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## LEGISLATIVE DEVELOPMENTS

# CALIFORNIA LEGISLATURE SHELVES BILL INTENDED TO FACILITATE FARMLAND CONVERSIONS FOR RENEWABLE ENERGY DEVELOPMENT

Assembly Bill (AB) 1156 was introduced by Assemblymember Wicks to broaden the definition of solar-use easements under the California Land Conservation Act of 1965 (Williamson Act) and further streamline the process for property owners to convert their Williamson Act or Farmland Security Zone contracts into solar-use easements for renewable energy project development. Intended to further efforts by the state to achieve its goal of 100 percent of electric retail sales served by renewable and zero-carbon energy resources by the end of 2045, AB 1156 was shelved at Assemblymember Wicks' request on September 13, 2025. While currently inactive, AB 1156 may be revived during a future legislative session.

### Background: The Williamson Act and Solar-Use Easements

The Williamson Act authorizes local governments to create agricultural preserves within their jurisdictions and contract with landowners to restrict land uses to agriculture, open space, and certain compatible uses in exchange for lower property tax assessments. Land within an agricultural preserve is eligible for a ten-year Williamson Act or a 20-year Farmland Security Zone contract. In return for the land-use restriction, landowners receive property tax assessments based on the agricultural or open-space use of the land, rather than the full market value of the parcel. Farmland Security Zone contracts are limited to higher-quality farmlands and offer a greater property tax reduction, at the lower of either 65 percent of its Williamson Act valuation or 65 percent of its Proposition 13 valuation. While the Williamson Act lists agricultural labor housing, water facilities, or electrical generation facilities as permissible related open space uses, the rules of each local government's agricultural preserve establish the permissible uses for lands under Williamson Act or Farmland Security Zone contracts.

In 2011, the Legislature created solar-use easements through Senate Bill (SB) 618. SB 618 authorizes parties to a Williamson Act or Farmland Security Zone contract to mutually agree to rescind the contract and simultaneously enter into a solar-use easement, under which the land is used for solar photovoltaic facilities for at least 20 years. As a pre-condition to the recission of the contract, the Department of Conservation (DOC) must consult with the Department of Food and Agriculture (DFA) to determine that the land has limited agricultural value, due to soil quality, and is eligible for conversion. If the parcel or parcels are designated as prime farmland, unique farmland, or farmland of statewide importance on California's Farmland Mapping and Monitoring Program, the DOC must conduct further analyses of water availability, crop yield, soil quality, and a landowner's management plan before allowing the parties to rescind the Williamson Act or Farmland Security Zone contract.

A local government and landowner may rescind the Williamson Act or Farmland Security Zone contract and enter into a solar-use easement if the DOC approves the land-use conversion and the landowner had paid a recission fee based on the fair market value of the property. SB 618 authorized local governments to include restrictions, conditions, or covenants in the solar-use easement to ensure that photovoltaic solar facilities are developed. Furthermore, local governments and persons or entities can seek an injunction if a building permit is issued or action is taken that violate the easement. Solar-use easements renew automatically on an annual basis for 20 years and can only be extinguished by nonrenewal if either party files a notice, termination, or by returning the land to its previous Williamson Act or Farmland Security Zone contract. Although SB 618 had a statutory sunset in 2020, the California Legislature reauthorized its solar-use easements in 2023 with SB 1489.

### Assembly Bill 1156

AB 1156 would encourage renewable energy project development by changing how solar-use ease-

ments are defined under the Williamson Act and by expanding authorized uses of land, overhauling the DOC's review process, and adding provisions that apply after the DOC has approved a land conversion.

AB 1156 expands the authorized uses of land under the term "solar-use easement" to include solar energy storage and appurtenant renewable energy facilities. In addition, AB 1156 requires the DOC to consult with the local groundwater sustainability agency to review whether water limitations would support solar easement eligibility. Eligibility based on limited water supply would look to whether the parcel or parcels have insufficient surface water or groundwater to support agricultural activities and whether the land had been historically used as irrigated cropland rather than unirrigated grazing land. The DOC would be required to issue a final determination on whether the parcel is eligible for conversion within 120 days. If the DOC does not act on a solar-use easement application within that time, it would be automatically approved.

AB 1156 also proposed provisions that would be binding on solar-use easements, local governments, and the landowners. While SB 618 authorized local governments to include restrictions, conditions, or covenants that might restrict the use of land for photovoltaic solar facilities, AB 1156 requires that mitigation measures must have an essential nexus and be roughly proportional to the impacts the local government seeks to mitigate. Finally, AB 1156 would have exempted the entering or recording a solar-use easement from environmental review requirements under the California Environmental Quality Act (CEQA).

### Conclusion and Implications

AB 1156 sought to expand opportunities for landowners to convert their Williamson Act land contracts to solar-use easements in support of renewable energy project development needed to meet long-term zero-carbon energy goals. Although AB 1156 will not go into law as part of the 2025–2026 Legislative Session, the bill sheds light on the statewide efforts to facilitate the state's clean energy transition. A similar bill may be introduced during the upcoming 2026–2027 Legislative Session.
(Christopher Marelich, Austin Cho)

## REGULATORY DEVELOPMENTS

# CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RELEASES WESTERN JOSHUA TREE CONSERVATION PLAN

On August 13, 2025, the California Department of Fish and Wildlife (CDFW) issued the Western Joshua Tree Conservation Plan (Plan). The Plan serves as a comprehensive blueprint for managing, conserving, restoring, and otherwise protecting western Joshua trees through a mix of regulatory, voluntary, and collaborative strategies.

### Background

The Plan implements the Western Joshua Tree Conservation Act (WJTCA), passed in July 2023. The Act requires CDFW to prepare a conservation plan for the *western Joshua tree* (*Yucca brevifolia*), with collaboration among tribes, local governments, and the public. The Plan does not impose new statutory mandates; its management actions may be voluntarily adopted by project proponents and land owners, or incorporated into project approvals by local, state, and federal agencies that approve projects and management plans in the tree's habitat.

### Purpose and Scope of the Plan

Joshua trees are particularly vulnerable to shifts in habitat and environmental stresses. They are slow-growing, long-lived, reproduce slowly, dependent on specific pollinators (yucca moths) and seed dispersal by small mammals.

The Plan marks one of the first times in California that a species that is currently abundant but projected to lose habitat has been protected proactively under a law meant to deal with climate change.

Threats prompting the issuance of the Plan urgency include climate change (future habitat loss under warming trends), wildfire, invasive species, and land-use pressures from development, in particular housing, infrastructure, and renewable energy projects. While the Joshua tree is currently abundant in many areas, models predict much of its suitable habitat will decline sharply by end of the century.

Core elements of the Plan include: (1) avoidance and minimization of impacts, (2) relocation guidelines and protocols, (3) mitigation and permitting framework, (4) land conservation and management, (5) tribal co-management and traditional knowledge, (6) research monitoring and adaptive management, and (7) public education, awareness and outreach.

### Avoidance and Minimization of Impacts

The Plan provides guidance on how development projects should avoid harming trees or habitat, or at least minimize such harm, including siting large development projects in lower-conflict areas.

### Relocation Guidelines and Protocols

The Plan includes rules for relocating Joshua trees, if necessary, as a condition of permits (incidental take permits). It allows for short-distance moves (*e.g.*, less than 2.5 km) into "future suitable habitat" if certain requirements are met.

### Mitigation and Permitting Framework

When Joshua trees are removed or potentially harmed in projects, mitigation will be required including fee payment, habitat acquisition/conservation, or habitat restoration. The Plan also provides for local governments to obtain delegated permitting authority under certain conditions.

### Land Conservation and Management

The Plan requires identification of priority conservation areas where trees are currently healthy, where future habitat is projected to be viable, where threats (fire, invasive plants, *etc.*) are lower, where pollinators (e.g., moths) and seed-dispersing animals are present. The Plan calls for strategic land acquisitions or protections to safeguard such areas.

### Tribal CoManagement and Traditional Knowledge

The Plan mandates collaboration with California Native American Tribes, including in implementa-

tion and decision-making. In addition, traditional ecological knowledge is to be leveraged and relocation onto tribal lands may be an option if requested.

### Research, Monitoring, Adaptive Management

The Plan establishes monitoring to track the health of Joshua tree populations and habitat trends over time and may be amended as necessary. Starting in 2026, and at least every two years thereafter, CDFW will review status of the species and the effectiveness of the Plan, with a public meeting held before August 31.

### Public Education, Awareness, and Outreach

The Plan includes efforts to educate the public about threats and conservation of the western Joshua tree.

### Plan Implementation

While the Plan does not create new statutory mandates by itself, it provides management actions, guidelines, and a framework that may be incorporated by CDFW, local, state, or federal agencies, or voluntarily by landowners or other stakeholders. Permitting and mitigation obligations stem from the WJTCA: If a project impacts Joshua trees, certain "incidental take" permits may be required, with associated mitigation or relocation, and payment of fees. Projects can pay into a mitigation fund and those funds are to be used for habitat acquisition, conservation or restoration. Local agencies may in some cases assume permitting authority under delegated arrangements.

### Innovation and Unprecedented Features

The Plan is notable for explicitly planning for future climate scenarios; projecting where Joshua trees may thrive under warming and protecting land accordingly. The Plan also contains unique structured comanagement and tribal involvement that is more explicitly built in than many prior conservation plans.

### Points of Controversy

Some in the development community expressed concern that mitigation fees and permitting burdens could increase costs or impede housing and infrastructure projects. Concerns were raised about fairness of fee structures, particularly for smaller landowners or low-income households; the Plan acknowledges potential disproportionate effects and includes adjustment processes.

Also, some stakeholders raised issues regarding delays or challenges introduced by the relocation guidelines. Such issues of concern include setting thresholds for when relocation is required, capacity, survival of relocated trees, and the practical limits for moving trees.

### Outcomes and Targets

A key goal of the Plan is to identify priority conservation lands — areas that are likely to have healthy Joshua tree populations now and in a future climate — and to protect a substantial portion of those. The Plan aims to permanently protect 70 percent of these priority lands by 2033. The Plan emphasizes fire risk reduction through reducing invasive grasses, managing wildfire response, rehabilitating burned areas with native species, and protecting existing trees from fire damage.

### Conclusion and Implications

The Plan's success will turn on many factors, including the effectiveness of calculating, collecting and use of mitigation fees. Other key measurements will be the success of relocation efforts and whether trees that are moved survive and thrive. Whether delegated permitting to local governments maintains conservation standards is certain to be watched along with whether enforcement efforts ensure that projects comply with avoidance, minimization, permitting, and mitigation requirements.

Given the unprecedented nature of the Plan, one can expect future amendments in response to new science, changing conditions and the practicality of compliance.

(Todd Williams, Darien Key)

## RECENT FEDERAL DECISIONS

# U.S. DISTRICT COURT DIRECTS U.S. FISH AND WILDLIFE SERVICE TO COMPLETE REVIEW OF PETITION FOR ESA LISTING OF WHITE STURGEON AS "THREATENED" WITHIN NINE MONTHS

*San Francisco Baykeeper, et al. v. United States Fish and Wildlife Service, et al.*, ___F.Supp.4th___, Case No. 25-cv-01360-LJC (N.D. Cal. Sept. 3, 2025).

On September 3, 2025 the United States District Court for the Northern District of California rejected arguments as to infeasibility on the part of the United States Fish and Wildlife Service (USFWS) to complete review of a petition to list the San Francisco Bay Estuary population of the White Sturgeon as "threatened" and held that the agency must comply with mandatory deadlines set forth under the Endangered Species Act (ESA) by providing a finding on the petition, no later than June 3, 2026.

### Background

According to a February 2, 2025 complaint filed in the United States District Court for the Northern District of California by the San Francisco Baykeeper, the California Sportsfishing Protection Alliance, Restore the Delta and Friends of the River, the San Francisco Bay Estuary population of the White Sturgeon is in increasingly critical decline prompting the need for protection and conservation provided with designation as a "threatened" species under the federal Endangered Species Act (ESA). The white sturgeon are only known to spawn in the San Francisco Bay watershed, making this specific population of certain concern, and subject of a petition to list the species as threatened under the ESA which submitted to the USFWS by the San Francisco Bay Keeper et al, on December 6 2023. According to the petition, the population of the white sturgeon has declined significantly over recent decades, with a heightened decrease in population in 2021 and 2022 as a result of algal blooms. The groups contend that the 2021 and 2022 blooms, compounded with overharvest and diversion of fresh water flows needed for reproduction have contributed the increasingly rapid decline of the species.

As is noted by the court, the ESA provides detailed timetables in which a petition must be answered. Broadly, a response must be provided to a petition, first, through a finding within the first 90 days, after receiving the petition, which specifies whether the petition presents substantial scientific information indicating that the petitioned action is, or is not, warranted. A subsequent, more detailed, finding must be made 12 months after the petition is received. These findings must be published in the Federal Register to as to apprise all interested parties as to the decision. 16 U.S.C. § 1533(b)(3)

On October 8, 2024, the USFWS responded to the December 2024 petition by publishing the agency's 90-day finding which included a determination that the petition provided substantial information to indicate that the petitioned action "may be warranted." The agency further provided that status review of the species to determine whether the actions petitioned are warranted would be initiated. Subsequently, on December 6, 2024, upon the 12-month deadline, the USFWS did not provide the subsequent, requisite finding or results of the status review to which the previous finding stated would be initiated. In response, on December 9, 2025 the San Francisco Baykeeper, et al. submitted a Notice of Failure to Issue a 12 Month finding, and subsequently filed for declaratory judgment, and injunctive relief compelling the USFWS to issue the 12-month finding, in the United States District Court for the Northern District of California.

On September 3, the court issued its decision, rejecting the USFWS claims of infeasibility to complete the mandated, statutory review, and directed the agency to provide the 12-month finding within nine months from the date of the court decision.

### The District Court's Decision

The San Francisco Baykeeper allege that the USFWS violated the ESA through failure to make

a timely 12-month finding, pursuant to 16 U.S.C. § 1533(b)(3)(B), and in response the groups' petition which requested listing the San Francisco Estuary population of the White Sturgeon as a threatened species under the ESA. The groups further contend that this unjustified delay in providing full protections of the ESA to the white sturgeon population has caused additional harm, as the species continue to decline throughout this extended decision-making process. The court rejected arguments set forth by USFWS, stating that the agency "disregarded the ESA's firm deadlines" and directed the agency to comply with the those deadlines through expediting review, and producing the requisite 12 month finding no later than nine months from the date of the court's decision.

In assessing the ESA claim, the court first examined the statutory language detailing the timelines required for consideration of petitions to designate a species as endangered or threatened. In doing so, the court stated:

> . . .an agency must consider petitions "solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account" conservation efforts by other government entities. 16 U.S.C. § 1533(b)(1)(A).

The court addressed the evidence offered regarding the "lifecycle and recent decline" of the white sturgeon population in the San Francisco Estuary in which it finds to be straightforward in indicating that the species has significantly declined in recent decades, with "sharp decreases" in 2021 and 2022. However, citing *Nat. Res. Def. Council v. Kempthorne*, 506 F.Supp.2d 322, 359 (E.D. Cal. 2007), the court pointed out that, while an agency may have some discretion in determining how a review may be conducted, namely that the discretion may be used in assessing the requisite "best scientific and commercial data available" as well as other general conversation efforts, an agency has no discretion, or authority, to extend statutorily provided timeframes which mandate when the review must be finalized.

The court noted, an agency must show evidence sufficient to meet the "especially high burden of showing infeasibility" to delay, or extend, the statutorily mandated deadlines, and provides examples that would likely meet this burden, such as demonstration of budgetary or staffing demands which the agency cannot meet, that conducting the review would unduly jeopardize implementation of other programs, or that the agency needs more time to sufficiently evaluate complex, technical issues related to the review. *Nat. Res. Def. Council v. Sw. Marine, Inc.*, 236 F.3d 985, 999–1000 (9th Cir. 2000), The court rejected the USFWS' arguments that such delay was permissible and ruled that the USFWS failed to conclusively provide evidence that this burden had been met.

In analyzing the defenses set forth by the USFWS, the court first addressed documents provided demonstrating a comprehensive schedule of deadlines for review of the petition concerning the white sturgeon, as well as several other pending petitions before the agency. With this schedule, the agency additionally provided a declaration stating that creating an expedited deadline for review for the white sturgeon petition only, would disrupt the USFWS's ability to resolve all petitions on scheduled. The court rejected this information, stating that any impediments to the review process were of the agency's own making, and thereby irrelevant. Thus, the court found the evidence offered to be inconclusive to meet the high burden required to show infeasibility of expedited review.

The court further rejected the USFWS additional defense that a current hiring freeze imposed by presidential memorandum has forced significant staff reduction, and created potential for further, future reduction, both amounting to a scenario to which the agency lacked the resources necessary to produce the 12-month finding. The court similarly rejected this claim, finding that insufficient evidence had been provided to support this argument.

### Conclusion and Implications

In accordance with this holding, the U.S. Fish & Wildlife Service is subject to the mandatory deadlines for petition review, and has no discretion to extend these deadlines, without a clear showing of infeasibility to do so, a burden which has not been met in this instance. Thus, the USFWS must provide a determination as to the petition for "threated status" within nine months from the date of the decision. This decision could impact other agency's which face staffing and resource limitations in light of recent hir-

ing freezes, and staff reductions, though the decision makes it clear that any such agency would be required to meet a heavy burden in demonstrating such need to any extension statutorily defined decision-making process. The court's findings of fact and conclusion of law is available here: https://www.courthousenews.com/wp-content/uploads/2025/09/sf-baykeeper-v-fws-finding-of-fact.pdf
(Miles Krieger, Stever Anderson)

## RECENT CALIFORNIA DECISIONS

# CALIFORNIA SUPREME COURT REPLACES *GREYHOUND* DEFERENCE FOR PUBLIC UTILITIES COMMISSION'S INTERPRETATION OF ITS CODE WITH LESS DEFERENTIAL *YAMAHA* STANDARD

*Center for Biological Diversity v. Public Utilities Commission*, ___Cal.5th___, Case No. S283614 (Aug. 7, 2025).

In its opinion in *Center for Biological Diversity v. Public Utilities Commission* the California Supreme Court overturned the First Appellate District's application of the highly deferential *Greyhound* standard of review to the Commission's decision lowering compensation for "customer-generators," with instruction to review the matter anew under the less-deferential *Yamaha* standard, consistent with significant legislation from the late 1990's.

### Factual and Procedural Background

In 1995, the Legislature instructed the Public Utilities Commission (Commission) to compensate customers with solar panels for the excess energy they provide to the grid at the same rate those customers purchased their electricity. In 2013, the Legislature amended that rule to allow the Commission to set lower rates for customer-generated electricity, provided the Commission based the lower rates on the "costs and benefits of the renewable electrical generation facility." (Public Utilities Code, § 2827.1.) As a result, Commission adopted an interim measure, and subsequently, a tariff that "significantly" reduced the price utilities paid for customer-generated power.

Petitioners Center for Biological Diversity (CBD) argued that in reducing these prices, the Commission violated section 2827.1 as the Commission failed to ensure that the standard price for customer-generated power was based on the costs and benefits of the renewable electrical generation facility because it did not "take account of all the benefits of renewable energy, particularly those conferred on society generally." CBD also argued that the Commission did not ensure that the price ensured that customer-sited renewable distributed generation continues to grow sustainably and to include specific alternatives designed for growth among residential customers in disadvantaged communities under subdivision (b)(1).

The Public Utilities Act of 1911 (Act), and subsequently, the enactment of the Public Utilities Code, granted the Commission broad authority to regulate utilities while simultaneously limiting judicial review regarding its decisions, "hampering" the extent to which the Commission's actions could be challenged in court. The Act determined that review shall not be extended further than determining whether the Commission has "regularly pursued" its authority, including whether the decision violated the rights of the petitioner's Constitutional rights. (Stats. 1951, ch. 764, p. 2090–2091.)

### At the Court of Appeal

The First Appellate District Court upheld the Commission's decision based on the "uniquely deferential standard of review" laid out in *Greyhound Lines, Inc. v. Public Utilities Commission*, 68 Cal.2d 406 (1968) (*Greyhound*), to determine whether the Commission properly interpreted Section 2827.1. The *Greyhound* case revolved around the validity of the Commission's decision under this "regularly pursued" standard. There, the Supreme Court ultimately found in favor of the Commission, holding that its interpretation of the Public Utilities Code "should not be disturbed unless it fails to bear a reasonable relation to statutory purposes and language." (*Greyhound*, *supra*, 68 Cal.2d at pp. 410–411.) The Court of Appeal found it did. The Supreme Court of California granted review to address whether the appellate court properly applied this *Greyhound* framework.

### The Supreme Court's Decision

The Supreme Court rejected the appellate court's deferential approach, highlighting that "courts remain the final arbiters of statutory meaning." The "regularly pursued" standard was eliminated for the review of most Commission decisions based on a

series of Legislative amendments that expanded the scope of review. The *Greyhound* degree of deference was inapplicable in this matter, as Public Utilities Code sections 1757 and 1757.1 expressly held the Commission's decisions on energy pricing to a standard of review that parallels Code of Civil Procedure section 1094.5. The Supreme Court deduced that this mirroring language was intentionally added by the Legislature for the purpose of holding the Commission to the usual, less-deferential standard of review for other administrative decisions.

To bolster this reading of the statute, the Court cited to the uncodified preamble to a 1998 amendment to the Public Utilities Code, which declared that:

> . . . [i]t is further the intent of the Legislature to conform judicial review of the Public Utilities Commission decisions that pertain to utility service providers with competitive markets to be consistent with judicial review of the other state agencies. (Stats. 1998, ch. 886, § 1.5, subd. (b), p. 5796.)

The Supreme Court also noted that *Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal.4th 1 (1998) (*Yamaha*), not *Greyhound*, is the leading case regarding agency statutory interpretation. That case distinguished between quasi-legislative regulations and agency interpretations of statutes. The Supreme Court emphasized that courts must apply their own independent judgment in interpreting statutes. While an agency's interpretation can potentially carry great weight in the court's determination, it is ultimately one tool of many in doing so. However, quasi-legislative rules are afforded a much narrower scope of review, and an inquiry will end once it is determined that the agency possesses the requisite lawmaking authority and that it is reasonably necessary to implement the rule based on its legislative directive. Yet, the Court also emphasized that quasi-legislative regulations, such as those the Commission made under the California Legislature's direction via section 2827.1, are still subject to independent review, and those reviewing courts cannot defer to the agency's view of whether the regulation lies within the scope of the agency's delegated authority either.

According the Court, petitioners made "little effort" in defending the Court of Appeal's reliance on *Greyhound*, and that the Attorney General failed to distinguish this matter from *Yamaha* and raised an unpersuasive Legislative intent argument regarding the 1998 enactment. The Attorney General also attempted to argue that the Supreme Court has cited to *Greyhound* since the 1998 amendment. However, those cases did not relate to the impacts of the changes made by sections 1757 and 1757.1 had on "*Greyhound*'s continuing vitality."

### Conclusion and Implications

The Supreme Court ultimately concluded that the Court of Appeal erred in relying on the highly deferential approach under *Greyhound*. It further left the application of *Yamaha* to the matter for the appellate court's determination on remand. This opinion emphasizes the Legislature's intent to walk back the great deference the Commission was originally granted in the early-to mid-twentieth century and hold it to the same "abuse of discretion" standard of deference afforded to other state agencies under Code of Civil Procedure section 1094.5.

The Supreme Court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/S283614.PDF

(Adam D. Nir, Blaine Dyas)

# CALIFORNIA SUPREME COURT FINDS EARNINGS STEMMING FROM INTANGIBLE ASSETS MAY BE CONSIDERED BY COUNTY ASSESSOR IN PROPERTY TAX VALUATION— COURT LIMITS APPLICABILITY OF *ELK HILLS* DECISION

*Olympic and Georgia Partners, LLC v. County of Los Angeles*, ___Cal.5th___, Case No. S280000 (Aug. 28, 2025).

In *Olympic and Georgia Partners, LLC v. County of Los Angeles* the California Supreme Court overturned the Second Appellate District's decision that the Los Angeles County Assessor's valuation of a hotel's property tax was incorrect due to its inclusion of two sources of hotel revenue deriving from nontaxable intangible assets. In doing so, the Supreme Court limited the application of *Elk Hills Power, LLC v. Board of Equalization*, 57 Cal.4th 593 (2013) (*Elk Hills*), holding that assessors are not required to exclude all revenue that derives from an intangible asset if it represents income attributable to the beneficial use of property.

## Factual and Procedural Background

The relevant hotel was originally developed pursuant to several contracts between the City of Los Angeles (City) and the original developer. This included the Occupancy Tax Agreement (Agreement), under which the City assigned the developer a 14 percent occupancy tax on nightly hotel room charges during the first 25 years of the hotel's operation and was offered in part as an inducement to the developer for the construction of the hotel. Prior to the hotel's completion and opening, the developer conveyed the property to Olympic, assigning them its rights under the Agreement. Subsequently, Olympic entered into a 50-year term management agreement with Marriott. Marriott paid Olympic a one-time $36 million key money payment, and in return for its management, Olympic was required to pay Marriott three percent of the hotel's gross revenues.

Upon its completion, Olympic challenged the County's tax assessment of the hotel to the County's assessment appeals board (Board). It argued that the Agreement should be excluded from the assessment as it was an "intangible" contractual asset that could be segregated from the hotel's operational revenues. Olympic argued the same regarding the $36 million key money payment, arguing that it was paid for the right to manage the hotel and, thus, was unrelated to taxable real property rights. In addition, Olympic identified three enterprise assets that also should have been removed from the assessment, each related to the benefits Olympic enjoyed under its management agreement with Marriott.

The Board ruled in favor of the County on each issue, noting that the occupancy tax payments represented "income to the property and related to real property," and was thus assessable. The Board noted that the Agreement required that the hotel set aside several "group rate" rooms for conference attendees that were usually lower than usual rates. Therefore, the Agreement not only incentivized construction of the hotel, but benefited the City by guaranteeing that conference goers to events at the nearby Los Angeles Arena would receive group booking rates. The Board further agreed with the County's argument regarding the key money payment, holding that it was also properly included in the assessment as it was received in exchange for "a tangible right in real property"—the right to manage the hotel. The Board also concluded that Olympic failed to provide evidence supporting their removal from the assessment.

Olympic subsequently filed a complaint in Los Angeles Superior Court.

## At the Lower Courts

The trial court again concluded that the Agreement and key money payment were properly included in the assessment. However, it did remand the matter to the Board with regard to the enterprise assets so that their values could be properly determined. On appeal, the Second Appellate District reversed the trial court's decision. Relying on *Elk Hills*, the appellate court concluded that the Agreement was intangible. It further held that the key money payment served as a "discount" on management fees rather than "income." Finally, it held that the County acted improperly in deducing that the deduction of the management fees accounted for the value of the enterprise assets as the only evidence it failed

to provide sufficient authority supporting the use of the "Rushmore Approach." Under that method, an assessor accounts for the portion of income generated through an enterprise activity of the hotel by deducting the costs due to be paid under the management agreement. In support of its use, the County merely cited to one article without empirical support for the premise that "every franchise fee wipes out all intangible benefits a franchise agreement might offer a hotel owner."

### The Supreme Court's Decision

On review, the Supreme Court highlighted the relevant portions of the California Constitution related to property assessments, noting that though it prohibits the direct assessment of intangible property in tax valuations, the earnings derived from that intangible property can be considered. The Court concluded that as long as the intangibles affect a real property's value, they may contribute to an assessment of its fair market value. (Art. XIII, § 2; *Roehm v. County of Orange* (1948) 32 Cal.2d 280.) This conclusion was supported by numerous provisions within the Revenue and Tax Code, namely sections 110 and 212. In doing so, it disagreed with appellate court's interpretation of those statutes and *Elk Hills*, holding that though income derived from enterprise activities such as customer goodwill and favorable franchise terms are nontaxable intangible assets, the earnings stemming from the beneficial use of the property are indeed taxable.

### Occupancy Tax Agreement

Olympic first argued that the Board acted improperly by declining to remove the $80 million value of the Occupancy Tax Agreement from the hotel's projected income stream as the Agreement was a form of intangible asset—namely, contractual rights. It argued that *Elk Hills* required an assessor's income stream analysis to exclude all revenue deriving from intangible assets. However, the Court sided with the County in its assertion that *Elk Hills* did not establish any "broad, categorical rule" that compels an assessor to exclude all revenue deriving from an intangible asset capable of valuation. The Court also agreed that *Elk Hills* did not provide the correct evaluation for the tax treatment of the type of asset at issue, which enabled the property, rather than merely the enterprise operating the property, to generate more revenue. The Court highlighted that the Agreement increased the amount of revenue generated by the use of property as each time a guest stayed at the hotel, the property would generate an additional revenue in an amount equal to 14 percent of the nightly rental rate. This revenue would be generated regardless of what business operates the hotel or how well or poorly it is run.

The Court rejected the appellate court's broad reading of *Elk Hills*, holding that when a project comes into existence as a result of contractual guarantees allowing the property to generate additional revenue unrelated to the operator's enterprise activity, the assessor may properly consider that additional revenue when conducting a valuation. That revenue source is "inextricably intertwined" with the operation of the hotel. To remove this revenue would "artificially deflate" the property's value in violation of the assessor's obligation to determine the full cash value of the property.

Olympic argued that adopting a standard that allows for the inclusion of intangible assets deriving value from the use of the property was violative of California law. However, the Court noted that its holding was narrow in scope and was predicated on the "unique" characteristics of the Agreement. In comparison to other intangible assets like "franchise rights" or "customer goodwill" that may increase the value of the business operation, the Agreement allowed the property itself to generate more income.

### Key Money Payment

The Court then shifted its focus to the $36 million key money payment Marriott made to Olympic for the right to manage the hotel for a 50-year period. In return for its management duties, Olympic pays Marriott around 3 percent of the hotel's revenues. The appellate court based its holding on the rationale that the key money payment was not income to the hotel because it was provided to Olympic as a reduction of the total management fees it would have to pay to Marriott. However, the Supreme Court determined that the key money payment allowed Olympic to make beneficial use of the property by allowing it to generate income in the form of management fees and brand the property with Marriott's logo.

The Court reasoned that this was similar to a commercial tenant paying rent to a landlord to make

beneficial use of a property. Management companies pay owners of desirable hotels to secure the right to collect income stemming from it and place its logo on the property. Marriott paid Olympic to conduct its own commercial activities on the property, and therefore, the Assessor could consider that payment when valuing the hotel. Though the dissent believed Marriott did not pay the key money for the beneficial use of the property as it was "merely hired" to manage it, the Court concluded that both entities put the property to beneficial use. Olympic obtains revenue from the hotel as well as a key money payment, and Marriott is able to collect its own income stream for the activities it performs on the property, in part due to its branding. Both are tied to the desirable physical attributes of the hotel.

### Enterprise Assets

Finally, regarding the lower courts findings that the County failed to adequately address evidence Olympic presented regarding the valuation of three intangible enterprise assets, the Supreme Court highlighted that neither party raised a Court of Appeal decision that categorically accepted or rejected the Rushmore Approach used by the County. Instead, the decisions that have addressed this method considered its applicability on a case-by-case basis. In the current matter, the Court held that the single article the County used to support its usage of the Rushmore method was unpersuasive to prove its sufficiency in accounting for the value of the three enterprise assets at issue. The Court concluded that on remand, the County would have another opportunity to litigate on the claims regarding the value of the enterprise assets and provide greater evidence in support of the usage of the Rushmore Approach.

### Conclusion and Implications

The Supreme Court's holding provides necessary clarification regarding the ability to assess revenue stemming from intangible assets. This holding limits the applicability of *Elk Hills*, still barring the valuation of intangible assets relating to the *enterprise* activity of a business, but permitting the inclusion of the income derived from these assets if they are tied to the beneficial use of the *property* itself. This holding will allow assessors a greater understanding of what should be included in a property tax assessment, resulting more accurate valuations.

The Court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/S280000.PDF

(Adam D. Nir, Blaine Dyas)

## FIRST DISTRICT COURT UPHOLDS MARIN COUNTY'S AGRICULTURAL HOUSING RESTRICTION

*Benedetti v. County of Marin*, ___Cal.App.5th___, Case No. A170403 (1st Dist. Aug. 29, 2025).

In a published decision with significant implications for local land use regulation and agricultural preservation in the coastal zone, the California Court of Appeal for the First District upheld Marin County's requirement that farmland owners may only build additional residential units if they record a restrictive covenant ensuring that the units are occupied by individuals engaged in commercial agriculture. Rejecting constitutional challenges by the Benedetti family, the court held that the requirement was consistent with the nexus and proportionality principles articulated in *Nollan v. California Coastal Commission*, 483 U.S. 825 and *Dolan v. City of Tigard*, 512 U.S. 374, and also satisfied substantive due process standards.

### Factual and Procedural Background

The plaintiffs, Arron and Arthur Benedetti and the Estate of Willie Benedetti, own farmland within Marin County's coastal zone. The County's Local Coastal Program (LCP), originally certified in 1981, was amended in 2021 following years of consultation with the California Coastal Commission. Among the amendments was a provision affecting agricultural zoning: property owners seeking to construct new residential units must record a covenant ensuring that the units are occupied by individuals actively engaged in commercial agriculture, either directly as farm operators or through leasing to commercial agricultural tenants.

The stated purpose of this covenant was to reinforce agricultural viability in the coastal zone, prevent conversion of farmland into rural estates or vacation properties, and align with the California Coastal Act's strong emphasis on protecting prime agricultural lands. The County argued that without such conditions, incremental residential development would gradually erode farmland productivity and undermine long-term agricultural use.

The Benedetti family wished to build a second residential dwelling on their property but refused to execute the covenant. Instead, they filed suit in Marin County Superior Court, contending that the covenant was unconstitutional on its face. Their arguments fell into two categories as follows:

**Takings Claim—**They asserted the covenant constituted an unlawful exaction under *Nollan* and *Dolan*, because it lacked the necessary "essential nexus" to legitimate public purposes and imposed conditions not "roughly proportional" to the impacts of their project.

**Substantive Due Process Claim—**They argued that requiring occupants to be engaged in commercial agriculture improperly compelled landowners into a specific occupation and unreasonably restricted use of their property.

The Superior Court sustained a demurrer in part and otherwise denied relief, effectively upholding the County's covenant requirement. The Benedettis appealed.

## The Court of Appeal's Decision

On appeal, the First District Court of Appeal carefully parsed the scope of constitutional review for legislatively adopted land use restrictions. The court first acknowledged that, contrary to the trial court's conclusion, a facial challenge under *Nollan* and *Dolan* was procedurally available. However, it emphasized that the merits of such challenges differ significantly when the condition at issue arises from generally applicable legislation, rather than an individualized permit requirement.

### Nexus and Proportionality

The court concluded that the Marin County covenant bore a sufficient nexus to the County's legitimate interest in preserving coastal agriculture. The Coastal Act expressly requires local governments to protect agricultural lands and to avoid their conversion to other uses. By ensuring that new residential units are linked to commercial agriculture, the County's covenant directly advanced that statutory mandate.

As to rough proportionality, the court held that the covenant was reasonably related in scope to the potential impacts of additional residential development. Without the covenant, farmland could be incrementally converted to nonagricultural residential uses, diminishing long-term agricultural productivity and undermining Coastal Act goals. The covenant thus functioned as a proportional safeguard against that risk.

The court distinguished the County's legislative approach from the ad hoc conditions invalidated in *Nollan* and *Dolan*. Because the covenant was part of a broadly applicable LCP amendment, certified by the Coastal Commission after public hearings and legislative findings, it carried a presumption of validity that was not overcome by the Benedettis' challenge.

### Substantive Due Process

Turning to the substantive due process claim, the court applied rational basis review. It rejected the Benedettis' argument that the covenant compelled landowners to farm or restricted occupational choice. Instead, the covenant merely required that any new residential units be occupied by individuals engaged in commercial agriculture, whether the landowner or tenants. This condition was rationally related to the County's legislative objective of maintaining viable agricultural use in the coastal zone.

The court emphasized that local governments may impose land use restrictions that incidentally affect who may occupy dwellings, so long as the restriction bears a reasonable relationship to legitimate public interests. Here, the interests in protecting agricultural resources and preventing speculative residential development were squarely within the County's regulatory authority.

## Conclusion and Implications

The Court of Appeal affirmed the judgment in favor of Marin County, upholding the validity of the agricultural housing covenant. The ruling has several important implications.

For property owners, the decision underscores the difficulty of mounting facial constitutional challenges against land use provisions adopted through legislative processes and certified under the Coastal Act. While *Nollan* and *Dolan* continue to provide powerful protections against excessive, individualized permit conditions, courts are far less likely to apply heightened scrutiny to generally applicable legislative measures tied to established statutory mandates.

For local governments and the Coastal Commission, the case affirms the legality of innovative regulatory tools designed to safeguard agricultural land. By conditioning new residential development on active agricultural use, counties can ensure that farmland remains dedicated to productive purposes rather than drifting into quasi-residential estates or recreational holdings inconsistent with Coastal Act priorities.

The decision also illustrates a broader judicial trend: Courts are increasingly willing to sustain land use restrictions that reflect legislative judgment and advance statewide policies, even when they impose significant obligations on landowners. By upholding Marin County's covenant requirement, the Court of Appeal confirmed that local governments retain substantial authority to integrate housing and land use policies with agricultural preservation goals.

Ultimately, *Benedetti v. County of Marin* reinforces the enduring strength of the Coastal Act's agricultural protections. It demonstrates that California courts will give deference to legislatively adopted local coastal program amendments when they are rationally related to statutory objectives and proportionate to development impacts. For landowners seeking to challenge such provisions, the decision signals that successful claims will face a high legal bar.

The court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/A170403.PDF
(Miguel Mauricio)

## SECOND DISTRICT COURT UPHOLDS CONSTITUTIONALITY OF SB 9 AS APPLIED TO GENERAL LAW CITIES

*City of Rancho Palos Verdes v. State of California*, ___Cal.App.5th___, Case No. B332315 (2nd Dist. Sept. 4, 2025).

On September 4, 2025, the Second District Court of Appeal rejected a constitutional challenge to Senate Bill (SB) 9, a pro-housing bill adopted by the California Legislature and signed by the Governor into law in 2021. Four general law cities had challenged the constitutionality of the new law, claiming that it impermissibly "usurps a city's authority over its own municipal affairs." The trial court and Court of Appeal each rejected the cities' arguments, siding instead with the arguments put forward by Attorney General Rob Bonta in defense of the law.

### Background

SB 9 was authored by then-State Senator Toni Atkins. This bill was intended to facilitate the construction of new housing by altering the municipal review process for two-unit housing developments on single-family lots and for the subdivision of such lots into two parcels. This law, which some observers called "the death of single-family zoning," required local agencies to ministerially approve such developments and subdivisions regardless of the applicable zoning, subject to jurisdictions' ability to adopt limited objective standards governing such developments.

### Passage and Effects of SB 9

Many California cities and counties, including the four plaintiffs in this case, commented on and opposed the legislation as it proceeded through the legislative process. Most of the votes in favor of the bill came from Democrats, although 13 Democratic Assembly Members opposed the bill and nine were absent from the vote, and one Democratic Senator voted no and five were absent from the vote.

By all accounts, SB 9, which was amended and strengthened through Senator Atkins' SB 450 in 2024, has arguably been less effective than originally hoped—or feared—by proponents and opponents of the bill. Nonetheless, many jurisdictions continue to oppose the bill and its limitations on local zoning control. On the other hand, the limited effect of SB 9 was one of the key reasons why housing advocates

pushed so hard for the passage of this year's SB 79, a more aggressive upzoning bill that mandates denser, taller housing projects near major transit stops in California's urban areas. As of the date of this article, it is not yet known whether Governor Newsom will sign this new bill, although most observers expect that he will sign it sometime before the deadline of October 12.

### At the Trial Court

Four southern California general law cities, namely Rancho Palos Verdes, Lakewood, Paramount, and Simi Valley, sued the State and challenged the law on constitutional grounds. In addition to complaining that the new law severely limited a city's authority over its municipal affairs, the plaintiffs argued that SB 9 is not reasonably related to its stated goal of increasing the amount of affordable housing, since any new units and subdivided lots created under the law were not required to meet any affordability standards.

The trial court rejected the cities' arguments and entered judgment for the State in August 2023, noting that the cities could not invoke the municipal affairs doctrine relied upon in their complaint since they were general law cities rather than charter cities, and further noting that they had not demonstrated a likelihood that their complaint could be amended to state a viable cause of action. The cities quickly appealed the case.

### The Court of Appeal's Decision

The cities' argument at the appellate level mostly echoed the arguments rejected by the trial court, stating that they are entitled to challenge the law as applied due to its "lack of reasonable relationship to affordable housing," and further alleging that they would each be negatively affected by certain effects of increased development. For example, Rancho Palos Verdes alleged that increased street parking and congestion would pose difficulties in evacuating residents in the event of a fire, and Lakewood claimed that increased numbers of trash bins on the street resulting from developments under SB 9 would exacerbate parking issues. The cities also requested that the appeals court take judicial notice of the 2024 trial court judgment in *City of Redondo Beach v. Bonta*, in which the trial court held that SB 9 could not be enforced against charter cities (a decision currently under appeal).

The Court of Appeal held oral arguments in the case on August 15, and the court fairly quickly thereafter issued its decision, with an opinion published on September 4, 2025, upholding the trial court's decision. As with the trial court, the appellate court found that the cities were barred from challenging SB 9 because their challenge was substantively based on the municipal affairs doctrine grounded in California Constitution Article XI Section 5, although that doctrine only applies to charter cities. In fact, the court argued that the cities' request for judicial notice of the *Redondo Beach* case was evidence of the cities' inappropriate attempt to rely on this doctrine. The court also held that the cities would not be able to use their arguments about the negative effects of the law to support an amended complaint that would be any more viable than the existing complaint, since the cities cannot argue that those "legitimate concerns" arise from any constitutional violation.

As of this date, the cities still have the right to appeal this case to the California Supreme Court, although it is not clear whether any such appeal would be forthcoming. The Rancho Palos Verdes City Council took action during a closed session at its meeting on September 16, 2025, authorizing the filing of an appeal – but only if all three of the other cities join in that appeal, and none of the other city councils have considered the case since the opinion was published.

### Conclusion and Implications

Although SB 9 has not had the effect that some observers expected, it has encouraged some small amount of additional residential development. The fact that the appeals court was willing to uphold the law despite a constitutional challenge is good news for housing advocates – both because it continues to allow development under SB 9, but also since it is likely that challenges to this year's SB 79 will be based on similar claims as made by the cities in this case. On the other hand, given the restrictions included in SB 79, the majority of that new bill's effects would be felt within charter cities, and thus the separate *Redondo Beach* case now on appeal will be much more relevant, depending on how that case is decided. The court's opinion is available online here: https://www4.courts.ca.gov/opinions/documents/B332315.PDF

(Neal A. Parish, Darien Key)

# FIRST DISTRICT COURT REJECTS CITY'S RENT CONTROL ORDINANCE EXEMPTION FOR RENOVATED MILITARY HOUSING

*CP VI Admirals Cove, LLC v. City of Alameda*, ___Cal.App.5th___,
Case Nos. A170689, A170986 (1st Dist. Aug. 29, 2025).

In a published decision resolving a contentious question about the interplay between local rent control ordinances and state law exemptions under the Costa-Hawkins Act, the California Court of Appeal for the First District reversed a trial court order that had found certain renovated residential units exempt from Alameda's rent control regime. The court held that, under existing precedent (notably *Burien, LLC v. Wiley* and *NCR Properties, LLC v. City of Berkeley*), the units in question, which were once used for military housing and substantially rehabilitated after a long vacancy, were not "new" for purposes of the Costa-Hawkins ceartificate-of-occupancy exemption because the property had prior residential use.

## Factual and Procedural Background

In 2018, CP VI Admirals Cove, LLC (Carmel Partners) purchased a property in Alameda formerly owned by the U.S. Navy. The property originally consisted of about 150 residential units built circa 1969, used to house Navy and later Coast Guard personnel and their families. These units had not been part of the general rental housing market; they were restricted to military personnel. After military use ceased around 2005, the units remained vacant and fell into disrepair.

Carmel invested heavily (approximately $48 million) in rehabilitating the units and associated infrastructure (in addition to spending $38 million on acquiring the property). The City of Alameda issued a final certificate of occupancy in December 2020, classifying the occupancy as "new." Carmel thereafter rented the units to the general public.

A dispute soon arose over whether the units were exempt from Alameda's rent control ordinance under Costa-Hawkins. Under Civil Code § 1954.52(a)(1), residential units with certificates of occupancy issued after February 1, 1995, are generally exempt from local rent control. The Alameda Rent Program Director determined the exemption did not apply because the property had prior residential use (albeit for military housing). An administrative hearing officer upheld that determination.

Carmel petitioned the Alameda Superior Court for writ relief, asserting the exemption should apply and arguing the project effectively constituted new housing stock. The Superior court sided with Carmel, granting the writ and concluding the exemption applied. The City and related respondents appealed.

## The Court of Appeal's Decision

The Court of Appeal framed the core issue as how to interpret the § 1954.52(a)(1) exemption in light of prior precedent and legislative purpose. The court reviewed *de novo* the question of statutory construction and application of Costa-Hawkins.

### The Statutory Exemption and Precedent

The Court of Appeal began by restating that § 1954.52(a) provides three distinct exemptions from local rent control; here, the relevant one is subsection (a)(1): the "certificate-of-occupancy after February 1, 1995" exemption. On its face, the 2020 certificate of occupancy qualifies. But the court emphasized that appellate decisions have refined the reach of this exemption:

In *Burien, LLC v. Wiley*, the Court of Appeal interpreted § 1954.52(a)(1) as applying only when the certificate of occupancy issues *prior to* any residential use. A certificate granted in connection with conversion from one residential use to another does not trigger the exemption.

In *NCR Properties, LLC v. City of Berkeley*, 89 Cal. App.4th 1039 (2023) the court considered a case where unpermitted rooming houses were converted into lawful multifamily units. The court adhered to *Burien*'s construction and declined to extend the exemption to such conversions, even when renovations were extensive.

The Admirals Cove Superior Court adopted that same interpretive approach: the exemption in § 1954.52(a)(1) should apply only when the certificate of occupancy precedes any residential use, thereby

favoring new construction or additions rather than reconstructions of existing housing.

### Application to Admirals Cove

Applying those principles, the court concluded that the section 1954.52(a)(1) exemption did not apply to the Admirals Cove units, despite the 2020 certificate of occupancy. The property indisputably had prior residential use (military housing), and the extensive rehabilitation did not suffice to convert it into "new housing" under the statutory scheme.

The court rejected Carmel's arguments that the long vacancy period or the scale of renovations should distinguish the result. It declined to adopt a case-by-case inquiry into whether renovations are "sufficiently extensive" to warrant treating a rehabilitated property as new. That approach, the court reasoned, would undermine predictability and risk perversely rewarding owners who allowed properties to deteriorate.

Carmel also contended that military housing should not count as "residential use" for these purposes, because while under federal control, it was not subject to local regulation and was not open to the general public. The court was unpersuaded. It emphasized that the units functioned as housing accommodations that analogous restrictions (*e.g.* senior housing, income-restricted projects) limit public availability without losing their status as residential uses.

In sum, although the certificate of occupancy was issued after 1995, prior residential use prevented the exemption under § 1954.52(a)(1). Therefore, the Admirals Cove units remain subject to Alameda's rent control ordinance.

### Conclusion and Implications

The Court of Appeal reversed the trial court's judgment and remanded for further proceedings consistent with its opinion. The City shall recover costs on appeal.

This decision carries several important lessons:

- Statutory exemptions under Costa-Hawkins are not mechanical. A post-1995 certificate of occupancy is not always dispositive; courts will look behind the certificate to prior use and legislative purpose.

- "New housing" under Costa-Hawkins is narrowly construed. The *Burien/NCR Properties* line of precedent limits the reach of the exemption to property that had no prior residential use.

- Major rehabilitation does not automatically reset regulatory status. Even extensive renovations and long vacancy will not transform a formerly residential property into "new" housing under the statute.

- Federal vs. local use distinctions do not shield prior residential use. The fact that Admirals Cove was used by the military under federal control did not prevent classification as residential use for purposes of the exemption.

For local governments and rent boards, the decision reinforces that they may subject substantially rehabilitated projects to local rent control, so long as prior residential use can be established. For developers, the case underscores the legal risk in relying solely on a new certificate of occupancy to claim exemption from rent stabilization.

The *Admirals Cove* decision illustrates the care courts take in policing the boundary between statutory exemptions and local regulatory authority and the importance of precedent and legislative intent in resolving ambiguities. You can read the full opinion here: https://www4.courts.ca.gov/opinions/documents/A170689.PDF
(Miguel Mauricio)

# FIRST DISTRICT COURT BACKS CITY AND COUNTY'S DETERMINATION OF CONSISTENCY IN GENERAL PLAN DISPUTE OVER WATER SERVICES AGREEMENT

*Solano County Orderly Growth Committee v. City of Fairfield*, ___Cal.App.5th___,
Case No. A170680 (1st Dist. Aug. 28, 2025).

On August 28, 2025, the City of Fairfield (City), Solano County (County), and the Solano Irrigation District (SID) prevailed in an appellate case against the Solano Orderly Growth Committee (Committee), clearing the way for Fairfield to provide treated water to the Middle Green Valley project outside of city limits.

## Factual Background

In 2021, Solano County asked the City to work with SID to provide water services for the Middle Green Valley project development. The following year, the City agreed to treat raw water supplied by SID and return it as potable water, while SID assumed responsibility for distribution, operations, maintenance, billing, and all related costs. After the City approved the Potable Water Services Agreement, the Committee filed a writ petition seeking to overturn the agreement, claiming that the agreement violated California's Planning and Zoning Law because the agreement was inconsistent with the City's General Plan.

California's state planning and zoning laws require that every city and county adopt a comprehensive, long-term General Plan to guide physical development both within its boundaries and, where relevant, in adjacent areas. Certain local government actions—including adopting specific plans, regulating open space, approving development agreements, or reviewing parcel maps—must be consistent with the jurisdiction's General Plan.

The City's General Plan includes a "land use element" with an urban limit line designed to ensure growth occurs in a planned and orderly manner. The plan states that urban development requiring basic municipal services should only take place within the incorporated city and within that urban limit line. The Committee argued that the Potable Water Services Agreement amounted to providing a basic municipal service outside the boundary set by the plan, rendering the agreement inconsistent with the City's General Plan.

A trial court initially ruled in the Committee's favor, finding that the City abused its discretion and granted the Committee's petition, invalidating the Potable Water Services Agreement.

## The Court of Appeal's Decision

On appeal, the City and Solano County argued that state law does not require such service agreements to comply with a General Plan. The Court of Appeal agreed, concluding that although the water service would support development, it did not amount to a "land use decision" or a Specific Plan by the City.

The ruling cited earlier cases confirming that cities may decide whether to extend water services outside their boundaries, even when those decisions shape development patterns. The court added that while some municipalities require consistency between water agreements and their General Plans, the city of Fairfield does not. Even if consistency were assumed to be required, the judges found the agreement compatible with the City's broader planning objectives.

The court also emphasized that California law does not demand perfect conformity with every General Plan policy. Instead, projects must align reasonably with a plan's overall goals and courts are expected to defer to a city's interpretation of its own plan. The Court determined that the Potable Water Services Agreement was generally consistent with the City's land use policies, reasoning that treating water alone does not amount to urban development or the delivery of a core municipal service. The court further explained that several other provisions in the General Plan are advisory in nature rather than binding or mandatory. As a result, the Committee did not establish that the City acted unreasonably in concluding the agreement aligned with those provisions.

In the end, the Court of Appeal found:

The City and the County argue that California law does not require the potable water service agreement to be consistent with the City's General Plan. They further argue that even if the law does so require, the City reasonably determined that the approval and agreement were consistent with the General Plan, and that interpreting the General Plan to prohibit the City's approval of the agreement would infringe the City's constitutional authority to provide water outside its boundary. We are not persuaded that the law requires the agreement to be consistent with the City's General Plan. However, assuming that the law does so require, we conclude that the City's determination of consistency was reasonable. Therefore we reverse the trial court judgment.

### Conclusion and Implications

Representatives of the Committee expressed disappointment regarding the appellate court's ruling. Committee member Duane Kromm argued that the ruling weakens growth controls and erodes the distinction between city and rural areas. While the group will not be required to cover government agencies' court costs, it must pay its own legal fees.

This decision affirms the legitimacy of service arrangements in which agencies contract for limited functions—such as treatment or storage—rather than delivering full bundled retail service classified as a basic municipal function. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A170680.PDF
(Mona Goodarzi)

## FIRST DISTRICT COURT LIMITS USE OF PRE-PROPOSITION 218 ASSESSMENT FORMULAS

*Thacker v. City of Fairfield*, ___Cal.App.5th___, Case No. A171354 (1st Dist. Aug. 28, 2025).

The California Court of Appeal has recently published a decision offering important clarification on Proposition 218 and how it applies to assessment districts that existed before its passing.

The Court of Appeal held that when an agency adjusts an assessment under a formula or range adopted before Proposition 218, that adjustment still qualifies as an "increase" under the proposition. As a result, any assessment that predates the 1996 measure may only be maintained at the rate in effect when Proposition 218 was adopted, unless the agency complies with the propositions requirements for majority protest and balloting.

### Factual Background

*Thacker v. City of Fairfield* deliberates requirements under Proposition 218, which was approved by voters in 1996. Proposition 218 places restrictions on a local government's ability to levy taxes, property-related fees and assessments. Under Proposition 218, voter approval is generally required prior to the implementation of new or increased taxes and special assessments. In addition, for property-related fees and assessments, Proposition 218 mandates that fees and assessments must be proportional to the specific benefit received by the property, cannot be used to fund general government services, and may only be imposed if affected property owners are given the chance to approve them through a vote or protest procedure.

In 1988, the city of Fairfield (City) established the Rolling Hills Maintenance District to fund landscaping and lighting improvements. By 1996, when Proposition 218 went into effect, the district charged homeowners a flat annual fee of $196.23 per lot to fund the landscaping, lighting, and related maintenance. The City's methodology allowed adjustments within a predetermined range based on budgetary needs, and by fiscal year 2022–2023, the City had gradually raised the assessment to $300 per parcel.

A homeowner challenged the increase in price and argued that the City violated Proposition 218; local governments are restricted from imposing or raising taxes, fees, and assessments without voter approval. The homeowner reasoned that the City needed to have followed the required procedures—such as send-

ing mailed notices, holding a majority protest hearing or election, and complying with the measure's substantive limits. The City countered that its methodology predated Proposition 218 and therefore exempted it from compliance.

The Solano County Superior Court sided with the City, concluding that the assessment was grandfathered and that increases within the pre-1996 range did not qualify as "increases" under Proposition 218. The trial court reasoned that the assessment was exempt under Article XIII D, Section 5(a) of the California Constitution as a preexisting charge, and that the adjustments followed a methodology in place before Proposition 218 was adopted.

### The Court of Appeal's Decision

On August 28, 2025, the Court of Appeal reversed the trial court's decision and held that Proposition 218 defines "increased assessments" broadly, covering any adjustment that results in a higher charge than the amount in effect in November 1996. The court also rejected the City's claim that a flat, per-lot charge was not a "rate," finding that the statutory language clearly encompasses per-parcel assessments. As a result, the court's decision reinforces Proposition 218's role as an ongoing check on local government revenue tools.

In summary, the court stated:

> In sum, even if the Assessment fell within the exemption set forth in article XIII D, section 5, subdivision (a) of the California Constitution, it was increased for purposes of Proposition 218 when it exceeded the rate of $196.23 per residential lot—the rate at the time Proposition 218 took effect

### Conclusion and Implications

While the Court of Appeal remanded the case for further proceedings, the appellate ruling sends a clear message:

Agencies must treat any increase above 1996 levels as subject to Proposition 218.

Pre-1996 ranges or formulas cannot shield increases from voter approval.

Local governments should review existing assessments with counsel to determine compliance and assess potential revenue risks. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171354.PDF
(Mona Goodarzi)

## 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 130 (formerly AB 609) (Wicks)—**Former AB 609 was absorbed into the Budget Trailer Bill, which was approved by the Governor and became effective on June 30, 2025. As reflected in the Budget Trailer Bill, the provisions of former AB 609 would provide an exemption from California Environmental Quality Act (CEQA) for housing projects that meet certain specified conditions, including among other things, being on a site that is not more than 20 acres (except for a builder's remedy site, which cannot be more than five acres), being located in an urban area surrounded by urban uses, and meeting labor wage standards if proposed buildings would be over 85 feet in height. The project must also 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 and would preclude any project with certain site-specific features, such as wetlands or prime farmland. The bill also includes several measures to support housing projects, including among other things, a temporary freeze on state and local building code updates for nearly six years to provide more certainty for housing developers.

**AB 527 (Papan)—**This bill was enrolled and presented to the Governor on September 22, 2025. This bill would provide an exemption from the requirements of CEQA for geothermal exploratory projects where the county in which the geothermal project is located or the Geologic Energy Management Division is acting as lead agency, if specified conditions are met. These conditions include a scoping consultation with any California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project, filing of an indemnity bond by the project applicant, and full reclamation of the project site.

**SB 71 (Wiener)—**This bill was enrolled and presented to the Governor on September 17, 2025. The bill would extend and expand existing CEQA exemptions for certain transportation-related projects. Specifically, the bill would remove the 2030 sunset for the existing CEQA exemption for active transportation, pedestrian, and bicycle plans and adds new permanent exemptions for transit operational analyses and route changes. 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 extend that exemption's sunset date to 2040. 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 131 (formerly SB 607) (Wiener)—**Former SB 607 was absorbed into the Budget Trailer Bill, which was approved by the Governor and became effective on June 30, 2025. This bill would streamline environmental review for projects that do not meet all eligibility requirements for reliance on a categorical or statutory exemption, focusing the scope of environmental review on 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 internal agency communications not presented to the project decision-makers, with specified exemptions.

### California Coastal Act

**AB 357 (Alvarez)—**This bill was enrolled and presented to the Governor on September 24, 2025. As amended, the bill would require the Coastal Commission to defer to a state or private university or college in determining the number of vehicle parking spaces necessary for residents of student, faculty, or staff housing facilities. The bill would also authorize the Commission's executive director to determine that a proposed amendment to a public works plan or long-range development plan is *de minimis* and provides procedures for the determination and approval of de minimis amendments.

### Density Bonus Law

**AB 87 (Boerner)—**This bill was enrolled and presented to the Governor on September 9, 2025. As amended, this bill would provide that a local government is not required to grant an incentive or concession for a mixed-use development containing a hotel, motel, bed and breakfast inn, or other visitor-serving purpose to the portion of the proposed development containing such use. The bill was further amended to incorporate the changes proposed by SB 92 (see below) to be operative only if both bills are enacted and AB 87 is enacted last.

**SB 92 (Blakespear)—**This bill was enrolled and presented to the Governor on September 22, 2025. As amended, this bill would specify that a concession and inventive shall not result in a proposed project with a commercial floor area greater than two and a half times what is allowed under the base zoning. This bill would also 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.

### General Plans

**AB 39 (Zbur)—**This bill was enrolled and presented to the Governor on September 23, 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 enrolled and presented to the Governor on September 22, 2025. As amended, the bill aims to refine the process by which small rural 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 define small rural jurisdictions as cities with fewer than 25,000 people, or counties with fewer than 200,000 people and would require HCD to review, upon request of a small local jurisdiction, submitted housing element materials to determine whether they qualify for the prohousing designation.

**AB 610 (Alvarez)—**This bill was enrolled and presented to the Governor on September 23, 2025. As amended, the bill would require cities and counties to include a potential and actual governmental constraints disclosure statement as part of their General Plan Housing Elements, identifying each new or amended potential or actual government constraint or revision that would increase the stringency of a governmental constraint that was adopted after the due date of the previous housing element and before submittal of the current draft housing element to HCD or that the local government anticipates adopting.

**SB 233 (Seyarto)—**This bill was enrolled and presented to the Governor on September 22, 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 (except for certain specified councils) 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 enrolled and presented to the Governor on September 16, 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 enrolled and presented to the Governor on September 24, 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. As amended, this bill would apply the same rules to post-entitlement permitting conducted by a state agency for permits necessary to begin construction of a development intended to be at least two-thirds residential. The bill would require a state agency to make the information list with examples of a complete, approved application and a complete set of post entitlement phase permits available on the agency's website by January 1, 2026.

**AB 712 (Wicks)—**This bill was enrolled and presented to the Governor on September 11, 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 extend any statute of limitations period for state law actions for 60 days beginning on the date the applicant provides written notice to the local agency of its intent to commence an action. 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 920 (Caloza)—**This bill was enrolled and presented to the Governor on September 4, 2025. This bill would require each local agency with a population of at least 150,000 to create a centralized application portal available on its website to applicants for housing projects by no later than January 1, 2028. The application portal must allow for tracking of the status of an application but is not required to provide the status of any permit or inspection required by another local agency, a state agency, or a utility provider.

**AB 1007 (Rubio)—**This bill was enrolled and presented to the Governor on September 24, 2025. The bill would reduce the time period during which a responsible agency, other than the California Coastal Commission or the San Francisco Bay Conservation and Development Commission, may approve or disapprove a project under the Permit Streamlining Act from 90 to 45 days. Application of the timeline requires both lead agency approval and submittal of a complete application to the responsible agency to commence.

**SB 9 (Arreguín)—**This bill was enrolled and presented to the Governor on September 9, 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 enrolled and presented to the Governor on September 23, 2025. The bill would establish zoning standards near major transit stops that allow for multi-family housing up to 95 feet, with lower height standards extending up to a half a mile away and supersedes more restrictive local standards. 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 adopt transit-oriented development zoning standards for district-owned properly located in a transit-oriented development zone.

**SB 489 (Arreguín)**—This bill was enrolled and presented to the Governor on September 9, 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 require a public agency, for each type of approval issued in connection with a housing development project, to publish online the criteria that the public agency will apply in order to determine the completeness of the development application and the name of the approval.

## Public Records Act

**AB 343 (Pacheco)**—This bill was enrolled and presented to the Governor on September 15, 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 approved by the Governor and chaptered on July 14, 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 enrolled and presented to the Governor on September 22, 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 or 500 units, whichever is greater. 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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