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LAND USE NEWS

CALIFORNIA TRIBAL CONSULTATION GUIDELINES TO BE UPDATED

On September 25, 2025, Governor Gavin Newsom's Office of Land Use and Climate Innovation (LCI) announced its extensive plans to update California's Tribal Consultation Guidelines (Guidelines) to further protect Tribal cultural resources and continue to foster relationships with the Native communities throughout the state.

Background

LCI, previously known as the Office of Planning and Research, was established in California in 1970. Since its creation, LCI has been responsible for cultivating and implementing forward-thinking initiatives within the state government and beyond. LCI's work aims to emphasize and resolve critical issues including land use, climate resilience, housing opportunities, and community empowerment.

In 2005, the California legislature passed Senate Bill 18, which aimed to protect Native American cultural heritage. Senate Bill 18 required California's local governments to consult with neighboring Native American tribes before adopting new plans or amending existing plans that would affect any sacred, historic, or cultural sites or objects belonging to the Native Americans.

Senate Bill 18 also required that the legislature develop advisory guidelines for local general plans in order to guarantee proper protection of Native American resources. The first order in the consultation process begins with local government contacting the appropriate tribe notifying the tribe about the opportunity to consult on a matter. Tribes then have 90 days to accept that opportunity and officially request a consultation. The last step is met when both parties mutually agree on a path forward or otherwise conclude that a mutual agreement to move forward cannot be reached.

Another piece of legislation that has often come into play is Assembly Bill 52 which was passed in 2014 and codified in Public Resources Code Section 21080.3.1. Assembly Bill 52 was created to establish a formal consultation process when a project is subject to California Environmental Quality Act (CEQA) review, and when to identify "tribal cultural resources" and mitigate impacts to them.

Under Assembly Bill 52, a tribe that maintains traditional and cultural ties to the geographic area in which a project is proposed may request that the lead agency or local government provide written notification of any projects within the tribe's area of traditional and cultural affiliation. These CEQA-related reviews require different and often shorter time periods for tribes to request a consultation. Generally, the lead agency for a given project should contact tribes that have requested notification of such projects no later than 14 days after an application has been completed or when the lead agency has decided to accept a project. The tribes then have 30 days to request a formal consultation.

A recent case in the California Court of Appeal for the First District strengthened Assembly Bill 52. The court found that the city did not fulfill its obligation to engage in meaningful consultation with a California Native American tribe as required by Assembly Bill 52, prompting the court to overturn approvals for a hotel and roadway project. *Koi Nation of Northern California v. City of Clearlake*, ___Cal.App.5th___, Case No. A169438 (1st Dist. Mar. 14, 2025). This decision heightens the level of diligence expected from agencies and developers when carrying out and recording tribal consultation under CEQA.

The New Guidelines

The original Tribal Consultation Guidelines were adopted in 2005 and have served as a foundational resource to ensure that Tribal governments have an active and meaningful role in land use and environmental planning decisions. The revisions introduced by Governor Newsom's office intend to incorporate substantial legal and policy developments that have occurred in the 20 years since the enactment of Senate Bill 18, including the passage of Assembly Bill 52 in 2014 and relevant and binding case law.

In updating the Tribal Guidelines, the process will include an extensive schedule of consultations—both in-person and virtual—over the next 18 or so months. LCI plans to release a draft outline for Tribal review in late fall 2025, followed by a formal consultation phase designed to capture feedback and insight from Tribal Nations and Native communities at each stage of development.

In addition, concurrent with updating the Tribal Consultation Guidelines, California's General Plan Guidelines—last updated in 2017—will also be undergoing a multiyear revision, both likely to be completed by 2027. Collectively, these updates aim to provide clear, practical, and culturally respectful direction for local governments, lead agencies, and project applicants to ensure compliance with CEQA's consultation requirements and related state planning laws.

Conclusion and Implications

Over the next two years or so, LCI will engage in sustained collaboration with tribal nations to ensure that the updated guidelines accurately reflect current statutes, new legislative mandates, and recent judicial interpretations, and to most importantly best protect the traditions, culture, and resources of neighboring native communities.
(Mona Goodarzi)

MARIN COUNTY HOUSING DISPUTE HIGHLIGHTS GROWING TENSIONS OVER CALIFORNIA'S HOUSING MANDATES

A dispute in the small town of Fairfax in Marin County has become a focal point in California's ongoing struggle to enforce state housing laws against local resistance.

The Project

The controversy centers on a proposed 243-unit apartment complex at School Street Plaza and has drawn the attention of housing advocates, state regulators, and local officials alike. The nonprofit group, "Yes In My Backyard" (YIMBY) Law, has accused Fairfax of violating state housing statutes by denying ministerial, or streamlined, approval for the project. The organization argues that the town's refusal contradicts its own housing policies and could expose it to penalties, including loss of state certification for its housing element—a key component of local general plans required under California law.

In letters sent to Fairfax Planning Director, Jeffrey Beiswenger, and the state Department of Housing and Community Development (HCD), YIMBY Law Executive Director, Sonja Trauss, warned that the group would take legal action if the town continues to block the project. The group, which frequently sues cities it believes are undermining state housing laws, has brought similar cases against Los Angeles, San Francisco, and other municipalities.

YIMBY Law attorney, Jack Farrell, also urged the state to consider decertifying Fairfax's housing element if it refuses to process the project under the streamlined review procedure. Such a move could trigger what is known as the "builder's remedy," allowing developers to bypass local zoning restrictions and seek automatic approval for housing projects, provided they meet objective safety and design standards.

Beiswenger, however, has maintained that the School Street Plaza proposal does not qualify for ministerial approval under the Fairfax Municipal Code. In a June 5 letter to the project's developer, Mill Creek Residential, he cited several disqualifying factors, including the site's location within a high fire severity zone and the demolition of units occupied by tenants within the past decade.

According to YIMBY Law, the town's own policy—approved to satisfy state housing mandates—explicitly allows ministerial approval for certain housing projects on designated sites, including School Street Plaza. Farrell noted that HCD initially withheld Fairfax's housing element certification due to concerns about the town's implementation of ministerial approval procedures and granted certification only after the town agreed to allow by-right approval for projects meeting specific criteria.

The stakes for Fairfax are significant. Every eight years, HCD sets housing production targets for each region of the state based on projected growth. For the 2023–2031 cycle, Fairfax must plan for 490 new homes, including 235 units designated for low and very low-income households. Countywide, Marin is

expected to accommodate about 14,000 additional housing units by 2032.

Yet, local opposition remains deeply entrenched. For decades, Marin County has been a stronghold of resistance to growth, favoring strict land-use controls to preserve its suburban character. A 1971 policy document captured the prevailing sentiment, warning against what it described as population "hordes" seeking to move into the county. That philosophy has continued to shape local attitudes toward development, even as state law has evolved to require more housing diversity and density.

As Governor Gavin Newsom and the legislature have intensified enforcement of housing mandates, many local governments have struggled to balance community opposition with state compliance. Marin, in particular, has faced increasing scrutiny for its slow pace of development and limited acceptance of multifamily housing. While some communities in the county have reluctantly approved higher-density projects, others, like Fairfax, remain locked in legal and political battles.

The controversy has also fueled political unrest in Fairfax itself. Town council members Lisel Blash and Stephanie Hellman face a recall effort partly motivated by anger over housing policy decisions. The campaign's organizers have until the end of October to submit nearly 1,500 signatures to qualify the recall for the ballot.

Conclusion and Implications

Housing advocates argue that Fairfax's continued resistance will ultimately backfire, predicting that state enforcement or court orders will compel the town to approve projects consistent with housing laws.

Local officials and residents, however, remain wary of what they view as the state's erosion of local control. Several members of the Marin County Planning Commission resigned in frustration over what they described as Sacramento's "upending" of traditional land-use review processes.

For now, Fairfax finds itself at the center of a broader statewide reckoning—where the tension between local autonomy and state housing mandates continues to test the limits of California's efforts to confront its housing shortage.
(Mona Goodarzi)

LEGISLATIVE DEVELOPMENTS

CALIFORNIA ENACTS SB 79 TO MANDATE HIGHER-DENSITY HOUSING NEAR TRANSIT

In a landmark action aimed at reshaping land use in transit-rich areas across California, the Governor signed Senate Bill 79 (SB 79) into law. The measure establishes a new statewide framework for transit-oriented development (TOD), setting mandatory minimum zoning standards, density allowances, and streamlined approval pathways for housing within a half-mile of major transit stops. SB 79 reflects California State Senator Scott Wiener's multi-year effort to expand housing production near high-quality transit, and represents one of the most consequential land-use reforms of the 2025 legislative session.

SB 79 aligns squarely with the Governor's emphasis on bold statewide intervention to increase housing supply in infill and transit-rich locations. Its combined elements are consistent with the Governor's stated housing priorities.

Background and Legislative Purpose

The Legislature adopted SB 79 in response to long-standing evidence that restrictive zoning near transit has constrained housing supply, undermined transit ridership, and exacerbated the state's housing affordability crisis. Despite billions invested in rail, commuter rail, and rapid bus infrastructure, many transit-rich neighborhoods remained zoned predominantly for low-density residential use, limiting opportunities for infill growth and reducing the effectiveness of major regional transit systems.

SB 79 builds on Senator Wiener's prior legislative efforts to promote transit-oriented development by requiring all jurisdictions statewide to accommodate significantly more housing near transit stops. The intent is to align land-use patterns with state housing needs, greenhouse-gas reduction goals, and regional mobility objectives, while ensuring that TOD growth occurs alongside affordability and anti-displacement protections.

Overview of SB 79's Structure

SB 79 creates a comprehensive statewide TOD entitlement system applicable to parcels within a half-mile of qualifying transit stops. The statute includes:

- mandatory minimum height, density, and FAR standards near transit;
- tiered entitlements tied to transit frequency and capacity;
- baseline affordability and anti-displacement requirements;
- a streamlined review pathway modeled on SB 35;
- a dedicated TOD framework for transit agency-owned property;
- a new "adjacency intensifier" extending benefits outside the immediate TOD radius; and enhanced oversight authority for the Department of Housing and Community Development (HCD).

Local jurisdictions may adopt their own alternative TOD plans, but only if they maintain equivalent overall housing capacity.

SB 79's Site Eligibility Framework

SB 79 applies to housing development projects on parcels zoned for residential, mixed-use, or commercial uses located within a half-mile of a TOD Stop. To qualify, projects must meet minimum baseline thresholds: at least five dwelling units; at least 30 units per acre and average unit sizes not exceeding 1,750 square feet.

Tiered Transit Categories

The statute establishes two categories of TOD Stops: (1) Tier 1 TOD Stops, located in counties with more than 15 passenger rail stations and served by heavy rail or extremely frequent commuter rail (at least 72 trains per day); (2) Tier 2 TOD Stops, including light rail, high-frequency commuter rail, and eligible high-frequency bus service.

Mandatory Zoning Standards

SB 79 prohibits local governments from imposing height, density, or FAR limits below state minimums, which vary based on transit tier and distance from the station: (1) For Tier 1 TOD Stops, SB 79 requires that parcels located within one-quarter mile of the station be permitted at minimum heights of 75 feet, densities of at least 120 units per acre, and floor area ratios (FAR) of up to 3.5. For sites between one-quarter and one-half mile of Tier 1 stops in larger cities, the statute establishes slightly reduced but still significant minimums of 65 feet in height, 100 units per acre, and an FAR of 3; (2) For Tier 2 TOD Stops, sites within one-quarter mile must allow at least a 65-foot building height, 100 units per acre, and an FAR of 3. Between one-quarter and one-half mile of Tier 2 stops in larger jurisdictions, the minimum entitlements decrease to 55 feet in height, 80 units per acre, and an FAR of 2.5.

Labor Provisions and Housing Accountability Act Enforcement

SB 79's labor provisions are structured to support housing feasibility by exempting transit-oriented development projects from heightened labor requirements. Specifically, projects under 86 feet in height are not subject to prevailing-wage obligations, a distinction that is expected to significantly improve project viability and reduce construction costs for mid-rise developments. By limiting mandatory prevailing wage only to projects above 85 feet, the Legislature sought to strike a balance of encouraging dense, transit-proximate housing while avoiding cost burdens that could prevent many projects from penciling out, particularly in jurisdictions where land values or financing conditions are already challenging. This exemption is anticipated to make a substantial portion of SB 79–eligible projects more financially feasible, especially those between 55-85 feet multifamily buildings that often form the backbone of infill development near transit.

SB 79 also strengthens enforcement through the Housing Accountability Act (HAA). Beginning in 2027, the statute establishes a presumption that a local jurisdiction's denial of a compliant TOD project in a high-resource area violates the HAA. High-resource areas are priority locations for new housing under state policy. By layering this presumption onto SB 79's entitlement framework, the Legislature signals that cities will face heightened legal exposure if they improperly deny projects that meet the law's objective standards. This added enforcement mechanism is intended to ensure that the substantial development capacity unlocked by SB 79 is not undermined by local resistance, and that compliant projects can move forward swiftly in the locations where they will have the greatest access to transit, jobs, and opportunity.

The Adjacency Intensifier

In addition to the core half-mile TOD zone, SB 79 establishes an "adjacency intensifier" designed to extend development incentives to parcels located just beyond the immediate TOD boundary established by SB 79. Under this provision, qualifying projects are entitled to a baseline increase of 20 feet in building height, up to 40 additional dwelling units per acre, and an additional floor area ratio (FAR) bonus of 1.

The adjacency intensifier reflects the Legislature's recognition that transit-oriented housing demand does not abruptly end at a strict half-mile radius. Parcels situated slightly further from transit stops may remain highly walkable, well-served by feeder bus lines, or otherwise integrated into the regional transit network. By extending height, density, and FAR benefits beyond the core TOD zone, SB 79 ensures that development potential aligns with practical transit accessibility and promotes a more continuous, efficient pattern of infill housing growth.

TOD Provisions for Transit Agency-Owned Property

SB 79 also includes a similar dedicated entitlement track for TOD projects on land owned by transit agencies. SB 79 empowers a transit agency's board of directors to establish transit-oriented development zoning standards for its own land, setting minimum thresholds for building height, density, floor area ratios, and allowable uses. Once implemented, these standards take precedence over local zoning on agency-owned parcels if a jurisdiction does not update its ordinances to comply within two years. The law also requires agencies to follow specific procedural steps, including holding public hearings, engaging with affected cities and communities of concern, and consulting on local housing needs and recent TOD approvals.

To qualify, projects must:

- devote at least 50 percent of floor area to residential use,
- restrict at least 20 percent of units to lower-income households for long-term affordability,
- maintain average unit sizes below 1,750 square feet, and be located on infill sites.

Streamlined Approval: Integration with SB 35

A significant component of SB 79 is its integration into California's existing SB 35 ministerial approval process (Gov. Code § 65913.4). TOD projects that meet SB 79 eligibility and affordability standards may pursue: (1) ministerial approval, (2) no CEQA review, and (3) strict review timelines (often 60–90 days).

The statute bars discretionary approvals, conditional use permits, and subjective design review for qualifying projects. This SB 35 integration is intended to ensure that SB 79's entitlements are enforceable in practice and not subject to local delay.

HCD Oversight and Local TOD Alternative Plans

SB 79 expands HCD's oversight role in several respects. By July 1, 2026, HCD must establish standards for calculating TOD capacity for housing-element and RHNA purposes. Local governments may adopt TOD ordinances or alternative plans, but only if they maintain at least equivalent housing capacity, measured in units and floor area.

Key safeguards include:

- prohibitions on reducing capacity within TOD Zones by more than 50 percent;
- minimum density and FAR floors for Tier 2 areas;
- caps preventing jurisdictions from concentrating density in a small number of parcels; and
- mandatory HCD review of draft ordinances before adoption.

If HCD finds noncompliance and the jurisdiction fails to remedy it, the department may refer the matter to the Attorney General.

Conclusion and Implications

SB 79 represents a transformative recalibration of the balance between state housing mandates and local zoning authority in transit-rich areas. By establishing clear, enforceable statewide entitlements for height, density, and FAR, the legislature aims to ensure substantial new housing production where transit access is greatest.

The statute's structure blends statewide mandates with limited local flexibility, allowing jurisdictions to adopt their own TOD plans so long as they maintain equivalent housing capacity. Its integration with SB 35 streamlining and expanded HCD oversight signals the Legislature's commitment to ensuring that TOD entitlements are realized in practice, not just on paper. For more details on SB 79, *see:* https://legiscan.com/CA/text/SB79/id/3059553

(Miguel Mauricio)

REGULATORY DEVELOPMENTS

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RELEASES SECOND COMPREHENSIVE REVISION TO STATE WILDLIFE ACTION PLAN

In October 2025, the California Department of Fish and Wildlife released the second update to the 2005 State Wildlife Action Plan. This plan, or SWAP, provides a blueprint for comprehensive and strategic statewide wildlife conservation plans crafted to achieve specific, and detailed, conservation goals. The SWAP specifically focuses on conservation of species which are not currently listed as engendered species under the Endangered Species Act, but face the threat of such designation without intervention in the form of conservation, and habitat restoration and protection.

Background

In 2005, Congress mandated each state and territory submit a State Wildlife Action Plan for approval to the U.S. Fish and Wildlife Service as a condition for receiving federal funding for wildlife conservation. The plans must be revised at least every ten years and include specific criteria for how threats to wildlife, and their habitats, will be addressed. CDFW released the first evaluation and revision of California's 2005 plan in 2015 and, as of October, has released the second evaluation and revision. The 2025 plan is shaped by input from the public and representatives from state and federal agencies and tribes gathered through conservation partner meetings, public webinars, and inter-tribal listening sessions. The SWAP is implemented through several projects; inter-agency, private, and academic sector coordination; and sector-specific conservation companion plans, implemented by state agencies. To date, CDFW has received nearly $71 million to support conservation strategies through the U.S. Fish & Wildlife Service's State Wildlife Grant program, and CDFW uses these funds to support implementation of the statewide conservation projects, outlined in the SWAP, to achieve detailed conservation goals.

The SWAP's conservation strategies protect certain species, designated as "Species in Greatest Conservation Need," and achieve conservation goals through several mechanisms including identification of key threats; protection and restoration of critical, species-supporting habitats; monitoring and research plans; and creation of specific-issue focus groups. With specific regard to aquatic ecosystems and anadromous fish, those species which largely live in saltwater body migrate to freshwater rivers to spawn, the SWAP details the primary conservation goal as management and conservation of the following species of fish: chinook and coho salmon, steelhead and cutthroat trout, green and white sturgeon, longfin smelt, and pacific lamprey and western river lamprey; as well as their critical habitats. The plan identifies specific habitat stressors as: population growth and increased infrastructure as a result of community expansion; dams and water management/use; and climate change. The SWAP provides specific conservation strategies to combat these stressors, all of which are crafted under the framework of six principles: water management, habitat restoration, species recovery, angling opportunities, hatchery management, and promotion of collaborative efforts through inter-agency, tribal, private, and academic partnerships.

At present, there are several state projects which address the conservation needs of the aforementioned species, and their habitats, such as the California Water Action Plan, Healthy Rivers and Landscapes Program, and the California Water Plan, among others. The SWAP recognizes these companion efforts and crafts goals that incorporate aspects of those projects in an effort to ensure successful outcomes through collaboration and shared resources. In addition, the SWAP details additional priority actions which require more immediate implementation, in addition to long-term commitment.

The State Wildlife Action Plan

The SWAP addresses statewide conservation needs by crafting specific conservation goals for four separate regions. First, North Coast and North/Central Coast conservation strategies focus heavily on salmon populations in the region and include numerous targets including as establishment of collaborative

working groups for the Smith, Mattole, and South Fork Eel river salmon watersheds to support strategies to promote strong salmon populations; evaluation and restoration of coastal estuaries, and development of strategies to enhance and restore Russian Rivershed conditions, implementations of water management plans that ensure fishery and land use efforts are compatible with conservation strategies, and expansion of the Warm Spring Hatchery complex to serve as a potential regional conservation facility to species in the North Central domain.

Second, Klamath River strategies focus specifically on, both, salmon and lamprey species and include actions to improve water flow to support species migration (such as the Klamath River Dam Removal project), establishment of an inter-organizational team to promote habitat recovery plans and species monitoring programs, implementation of efforts that support the Trinity River Restoration Plan and Klamath River Settlement, and strategic species hatchery management.

Third, South Coast and Southern California conservation strategies detail strategies to benefit the steelhead such as remediation of downstream barriers which prevent the Steelhead from entering rivers and streams, modification of land use practices and water management strategies which negatively affect steelhead populations, and establishment of a monitoring program to further evaluate steelhead populations and related ecological process.

Fourth, the conservation strategies for the Sacramento-San Joaquin River region address recovery strategies for the chinook salmon and steelhead populations of the region and lists specific conservation goals for each species including integration of current conservation efforts within current National Marine Fisheries Service and CDFW recovery programs, the Central Valley Project Improvement Act, the Bay Delta Conservation Plan, the San Joaquin River Restoration Program, as well as dam reintroduction projects on the Yuba, Feather, and Sacramento rivers.

Conclusion and Implications

While the State Wildlife Action Plan is not a regulatory tool and does not provide specific mandates, it does guide priorities and funding while encouraging inter-agency coordination thereby creating greater potential for successful outcomes. The nearly 800-page SWAP provides extensive, and detailed, conservation strategies to accomplish the listed conservation targets, creating an underpinning for greater statewide water policy and water management practices. Any creation of, or amendment to existing, water policies which may affect or alter streamflows, connectivity, water storage practices, should to take into account, and incorporate, the conservation strategies detailed in the SWAP, both, because of the benefit of public input that has already been generated in creation of the revision, but because of the greater database of information and resource which has been compiled. Further, the goals and strategies detailed in the SWAP may likely play an influential role in how decision makers evaluate, approve, or deny permits for projects, or project proposals, which have the potential to alter or impact streamflow, negatively affect key species or surrounding habitats, or otherwise create outcomes that would be in contradiction to the outlined conservation goals in the SWAP. In this manner, the strategies and guidelines provided in the SWAP have the potential to directly influence the regulatory process, and continued evolution of water-related policy in the state. The State Wildlife Action Plan is available at https://wildlife.ca.gov/SWAP/Final

(Miles Krieger)

DISPUTE BETWEEN CITY AND DEVELOPER HIGHLIGHTS TENSIONS BETWEEN SGMA AND STATE HOUSING POLICY

On September 22, 2025, the California Department of Housing and Community Development (HCD) issued a technical assistance letter that questions the City of Patterson's decision to reject a developer's tentative subdivision map for a proposed housing development. The Keystone Ranch development project (Project) sought to subdivide 95 acres into 719 single- and multifamily housing units in Stanislaus County. At a meeting in April 2025, the Patterson City Council rejected the subdivision map, finding groundwater supplies were insufficient to meet demands. The developer filed suit, arguing the City violated housing law by demanding an unreasonable condition to fund a $20 million groundwater recharge facility.

Background

The City's primary water supply is groundwater from the Delta-Mendota Subbasin. The Subbasin is considered "critically overdrafted," putting it at the highest priority for developing and implementing one or more Groundwater Sustainability Plans (GSPs) under the Sustainable Groundwater Management Act (SGMA). The six GSPs adopted for the Delta-Mendota Subbasin in 2022 acknowledged a net overdraft of 140,000 acre-feet per year. The GSPs described projects and management actions to address groundwater deficits via supply augmentation and reduction of current demands, but the Department of Water Resources deemed them inadequate in 2023. A new single GSP was adopted in 2024, which the State Water Resources Control Board will consider alongside potential state intervention and probationary status.

California also faces a housing shortage, estimated between 1 million and 3.5 million units. Meanwhile, housing costs in the state far exceed the national average. The Legislative Analyst's Office (LAO) has reported that a "bottom-tier" home in California costs about 30 percent more than a "mid-tier" home elsewhere in the country. Recent efforts to counter the housing shortage include amendments to the Housing Accountability Act (HAA) and the passage of the Housing Crisis Act (HCA). Together, these laws work to limit local governments' ability to deny or downsize housing projects, hinder growth, impose undue development fees, or deliberately delay projects.

The Keystone Development Project

The Project was proposed within the Zacharias Master Plan, a 1,200-acre area in Stanislaus County that the City annexed in 2023. The City issued, pursuant to the California Environmental Quality Act (CEQA), a final Environmental Impact Report (EIR) for the Zacharias Master Plan in 2021; the EIR did not identify groundwater impacts, but in the years since its adoption, concerns over groundwater sustainability and legal challenges prompted the City to consider a need for additional environmental analysis and mitigation. As part of a settlement of the EIR litigation, the City agreed to require developers to fund a recharge project and purchase surface water to offset groundwater demands.

At its April 2025 meeting, the City Council called for a supplemental EIR for the Zacharias Master Plan as a condition for Project approval. Additionally, the City sought to impose development fees on the Project proponents to fully fund a $20 million groundwater recharge basin to supplement the City's water supply. According to the City, the recharge basin is needed to comply with SGMA and its settlement of the EIR litigation. The City Council indicated it would withhold a "will-serve" letter for the Project until it achieves offsets that account for the development's increased demands. Because the recharge basin would supply more than just the proposed development, the City noted the Project developer would be given a chance to recoup costs in excess of its proportional share via fee credits and reimbursements.

When the Project developer refused to accept the conditions of approval, the City rejected the subdivision map and stated its intent to move forward with recirculation of the EIR for the Zacharias Master Plan to incorporate new groundwater data from the 2024 GSP. The Project developer sued the City, alleging, among other things, that the City's denial violated state housing law. (*Keystone Ranch, LLC v. City of Patterson et al.*, Stanislaus County Superior Court Case No. CV-24-003269.) The Project developer's

briefing elaborates on its housing violation claims, arguing in part that the City failed to support its denial of the Project with necessary findings that the Project would adversely impact public health or safety based on standards in effect at the time of the Project application.

HCD Involvement

In its September letter, HCD similarly characterizes the City's decision as inconsistent with state housing law, namely the HAA and HCA. HCD focuses on the City's requirement for the Project to shoulder the cost of the groundwater recharge facility, which it considers a considerable burden on the Project. HCD also notes that the City failed to make sufficient findings under the HAA to deny the Project, and that the Zacharias Master Plan purported to limit developers' contributions to "their respective fair share" of infrastructure projects. HCD states that the funding condition and other requirements may run afoul of the HCA, as they operate as *de facto* restrictions on housing development. HCD requests that the City respond to its letter in writing by October 22, 2025, indicating how it plans to implement the guidance provided in its letter.

Conclusion and Implications

The arguments raised by the Project developer, HCD, and the City highlight an apparent tension between the state's competing policies for expanded housing and groundwater sustainability. HCD suggests the City has a choice to respond with written findings and analysis that demonstrate compliance with the HAA and HCA, or provide a timeline for revisiting its rejection of the Project. The City, on the other hand, contends that it cannot approve a development that runs afoul of SGMA as the Delta-Mendota Subbasin faces potential probationary status. A copy of HCD's letter to the City of Patterson is available at: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/patterson-hau-1958-ta-092225.pdf.
(Josh Bailey, Austin Cho)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT CLARIFIES THE CLEAN WATER ACT'S IRRIGATED FLOWS EXEMPTION

Pacific Coast Federation of Fishermen's Associations, Inc. v. Nickels, 150 F.4th 1260 (9th Cir. 2025).

The Ninth Circuit, on September 5, 2025, has affirmed the U.S. District Court for the Eastern District of California's holding that the federal Clean Water Act's (CWA) irrigation return flows exemption applied to Grassland Bypass Project (Project), clarifying that minor commingling with nonpoint source pollution doesn't defeat the exemption. The ruling preserves a long-standing balance between agricultural water management and environmental protection.

Background

Launched in 1996 to address selenium contamination from agricultural drainage, the Project is a Central Valley drainage system that conveys irrigation return flows from nearly 100,000 acres of farmland into the Mud Slough wetlands, a navigable water feeding into the San Joaquin River. The Project operates as a nonpoint source under the irrigation return flows exemption.

Plaintiffs filed suit in 2011 alleging the Project violated the CWA by discharging pollutants from non-agricultural sources—such as groundwater seepage and urban runoff—without a National Pollutant Discharge Elimination Sysatem (NPDES) permit. The Ninth Circuit ultimately upheld the Project's exempt status under the CWA.

The Clean Water Act and Irrigation Flows Exemption

The CWA prohibits discharge of pollutants from a point source into navigable waters without first obtaining an NPDES permit. However, the CWA contains an exemption for discharge comprised *entirely* of return flows from irrigated agriculture. The irrigation flows exemption was intended to: (i) alleviate the burden posed by having the Environmental Protection Agency (EPA) issue permits to every agricultural point source; (ii) promote equitable treatment of irrigated and non-irrigated agriculture; and (iii) address the practical difficulty of tracing diffuse agricultural runoff to upstream sources. Under the exemption, return flows from irrigated agriculture are treated as though they are nonpoint sources of pollution.

The Ninth Circuit's Decision

The Meaning of "Entirely"

Plaintiffs contended the word "entirely" should be read literally, arguing that any commingling of irrigation flows with pollutants unrelated to irrigated agriculture, even in trace amounts, negates the exemption thereby requiring an NPDES permit. The Ninth Circuit disagreed, reasoning the exemption's statutory text left ambiguous "whether 'entirely' requires every pollutant within a return flow to be from irrigated agriculture or every discharge within a return flow to be from irrigated agriculture." Judge Gabriel Sanchez, writing for the unanimous panel, offered a simple analogy: a wallet "filled entirely with twenties" may still contain a family photo and be accepted as a wallet filled entirely with twenties.

Legislative Intent and Practical Considerations

The Court of Appeals turned to the legislative history for guidance, quoting a Senate report that clarified the exemption was intended to apply to return flows that "do not contain additional discharges from activities unrelated to crop production." As the CWA only govern point source discharges, the court reasoned irrigated return flows may not contain additional point source discharge unrelated to crop production.

Next, the court looked at the congressional purpose of the exemption, finding that Congress intended to avoid imposing burdens on the EPA, treat farmers fairly, and address the difficulties presented by distinguishing diffuse, untraceable pollutants from point source discharges on farms. Plaintiffs' interpre-

tation would frustrate all of these purposes.

Finally, the court noted Plaintiffs' reading would "render the exemption a dead letter," as virtually all irrigation systems experience some incidental commingling with dust, runoff, or seepage. Under such an interpretation, no irrigated agriculture system would ever qualify for the exemption.

Analysis of The Four Alleged Pollution Sources

Plaintiffs identified four alleged sources of pollution they claimed defeated the exemption—all of which the court rejected. In doing so, the court found the sources of the pollution originated from nonpoint sources or from a point source related to crop production. Accordingly, the Project remained within the irrigation flows exemption.

Conclusion and Implications

The Ninth Circuit's decision provides clarity on the scope of the Clean Water Act's irrigated agriculture exemption, emphasizing statutory intent over literal interpretation. By affirming that minor, incidental commingling fails to invalidate the exemption, the court preserved regulatory certainty for western irrigation districts while maintain state authority over pollution from nonpoint sources. This may serve as key precedent for balancing agricultural operations with environmental mandates. However, questions remain as to how much commingling is too much. The Ninth Circuit's opinion is available here: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/09/05/23-15599.pdf
(Kendall Lovell, Derek Hoffman)

RECENT CALIFORNIA DECISIONS

SECOND DISTRICT COURT AFFIRMS STATE'S AUTHORITY TO OVERRIDE ZONING IN SB 9 CHALLENGE

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

In a published decision addressing the contested interplay between local land-use control and state housing law, the California Court of Appeal for the Second District affirmed the judgment of the Superior Court rejecting a challenge by several general-law cities to the constitutionality of Senate Bill 9 (SB 9). The Court of Appeal held that the cities, organized under general law rather than charters, could not invoke the municipal affairs doctrine, that the statute fell within the state's police power, and that the cities failed to identify any constitutional right or viable cause of action. The ruling underscores the strength of state housing law in overriding local resistance in general-law jurisdictions and clarifies the legal limits of municipal authority when addressing statewide housing policy, particularly in light of California's ongoing housing crisis.

Factual and Procedural Background

SB 9, enacted in 2021, was intended to address California's severe housing shortage by easing restrictions on infill development in single-family residential zones. The statute permits ministerial approval of certain two-unit housing developments and lot splits, aiming to increase housing supply without discretionary review.

Several general-law cities, including Rancho Palos Verdes, Lakewood, Paramount, and Simi Valley, filed a verified petition for a writ of mandate and complaint for declaratory and injunctive relief in Los Angeles County Superior Court. The cities argued that SB 9 violated their constitutional authority under Article XI of the California Constitution to regulate municipal affairs, undermining local land-use control. They further contended that the law lacked a rational connection to its stated goal because it did not impose affordability requirements on the new units and intruded into areas of municipal concern.

The Superior Court granted the state's motion for judgment on the pleadings, concluding that general-law cities could not claim municipal-affairs protection, that SB 9 was a valid exercise of the state's police power, and that the cities had not demonstrated any constitutional violation or plausible cause of action. The trial court also found no reasonable likelihood that the complaint could be amended to state a viable claim, and the cities appealed.

The Court of Appeal's Decision

The Court of Appeal examined two central issues: (1) whether general-law cities could invoke the municipal affairs doctrine under Article XI, Section 5, and (2) whether SB 9 violated any constitutional provision or lacked a rational relationship to its stated purpose. The court applied *de novo* review to the demurrer and judgment on the pleadings.

Municipal Affairs Doctrine and General-Law Cities

The court reaffirmed that the municipal affairs doctrine is limited to charter cities. Because the plaintiffs were all general-law cities, they could not claim that local ordinances take precedence over state law in matters related to housing production. This distinction underscores the fundamental difference in autonomy between charter and general-law municipalities and confirms that general-law cities are bound by state housing mandates, including SB 9. In reaching this conclusion, the court noted that allowing general-law cities to evade state housing law would directly undermine the Legislature's authority to implement statewide housing policy in response to the housing shortage, effectively creating a patchwork of enforcement that would thwart legislative intent.

Rational Basis Review of SB 9

Turning to the substance of SB 9, the court applied rational basis review, finding that the statute's goal, to increase housing supply through ministerial approval

of two-unit developments and lot splits, is clearly within the state's police power. The court emphasized that promoting housing supply is a legitimate and constitutionally sufficient objective even if the statute does not impose affordability requirements on every unit. The cities' argument that SB 9 did not mandate affordability was rejected as insufficient to invalidate a rational, statewide policy aimed at addressing California's housing shortage.

The court also addressed procedural arguments, noting that the cities had not identified any deprivation of due process or equal protection, and that the statute's ministerial process does not violate constitutional protections. By framing the law as a rational, targeted effort to expand housing options in single-family zones, the court reinforced the principle that legislative solutions to housing crises are entitled to broad deference.

Conclusion and Implications

The Court of Appeal affirmed the Superior Court's judgment and ordered that respondents recover costs on appeal. The decision has significant implications for local governments, developers, and housing advocates:

- Limits on Local Authority: General-law cities are constrained in opposing statewide housing laws, even when such laws affect local zoning authority. Charter cities retain broader autonomy, but general-law municipalities must comply with SB 9 and similar state housing measures.

- Strengthened Ministerial Approvals: SB 9's ministerial approval framework is legally shielded from constitutional challenge, creating a predictable pathway for duplexes and lot splits in single-family zones.

- Reinforced State Housing Goals: The decision emphasizes the Legislature's power to address the housing shortage, including through measures that may not include explicit affordability requirements but promote housing supply more broadly.

For planners, developers, and housing advocates, the ruling signals that statewide housing initiatives will likely take precedence over local resistance in general-law jurisdictions. It also highlights the importance of aligning local planning and zoning policies with state law to avoid legal challenges and ensure compliance with the evolving regulatory landscape. By affirming SB 9's constitutionality, the court has reinforced the state's authority to implement innovative, supply-focused housing policies designed to address the affordability crisis and promote transit-oriented and infill development.

This decision also provides guidance for municipalities considering alternative approaches to single-family zoning, underscoring the need to develop local strategies that both comply with state law and leverage available ministerial approval pathways to meet housing production targets. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B332315.PDF
(Miguel Mauricio)

FIRST DISTRICT COURT REJECTS LATEST ATTACK ON AFFORDABLE HOUSING DEVELOPMENT AFFIRMING THAT REFERENDUM POWERS DO NOT APPLY TO ADMINISTRATIVE ACTION

Move Eden Housing v. City of Livermore, ___Cal.App.5th___, Case No. A171937 (1st Dist. Oct. 7, 2025).

In *Move Eden Housing v. City of Livermore* the First District Court of Appeal, on October 7, 2025, rejected the latest attack on affordable housing development in the City of Livermore (City) by holding that the referendum power used to attack a resolution related to the underlying development agreement did not preclude the City from immediately re-adopting the *administrative* elements of the subject-resolution because the replacement resolution did not re-adopt the *legislative* portions of the subject-resolution.

Factual and Procedural Background:

In 2008, the City of Livermore purchased the subject property in downtown in an area bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street, and recorded a deed restriction against the property requiring the development of at least 28 low-income and 56 moderate-income housing units. Ten years later, the City approved its Downtown Plan, which included two public parks, a black box theatre, science center, commercial retail space, a hotel, and affordable workforce housing on the property. Shortly thereafter, the City entered into a development agreement with Eden Housing who would develop up to 130 units of workforce housing on the property.

In 2021, the City approved the relevant land use entitlements and amended the original development agreement to grant the City an option to negotiate a future construction and reimbursement agreement with Eden Housing to construct Veterans Park. A group known as "Save Livermore Downtown" petitioned for a writ of mandate alleging the City violated the California Environmental Quality Act (CEQA) and state and local planning and zoning laws in approving the entitlements, which was denied by the trial court and this Court. (*Save Livermore Downtown v. City of Livermore*, 87 Cal.App.5th 1116 (2022).)

In 2022, the City adopted the 2022 Resolution which amended the original development agreement to clarify, among other things, that Eden Housing could use up to $5.5mil to develop Veterans Park, subject to reimbursement by the City. A group known as "Move Eden Housing" secured enough public support to secure a referendum against the 2022 Resolution, which the City rejected because, according to the City Attorney, the resolution was purely administrative and therefore not subject to referendum. Move Eden Housing petitioned for a writ of mandate ordering the City Clerk to certify the referendum, which the trial court denied. The Court of Appeal reversed in favor of Move Eden Housing because the 2022 Resolution approved, for the first time, the city legislatively approved the specific amount of $5.5mil of City money to be used to support Eden Housing's development of Veterans Park. (*Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024) (*Move Eden I*).)

At the Trial Court

In 2024, pursuant to this court's order in *Move Eden I*, and before the trial court actually issued the writ, the City repealed the 2022 Resolution instead of submitting the referendum to the people. On the same day, the City passed the 2024 Resolution which adopted the 2022 Resolution less the portions addressing Veterans Park. Move Eden Housing petitioned for a writ of mandate, arguing the City violated Elections Code section 9241 which prohibits a city from adopting a legislative act that has been repealed via referendum within one year from the date of either the people's vote in favor of the referendum or from the date the City voluntarily repealed the legislative act in advance of a referendum vote. The trial court granted the writ because "the new 2024 resolution was substantially similar to the original one, with the exclusion of the Veterans Park provisions, and not 'essentially different,'" and because the City "effectively only repealed part of the original resolution" and "the new resolution cannot be enacted for a period of a year following the repeal."

The Court of Appeal's Decision

The First District Court of Appeal started by affirming that the people's initiative and referendum powers are to be jealously guarded by the courts whenever possible, but that those powers only apply to legislative acts, not administrative or executive. The court acknowledged that jurisprudence distinguishing between legislative and administrative acts is sometimes inconsistent:

> . . .[l]egislative acts generally are those which declare a public purpose and make provisions for the ways and means of its accomplishment. . .[while]. . .[a]dministrative acts … are those which are necessary to carry out the legislative policies and purposes already declared by the legislative body. . . .The power to be exercised is legislative in nature *if it prescribes a new policy or plan*; whereas, it is administrative in nature *if it merely pursues a plan already adopted* by the legislative body itself. (citing *San Bruno Committee for Economic Justice c. City of San Bruno*, 15 Cal. App.5th 524, 530 (2017); *Move Eden I, supra*, 100 Cal.App.5th at p. 276.)

To satisfy Elections Code section 9241, a city must entirely repeal the challenged ordinance and must not reenact the ordinance for at least one year. Here, Move Eden Housing argued the City failed to entirely repeal the 2022 Resolution because the City immediately re-adopted the 2022 Resolution via the 2024 Resolution except for the portions relating to Veterans Park, which this court declared were the *only* legislative portions of the 2022 Resolution that made it subject to referendum in the first place. Because the City effectively repealed the entire legislative portion of the 2022 Resolution, *i.e.*, the entire portion of the 2022 Resolution subject to referendum, this court found that the City indeed "entirely repealed" the legislative act as required under Elections Code section 9241.

Additionally, Move Eden Housing argued the City violated the one-year prohibition on reenacting legislative acts revoked under the referendum process. Because the City did not adopt the portion of the 2022 Resolution that made it subject to the referendum power in the first place, this Court found that the City did not violate the one-year ban on readopting a legislative act repealed via referendum under Elections Code section 9241.

Importantly, the court emphasized that:

> California has a housing supply and affordability crisis of historic proportions. . .[and that]. . .delays in construction projects can. . .threaten the viability of a project. (citing Government Code § 65589.5 subd. (a)(2)(A); *California Renters Legal Advocacy & Education Fund c. City of San Mateo*, 68 Cal.App.5th 820, 830 (2021); *Anderson v. City of San Jose*, 42 Cal.App.5th 683, 705-712 (2019); *Addressing Challenges to Affordable Housing in Land Use Law: Recognizing Affordable Housing as a Right* (2022) 1335 harv. L.Rev. 1104, 1113, fn. 70.)

If the court were to accept Move Eden Housing's interpretation of the referendum power, that power would be invoked to thwart the City's implementation of its long-planned, legislatively blessed affordable housing development "for no purpose consistent with the referendum power."

Conclusion and Implications

In denying Move Eden Housing's challenge to the City's adoption of the 2024 Resolution, the First District Court of Appeal held that a city can adopt a resolution that has been overturned via referendum within one year of its demise even if the subsequent resolution is "substantially the same as" the prior resolution, provided the replacement resolution does not adopt any legislative portion of the prior resolution. In invoking the referendum power to threaten the viability of legislatively approved affordable housing projects, petitioners should be aware that even if their referendum is successful, only the legislative portions of the subject-resolution or ordinance will be prohibited for the prescribed one-year period under Elections Code section 9241.

The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171937.PDF

(Blaine R. Dyas)

SECOND DISTRICT COURT STRIKES DOWN CITY'S HOUSING ELEMENT FOR RELYING ON PERMISSIVE ZONING OVERLAYS AND SITE BURDENED BY LEASE, DESPITE HCD'S APPROVAL

New Commune DTLA LLC v. City of Redondo Beach, ___Cal.App.5th___,
Case No. B336042 (2nd Dist. Oct. 10, 2025).

In *New Commune DTLA LLC v. City of Redondo Beach*, the Second District Court of Appeal reversed the Los Angeles County Superior Court's ruling, holding that the City of Redondo Beach's (City) Housing Element did not substantially comply with the Housing Element Law (Government Code, § 65580 *et seq.*) because it attempted to satisfy the City's Regional Housing Need Allocation (RHNA) by improperly relying on (1) overlay zoning which allowed development of purely nonresidential uses and (2) a nonvacant site subject to contractual obligations that granted its private owner exclusive veto power over housing development on the site.

Factual and Procedural Background

California's Housing Element Law (Gov. Code, § 65580 *et seq.*) requires every local jurisdiction to adopt a state-approved plan showing how it will accommodate its share of regional housing need (RHNA) for all income levels. To qualify as "substantially compliant," a housing element must identify sites with "realistic and demonstrated potential" for development during the planning cycle and zone them to meet statutory density and affordability criteria.

For the sixth planning cycle (2021–2029), the City was assigned 2,490 new housing units, including 936 very-low-income and 508 low-income units. To meet these obligations, the City adopted a residential overlay zoning scheme that superimposed new multifamily housing allowances for up to 55 units per acre over existing commercial and industrial zones, without prohibiting the underlying nonresidential uses. Through this overlay, the City sought to accommodate roughly 1,223 lower-income units. Two major sites illustrate the plan's approach: (1) the South Bay Marketplace, a large retail parking area proposed for 486 lower-income units, and (2) 4001–4051 Inglewood Avenue, an active shopping-center property leased to a grocery store, projected for 35 very-low-income and 140 above-moderate-income units. Notably, the Department of Housing and Community Development (HCD) approved the housing element.

Developers New Commune DTLA LLC and Leonid Pustilnikov challenged the housing element, arguing the City failed to identify adequate and available sites for lower-income housing because the housing element (a) allowed purely nonresidential projects within the zoning overlay and (b) included nonvacant sites encumbered by lease that could preclude redevelopment. The trial court denied the writ.

The Court of Appeal's Decision

The Second District Court of Appeal struck down the City's housing element because the zoning overlay strategy did not satisfy the statutorily mandated minimum density requirement of 20 units per acre, it did not qualify for the mixed-use exception, and the Inglewood Avenue sites were encumbered by a lease that granted the lessee, a grocery store, the "sole and absolute discretion" to veto development on the site.

Failure to Meet the Mandatory Minimum Density Requirement

The court held that Government Code section 65583.2, subdivision (h)(2), imposes an unambiguous and mandatory requirement that rezoned sites for lower-income housing "shall be zoned with the minimum density and development standards" of at least 20 units per acre in suburban jurisdictions. The City's overlay, however, did not compel this density because it merely permitted residential use on top of existing commercial and industrial base zoning that allowed projects with no housing component *at all*.

In support, the court relied on *Martinez v. City of Clovis*, 90 Cal.App.5th 193 (2023), which held that overlays that do not require development at or above the statutorily defined minimum density fail to comply with section 65583.2(h). Both *Clovis* and the present case reject the idea that cities can satisfy their RHNA obligations through zoning schemes that make residential use optional rather than mandatory.

Overlay Did Not Qualify for the Mixed-Use Exception

The City argued that its overlay satisfied the statute's "mixed-use" exception, which allows jurisdictions to accommodate their lower-income housing need on mixed-use sites if those sites allow 100 percent residential use and require that at least 50 percent of total floor area be devoted to residential uses. As discussed above, the court rejected this contention because the overlay preserved the underlying commercial and industrial zoning without requiring any minimum share of residential floor area.

Encumbered Inglewood Avenue Sites Not Supported by Substantial Evidence

The court further concluded that the City improperly identified the Inglewood Avenue site as suitable for residential development. These parcels were leased to Vons, whose contract granted it "sole and absolute discretion" to withhold consent to any changes within a defined "Zone of Control," which included most of the parking area proposed for redevelopment. Because the lease gave the tenant an unqualified right to veto construction, the existing use was presumed to impede additional residential development under section 65583.2, subdivision (g)(2).

The City offered no substantial evidence that Vons would discontinue operations or that the area outside the Zone of Control could realistically accommodate the number of units claimed in the housing element. In contrast to the South Bay Marketplace site where the court found the record supported a reasonable likelihood of redevelopment based on an expert consultant's analysis, the Inglewood Avenue site lacked the "realistic and demonstrated potential" required by statute.

Limited Weight of HCD Approval

Finally, the Court of Appeal rejected the City's reliance on HCD's prior finding of compliance. Although HCD's determinations are entitled to a rebuttable presumption of validity, courts remain the ultimate interpreters of statutory meaning. The agency's stamp of approval cannot cure violations of clear legislative requirements.

Conclusion and Implications

The City's housing element failed to satisfy the mandatory minimum density requirement because their overlay zone permitted, but did not require, residential development, and it failed to provide substantial evidence that the lessee of one of its designated sites would not exercise its contractually granted "sole and absolute discretion" to veto residential development on the site. The court furthered the holding in *Martinez v. City of Clovis*, 90 Cal.App.5th 193 (2023) by rendering overlay zoning that *permits* the minimum density of 20 units per acre but does not *require* the development of *any* housing inadequate. Finally, the court reaffirmed that an action prohibited by statute does not become lawful merely because it has been blessed by the agency tasked with interpreting and enforcing the underlying statutory scheme.

The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B336042.PDF

(Blaine R. Dyas)

FOURTH DISTRICT COURT REINFORCES STATE OVERSIGHT OF LOCAL HOUSING PLANS IN LANDMARK DECISION

The Kennedy Commission v. Superior Court of San Diego County, ___Cal.App.5th___, Case No. D085237 (4th Dist. Sept. 11, 2025).

In *The Kennedy Commission v. Superior Court of San Diego County,* the California Court of Appeal for the Fourth District delivered a pivotal decision underscoring the state's authority to enforce housing laws, even against charter cities. The ruling arose from Huntington Beach's refusal to adopt a compliant "housing element," a mandatory component of every local government's general plan under California's Housing Element Law (Gov. Code §§ 65580–65589.55).

The case centered on whether provisions within the Government Code, which require cities to correct deficiencies in their general plans within strict timeframes and authorize courts to impose provisional remedies, apply to charter cities such as Huntington Beach. The appellate court answered affirmatively, affirming a significant expansion of state oversight in housing enforcement.

The Legal Framework for Housing Elements

California's Housing Element Law requires each city and county to identify and plan for sufficient sites to meet its "regional housing need allocation" (RHNA), the locality's share of the statewide housing demand. This obligation applies to both general law and charter cities. Housing elements must assess existing and projected housing needs, designate adequate sites for development across all income levels, and establish programs to ensure compliance.

To facilitate accountability, local governments must submit housing element drafts to the California Department of Housing and Community Development (HCD) for review. If HCD finds a draft noncompliant, the locality must either revise it to meet legal standards or adopt it with a formal finding of substantial compliance. Failure to comply exposes cities to enforcement actions by the Attorney General, including fines and judicial orders compelling compliance.

The case against Huntington Beach exemplified the tension between local autonomy and the state's housing mandates. Despite receiving HCD's conditional approval of its draft housing element, the city refused to adopt it, citing environmental concerns and objections to what it viewed as inflated RHNA allocations.

State Enforcement and Procedural Background

After Huntington Beach missed its October 2021 deadline to adopt its sixth-cycle housing element, HCD issued a notice of violation and later, joined by Attorney General Rob Bonta, filed a petition for writ of mandate. The petition sought a court order compelling the city to adopt a compliant housing element within 120 days, as required by Government Code § 65754, and to impose temporary restrictions on local permitting and zoning authority under § 65755 until compliance was achieved.

The trial court granted the writ but declined to include the 120-day deadline or any provisional remedies. On appeal, the Attorney General and the Kennedy Commission contended that these omissions violated the Government Code's mandatory provisions.

The Court of Appeal's Decision

The appellate court agreed with the Kennedy Commission, holding that the trial court erred by omitting the statutory deadline and enforcement tools. It directed the lower court to issue a new order that included both the 120-day compliance period and at least one provisional remedy limiting the city's discretion over land use decisions.

Government Code's Role and the Charter City Question

At the heart of the decision was whether the Government Code sections of the Planning Law, encompassing §§ 65750–65763, applies to charter cities. Huntington Beach argued that, under Government Code § 65700(a), most of Chapter 3 of the Planning Law does not apply to charter cities unless expressly stated. The city maintained that because Article 14 of the Government Code was not explicitly listed

among the exceptions, its provisions could not be enforced against it.

The Court of Appeal rejected this interpretation. It reasoned that § 65700 simultaneously requires charter cities to adopt general plans containing all "mandatory elements" under Article 5, including housing elements, and that Article 14 provides the enforcement mechanisms ensuring those elements are meaningful. Reading the statutes together, the court found that the Legislature intended Article 14 to apply broadly to "any city" and that explicit references to charter cities within § 65754(b) confirmed that intent.

The court further emphasized the statewide importance of housing policy, quoting the Legislature's declaration that the "availability of housing is of vital statewide importance." Exempting charter cities, roughly one-quarter of all California municipalities, from enforcement would undermine the state's ability to address its severe housing shortage.

Legislative Reinforcement: Senate Bill 1037 and Section 65009.1

While the litigation was pending, the Legislature enacted Senate Bill No. 1037 (Stats. 2024, ch. 293), which added Government Code § 65009.1, effective January 1, 2025. Subdivision (e)(2) of that statute expressly states:

> The remedies in Article 14 (commencing with Section 65750) of Chapter 3 apply to actions against all cities, including charter cities. . . .This paragraph is declaratory of existing law.

The appellate court cited this amendment as confirmation that its interpretation aligned with legislative intent. Because no prior case had definitively resolved Article 14's applicability to charter cities, the Legislature's declaration was entitled to deference as a clarification rather than a substantive change.

Huntington Beach's argument that applying § 65009.1 violated its constitutional "home rule" authority under Article XI, Section 5 of the California Constitution was similarly rejected. The court found that the statute addressed a matter of "statewide concern," the availability and affordability of housing, and was narrowly tailored to achieve that end. The decision reaffirmed that when state law targets issues of statewide importance, it prevails over conflicting municipal policies.

Conclusion and Implications

The ruling in *Kennedy Commission v. Superior Court* has profound implications for California's housing framework. First, it eliminates any lingering ambiguity about the state's power to compel charter cities to comply with housing mandates. All cities, charter or otherwise, must now adhere to the same enforcement mechanisms, including 120-day correction periods and potential provisional limits on development authority.

Second, the decision strengthens HCD's and the Attorney General's enforcement tools. By affirming that courts must impose provisional remedies, such as suspending local permitting authority or mandating the approval of compliant housing projects, the court ensures that noncompliant jurisdictions cannot indefinitely delay corrective action.

Third, the case underscores the judiciary's role as an active enforcer of housing law. The appellate court directed the lower court not only to amend its order but also to lift its stay and adjudicate remaining issues expeditiously, reflecting a broader shift toward judicial urgency in resolving housing compliance disputes.

Finally, the decision contributes to the growing body of precedent reinforcing the state's primacy in addressing California's housing crisis. By explicitly recognizing housing availability as a matter of statewide concern, the court extended the reach of state housing policy to even the most autonomous municipalities.

The *Kennedy Commission* decision marks another step toward statewide housing control as opposed to local control. By holding that Article 14's remedies apply to charter cities, the Court of Appeal affirmed the state's constitutional and statutory authority to ensure that all local governments, regardless of their form, participate meaningfully in alleviating the housing shortage.

The ruling provides a clear roadmap for enforcement: when a city fails to adopt a compliant housing element, courts must impose a 120-day compliance deadline and one or more provisional remedies restricting local land-use authority until compliance is achieved. This approach promotes both accountability and uniformity, ensuring that statewide housing

goals cannot be thwarted by municipal resistance.

For local governments, the message is unambiguous: housing element compliance is not optional, and assertions of charter autonomy will not shield cities from state enforcement. For advocates and policymakers, the decision represents a significant victory in the state's broader effort to overcome local barriers to affordable housing development.

Ultimately, the *Kennedy Commission* decision reinforces that housing is not merely a local issue but a fundamental statewide concern, one that demands coordinated, enforceable, and timely action across all levels of government. The court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/D085237.PDF
(Darien Key)

LEGISLATIVE UPDATE

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

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

California Environmental Quality Act

AB 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 provide an exemption from the 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 does 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 vetoed by the Governor on October 6, 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 signed by the Governor on October 13, 2025. The bill extends and expands existing CEQA exemptions for certain transportation-related projects. Specifically, the bill removes 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 also expands 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 also exempts, until January 1, 2032, certain transit projects located in urbanized areas and for use by low-emission vehicles. The bill also extends 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 streamlines 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 also excludes 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 signed by the Governor on October 3, 2025. The bill requires 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 also authorizes 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 signed by the Governor on October 10, 2025. This bill provides 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 further incorporates 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 signed by the Governor on October 10, 2025. This bill specifies 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 further specifies 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 signed by the Governor on October 6, 2025. The bill, called the Local Electrification Planning Act, requires 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 signed by the Governor on October 10, 2025. The bill refines 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 defines 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 signed by the Governor on October 10, 2025. The bill requires 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 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 signed by the Governor on October 10, 2025. This bill amends 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, the bill requires 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 requires 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 signed by the Governor on October 10, 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. This bill expands 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 signed by the Governor on October 10, 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 applies 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 requires 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 signed by the Governor on October 10, 2025. The bill entitles an applicant for a housing development project to reasonable attorney's fees and costs and requires 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 extends 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 also prohibits 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 signed by the Governor on October 10, 2025. This bill requires 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 signed by the Governor on October 10, 2025. The bill reduces 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 signed by the Governor on October 10, 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 invalidates 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 signed by the Governor on October 10, 2025. The bill establishes 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 also streamlines the permitting process for hous-

ing 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 signed by the Governor on October 10, 2025. The bill requires 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 also requires each commission to provide access to its written policies and procedures through its website. The bill also requires 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 signed by the Governor on October 1, 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 includes certain types of retired judges to be included in the term "elected or appointed official."

AB 370 (Carrillo)—This bill was signed 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 also only allows 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 vetoed by 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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