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CONTENTS

LAND USE NEWS

Faith-Based Communities Turn Unused Land into Affordable Housing. . 221

LEGISLATIVE DEVELOPMENTS

AB 609: Landmark Bill Aims to Curb CEQA's Grip on Urban Housing Development in California. 223

REGULATORY DEVELOPMENTS

Federal Fisheries Agencies Propose Rule Rescinding the Regulatory Definition of 'Harm' under the Endangered Species Act 225

LAWSUITS FILED OR PENDING

YIMBY Challenges City of Cupertino's Alleged Violation of Builder's Remedy Project Processing 227

RECENT FEDERAL DECISIONS

Circuit Court of Appeals:
Ninth Circuit finds City's Distance Requirement for Group-Living Facilities Survives Challenge that Regulation Discriminated Against Persons with Disabilities 229
The Ohio House, LLC v. City of Costa Mesa, 135 F.4th 645 (9th Cir. 2025).

RECENT CALIFORNIA DECISIONS

District Court of Appeal:
Second District Court Allows Non-Refund-Seeking Constitutional Challenge to City's Utility Fee Scheme Despite Failure to Satisfy 'Pay-Now, Refund-Later' Administrative Exhaustion Rule 231
Carlos Carachure v. City of Azusa, ___Cal.App.5th___, Case No. B336778 (2nd Dist. Apr. 15, 2025).

Continued on next page

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First District Court Affirms Trial Court's Rejection of Challenge to City Community Services District Charges Made without Voter Approval 233
Gomes v. Mendocino City Community Services District, ___Cal.App.5th___, Case No. A167862 (1st Dist. Apr. 14, 2025).

Second District Court Affirms City's Lease-Leaseback Financing Mechanism Does Not Violate Constitutional Debt Limits 235
Moving Oxnard Forward v. City of Oxnard, Unpub., Case Nos. B334636, 335866 (2nd Dist. Apr. 4, 2025).

LEGISLATIVE UPDATE 237

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LAND USE NEWS

FAITH-BASED COMMUNITIES TURN UNUSED LAND INTO AFFORDABLE HOUSING

In 2021, Grace Presbyterian Church in Walnut Creek was approached with a novel proposal by two nonprofit organizations: transform its unused land into housing for those in need. Pastor Mark Burnham was intrigued by the idea. Like many congregations across the country, Grace had seen a decline in attendance over the years, leaving portions of its property—such as expansive parking lots—largely unused.

Though the church had long supported outreach in the community, building affordable housing seemed out of reach—until that proposal. The church recognized that it lacked the knowledge and experience to build housing or manage support programs, but the outreach helped them realize they could still have a meaningful impact on local homelessness.

Hope Village

Grace Presbyterian teamed up with Hope Solutions, a local nonprofit that specializes in affordable housing in partnership with faith communities. With their support, the concept turned into reality: Hope Village, a six-unit development, welcomed its first residents in the spring of 2025.

The project has been a collaborative effort, with Hope Solutions overseeing planning, securing funding, managing the property, and offering supportive services. According to Erika Vandenbrande, Walnut Creek's Community Development Director, Hope Village is both the city's first modular tiny home community and the first faith-based affordable housing project in Contra Costa County.

State legislation helped make Hope Village possible. AB 2162 (2018) supports the development of supportive housing in residential areas, while SB 4 (2023) streamlines approvals for religious groups and nonprofit colleges looking to build affordable housing on their land. Hope Solutions credits these laws with making projects like this viable.

Hope Village is Hope Solutions' first venture into housing on faith-owned land, and two more projects are already in the works in the county. The project was completed in under three years and came in a million dollars under budget, thanks to donated services and support from city grants.

Faith, Housing, and Innovation

Hope Village is part of a growing movement in California to convert faith-owned land into housing. A 2020 report by the Terner Center for Housing Innovation identified over 47,000 acres of land owned by religious organizations in the state with potential for development. A 2024 HUD report further encouraged partnerships between local governments and religious groups to address housing shortages.

However, challenges remain. Despite laws like SB 4, faith-based organizations often lack the know-how or resources to launch housing developments. Many must also navigate internal denominational structures, which can slow progress.

Still, some groups have found ways to succeed. In San Diego, Bethel AME Church partnered with YIGBY® (Yes in God's Backyard), a nonprofit that helps religious organizations convert their land into housing. YIGBY provides affordable consulting, access to financing, and help navigating policy and construction hurdles.

The church launched its Bethel One project in 2019 after Pastor Harvey Vaughn III was inspired by a news story about the housing crisis. The 26-unit development will house low-income seniors and formerly homeless veterans. The project broke ground in 2024 and is set to open by August 2025.

A Broader Movement Across California

YIGBY sees San Diego as fertile ground for more projects—over 4,600 acres of church-owned land are considered suitable for housing development. The organization aims to support three new projects annually by working with mission-driven investors and faith-based lenders.

Farther north, in West Los Angeles, the IKAR synagogue is planning a mixed-use redevelopment of its recently purchased property. Their new site will include 60 to 70 units of permanent supportive hous-

ing for formerly homeless seniors, along with a space for the congregation.

Partnering with a housing developer and benefiting from city support, IKAR is prioritizing people over parking spaces. The project aligns with the city's goals and enjoys backing from leaders like Mayor Karen Bass and Councilmember Katy Yaroslavsky.

In addition, the Catholic Church is developing affordable housing near Los Angeles City College on land owned by the archdiocese—further proof that faith communities are stepping up.

Conclusion and Implications

Leaders of these projects hope to inspire a statewide shift; the aim behind these housing initiatives goes beyond just building one development. The broader vision is that if religious institutions across the state each utilized their extra land to create even a handful of housing units, the combined effort could make a substantial difference in addressing California's affordable housing crisis.
(Mona Goodarzi)

LEGISLATIVE DEVELOPMENTS

AB 609: LANDMARK BILL AIMS TO CURB CEQA'S GRIP ON URBAN HOUSING DEVELOPMENT IN CALIFORNIA

California has long grappled with a deep divide in its legislature—between those seeking to fast-track new housing development and those intent on upholding a foundational environmental law. A bold proposal, known as Assembly Bill (AB) 609, was introduced earlier this year by Assembly member Buffy Wicks (D-Oakland) and could mark an important turning point if passed.

For over five decades, the California Environmental Quality Act (CEQA) has required state and local agencies to evaluate and disclose the environmental impacts of major projects, including housing developments. Though CEQA does not directly prohibit construction, the law's procedural requirements have been used by various groups—ranging from environmental advocates to construction unions and neighborhood opposition groups—to delay, alter, or block new developments, often through litigation.

AB 609 proposes to eliminate CEQA review for "infill" housing—residential developments located within already urbanized areas that are not environmentally sensitive, such as wetlands or farmland. Under the proposal, qualifying projects would be shielded from CEQA lawsuits and the lengthy environmental review process, provided they meet certain conditions, such as being under 20 acres in size and not requiring zoning variances.

Recent Legislation

AB 609 is a piece of a broader package of legislation introduced by a bipartisan coalition of lawmakers and includes 22 bills targeting various bureaucratic delays and regulatory bottlenecks that have purportedly helped fuel California's ongoing housing crisis.

While previous legislative attempts to ease CEQA restrictions have focused on narrowly tailored exemptions—typically contingent on affordable housing provisions or labor standards—AB 609 would mark a significant departure by offering a blanket exemption for most infill housing projects, with no additional strings attached. To address concerns around zoning, a companion measure—SB 607, authored by Senator Scott Wiener (D-San Francisco)—would exempt rezonings from CEQA if the proposed project aligns with the city's state-certified housing plan. Together, the two bills aim to eliminate CEQA-related roadblocks from both project and zoning perspectives.

Fears and Potential Downsides

Opponents of AB 609 caution that removing CEQA review could come at a cost. Environmental justice organizations highlight cases where CEQA helped improve the safety and sustainability of housing projects in low-income areas, such as the Miraflores Senior Housing project in Richmond, where environmental studies led to vital changes that forced developers and cities to address pollution, including air and water contamination, noise, and historic preservation.

Supporters of the bill argue that CEQA, while rooted in environmental protection, has increasingly become a weapon wielded by special interest groups—ranging from anti-development neighborhood coalitions to labor unions and environmental justice advocates—to extract concessions or block projects entirely. Supporters of CEQA's current application to housing contend that lawsuits under the law are relatively uncommon. However, critics argue that even the possibility of legal action can be enough to scale back or completely halt proposed developments.

Conclusion and Implications

The decades-long tug-of-war between development and environmental review in California may be approaching a decisive turning point. With growing consensus among state lawmakers that California's severe housing shortage is a key factor behind the state's soaring cost of living, CEQA has increasingly come under scrutiny.

Currently awaiting its Second Committee Review, it is uncertain whether AB 609 will gain enough traction to reach Governor Gavin Newsom's desk. If it

does, it would represent a seismic shift in California's approach to housing and land use—potentially ending the so-called "Housing-CEQA Wars" and redefining how the state balances environmental protection with housing affordability. For more information on AB 609, *see:* https://legiscan.com/CA/text/AB609/id/3186969
(Mona Goodarzi)

REGULATORY DEVELOPMENTS

FEDERAL FISHERIES AGENCIES PROPOSE RULE RESCINDING THE REGULATORY DEFINITION OF "HARM" UNDER THE ENDANGERED SPECIES ACT

On April 17, 2025, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively: the Services) published notice of a proposed rule in the Federal Register that would rescind the current definition of "harm" to species under the Services' federal Endangered Species Act (ESA) regulations.

Background

Enacted in 1973, the ESA is a federal statute designed to conserve species of wildlife, fish, and plants that are considered endangered or threatened. (16 USCA § 1531.) Among the ESA's key provisions is a list of prohibited acts, which makes it unlawful to engage in certain conduct involving endangered species of fish, wildlife, or plants. (16 USCA §§ 1538, 1533.) For example, the ESA prohibits the sale or offer for sale of listed species in interstate or foreign commerce, as well as their import into or export from the United States. (16 USCA § 1538.) The statute also prohibits the "take" of endangered fish or wildlife, either within the United States, the territorial waters of the United States, or the high seas. (16 USCA § 1538.) The ESA defines "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 USCA § 1532.)

Both USFWS and NMFS have issued regulations defining harm as it is used within the ESA definition of "take" to include harmful modifications to habitat. USFWS defines harm as "an act which actually kills or injures wildlife" in a manner that "may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." (50 CFR § 17.3.) NMFS uses a similar definition that encompasses "significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering." (50 CFR § 222.102.) Thus, under both regulatory definitions, take is interpreted broadly to include indirect and unintentional harm to species that may be caused by changes to habitat.

Proposed Rulemaking

In the recent Federal Register notice, the Services propose to rescind the definitions of harm contained in their respective regulations. (90 Fed. Reg. 16102 (Apr. 17, 2025).) The Services explain that the current interpretation of harm—originating in regulations upheld by the Supreme Court in *Babbit v. Sweet Home Chapter of Communities for a Great Oregon* (*Sweet Home*) 515 U.S. 687 (1995), "do not match the single, best meaning" of the ESA. (*Id.* at 16103.) In *Sweet Home*, the Supreme Court upheld the USFWS regulation defining harm based on the deference afforded to agencies under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, (*Chevron*) 467 U.S. 837 (1984), and the Secretary of the Interior's discretion in construing the intent of Congress when defining the term harm under the ESA. (515 U.S. at 708.) But last year in *Loper Bright Enterprises v. Raimondo*, (*Loper Bright*) 603 U.S. 369 (2024), the Court overruled the longstanding precedent of *Chevron* deference, holding that agency regulations must conform to the governing statute's "single, best meaning." (See 90 Fed. Reg. at 16103 [quoting *Loper Bright*, 603 U.S. at 400, 406].) In lieu of granting *Chevron* deference, the Supreme Court analyzed whether "the *statute* authorize[d] the agency action." (*Id.*)

Relying on the Dissent in *Sweet Home*

The Services cite the dissent in *Sweet Home* to support their position that the current definition of harm does not match the single, best meaning of the ESA. That dissent argued that even under *Chevron*, a

definition of harm that included indirect effects was untenable. (*Id.* [citing *Sweet Home*, 515 U.S. at 715].) The Services' notice emphasizes that "take" should be limited to actions that "reduce those animals, by killing or capturing, to human control." (*Id.* at 16103 [quoting *Sweet Home*, 515 U.S. at 717].) Under the interpretive cannon *noscitur a sociis*—the principle that a word is known by the company it keeps—the term "harm," like the nine other verbs in the definition of "take," is better understood to connote an "affirmative act []… directed immediately and intentionally against a particular animal," not merely indirect or accidental injury to a population of animals. (*Id.* [quoting *Sweet Home*, 515 U.S. at 719-20].)

Existing Definitions of Harm are Erroneous

Following *Loper Bright*, the Services conclude that the existing definitions of harm violate established interpretive canon, disregard centuries of legal history, and conflict with the structure of the ESA. (*Id.* at 16103.) They also state that a replacement definition is unnecessary, given the statute's comprehensive definition of the term "take." Further elaboration on a single component—*i.e.*, "harm"—is, in the Services' view, therefore superfluous. (*Id.*) The Services distinguish the holding in *Sweet Home* by characterizing the prior definition of harm as a permissible interpretation, but not the only possible one. Thus, the proposed rescission is consistent with *Sweet Home*, particularly in light of *Loper Bright's* abrogation of Chevron deference. (*Id.*)

Conclusion and Implications

With the removal of deference to agency interpretations in *Loper Bright*, the Services propose to rescind their regulatory definitions of "harm" to ensure that their respective definitions conform to the single, best reading of the ESA. The Services accepted public comments on the proposed rule until May 19, 2025. The Federal Register notice remains available at the following link: https://www.govinfo.gov/content/pkg/FR-2025-04-17/pdf/2025-06746.pdf
(Taylor Strain, Austin C. Cho)

LAWSUITS FILED OR PENDING

YIMBY CHALLENGES CITY OF CUPERTINO'S ALLEGED VIOLATION OF BUILDER'S REMEDY PROJECT PROCESSING

In May 2025, the pro-housing group, Yes in My Backyard (YIMBY) filed two separate lawsuits against the City of Cupertino, claiming the City violated state law provisions commonly known as "Builder's Remedy" when processing development applications for two residential projects. [*Yes In My Backyard, et al. v. City of Cupertino, et al.*, Case No. 25CV462924, Case No. 25CB462857 (Santa Clara Super. Ct.).]

Background

This article will discuss writ actions recently filed against the City of Cupertino in connection with two Builder's Remedy housing development applications filed in 2024. The writ actions seek to challenge the City's approach to processing Builder's Remedy applications against the requirements of the Permit Streamlining Act and State Housing and Community Development guidance.

Builder's Remedy Role within the Housing Accountability Act

Builder's Remedy is a component of the state's Housing Accountability Act, found at Government Code § 65589.5 *et. seq.* (HAA), which has been available to developers and project applicants for decades but has only recently been utilized as a tool to advance land use applications following the state's last Housing and Community Development (HCD) round of local Housing Element review and findings of non-compliance for many California jurisdictions. Under the Builder's Remedy component of the HAA, any jurisdiction that does not have an HCD-compliant (or substantially compliant) Housing Element (a required element of every local agency's general plan (Government Code § 65580 *et. seq.*)), is required to process and approve a Builder's Remedy project application, provided the application meets certain statutory requirements. A jurisdiction cannot also condition approval of such a project in a manner that renders a qualifying project infeasible. For Cupertino, its Regional Housing Needs Allocation (RHNA) obligations are to approve 4,588 new units by 2031, of which 1,880 must be designated for lower-income households.

Limited Grounds for Denial of a Builder's Remedy Project

Under Builder's Remedy, a project submitted in a non-HCD compliant jurisdiction which includes 13 percent units that are affordable to low-income households (or 100 percent moderate income households) cannot be denied even if the project is inconsistent with the local agency's zoning and general plan standards, absent specific adverse public health and safety findings. Under the HAA, disapproval of housing development project includes: i) a vote to deny the project, including disapproval of an application; ii) making a written determination that the preliminary application expired or that an applicant has somehow lost its vested rights; iii) making an improper incompleteness determination; and iv) engaging in a course of conduct intended to delay or harass an applicant in such a way that effectively disapproves the proposed project without taking final administrative action. Government Code § 65589.5 (h)(6)).

Permit Streamlining Act

Developers submitted two applications to the City of Cupertino in 2024, before the City's Housing Element was certified by the State, thus paving the way for Builder's Remedy project applications. Both developers submitted their Builder's Remedy applications in reliance on the Housing Crisis Act (SB 330) which amended the Permit Streamlining Act (Government Code § 65941.1(a)) to allow developers to submit a "preliminary application" in order to vest or lock in the zoning and general plan standards in effect at the time the preliminary application is submitted. Thereafter, and provided the number of units or square footage of the project that is the subject of the preliminary application does not change by more than 20 percent, the developer has 180 days to file a final application for a housing development project.

Failure to file a final application within that 180-day period results in an expired application.

One Bite at the 90 Day Incompleteness Apple or Successive 90 Day Periods?

In early 2025, the City notified the developers of the Vista Heights and Scofield projects that the applications were "incomplete" based upon a failure to submit information within 90 days following submittal of its final development application. At issue in the lawsuits filed by YIMBY is whether a Builder's Remedy project applicant is limited to one 90-day period within which to provide information in order to obtain a completeness determination or whether a developer is entitled to successive 90-day periods. The City's position is that it is entitled to request updates and revisions, all of which must be submitted within 90 days of the City's *first request* for more information.

A review of the lawsuit reflects actions by the City that make clear the developer timely responded to each notice of incompleteness and that the City refused to accept the applications as complete or to process the applications until the project was revised to achieve zoning and municipal code-compliance, even though Builder's Remedy insulates a project from being disapproved on the grounds of general plan or zoning inconsistency. In addition to the multiple incompleteness determinations, the City further took the position that the vested preliminary applications had expired and, ultimately, denied the applicant's right to an appeal of the City's inconsistency findings by declining to hold a public hearing on the matter.

HCD and Los Angeles Superior Court Guidance

Prior to the City's actions, HCD had issued technical guidance on this issue and has opined that a developer is, indeed, entitled successive 90-day periods in order to achieve final application "completeness." Additionally, a recent Los Angeles Superior Court ruling concluded that "that when an applicant receives an incompleteness determination pursuant to [Government Code] section 65943—not just the first incompleteness determination—an applicant has 90 days to respond." (*Janet Jha v. City of Los Angeles, et al.* (Los Angeles Sup. Ct., Case No. 23STCP03499).)

Conclusion and Implications

In conclusion, it appears relatively clear how the Santa Clara Superior Court should rule in these instances but it will have taken the resources and determination of YIMBY and these intrepid developers to force the City's hand in compliance with state law. While Builder's Remedy, as originally drafted, is not necessarily a model of clarity, practitioners have the benefit of guidance from HCD, which local agencies would be well advised to heed.
(Amara Morrison, Darien Key)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT FINDS CITY'S DISTANCE REQUIREMENT FOR GROUP-LIVING FACILITIES SURVIVES CHALLENGE THAT REGULATION DISCRIMINATED AGAINST PERSONS WITH DISABILITIES

The Ohio House, LLC v. City of Costa Mesa, 135 F.4th 645 (9th Cir. 2025).

In *The Ohio House, LLC v. City of Costa Mesa* the Ninth Circuit Court of Appeals upheld a U.S. District Court's decision on summary judgment that, as a matter of law, a city's requirement that group-living facilities must be separated by at least 650 feet did not violate the Fair Housing Act (FHA). The Ninth Circuit also upheld a jury verdict in favor of the City of Costa Mesa (City) as to claims brought under the California Fair Employment and Housing Act (FEHA), and rejected a claim under the California Planning and Zoning Law as untimely.

Background

The Ohio House (Ohio House), an operator of a sober-living home for persons recovering from addiction, sued the City of Costa Mesa, alleging zoning regulations that required group-living facilities to be separated from each other by at least 650 feet discriminated against individuals with disabilities in violation of the FHA, FEHA, and the Planning and Zoning Law.

The District Court for the Central District of California granted city's motion for summary judgment on the disparate impact claims. A jury trial was held on the remaining claims. The jury returned a verdict in the City's favor. The District Court issued findings related to the Planning and Zoning Law claim and entered judgment for the City. Ohio House appealed.

Disparate Treatment Claims Were Properly Denied

A city violates the FHA if its zoning rules discriminate against disabled individuals and contribute to denying housing to such persons. Persons recovering from drug or alcohol addiction are considered "disabled" under the FHA. Group, or "sober-living," homes for such persons are covered "dwellings" under the FHA and FEHA, meaning federal and California law prohibit discriminatory actions that lessen the availability of such homes.

Disparate treatment is synonymous with intentional discrimination. To prevail on a disparate treatment claim, a plaintiff must establish a discriminatory intent or motive by the defendant. A plaintiff may demonstrate such intent through evidence of indirect discrimination and that a facially neutral explanation for the challenged rule is actually pretextual.

The Ninth Circuit's Decision

While Ohio House argued that the City's separation requirement was discriminatory against disabled individuals since it facially imposed differential treatment by treating sober living homes differently from other dwellings, the Court of Appeals found that the City's law facially benefited the disabled individuals because group sober-living homes with six or fewer residents could operate in single-family districts if they met permitting and separation requirements, whereas boardinghouses of any size were barred from those districts. Moreover, group homes were not subject to the six-resident limitation that applied to boardinghouses. Since the challenged regulations treated disabled individuals more favorably than similarly-situated nondisabled individuals, the court denied Ohio House's facial challenge under the FHA.

A disparate purpose facial challenge to a law under the FHA and FEHA must show that the law lacks a plainly legitimate sweep. Here, the court determined that nuisance laws alone would not have accomplished the same scope of objectives the City was trying to achieve through the separation requirement. The City's goal was to avoid institutionalization and to ensure that disabled individuals could live in normal residential surroundings. The court acknowl-

edged that nuisance laws alone could help combat excessive noise and second-hand smoke, but did little to prevent over-concentration of group-living facilities.

The court reached this conclusion despite the fact that 22 of 26 group home conditional use permit (CUP) applicants were disqualified by the separation requirement. The court found that denial of CUPs only showed that applicants seeking to operate group homes were adversely impacted, but not that individuals with disabilities themselves were impacted.

To establish prima facie disparate impact claim under the FHA, a plaintiff must present evidence of: (1) the existence of policy that is outwardly neutral; (2) a significant, adverse, and disproportionate effect on a protected class; and (3) robust causality that shows that the challenged policy, and not some other factor or policy, caused the disproportionate effect. Here, the court found that Ohio House failed to establish the separation requirement was outwardly neutral, thus defeating their disparate impact claim premised on the law being facially discriminatory.

Comments made by individual city employees suggesting a discriminatory purpose for adopting the law were deemed by the Court of Appeals insufficient to overturn the jury's verdict upholding the City's enactment of the law. While reports and statements from City officials indicated that it passed the law to protect residential neighborhoods from encroachment of disruptive land uses, the City explained that over-concentration of group-living homes produced negative impacts on parking, density, second-hand smoke and noise. Such issues were, the court found, legitimate concerns central to a city's zoning goals.

Denial of Reasonable Accommodations Request Upheld Despite Claimed FHA Violation

A city violates the FHA if it refuses to make reasonable accommodations in rules and practices, when such accommodations are necessary to provide disabled individuals equal opportunity to use of a dwelling. To prevail, a plaintiff must prove: (1) that the plaintiff or his associate is handicapped within the meaning of the FHA; (2) that the defendant knew or should reasonably be expected to know of the handicap; (3) that accommodation of the handicap may be necessary to afford the handicapped person an equal opportunity to use and enjoy the dwelling; (4) that the accommodation is reasonable; and (5) that the defendant refused to make the requested accommodation.

The City denied Ohio House's request for accommodations from the separation requirement. The Court of Appeals found substantial evidence supported the jury's finding that the request was not reasonable, justifying the City's refusal of a waiver. The City enacted the ordinance over concerns about over-concentration of sober living units in one area and to ensure that disabled individuals could reside in a comfortable residential environment. In addition, Ohio House's proposed waiver for over 20 group homes would have caused a fundamental alteration to the zoning scheme.

California Planning and Zoning Law Claim Untimely

Finally, as to Ohio House's challenge to the City's separation requirement under the Planning and Zoning Law, the Court found that it was a facial challenge subject to the a 90-day limitations period. Ohio House argued that it was not challenging a "decision" governed by Government Code section 65009," *i.e.*, the law's enactment and the denial of its CUP, but the exercise of municipal code enforcement power to cite, fine, and compel the closure of a dwelling. The court found that Ohio House's challenge was to the facial validity of an ordinance, not an as-applied challenge of a final adjudicatory decision that would have triggered its own 90-day statutory limitations period. Because Ohio House filed its Planning and Zoning Law claim well after 90 days from the date the law was adopted, it was untimely.

Conclusion and Implications

The Ohio House decision demonstrates the high degree of deference that court's generally give to a local government's statutes and the high bar that claimants must meet in order to establish disparate impact claims. The court's amended opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/04/24/22-56181.pdf
(Todd Williams, Darien Key)

RECENT CALIFORNIA DECISIONS

SECOND DISTRICT COURT ALLOWS NON-REFUND-SEEKING CONSTITUTIONAL CHALLENGE TO CITY'S UTILITY FEE SCHEME DESPITE FAILURE TO SATISFY 'PAY-NOW, REFUND-LATER' ADMINISTRATIVE EXHAUSTION RULE

Carlos Carachure v. City of Azusa, ___Cal.App.5th___, Case No. B336778 (2nd Dist. Apr. 15, 2025).

In *Carlos Carachure v. City of Azusa* the Second District Court of Appeal held that a plaintiff challenging the constitutionality of a city's utility fee schemes need not first exhaust certain administrative remedies by paying the fees under protest before bringing an action in court. Those so-called "pay-first, refund-later" requirements (Health and Safety Code, § 5472) only apply to plaintiffs seeking a refund of those fees, and not to plaintiffs who exclusively seek prospective injunctive relief via constitutional challenge.

Factual and Procedural Background

Carlos and Ana Carachure (plaintiffs), residents of the City of Azusa (City) pay monthly sewer and trash charges that include a 2 percent sewer franchise fee and a 10 percent trash franchise fee. Each year the City transfers the leftover revenue from those fees out of the enterprise (utility) funds and into its general fund, justifying the transfers as reimbursement for general governmental costs associated with the services.

At the Trial Court

Plaintiffs petitioned the Superior Court for a writ of mandate and declaratory relief, alleging the City's charges violate article XIII D of the California Constitution (Proposition 218) because the total charges exceed the cost of providing sewer and trash service and the revenue is spent on unrelated general-fund purposes. They asked the trial court to compel the City to stop collecting the allegedly unlawful surcharges and to return three years of transfers to the utility funds. The City moved to dismiss, contending plaintiffs had failed to "pay under protest" and file an administrative refund claim as required by Health & Safety Code § 5472 and Revenue & Taxation Code Division 1, Part 9, Chapter 5, Article 2 (the "pay-first, refund-later" scheme at §§ 5140-5149.5). The trial court agreed and entered judgment for the City. The Palintiffs' motion for a new trial was denied, and they appealed.

The Court of Appeal's Decision

The Second District Court of Appeal reversed. Writing for the court, Justice Segal held that the administrative protest-and-refund procedure applies only to actions that actually seek a refund of previously paid fees, not to forward-looking constitutional challenges to the manner in which a city sets or spends utility charges. Because plaintiffs had abandoned any claim for personal refunds and instead sought to halt an allegedly unconstitutional funding mechanism, they were not required to exhaust the statutory refund process:

> The issue, however, [here] is not whether the Carachures *could have* filed an administrative claim seeking equitable relief under section 5472 and Article 2; the issue is whether thestatutory scheme *required* them to do so before filing this action. As discussed, the plain language of the statutory scheme requires a taxpayer to pay under protest and file a refund claim before filing a superior court action for a refund of sewer or trash fees. It does not require the same of a plaintiff challenging the constitutionality of a city's general practices for setting and spending such fees.

The court anchored its analysis in the plain language of § 5472 and in precedent allowing constitutional challenges to proceed without exhaustion. It distinguished decisions that enforced the "pay-first"

rule because those cases were bona fide refund actions on behalf of fee payers. Similarly, property-tax cases were deemed inapposite because they turned on either unpaid taxes or mis-sued defendants.

Applying *de novo* review, the court ultimately concluded that forcing every Proposition 218 challenger to file a refund claim—even when the gravamen of the case is prospective injunctive relief—would add requirements the California Legislature did not impose and would deprive plaintiffs of a judicial forum to test the constitutional validity of municipal finance practices. The judgment was therefore reversed, and costs on appeal were awarded to plaintiffs.

Conclusion and Implications

The decision clarifies that Proposition 218 plaintiffs who attack the legality of a city's franchise-fee structure—without asking for individual refunds—may proceed directly to court without first paying under protest or filing an administrative refund claim. Cities may not invoke Health & Safety Code § 5472 as a jurisdictional bar where the relief sought is injunctive or declaratory rather than restitutionary.

Practically, the ruling invites closer scrutiny of transfers from utility enterprise funds to general funds: if the transfer is not demonstrably cost-based, a city risks facing litigation it cannot thwart based on a plaintiff's failure to exhaust the "pay-now, refund-later" administrative remedy procedures. Municipalities that rely on franchise or "in-lieu" fees to balance their budgets should re-evaluate whether those charges comply with Proposition 218's cost-of-service and dedicated-use mandates and should anticipate that future challenges may proceed without the procedural hurdles of the pay-first, litigate-later model. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B336778.PDF
(Blaine R. Dyas)

FIRST DISTRICT COURT AFFIRMS TRIAL COURT'S REJECTION OF CHALLENGE TO CITY COMMUNITY SERVICES DISTRICT CHARGES MADE WITHOUT VOTER APPROVAL

Gomes v. Mendocino City Community Services District,
___Cal.App.5th___, Case No. A167862 (1st Dist. Apr. 14, 2025).

The First District Court of Appeal, in a *partially* published opinion, has affirmed a trial court's rejection of a challenge to various charges imposed by the Mendocino City Community Services District (District) without first obtaining voter approval.

Background

Cal. Water Code §§ 10700 through 10717 (Act) authorizes the District to establish programs for the management of groundwater resources and imposes procedures the District must follow to enact such a program, including noticed public hearings and an opportunity for registered voters to file written protests. (§§ 10703-10706) If the District proposes a groundwater management program that garners protests from more than 50 percent of eligible voters, the program shall be abandoned, and the District may not consider another program for a period of one year. (§ 10706). The procedures codified in §§ 10703 to 10706 are mandatory.

The Act also authorizes the District to fix and collect rates for the extraction of groundwater (§ 10708), and to levy a water replenishment assessment (§ 10709). Before the District may levy a water replenishment assessment or otherwise fix and collect rates for the extraction of groundwater, it must hold an election and obtain the majority approval of the voting electorate (§ 10710).

The District adopted a series of ordinances and related resolutions in 2020: Ordinance Nos. 2020-1, 2020-2 and 2020-3. These measures collectively established groundwater management regulations and fees, and a water shortage continency plan. Ordinance No. 2020-1 requires, among other things, that all developed parcels in the District must have a valid groundwater extraction permit and limit groundwater extraction to an allotment approved by the District. To obtain the required permit, the property owner must submit a written application accompanied by a fee in an amount determined by the Board to cover the cost of administering this groundwater extraction permit process. Many applicants must submit a hydrological study and pay a fee as determined by the Board to cover the cost for the District to review the study. All applicants must agree to install a water meter, and once an extraction permit is issued, the permittee must submit monthly meter readings to the District. Ordinance No. 2020-1 imposes misdemeanor and financial penalties for failure to comply with its requirements and contains a prevailing party attorney's fee provision.

Ordinance No. 2020-2 establishes water conservation policies and year-round water conservation measures, and it incorporates a water shortage contingency plan that the District adopted pursuant to a related resolution. This ordinance establishes misdemeanor and financial penalties, as well as other enforcement procedures, and contains a prevailing-party attorney's fee provision.

Ordinance No. 2020-3 set fees and charges for the 2020–2021 fiscal year, and thereafter unless revised. This ordinance is not limited to groundwater management programs but lists all fees and charges adopted by the District.

At the Trial Court

A landowner within the District sued for declaratory and injunctive relief ruling that the District exceeded its authority and failed to proceed as required by law when adopting the 2020 measures. He argued that fees imposed by the District must be adopted pursuant to § 10710's requirement for voter approval through an election. He did not challenge the District's compliance with §§ 10703 to 10706 nor with Proposition 218, which have mechanisms for securing popular approval through a majority-protest procedure.

The trial court rejected all of Gomes's claims, except that it found that Ordinances 2020-1 and 2020-2 contained an invalid provision authorizing the District to recover attorney's fees and costs for prevailing in litigation. The trial court ruled that the District

lacked statutory authority to adopt these provisions, but that they were severable. These rulings adverse to the District were not appealed.

The Court of Appeal's Decision

The Court of Appeal ruled that the Legislature did not require voters to approve in an election all groundwater-related charges, nor did it limit application of §§10708 and 10710 to per-unit charges for extracting groundwater. A rate that requires majority voter approval is any charge that is assessed for a specific activity: "the extraction of groundwater." A rate "for the extraction of groundwater" means a charge for extracting groundwater. The monthly charge imposed by the District on all developed parcels in the District that extract groundwater or receive extracted groundwater is not a rate for extracting groundwater. It is a fee that property owners using groundwater pay the District for groundwater management services in general. The District has authority to charge for its groundwater management services that is independent of, and not limited by, its authority to fix and collect rates for the extraction of groundwater.

The groundwater extraction permit charges also are not a rate "for the extraction of groundwater." By paying permit-related fees, a property owner secures permission to participate in a program for the preservation of a finite groundwater resource, a program that has been implemented in accordance with §§ 10703 through 10706. Unless a property owner already has a permit, payment of permit fees is a prerequisite for participating in the groundwater program—which means the fees are a prerequisite for extracting groundwater within the district—but they are not themselves a charge for extracting groundwater. A property owner might pay to obtain a permit and allotment because the ordinance requires "all developed parcels" to have one, but that does not necessarily mean the property owner is actively engaged in extracting groundwater. There is a subtle but important distinction between a charge that is a prerequisite to an activity and a charge that is levied for actually engaging in the activity. A permit is a prerequisite to participating in an activity, here the extraction of groundwater, but having a permit does not mean the permittee is actually engaged in the permitted activity. Paying the fees is a necessary—but not sufficient—condition for the extraction of groundwater. If the permit-related fees are any kind of rate, they are a rate for obtaining a permit to extract the allotted amount of groundwater, not a rate for the extraction of that groundwater. The service for which the District is charging is its determination of how much groundwater a property owner may draw, consistent with the District's water use standards and a site's hydrology. The property owner pays the permit fees to obtain this assessment and approval; and the property owner pays without regard to whether—or how often—he or she actually extracts this quantity of groundwater. Indeed, Ordinance No. 2020-1 requires all owners of developed property to have a permit—and have paid the associated fees—even if they are not actively engaged in the extraction of groundwater.

Finally, the penalties the District imposes for violating its groundwater ordinances are not charges for extracting groundwater, but fines for violating the ordinances. A penalty is not a charge paid for a service or benefit. It is a mechanism for enforcing a regulatory scheme.

Conclusion and Implications

In the end, the court found:

> . . .in the published portion of the opinion we reject Gomes's claim on the merits and affirm the judgment. As we shall explain, although the ordinances Gomes challenges in this action impose fees on property owners that relate to the district's groundwater management services, these fees are not imposed "for the extraction of groundwater" (§ 10710) and, thus, do not require voter approval in the manner set forth in section 10710.

The court's *partially* published opinion is available online at https://www4.courts.ca.gov/opinions/documents/A167862.PDF
(Lauren J. Caster, Derek Hoffman)

SECOND DISTRICT COURT AFFIRMS CITY'S LEASE-LEASEBACK FINANCING MECHANISM DOES NOT VIOLATE CONSTITUTIONAL DEBT LIMITS

Moving Oxnard Forward v. City of Oxnard, Unpub., Case Nos. B334636, 335866 (2nd Dist. Apr. 4, 2025).

In the *unpublished* opinion by the Second District Court of Appeal, the court upheld the City of Oxnard's (City) issuance of lease revenue bonds without voter approval, affirming the lower court's judgment in favor of the City. The court found the bonds did not violate constitutional debt limits because the lease-leaseback financing arrangement complied with certain established exceptions under California law.

Factual and Procedural Background

The City of Oxnard, alongside two other public entities, created the Oxnard Financing Authority (the Financing Authority) under California's Joint Exercise of Powers Act to finance public capital improvements. In 2022, the City and Financing Authority approved two series of lease revenue bonds, Series 2022A and 2022B, amounting to $36 million and $9 million, respectively, intended for street improvements and software upgrades.

The financing structure involved a lease-leaseback arrangement wherein the City leased properties to the Financing Authority for nominal rent. The Financing Authority then leased these properties back to the City, with the City making base rental payments equivalent to bond debt service, and additional payments covering administrative costs, insurance, and taxes.

Appellants attended the public hearing and opposed the approval of the bonds. The City adopted Resolution No. 56 and the Financing Authority adopted Resolution No. 15, 638. The two resolutions approved authorizing the Financing Authority's issuance of the Bond Series 2022A and B, "not to exceed 36,000,000 and $9,000,000 respectively.

Appellants challenged this bond issuance through a reverse validation action. They argued that the bonds violated constitutional debt limits under article XVI, section 18 of the California Constitution due to the lack of a two-thirds voter approval.

At the Trial Court

Following a hearing in December 2023 the Superior Court issued a tentative statement of decision finding in favor of respondents in the reverse validation cause of action. However, since the court found the *Offner*-Dean rule applied to the lease revenue bonds, the court concluded that the City was not required to seek voter approval before authorizing the bonds. The court also found respondents complied with the Act in authorizing the bonds under the resolutions.

The Court of Appeal's Decision

The Court of Appeal affirmed the trial court's decision, emphasizing the applicability of the *Offner-Dean* rule, a constitutional exception to debt limits for contingent obligations like lease agreements. The court found that the City's obligations under the lease-leaseback arrangement were contingent, payable annually, and subject to abatement if the City's use of the property was impaired.

"Additional Payments"

The court rejected appellants' arguments regarding the "additional payments," holding that these payments, covering administrative costs and insurance, were contingent obligations directly tied to the City's ongoing use of the leased property. It found these payments analogous to additional rent validated in prior Supreme Court decisions, specifically citing *Rider v. City of San Diego* (1998) 18 Cal.4th 1035 (*Rider*) and *Starr v. City and County of San Francisco* (1977) 72 Cal.App.3d 164.

Fair Market Value

Separately, appellants contended the lease payments were not tied to fair market values, making them unconstitutional. The Court of Appeal dismissed this, clarifying that the fair rental value was

appropriately assessed based on replacement costs of the leased properties, aligning with precedents such as *Rider*.

Marks-Roos Act

Finally, the court also found compliance with the procedural requirements under the Marks-Roos Act, which requires the financing agency to find that the project at issue would confer a public benefit. The court held that the City had correctly appropriately found the project would confer a significant public benefit without needing a separate evidentiary hearing in support of that conclusion.

Conclusion and Implications

This decision reinforces the validity of lease revenue bonds as a financing tool for local governments, explicitly acknowledging and upholding certain lease-leaseback structures as compliant with constitutional debt limit exceptions. This case underscores the broad discretion local agencies possess in utilizing contingent lease arrangements to fund public improvements without direct voter approval, provided they comply with established legal criteria and clearly demonstrate contingent obligations and contemporaneous consideration. Overall, the ruling supports greater financial flexibility for local governments in California, emphasizing that such arrangements must reflect genuine lease payments and contingent liabilities rather than concealed long-term debts. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B334636.PDF
(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 35 (Alvarez)—This bill was re-referred to the Committees on Natural Resources following amendment on April 22, 2025. As amended, the bill 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 for qualifying projects.

AB 52 (Aguiar-Curry)—This bill was re-referred to the Committee on Local Government on April 24, 2025, and is awaiting hearing. This bill would amend provisions of previously enacted AB 52 (2014), which established a formal consultation process between lead agencies and California Native American tribes as part of the CEQA process. Among other things, the bill would define the duration of tribal consultation to include the point in time when the tribe requests consultation to the completion of implementation of mitigation measures for the project. The bill would also afford tribes the opportunity to participate in the technical studies relating to tribal cultural resources during project scoping ,before the initial study and environmental review documents are drafted.

AB 295 (Macedo)—This bill was referred to the Committees on Natural Resources and Water, Parks, and Wildlife on February 10, 2025, and is awaiting hearing. The bill 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 404 (Sanchez)—This bill was referred to the Committee on Natural Resources on February 18, 2025, and is awaiting hearing. 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 609 (Wicks)—This bill was read for the first time in the Senate on May 20, 2025. The bill 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 urban area, and has either been previously developed with urban use or at least 75 percent of the site perimeter adjoins parcels already developed with 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. The exemption would also not apply to a project that requires demolition of a historic structure placed on a national, state, or local historic register. The bill also includes requirements for any housing project located within 500 feet of a freeway to address potential air quality pollution impacts.

SB 71 (Wiener)—This bill was ordered to a second reading in the Senate on May 29, 2025. The

bill would expand an existing CEQA exemption for transportation plans to include additional projects, such as projects or plans that readjust transit routes. The bill would also eliminate the exemption's sunset date, extending it indefinitely. The bill would also expand an existing 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 amended, the bill would also exempt, until January 1, 2032, certain transit projects located in urbanized areas and for use by low-emission vehicles. The bill would also extend applicable time periods related to review and approval of environmental leadership transit projects.

SB 73 (Cervantes)—This bill was referred to the Committees on Environmental Quality and Housing on January 29, 2025, and is awaiting hearing. The bill 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 held in committee and under submission on May 23, 2025. 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 held in committee and under submission on May 23, 2025. This bill 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 is awaiting hearing. The bill would exempt projects to underground powerlines from the requirements of CEQA.

SB 424 (Grove)—This bill was re-referred to the Committees on Environmental Quality and Natural Resources and Wildlife on April 2, 2025, and is awaiting hearing. The bill would exempt from the requirements of CEQA a project developed solely to serve an urgent public health or housing need, as specified, that is within the boundaries of an expired regional habitat conservation plan, and that had an environmental review completed consistent with the requirements of the regional habitat conservation plan as the plan existed before its expiration.

SB 607 (Wiener)—This bill was gutted in the Senate Appropriations Committee and ordered to third reading on May 28, 2025. As amended, this bill would no longer include the various provisions intended to streamline environmental review and instead states the intent of the Legislature, that among other things, no revisions shall be made to CEQA for purposes of the Delta Conveyance Project. The former text of SB 607 is now being revised to embed in the state budget. That text may include several changes aimed at improving the clarity and efficiency of the CEQA process, including revising the definition of "negative declaration" and "mitigated negative declaration" to ensure that the more deferential "substantial evidence" standard of review would apply to judicial review of the document's conclusions. In addition, for projects that do not meet all eligibility requirements for reliance on a categorical or statutory exemption, former SB 607 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. Former SB 607 would also exclude from the administrative record required for CEQA litigation any communications of persons tangential to or far removed from project decision-making, with specified exemptions, and 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.

SB 797 (Choi)—This bill was held in committee and under submission on May 23, 2025. As revised, the bill would no longer include an exemption from CEQA for a project related to the undergrounding of electric distribution facilities. This bill would continue to require the Public Utilities Commission, until January 1, 2031, to form a working group to study the cost of undergrounding and insulating overhead electric utility distribution system facilities or transmission system facilities, compile wildfire mitigation reports of electric utilities, and provide the Legislature, on or before July 1, 2027, with a plan on how to most effectively invest in undergrounding and insulating those facilities or how to otherwise support electrical corporations, as provided.

California Coastal Act

AB 357 (Alvarez)—This bill was read a second time and ordered to third reading on May 27, 2025. As amended, the bill would require the Coastal Commission to approve or deny a complete application for a coastal development permit for a student housing project or a faculty and staff housing project, as defined, within 90 days of submittal, except in certain defined circumstances.

Density Bonus Law

AB 87 (Boerner)—This bill was read in the Senate for the first time on May 13, 2025 and referred to the Committees on Housing and Local Government on May 21, 2025. As amended, this bill would prohibit an incentive or concession granted for a mixed-use development containing a hotel, motel, bed and breakfast inn, or other visitor-serving purpose from applying to the portion of the proposed development containing such use.

SB 92 (Blakespear)—This bill was ordered to the Assembly and read for the first time on May 28, 2025. As amended, this bill would specify that certain provisions of the Density Bonus Law do not require a local government to approve, grant a concession or incentive requiring approval of, or waive or reduce development standards otherwise applicable to transient lodging as part of a housing development, except as specified. The bill would also specify that a local government is authorized, but not required, to provide concessions or incentives or waivers or reductions of development standards allowing for an increase in floor area to apply to the nonresidential portion, or specified parking, of a housing development.

General Plans

AB 39 (Zbur)—This bill was amended and referred for a third reading on May 27, 2025. As amended, the bill, called the Local Electrification Planning Act, would require each city, county, or city and county with a population greater than 75,000 residents to 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 and other zero-emission vehicle fueling infrastructure, 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 read for the first time in the Senate on May 8, 2025, and referred to the Committee on Housing on May 21, 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.

AB 610 (Alvarez)—This bill was read for a second time and ordered to third reading on May 27, 2025. The bill would require General Plan Housing Elements to include a governmental constraints disclosure statement and would prohibit any new or amended covered governmental constraint from being adopted within three years from the date the Housing Element or amendment is considered in substantial compliance with the Housing Element Law unless, it was both included in the government constraints disclosure statement and the local government has competed all the housing element program commitments to eliminate or mitigate covered governmental constraints from the prior and current planning periods.

SB 233 (Seyarto)—This bill was referred to the Committees on Housing and Community Development and Local Government on May 12, 2025. This bill 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 ordered to second reading on May 29, 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 local 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 referred to the Committee on Housing on May 7, 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.

AB 660 (Wilson)—This bill was read for a second time and ordered to third reading on May 27, 2025. This bill would prohibit a local agency from requiring or requesting more than two plan check and specification reviews in connection with an application for a building permit. The bill would further revise the timelines for a determination on appeal of a finding that a post entitlement phase permit application is incomplete or noncompliant to not later than 30 business days for housing projects of less than 25 units and no later than 45 days for housing development projects with 26 or more units. The bill would further authorize the applicant to seek a writ of mandate to compel approval of the application if the local agency denies the appeal, and the writ must be granted if there is substantial evidence that a reasonable person could rely on to find that the application is complete and compliant with applicable standards.

AB 712 (Wicks)—This bill was ordered to the Senate on May 12, 2025, and referred to the Committees on Housing and the Judiciary on May 21, 2025. The bill would entitle an applicant for a housing development project to reasonable attorney's fees and costs and would require a court to impose fines on a local agency where the applicant is a prevailing party in an action brought to enforce compliance with a housing reform law as applied to the applicant's housing development project against the public agency. The bill would also prohibit a public agency from requiring the applicant to indemnify, defend, or hold harmless the public agency in any action alleging the public agency violated the applicant's rights or deprived the applicant of the benefits or protection provided by a housing reform law.

AB 1007 (Rubio)—This bill was ordered to the Senate and read for the first time on May 23, 2025. The bill would reduce the time period during which a responsible agency is to approve or disapprove a project under the Permit Streamlining Act from 90 to 45 days.

AB 1276 (Carrillo)—This bill was ordered to the Senate and read for the first time on May 23, 2025. The bill would revise provisions of the Housing Accountability Act to expand the vesting of ordinances, policies, and standards adopted and in effect when a SB 330 preliminary application was submitted to include materials requirements, post entitlement permit standards, and any rules, regulations, determinations, and other requirements adopted or implemented by other public agencies. The bill would also provide that, for purposes of the Planning and Zoning Law, a housing development project or emergency shelter shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision adopted or implemented by a public agency, if there is substantial evidence that would allow a reasonable person to conclude that the housing development project or emergency shelter is consistent, compliant, or in conformity.

SB 9 (Arreguín)—This bill was ordered to the Assembly on May 28, 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 invalidate the ordinance if the local agency fails to submit a copy to the Department of Housing and Community Development within 60 days of the adoption or fails to respond to the Department's findings that the ordinance does not comply with the specified standards within 30 days.

SB 79 (Wiener)—This bill was ordered to second reading on May 29, 2025. The 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.

AB 489 (Arreguín)—This bill was ordered to the Assembly on May 27, 2025, and read for the first time on May 28, 2025. The bill would require local agency formation commissions to update their written policies and procedures to include any forms necessary for a complete application to the commission concerning a proposed change of organization or reorganization. The bill would also require each commission to provide access to its written policies and procedures through its website. The bill would also revise provisions of the Permit Streamlining Act to define "development project" to include a housing development project, notwithstanding provisions in other laws making such projects ministerial projects, projects that involve no discretionary approvals and projects that involve both discretionary and non-discretionary approvals. The bill would also require a public agency, for each approval issued in connection with a housing development project, to publish online until January 1, 2030, the criteria that the public agency will apply in order to determine the completeness of the development application and the name of the approval.

SB 677 (Wiener)—This bill failed passage in Committee and was granted reconsideration on April 23, 2025. The bill would strengthen two recently enacted housing laws SB 9 (2021) and SB 423 (2024) by ensuring the right to build duplexes and fourplexes in residential neighborhoods, and strengthening streamlining for multi-family properties in urban areas.

Public Records Act

AB 343 (Pacheco)—This bill read a second time and ordered to third reading on May 27, 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 the Judiciary on May 28, 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 read for the first time in the Senate on May 8, 2025, and referred to the Committee on Local Government on May 21, 2025. The 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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