the ordinance aimed to establish a more sustainable and enforceable groundwater management strategy while balancing property rights and environmental protection.

What the Ordinance Would Not Have Regulated

Despite its broad scope, the proposed ordinance had notable limitations. It did not apply to all groundwater extractions—only those intended for commercial bulk sales. Private well owners using groundwater for personal, agricultural, or non-commercial purposes would not have been subject to the new regulations. Additionally, the ordinance did not directly regulate the use of springs or surface water sources, which raised concerns among stakeholders about potential loopholes.

Another significant limitation was its applicability within Mendocino County's Coastal Zone. The ordinance was primarily drafted with inland areas in mind, and it was unclear whether its provisions would extend to coastal communities where groundwater extraction also presents sustainability challenges.

Moreover, concerns were raised about the ordinance's enforcement mechanisms. The proposed citizen enforcement provisions were widely criticized for potentially exposing the county to legal challenges. There were also ambiguities surrounding key definitions, such as the criteria for determining "first pumping of the season" and procedures for monitoring adverse impacts on neighboring wells.

Legal and Administrative Hurdles

Several legal and administrative concerns contributed to the Board's decision not to adopt the ordinance. One major issue was the lack of necessary expertise within county departments to implement and enforce the ordinance effectively. The county did not have a designated hydrologist or a fully functioning water agency to oversee the permitting and monitoring process.

The estimated cost of revising and implementing the ordinance further complicated the matter. County staff estimated that hiring a third-party consultant to draft a revised version would cost approximately $36,000, with an additional $20,000 for outside legal counsel. Planning and Building Services staff time was projected to add another $15,000 in expenses. These financial considerations, coupled with competing priorities such as the Inland Zoning Code Update, made it difficult to justify moving forward with the ordinance at this time.

Additionally, the classification of groundwater extraction as "mining" under the county's zoning code added regulatory complexities. Any use permit for water extraction would have triggered site-specific environmental reviews under CEQA, adding another layer of bureaucratic oversight that some Board members viewed as burdensome.

Conclusion and Implications

The failure to pass the groundwater extraction ordinance underscores the challenges of regulating water use at the county level, particularly in regions facing ongoing water scarcity. While the ordinance sought to address legitimate concerns regarding groundwater depletion and unregulated commercial extraction, legal uncertainties, financial constraints, and administrative challenges ultimately prevented its adoption.

Moving forward, Mendocino County may need to explore alternative approaches to groundwater management. This could include strengthening state-level coordination, securing funding for a county water agency, or revising the ordinance to address its enforcement and applicability concerns. Until then, the regulation of groundwater extraction remains a pressing but unresolved issue for the county and its residents.

(Darien Key)

ARGENT COMMUNICATIONS GROUP'S TENTH ANNUAL CALIFORNIA LAND USE LAW, POLICY, AND PLANNING CONFERENCE SLATED FOR MAY 21, 2025

Registration is now open for Argent Communications Group's tenth annual California Land Use Law, Policy, and Planning Conference, online. This year's theme is "Housing, Changing Federal Priorities, and Other Critical Land Use Topics."

Co-Chairs Scott Birkey of Cox, Castle & Nicholson and Lauren Langer of Best Best & Krieger have prepared a comprehensive, practice-oriented program that is a streamlined, one-day excursion through some of the most important issues facing land use practitioners today.

WHEN: Wednesday, May 21, 2025.

WHERE: Live Online

We heard from our past attendees about the ease and value of our previous virtual conferences, and we listened. The virtual format allows you to tap into our expert faculty members' unique experience and knowledge not only through their presentations, but also with live Q&A following each session—travel-free and hassle-free from your own (home) office.

WHO SHOULD ATTEND:

- Land Use, Environmental, and Municipal Attorneys;
- Municipal and Private Land Use Planners;
- Land Use and Environmental Consultants;
- City Counil and County Board of Supervisor Members and Staff;
- State and Local Agency Representatives;
- Developers and Land Owners; and
- Public Interest Group and Advocacy Personnel

Whatever your role in the development process, this comprehensive, practice-oriented conference will flesh out the information land use practitioners will need in the coming year—in one intensive day. You'll gain practical insights and problem-solving strategies from representatives of consulting firms, municipal attorneys, and top attorneys throughout the state including those from our co-sponsor firms of Best Best & Krieger; Cox, Castle & Nicholson; Fennemore; and Miller Starr Regalia.

KEYNOTE PRESENTATION:

We are pleased to have as our Keynote Speaker Melinda Coy, Proactive Accountability Chief, Land Use and Local Government Relations, California Department of Housing & Community Development, who will discuss the Department's Perspective on Housing Elements.

TOPICS COVERED:

In this conference we have identified those evolving land use law and planning shifts and tools that are most important for your practice. There's plenty on housing issues, and you'll also learn about developments in CEQA, Coastal Development, Environmental Law under the new Federal Administration, and more:

- **It's All About Housing**
  - **2025 Housing Law Legislative Updates**
  - **What Can We Expect to See from Sacramento in 2025?**

- **Implementing "Builder's Remedy": Case Studies**
  - **The Santa Monica Approach to Builder's Remedy**
  - **The La Cañada-Flintridge Saga**

- **Hot Topics in California Land Use**
  - **Creating Affordable Housing with Changing Federal Priorities**
  - **Coastal Development in California**

- **Federal Environmental Laws under the Trump Administration Affecting Your Practice**

- **Rebuilding after a Wildfire and Project Design Features to Prevent Destruction**

- **CEQA Case Law Update**

ACCREDITATION:

MCLE accreditation has been requested from the State Bar of California for 7 hours.

CONFERENCE REGISTRATION:

Visit the Conference Webpage, where you can find out more, download the conference brochure with full program information, and register for the conference.

The easiest way to register is to use our online registration form. You can also download the full conference brochure with registration form and email the completed form to register@argentco.com with your tuition payment. Or call 800-419-2741 to register by phone.

Conference tuition of $695 includes participation in all sessions and a 150+ page set of program materials prepared by the Faculty. And, as a value-added bonus, you'll also receive a link to view the program video recording. Discounts apply for government agency personnel, or when you register two or more attendees from the same organization. See our registration page and/or conference brochure for complete details.

If you attend only one MCLE-accredited land use law conference this year, make it the only one produced by the land use and natural resources publishers and editors of *Calfiornia Land Use Law & Policy Reporter*.

We look forward to seeing you online, May 21, 2025!

REGULATORY DEVELOPMENTS

COUNCIL ON ENVIRONMENTAL QUALITY PUBLISHES INTERIM FINAL RULE: "REMOVAL OF NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING REGULATIONS" IN THE FEDERAL REGISTER

On February 25, 2025, the Council on Environmental Quality published in the Federal Register its proposed final rule: Removal of National Environmental Policy Act Implementing Regulations. The final rule:

> . . .removes the Council on Environmental Quality (CEQ) regulations implementing the National Environmental Policy Act (NEPA) from the Code of Federal Regulations. In addition, this Interim final rule requests comments on this action and related matters to inform CEQ's decision making.

The interim rule will become effective on April 11, 2025, with the comment deadline having ended on March 27, 2025.

Background

Congress enacted NEPA to declare a national policy "to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and [to] fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. 4331(a).

NEPA, as amended by the Fiscal Responsibility Act of 2023 (FRA), Public Law 118-5, furthers this national policy by requiring Federal agencies to prepare a "detailed statement" for proposed "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C). This statement must address: (1) The reasonably foreseeable environmental effects of the proposed agency action; (2) the reasonably foreseeable adverse environmental effects that cannot be avoided; (3) a reasonable range of alternatives to the proposed agency action, including an analysis of any negative environmental impacts of not implementing the proposed agency action in the case of a no action alternative, that are technically and economically feasible, and meet the purpose and need of the proposal; (4) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; and (5) any irreversible and irretrievable commitments of resources that would be involved in the proposed action. 42 U.S.C. 4332(2)(C).

NEPA further mandates that federal agencies ensure the professional and scientific integrity of environmental documents; use reliable data and resources when carrying out NEPA; and study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. 4332(2)(D)-(F). NEPA provides procedures for making threshold determinations about whether an environmental document must be prepared and the appropriate level of environmental review. 42 U.S.C. 4336(a)-(b).

NEPA does not mandate particular results or substantive outcomes. Rather, NEPA requires Federal agencies to consider the environmental effects of proposed actions as part of agencies' decision-making processes. As amended by the FRA, NEPA provides additional requirements to facilitate timely and unified Federal reviews, including provisions clarifying lead, joint lead, and cooperating agency designations, generally requiring the development of a single environmental document, directing agencies to develop procedures for project sponsors to prepare environmental assessments and environmental impact statements, and prescribing page limits and deadlines. 42 U.S.C. 4336a. NEPA also sets forth the circumstances under which agencies may rely on programmatic environmental documents, 42 U.S.C. 4663b, and adopt and use another agency's categorical exclusions. 42 U.S.C. 4336c.

The CEQ

NEPA established CEQ as an advisory agency within the Executive Office of the President to assist and advise the President on certain environmental

matters and the implementation of NEPA's national policy. 42 U.S.C. 4342. Specifically, NEPA charges CEQ with the duty and function to: (1) to assist and advise the President in the preparation of the Environmental Quality Report; (2) to gather, analyze, and interpret information concerning the conditions and trends in the current and prospective quality of the environment for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of NEPA's national policy, and to compile and submit to the President studies on such conditions and trends; (3) to review and appraise Federal programs and activities for the purpose of determining the extent to which such programs and activities contribute to the achievement of NEPA's national policy, and to make relevant recommendations to the President; (4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals; (5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality; (6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes; and (7) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request. 42 U.S.C. 4344.

On August 15, 2017, President Trump issued E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects, which directed CEQ to establish and lead an interagency working group to identify and propose changes to the NEPA regulations In response, CEQ issued an advance notice of proposed rulemaking on June 20, 2018, and a notice of proposed rulemaking (NPRM) on January 10, 2020, proposing broad revisions to revise, update, and modernize the 1978 regulations. CEQ promulgated its final rule on July 16, 2020.

Following the issuance of the 2020 rule, five lawsuits were filed challenging it. These cases challenged the 2020 rule on a variety of grounds, including under the APA and NEPA, and contended that the rule exceeded CEQ's authority and that the related rulemaking process was defective. However, as discussed below, after CEQ indicated its intent to reconsider the 2020 rule and again revise the CEQ regulations, the district courts issued temporary stays in each of these cases, except for *Wild Virginia v. Council on Environmental Quality*, which the U.S. District Court dismissed without prejudice on June 21, 2021.

On January 20, 2021, President Biden issued E.O. 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, which revoked E.O. 13807 and directed agencies to take steps to rescind any rules or regulations implementing it. An accompanying White House fact sheet, published on January 20, 2021, specifically identified the 2020 regulations for CEQ's review for consistency with E.O. 13990's policy.

After conducting that review, on June 29, 2021, CEQ issued an interim final rule extending by two years the September 14, 2021, deadline for agencies to propose changes to existing agency-specific NEPA procedures to make those procedures consistent with the 2020 regulations. Next, on October 7, 2021, CEQ issued a "Phase 1" proposed rule to amend the 2020 regulations to restore discrete portions of the 1978 regulations, which CEQ finalized on April 20, 2022.

On June 3, 2023, President Biden signed into law the FRA, which included amendments to NEPA. On July 31, 2023, CEQ published a "Phase 2" proposed rule to again revise, update, and modernize the NEPA implementing regulations and propose revisions to implement the FRA amendments to NEPA. On May 1, 2024, CEQ finalized its Phase 2 rule, which incorporated many of its proposed revisions, including those to implement the FRA's amendments. After publication of the final rule, the three pending challenges to the 2020 regulations were voluntarily dismissed without prejudice.

Why Now?

The Council on Environmental Quality is issuing this interim final rule to remove the existing implementing regulations for the National Environmental Policy Act of 1969 in response to Executive Order (E.O.) 14154, *Unleashing American Energy*. Among other things, E.O. 14154 rescinds E.O. 11991, *Relating to Protection and Enhancement of Environmental Quality,* which amended E.O. 11514, *Protection and Enhancement of Environmental Quality,* and directed

CEQ to promulgate regulations for implementing NEPA and required Federal agencies to comply with those regulations. E.O. 14154 also directs CEQ to issue guidance on implementing NEPA and to propose rescinding the NEPA implementing regulations. This interim final rule carries out President Trump's latter instruction.

The CEQ went on to state that while it is mindful of the body of Supreme Court case law holding CEQ's past interpretations of NEPA as expressed through its implementing regulations were entitled to deference, *see Andrus* v. *Sierra Club*, 442 U.S. 347, 358 (1979) ("CEQ's interpretation of NEPA is entitled to substantial deference."); *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 355 (1989) ("CEQ regulations are entitled to substantial deference."); *Department of Transp.* v. *Public. Citizen*,541 U.S. 752, 757 (2004):

> . . .none of these decisions expressly holds that Congress delegated authority to CEQ to bind Executive Branch agencies. In any event, these decisions occurred against the backdrop of the now-rescinded grant of authority in E.O. 11991. Nowhere in *Andrus*, *Methow Valley*, *Public Citizen*, nor any other case did the Court after briefing and argument find that NEPA provided CEQ with the authority to bind other agencies in the absence of E.O. 11991.

Conclusion and Implications

CEQ's publishing of the final rule in the Federal Register, and after exhaustion of the comment period and stemming from President Trump's Unleashing American Energy Executive Order, the likely result as to CEQ is to greatly diminish it impact on implementation of the National Environmental Policy Act. But how all this will shake out for NEPA regulation will require the passage of time.

For more information, *see:* https://www.federalregister.gov/documents/2025/02/25/2025-03014/removal-of-national-environmental-policy-act-implementing-regulations
(Robert Schuster)

CALIFORNIA HIGH SPEED RAIL AUTHORITY INSPECTOR GENERAL ISSUES REPORT AND PROPOSES EFFICIENCIES TO CONTROL COSTS AND EXPEDITE COMPLETION OF THE PROJECT

The construction of the first phase of the California High Speed Rail Project, between Bakersfield and Merced has been plagued with delays and cost overruns due to acquiring required right-of-way and approval for utility relocation. In February, the California High Speed Rail Authority's Inspector General, issued a Report discussing the delays and outlining steps being taken by the Rail Authority to prevent similar delays on future phases of the Project. Solutions being implemented include what is being called a Staged Project Delivery phasing system and may involve new legislation the Rail Authority says is needed to expedite the process for negotiating with third party land owners and utilities for required right-of-way and utility realignment.

Background

California voters, in November 2008, approved "The Safe, Reliable High-Speed Passenger Train Bond Act" authorizing the issuance of $9 billion in bonds for the construction of a high-speed railroad between Los Angeles and San Francisco (High Speed Rail). The California High Speed Rail Authority (Rail Authority) is in charge of the construction of the High Speed Rail. Construction of the High Speed Rail has been broken into segments, the first segment of the rail corridor is a 171 miles stretching being between Bakersfield and Merced. This first segment is further broken down into an initial 119-mile segment between Fresno and Shafter (Initial Segment), currently under construction, with two extensions, one between Madera and Merced and the second between Shafter and Bakersfield. Construction of the initial 119 segment has been plagued with significant delays and cost overruns.

Delays and Cost Overruns on the Initial Segment

The Rail Authority has experienced significant delays and cost overruns throughout the construc-

tion of the Initial Segment. According to the Rail Authority, these delays have been caused by delays on acquiring the required right-or-way for the tracks, also called guideways, from third party property owners and in negotiating, designing and realignment the utilities that cross the right-of way (collectively: Third Parties). The stated causes for these delays are that the Third Parties are slow to respond and have no motivation to respond, lack of understanding by the Rail Authority of the costs associated to negotiate with the Third Parties, and often having to enter into reimbursement agreements with third party utilities to pay for their staff and attorney costs to negotiate the required agreements. As a result, in many instances, the Rail Authority proceeded with design, and at times, with construction, even though they did not possess all of the required right-of-way or utility relocation, necessary to complete one of the smaller construction segments. Where construction had started, then had to stop, due to lack of an agreement, the Rail Authority, had to pay penalties to contractors for the delays and cost overruns.

The Inspector General's Report

On February 21, 2025, the Inspector General for the Rail Authority issued a Report that looked at new procedures the High Speed Rail Authority was implementing for the construction of the Madera to Merced and Shafter to Bakersfield Segments (Report). Rail Authority is starting their preliminary work on those two segments and wants to avoid the delays and cost overruns it has encountered on the Initial Segment. Some of the new procedures that are discussed in the Report are identified below.

Staged Project Delivery

The High Speed Rail Authority started construction on the Initial Segment prior to having the required right-of-way and utility realignment agreements in place. By going "at-risk" with construction caused significant cast over-runs with the actual construction. In addition, the Rail Authority did not have an efficient system for tracking the progress of the right-of-way acquisition and utility relocation status. The Rail Authority is implementing what it calls a Staged Project Delivery Process ("Staged Delivery") where a construction segment will not be released until all of the right-of-way and utility realignment agreements are in-place. Part of the Staged Delivery is to make sure that each of the steps leading up-to construction is identified and completed before moving to the next step. The Staged Delivery process has seven Stages:

- Stage 1—Project Initiation
- Stage 2—Environment (CEQA/NEPA)
- Stage 3—Configuration Footprint (design railline, identify right-or-way and utility conflicts and relocations).
- Stage 4—Early Works (acquire right-of-way, commence utility relocation)
- Stage 5—Procurement
- Stage 6—Construction
- Stage 7—Closeout

The Rail Authority, by implanting its seven-step Staged Delivery, intends to avoid the delays and cost over-runs by not starting construction on future segments until it has all of the right-of-way acquired and utility relocation agreements and construction plans approved by the third-party utility companies. In addition, the Rail Authority is implementing additional internal controls and developing timelines for each stage, including tracking mechanisms to identify and address those acquisition and relocation agreements that are not proceeding according to the timeline. By having a timeline under which to move agreements along, there is hope that it will lead to a more efficient process that will minimize or eliminate delays that would prevent moving to the next stage of delivery.

Legislative Efforts to Expedite Acquisition

The Rail Authority identified that on of the issues they faced in acquiring the necessary right-of-way or utility relocation agreements was a lack of leverage in negotiating with Third Parties. The Rail Authority has indicated that if it had statutory authority to require utilities to relocate their own utilities within a mandated timeline, it would promote faster construction of the High Speed Rail. The Report did not provided details on any specific legislative efforts underway but identified that even with the Staged Delivery and internal timelines, there will be continued delays in negotiating with the Third Parties because there is no motivation for those parties to participate, and as such a statutory solution must be identified and implemented to facilitate real changes in the process.

Conclusion and Implications

The Rail Authority has acknowledged that the Initial Segment has not proceeded on-time or on-budget but is working to implement new policies and procedures to address. By implementing its Staged Delivery process with new internal timelines, they hope to deliver future segments on-time and within budget. However, it is felt that those new systems will be hampered because of the delays and costs associated with the acquisition of right-of-way and agreements for utility relocation. Based on the Report, we are likely to see legislation that will grant the Rail Authority new powers to facilitate and force the acquisition and relocation process as a means to complete California's High Speed Rail Project. The 2025 HSR Report is available online at: https://hsr.ca.gov/wp-content/uploads/2025/03/2025-Project-Update-Report-FINAL-030125-A11Y.pdf

The March 26, 2025, "HSR 2025 Project Update Report" submitted to the California Legislature is available online at: https://abgt.assembly.ca.gov/system/files/2025-03/lao-hsr.pdf
(Darien Key)

RECENT CALIFORNIA DECISIONS

SECOND DISTRICT COURT FINDS CALIFORNIA AIR RESOURCES BOARD'S REGULATIONS OF EMISSION STANDARDS FOR OCEAN-GOING VESSELS SURVIVES APA AND CEQA CHALLENGES

Western States Petroleum Association v. California Air Resources Board, 108 Cal.App.5th 938 (2nd Dist. 2025).

The Second District Court of Appeal, on February 13, 2025, affirmed the trial court's denial of Western State Petroleum Association's (WSPA) challenge to the California Air Resources Board's (CARB) decision adopting the Control Measure for Ocean-Going Vessels At Berth (Cal. Code Regs., tit. 17, § 93130 *et seq.*) (Regulation).

Factual and Procedural Background

In 2017, CARB began amending existing at-berth emission control requirements for certain ocean-going vessels to include tankers pursuant to its authority to reduce toxic air emissions from nonvehicle sources. The Regulation contemplated that tankers will comply with the regulation via shore power and capture and control systems to reduce auxiliary engine and boiler emissions by at least 80 percent while at berth. The regulation would take effect in 2025 for the Ports of Long Beach and Los Angeles, and 2027 for other tanker terminals. The timeline was accelerated from earlier drafts of the proposed Regulation that required implementation by 2027 and 2029, respectively.

WSPA challenged CARB's adoption of the Regulation's accelerated deadlines as arbitrary, capricious and unsupported by the evidence. WSPA also claimed CARB violated the Administrative Procedure Act (APA) by failing to timely release a related study and violated the California Environmental Quality Act (CEQA) by failing to analyze and mitigate safety hazards and cumulative impacts.

The Court of Appeal's Decision

WSPA challenged the feasibility of implementing the Regulation within the adopted timeframe because the emissions control technology did not yet exist. The court applied the "reasonable basis" test to CARB's exercise of quasi-legislative action to determine whether the agency acted in an arbitrary and capricious manner in passing the Regulation.

The authorizing statutes require that emission control measures be "achievable" and "technologically feasible." The court pointed to the Supreme Court's holding in *American Coatings Assn. v. South Coast Air Quality Management Dist.*, 54 Cal.4th 446, 463 (2012), which permitted pollution control regulations to require technology that does not yet exist but is capable of being achieved by its implementation date. Technology-forcing standards are necessary to incentivize regulated industry to develop more effective pollution control solutions. The court then conducted a lengthy survey of CARB's evidence that the specified capture and control systems could be developed and implemented by the target dates, including staff capacity of manufacturers, the availability of vendors, the existing components and the guarantees of companies that design and build maritime emissions treatment systems. The court concluded CARB's evidence constituted a reasonable basis for the agency's conclusion that the implementation of such technology could be feasibly applied to tankers by the target dates.

The Rulemaking Process, CEQA and the APA

WSPA claimed CARB violated the APA's rulemaking procedures by delaying release of a study commissioned in connection with the adoption of the Regulation evaluating tanker emissions while off-loading fuel at-berth. The appellate court found that CARB substantially complied with its obligation under Government Code section 11347.3 which required the report to be timely added to the rulemaking file. While the report was dated March 2020 and provided in July 2020, CARB made the report

available to WSPA before the end of the public comment period and WSPA provided written and oral comments after the release of the report and before the close of the comment period. As such CARB substantially complied with its obligation.

CARB's rulemaking process is exempt from certain procedural aspects of CEQA as a certified regulatory program. (Pub. Resources Code, § 21159 *et seq.*) CARB released an environmental assessment (EA) which serves as the functional equivalent of an Environmental Impact Report (EIR). CARB's programmatic EA tiered from the EA of the 2016 State Implementation Plan (SIP) and accounted for deferred, site-specific analyses anticipated at the project level to be undertaken by an appropriate lead agency in the future. The court held that CARB's assessment of the potentially significant impacts sufficiently addressed reasonably foreseeable safety hazards resulting from the Regulation's compliance methods and mitigation measures. In other words, the court sanctioned CARB's deferment of project-specific analyses to the project level.

Cumulative Impacts Analysis

The court declined to determine whether a "full-blown" cumulative impacts analysis was required under CEQA's expedited review provisions. However, the court also noted that certified regulatory programs are not "technically" subject to the Guidelines that establish requirements for cumulative impacts analyses, although those impacts must still be considered to the extent practical and reasonable. Nonetheless, the court looked to Guidelines regarding cumulative impacts analyses to determine that the discussion must include a list of related projects or a summary of projections in applicable plans for evaluation. The agency's reliance on a summary of projections from the SIP EA from which CARB's Regulation EA tiered was proper. The court rejected WSPA's challenge to CARB's chosen methodology under the deferential substantial evidence standard of review.

The court rejected WSPA's claim that the Regulation EA's cumulative impacts analysis contained an insufficient project-level discussion of several categories of resources, namely biological, because the SIP EA contained a "robust discussion" of those impacts. The statewide context of the Regulation's EA meant that more specific detailed mitigation measures and analysis would be subject to control of local jurisdictions and land use permitting and thus the programmatic level of analysis was not required to address project-specific details. Finally, WSPA failed to meet its burden to show that CARB's adoption of an accelerated timeline would not cause increased impacts to biological resources was not supported by evidence.

Conclusion and Implications

The opinion confirms that challenging an agency's action as arbitrary and capricious faces high hurdles. It reinforces authorization to defer project-level impacts analyses and mitigation to a future time when clear details exist and highlights that certified regulatory programs are subject to abbreviated environmental analyses. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B327663.PDF

(Natasha Roland, Blaine Dyas)

SUPERIOR COURT FINDS THAT THE CITY OF LOS ANGELES IMPROPERLY DENIED HOUSING DEVELOPMENT

Cesar Chavez 888, LLC v. City of Los Angeles et al., Case No. 24STCP01880 (LA. Super. Ct. Jan. 30, 2025).

The Los Angeles Superior County Court found that the City of Los Angeles acted in bad faith when it denied a Boyle Heights housing development to move forward amidst the city's ongoing housing crisis.

Factual Background

The plaintiff in this case, Cesar Chavez 888, LLC (Plaintiff) owns real property located at 2115-2125 East Cesar Chavez Avenue and 301-309 North Chicago Street in the Boyle Heights neighborhood in Los Angeles (Property). The Property includes two lots with two commercial buildings and three sing-family rent-controlled residential buildings.

Plaintiff planned to build a six floor, 55,265 square foot building consisting of 50 residential units and a roughly 4,030 square foot commercial area, making the building a mixed-use project (Project). The Project intended for five of the units to be reserved for extremely low-income households, while all 50 units be rent-stabilized. The Project also intended to provide current tenants of the Property that would be displaced during the demolition phase of the Project with the option to return to the Property once construction was complete.

The Housing Accountability Act

Plaintiff proposed this plan after the California Legislature addressed the growing and historic housing crisis happening in California by enacting the Housing Accountability Act (HAA). Widely known as the "Anti-NIMBY Act," the HAA was passed to prevent local governments from arbitrarily denying feasible development projects and to, in turn, dramatically increase housing construction to address the dire need for housing.

The Interim Control Ordinance

On August 31, 2023, the city's Planning Department approved the Project and issued detailed findings and conditions of its approval, including the exemption from further review under the California Environmental Quality Act (CEQA). Councilmember Kevin de León introduced a motion to the Los Angeles City Council instructing the Planning Department to implement an Interim Control Ordinance (ICO). The ICO meant to prohibit the issuance of demolition permits for residential units in the Boyle Heights neighborhood, pending an update to the Boyle Heights community plan. In addition, de León brought the motion to the East Los Angeles Area Planning Commission (APC) and argued that the Project should be evaluated in the context of the proposed ICO.

In turn, Plaintiff submitted a letter opposing the ICO on the grounds that it violated state law under the HAA. Nonetheless, despite the passage of HAA and the Planning Department's approval of the Project, the Project was rejected by the city of Los Angeles based on the APC's concerns of neighborhood gentrification and displacement. On December 15, 2023, Los Angeles City Council adopted the ICO.

The Letter of Determination

Between November 2023 and March 2024, the APC held multiple hearings regarding the Project. At the final hearing, three APC commissioners announced their intent to disprove the Project, without producing any concrete reasons why. During the hearings, APC commissioners heard support from city staff, the city attorney's office, and even the California Department of Housing Development, which issued an advisory letter to the city in support of the Project. Nevertheless, on May 1, 2024, the city mailed a Letter of Determination stating that APC found that the Project:

> . . .will decrease the quality of life for those who live and work in and visit the Project area; reduce opportunities for residents who reside in or adjacent to the Project Area; and not promote a wide range of types, prices, rent levels, and ownership options to meet the needs of the resident population. . .[t]he Project will displace the existing residential and commercial tenants with a new, six-story commercial and residential structure.

On June 10, 2024, Plaintiff filed a Complaint in Los Angeles Superior Court.

The Superior Court's Decision

The court, after reviewing the evidence presented, found that the Project complied with all applicable, objective General Plan, zoning, and subdivision standards and criteria under state law and that the city's arguments to the contrary failed. The court stated that, in order to correctly disapprove of the Project, the city would have had to find that the Project would have specific adverse effects on public health or safety that could not be feasibly mitigated.

The court did not agree with the city's argument that the Project would aggravate displacement and gentrification by adding 45 new market rate units in Boyle Heights. In fact, the court found that the defendant failed to demonstrate any quantifiable, direct, and unavoidable gentrification or displacement based on any objective, written public health or safety standard. Specifically, the court found that the city provided no evidence as to how the Project would cause the purported adverse health impacts of evictions and displacement.

Importantly, the court recognized that the APC's concerns about gentrification, eviction, and displacement are not concerns that unique to the Project. Rather, these concerns would apply to any new development offering market rate units in the city of Los Angeles.

Conclusion and Implications

In finding that the City of Los Angeles acted in bad faith, the Project will be approved and will move forward in construction.

In the future, local governments should instruct its commissions review proposed projects within the lens of the Housing Accountability Act and related housing laws in order to avoid any potential litigation. This decision will be instructive to municipalities throughout the state.
(Mona Goodarzi)

SUPERIOR COURT ANALYZES THE HOUSING ACCOUNTABILITY ACT AND A VESTING TENTATIVE TRACT MAP

Shelby Family Partnership, L.P., v. City of Goleta, et al., Case No. 24CV00548 (Santa Barbara Super. Ct.).

The Santa Barbara County Superior Court in the matter of *Shelby Family Partnership, L.P., v. City of Goleta, et al.* ruled that the City of Goleta (City) must process an SB 330 Preliminary Application for a Housing Development, submitted in 2023, in accordance with the current City development policies and standards and those that were applicable to the property in 2011.

Background

The City rejected an SB330 Preliminary Application and application fees for a housing Development because the Developer, Shelby Family Partnership, L.P., already has entitlement applications on file for the same Property. City returned the application and fees stating that an SB330 preliminary application could not modify or amend an existing application. The developer filed a Writ of Mandate action, with numerous causes of action, requesting the court to compel the City to process the SB330 Preliminary Application, which the court granted.

The Entitlement Applications

In 2011, the Developer applied to the City for a General Plan Amendment, Zone Change, Vesting Tentative Map and Development Agreement on an approximately 14-acre property that had a General Plan Land Use designation and zoning of Agriculture for a housing development. Those applications were deemed complete by the City in March 2011 (2011 Applications). For unknown reasons those applications were not processed to completion but remained on-file with the City.

Subsequent to the applications being deemed complete, the City of Goleta voters, in 2012, approved an initiative that, amongst other things, required voter approval for changes to the Agricultural General Plan designation (Initiative). The City attorney, at

that time, opined that the 2011 Applications were exempted from the Initiative because the rules for processing the applications became fixed, or vested, under the Subdivision Map Act as a result of the Vesting Tentative Map application.

In 2016, the local water district enacted a moratorium on new or additional water service connections. This moratorium was rescinded in December 2023. In March 2023, the Developer applied to the City for an SB 330 Preliminary Application, revising the 2011 applications to include at least 13 affordable housing units (2023 Application). The SB 330 Preliminary Application did not alter the pending Vesting Tentative Tract Map.

The City rejected the SB 330 Preliminary Application and returned the check for the fees. The City justification for rejecting the application was that an SB 330 Preliminary Application and the City also rejected the Developer's appeal of the rejection.

The Superior Court's Decision

The Developer filed a Writ of Mandate with the Superior Court claiming, amongst other items, that the City violated the SB 330 preliminary application law and violated the Housing Accountability Act. The court ruled in favor of the Developer requiring the City to process the 2023 Application and finding that the 2023 application must be processed using the City's Planning policies and development standards that existed at the time of the 2011 Applications and the Planning policies and development standards in place at the time of the 2023 application.

Applicability of the Vesting Tentative Tract Map

The court found that when the Developer filed the 2011 Applications, the Vesting Tentative Tract Map, through the Subdivision Map Act, locked in the City's Development standards that were in effect at that time. Since the 2011 Applications had not been processed to conclusion and were still pending, the vesting of the development standards, to those in 2011, was still applicable and should be applied to the 2023 Applications.

The court discussed the Case of *North Murietta Community, LLC v. City of Murrieta* (2020), where in that case the developer had an approved Vesting Tentative Tract Map, which approval was valid for an initial two-years with the possibility of a one-year extension, under the Subdivision Map Act. [https://law.justia.com/cases/california/court-of-appeal/2020/e072663.html]

Before the end of the initial two-years, the developer and city entered into a Development Agreement that extended the map for 15-years and vested the City's development standards and Development Impact Fees, it allowed the City to adopt certain Mitigation Fees that would be applicable to the development. The City subsequently adopted those certain mitigation fees and when it applied those fees to the development, that occurred on lots created by the Vesting Tentative Tract Map, the developer sued the City. In Murrieta, the court found that while the Vesting Tentative Tract Map and Development did vest development standards and Development Impact Fee's, the Development Agreement specifically authorized the City to adopt and levy against the development additional mitigation fees. In the present case, the court found that because the Vesting Tentative Map had not been approved, the two-year time frame had not been triggered. As such, the court found that the 2011 Planning policies and development standards locked-in for the Vesting tentative Tract Map were still applicable today.

The Housing Accountability Act

The court discussed the Housing Accountability Act (HAA) analogizing to the Vesting Tentative Tract Map, explaining that under the HAA, ordinances, policies and standards in effect at the time of the submittal of a Preliminary Application, including all of the information required by subdivision (a) of Section 65941.1, are locked in. Similar to the vesting of Planning polices and Development Standards applicable to a Vesting Tentative Tract Map. Here the court found that the City had to apply both the 2011 Development standards and the 2023 Development standards, to the complete Housing Development being requested by Shelby.

Conclusion and Implications

The use of a Vesting Tentative Tract Map locks in, or vests, a jurisdictions Development Standards (including ordinances, resolutions, etc.), in the same manner the Housing Accountability Act locks in the Development Standards for a Housing Development.

In addition, the Superior Court found that a Developer could modify or amend a pending Development Project to include housing pursuant to the HAA through a SB 330 Preliminary Application. At this time, it is not known whether the City of Goleta will appeal this ruling.
(Brent McManigal, Darien Key)

LEGISLATIVE UPDATE

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

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

California Environmental Quality Act

AB 35 (Alvarez)—This bill was referred to the Committees on Natural Resources and Judiciary on February 18, 2025, and would streamline California Environmental Quality Act (CEQA) review for qualifying clean hydrogen transportation projects. Qualifying projects would undergo a specialized clean hydrogen environmental assessment to accelerate permitting and approval, unless the project applicant elects otherwise. A clean hydrogen environmental assessment would not be required to analyze project alternatives. The bill also provides a mandatory approval timeline and expedited judicial review for qualifying projects.

AB 295 (Macedo)—This bill was referred to the Committees on Natural Resources and Water, Parks, and Wildlife on February 10, 2025, and would extend application of The Jobs and Economic Improvement Through Environmental Leadership Act of 2021 to water storage projects, water conveyance projects, and groundwater recharge projects that provide public benefits and drought preparedness. The Act authorizes the Governor, until January 1, 2032, to certify environmental leadership development projects that meet specified requirements for certain CEQA streamlining benefits.

AB 314 (Arambula)—This bill was referred to the Committee on Natural Resources on February 10, 2025. CEQA exempts certain types of residential projects on infill sites that are near "major transit stops." These major transit stops include, among other locations, the intersection of two or more major bus routes with a frequency of service interval of 15 minutes or less during the morning and afternoon peak commute periods. This bill would additionally define "major transit stop" to include a planned or existing high-speed rail station.

AB 404 (Sanchez)—This bill was referred to the Committee on Natural Resources on February 18, 2025. Existing law temporarily exempts certain prescribed fire and fuel reduction projects on federal lands to reduce the risk of high-severity wildfire from environmental review under CEQA, if the project has already undergone environmental review under the National Environmental Policy Act (NEPA). This bill would extend the exemption, and the requirements for notification of particular agencies under this exemption, indefinitely.

AB 442 (Hardwick)—This bill was referred to the Committee on Natural Resources on February 18, 2025, and would add a CEQA exemption for prescribed fire, thinning, or fuel reduction projects undertaken within a community with a single ingress and egress evacuation route.

AB 609 (Wicks)—This bill was amended and referred to the Committee on Natural Resources on March 25, 2025, and would provide an exemption from CEQA for housing projects that meet certain specified conditions, including being on a site that is not more than 20 acres, and located within an incorporated municipality or urbanized area that has been previously developed with urban use or is adjacent to sites with qualified urban uses. The project would also be required to be consistent with applicable planning and zoning designations, and as a condition of the project's approval, the project proponent must complete a phase I environmental assessment.

SB 71 (Wiener)—This bill was amended on March 25, 2025, and set for hearing on April 8, 2025, by the Committee on Transportation, and would expand on prior bills that exempt various projects related to public transportation, as well as bike and

pedestrian infrastructure. The bill would expand an existing CEQA exemption for transportation plans to include additional projects, such as transit route readjustments or plans that readjust transit routes. The bill would also eliminate the exemption's sunset date, extending it indefinitely. The bill would also expand a CEQA exemption for projects related to zero emission modes of public transportation to include a larger class of projects and would eliminate that exemption's sunset date as well. As amended, the bill would also exempt, until January 1, 2032, certain transit projects located in urbanized areas and for use by low-emission vehicles.

SB 73 (Cervantes)—This bill was referred to the Committees on Environmental Quality and Housing on January 29, 2025, and would expand several existing CEQA exemptions and streamlining applicable to projects in transit priority areas to also cover projects in low vehicle travel areas. This bill would also modify and slightly broaden requirements applicable to CEQA exemptions for agricultural employee housing projects and infill housing projects near transit.

SB 231 (Seyarto)—This bill was revised in the Committee on Environmental Quality and referred to the Appropriations Committee on March 19, 2025. As revised, this bill would require that, on or before July 1, 2027, the Office of Land Use and Climate Innovation (formerly the Governor's Office of Planning and Research) consult with regional, local, state, and federal agencies to prepare and develop a technical advisory on thresholds of significance for greenhouse gas and noise pollution effects, which local agencies may elect to adopt.

SB 232 (Seyarto)—This bill was heard by the Committee on Environmental Quality and referred to the Appropriations Committee on March 20, 2025, and would require that the Office of Land Use and Climate Innovation conduct a study to evaluate how "locked in guidelines" could provide regulatory certainty for developers and lead agencies. The study would assess how those guidelines could affect the efficiency of the environmental review process pursuant to CEQA and evaluate whether the guidelines impact the quality and thoroughness of environmental reviews or create unintended environmental risks. As defined, "locked in guidelines" refers to guidelines adopted pursuant to Section 21083 of the Public Resources Code that are in effect at the time of the first issuance of the notice of preparation for a project. Those guidelines would then apply to the project throughout the course of the environmental review process, regardless of any later changes to the guidelines.

SB 252 (Valladares)—This bill was referred to the Committee on Environmental Quality and the Energy, Utilities, and Communications Committee on February 14, 2025, and would exempt projects to underground powerlines from the requirements of CEQA.

SB 607 (Wiener)—This bill was amended and referred to the Committee on Environmental Quality on March 24, 2025. As amended, this bill would make several changes aimed at improving the clarity and efficiency of the CEQA process. For projects that do not meet all eligibility for a categorical or statutory exemption, this bill would focus the scope of environmental review to the project aspect or impact that resulted in inapplicability of the exemption, with exceptions for distribution centers and oil and gas infrastructure projects. This bill would also exclude from the administrative record required for CEQA litigation any communications of persons tangential or far removed from project decision-making, with specified exemptions. The bill would also aim to reduce delays on housing and other urban infill projects by clarifying the existing Class 32 urban infill exemption and exempting from CEQA review rezones that are consistent with an already approved housing element.

California Coastal Act

AB 10 (Essayli)—This bill was introduced on January 3, 2025, and is pending referral. The bill would allow SpaceX to increase its Falcon 9 launch activities at the Vandenberg Space Force Base from 36 to 50 launches per year. In October 2024, the Coastal Commission declined to concur with the Department of Air Force's consistency determination regarding increased SpaceX launches at the base under the Coastal Zone Management Act. This bill would declare that the Coastal Commission's objection to the consistency determination is null and void

and find increased SpaceX launches consistent with the Coastal Act, effectively granting the necessary approval for the launch expansion.

AB 357 (Alvarez)—This bill was referred to the Committee on Natural Resources on February 18, 2025, and would exclude student housing projects and faculty and staff housing projects, as defined, from needing to obtain a permit from the California Coastal Commission for development in a coastal zone.

Density Bonus Law

AB 87 (Boerner)—This bill was amended and referred to the Committee on Housing and Community Development on March 18, 2025, and would define "mixed-use development" for purposes of Density Bonus Law to mean a project with at least 70 percent of the square footage designated for residential use and no square footage designated for hotel, motel, or other visitor-serving purpose. The bill would also prohibit eligibility for a density bonus or other incentives or concessions under Density Bonus Law unless the applicant agrees to record a land use restriction or covenant providing that units may not be listed as short-term rental units.

SB 92 (Blakespear)—This bill was referred to the Committee on Local Government on March 18, 2025. Under existing law, a city or county is required to provide a density bonus and other incentives to housing developments of five or more residential housing units, including mixed-use developments, that meet certain affordability standards. SB 92 would revise existing law to define "mixed-use development" to mean development consisting of residential and nonresidential uses that meet specified conditions.

General Plans

AB 39 (Zbur)—This bill was amended and referred to the Committee on Local Government for a second reading on February 26, 2025. As amended, the bill would require each city, county, or city and county with a population greater than 75,000 residents develop or integrate an electrification plan into their general plans by January 1, 2030. This plan must include locally-based goals, policies, and implementation measures to promote electric vehicle (EV) charging, building electrification, and clean energy generation, with a particular focus on supporting disadvantaged communities, low-income households, and small businesses.

Housing Elements

AB 36 (Soria)—This bill was amended and referred to the Committee on Housing and Community Development on March 20, 2025. As amended, the bill aims to refine the process by which local jurisdictions are designated as "prohousing" by the Department of Housing and Community Development (HCD). This designation gives local governments priority for state funding related to housing and infrastructure. Existing law requires HCD to designate jurisdictions as prohousing pursuant to emergency regulations adopted by HCD, and to report those designations to the Office of Land Use and Climate Innovation. The bill would require HCD to adopt permanent regulations to determine which jurisdictions qualify as prohousing.

SB 233 (Seyarto)—This bill was referred to the Committee on Appropriations on March 18, 2025, and would amend the Planning and Zoning Law's requirement that HCD meet and consult with each council of governments (council) to determine the existing and projected needs for housing in each region by a specified deadline. Specifically, for the seventh revision of the housing element, this bill would require HCD to meet and consult with each council at least 38 months prior to the scheduled revision and for the eighth and subsequent revisions of the housing element, the bill would require all meetings to occur at least 38 months prior to the scheduled revision. Under existing law, these meetings need occur only 26 months prior to the scheduled revision for the fourth and subsequent revisions of the housing element.

SB 262 (Wahab)—This bill was amended and referred to the Committee on Appropriations on March 19, 2025. Existing law, section 65589.9 of the Government Code, creates incentives for jurisdictions that are compliant with housing element requirements and have enacted prohousing local policies. As amended, this bill would expand the definition of "prohousing policies" under the Planning and Zoning Law to include policies that keep people housed and

would specify additional examples of local policies.

Planning and Zoning

AB 301 (Schiavo)—This bill was read on the Assembly Floor and ordered to third reading on March 20, 2025. Existing planning and zoning law requires local agencies to compile a list of information needed to approve or deny a post-entitlement phase permit. Existing law also requires the agency to provide the public with exemplars of approved applications and sets timelines for completing review of these applications. This bill would apply the same rules to post-entitlement permitting conducted by a state department. The bill would require a state department to make the information list with examples of a complete, approved application and a complete set of post-entitlement phase permits available on the department's website by January 1, 2026.

SB 9 (Arreguín)—This bill was referred to the Committees on Housing and Local Government on January 29, 2025. Existing Planning and Zoning Law provides for the creation of an accessory dwelling unit by local ordinance, or, if a local agency has not adopted an ordinance, by ministerial approval, in accordance with specified standards. This bill would prohibit local agencies from imposing owner-occupancy requirements on accessory dwelling units.

SB 79 (Wiener)—This bill was amended and referred to the Committees on Housing and Local Government on March 12, 2025. As amended, this bill would establish zoning standards near major transit stops that allow for multi-family housing up to seven stories, with lower height standards extending up to a half a mile away. This bill would also streamline the permitting process for housing built within half a mile of major public transit stops and would allow local transit agencies to develop at the same or greater density on land they own.

Public Records Act

AB 343 (Pacheco)—This bill was referred to the Committee on Appropriations on March 4, 2025. The California Public Records Act exempts from disclosure specified information relating to elected or appointed officials and makes specified disclosures of information relating to elected or appointed officials a crime. This bill would include certain types of retired judges to be included in the term "elected or appointed official."

AB 370 (Carrillo)—This bill was referred to the Committee on Appropriations on March 13, 2025. Under existing law, the California Public Records Act requires agencies to promptly determine whether a request seeks copies of disclosable public records in possession of the agency and then to notify the requester of the determination. However, if there are "unusual circumstances," as defined, an agency may delay this notification by 14 days. This bill defines "unusual circumstances" to allow for agencies experiencing a cyberattack to delay notification until the agency regains its ability to access its electronic servers and documents. This bill would also only allow unusual circumstances to apply during a state of emergency if the emergency directly affects the agency's ability to timely respond to requests.

Surplus Land Act

AB 76 (Alvarez)—This bill was amended and referred to the Committee on Local Government on March 28, 2025. As amended, this bill would change how local agencies calculate affordable housing obligations when disposing of surplus land that includes housing for students, faculty, and staff. The bill revises two key provisions governing exempt surplus land in sectional planning areas. First, it specifies that the requirement to dedicate 25 percent of units to lower-income households applies only to units not designated for academic institution members. Second, it clarifies that the minimum density requirement of ten units per acre must account for all residential units in the planning area, including those designated for academic institution occupants and meet other certain requirements.
(Amy Higuera)

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