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CONTENTS

LAND USE NEWS

Trump Administration Rescinds Biden-Era Public Lands Protections across the West 231

California Attorney General Issues Warning to Local Agencies over Group-House Ordinances Following Federal *Ohio House* Decision 233

LEGISLATIVE DEVELOPMENTS

Governor Newsom Signs into Law Assembly Bill and Senate Bill 131—CEQA and Housing 235

Rising Concerns over Potential Data Center Developments and Effects on State Water Supplies—California Senate Bills 886 and 887 237

REGULATORY DEVELOPMENTS

California Department of Housing and Community Development Issues Draft Guidelines to Clarify AB 2011 Streamlining for Commercial-Site Housing 239

LAWSUITS FILED OR PENDING

Members of California State Employment Union File Lawsuit, Claim State "Return-to-Office" Mandate Is Subject to CEQA Review 241

RECENT FEDERAL DECISIONS

Circuit Court of Appeals:
Standing before Substance: D.C. Circuit Dismisses PFAS Citizen Suit against EPA 243
Public Employees for Environmental Responsibility, et al. v. Zeldin, et al., ___F.4th___, Case No. 24-5294 (D.C. Cir. May 1, 2026).

Continued on next page

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RECENT CALIFORNIA DECISIONS

District Court of Appeal:

First District Court Finds San Francisco Bay Bridge "Bay Lights 360" Project Survives Second CEQA Attack— Pro Per Litigants Held to the Same Standard as an Attorney 245
Baker v. Bay Area Toll Authority, ___Cal.App.5th___, Case No. A174642 (1st Dist. June 5, 2026).

Fourth District Court Holds California Public Records Act, Statutory Timeframe for Making Records "Promptly Available" Is Flexible and Context-Specific 247
Voice of San Diego v. San Diego Unified School District, ___Cal.App.5th___, Case No. D084327 (4th Dist. May 11, 2026).

Superior Court:

In a First, California Superior Court Imposes Financial Penalties on City for Failure to Adopt Housing Element 248
People of California Ex Rel Rob Bonta vs. The City of Huntington Beach, Case No: 30-2023-01312235-CU-WM-CJC (San Diego Super. Ct. May 15, 2026).

LEGISLATIVE UPDATE 251

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LAND USE NEWS

TRUMP ADMINISTRATION RESCINDS BIDEN-ERA PUBLIC LANDS PROTECTIONS ACROSS THE WEST

The Trump administration has rescinded a Biden-era Bureau of Land Management (BLM) rule that had formalized conservation as part of public-land management across the West. The change removes a national framework for restoration, mitigation, and landscape-health planning, while leaving future site-specific decisions to existing land-use planning, permitting, and review processes.

Background

The Public Lands Rule, officially the Conservation and Landscape Health Rule, was finalized in May 2024 and became effective on June 10, 2024. Adopted under the Federal Land Policy and Management Act's multiple-use and sustained-yield framework, it directed the BLM to protect intact landscapes, restore degraded habitat, and rely on science and data in decisions for BLM-managed lands.

What the Rule Changed

The 2024 rule clarified that conservation could be treated as a use under the Federal Land Policy and Management Act's multiple-use and sustained-yield framework. In practical terms, conservation became an affirmative management objective that could be considered alongside grazing, mining, energy development, recreation, and timber management.

The rule also applied land-health standards beyond grazing, created restoration and mitigation leases, and revised procedures for Areas of Critical Environmental Concern, or ACECs. Those changes were intended to give the BLM consistent tools for identifying intact landscapes, addressing degraded lands, and considering ecological conditions during planning. The agency described the rule as promoting ecosystem resilience without displacing the broader multiple-use mandate.

Under the leasing provisions, eligible entities could seek restoration or mitigation leases to improve degraded land or offset impacts from other authorized uses. The rule stated that those leases would not override valid existing rights or authorizations, including grazing, mining, and oil and gas leasing. For supporters, that structure created a clearer path for restoration work. For opponents, it raised concern that conservation leases could restrict other uses or add permitting uncertainty.

The Rollback

The BLM proposed rescinding the rule on September 11, 2025, opening a 60-day public comment period that ended November 10, 2025. The final rescission was published May 12, 2026, and became effective June 11, 2026. In the final rule, the BLM said it received 138,161 comment letter submissions from both sides.

In explaining the rollback, the agency said the 2024 rule "inappropriately elevated conservation" as a discrete use of public lands and created planning and permitting burdens. The rescission eliminated restoration and mitigation leases, removed land-health provisions outside the grazing context, and restored ACEC regulations to their pre-2024 approach. The BLM also said existing authorities, including land-use planning, project-level environmental review, and partnership programs, remain available to address restoration and environmental impacts.

The Department of the Interior described the move as a return to "balanced, multiple-use management," arguing that the Biden-era rule could limit grazing, energy development, recreation, timber management, and other uses. That framing places the recission within a broader policy preference for local decision-making, energy access, and reduced regulatory burdens.

California and Western Lands

The BLM manages about 245 million acres of public land, mostly in the western United States. In California, the agency oversees about 15 million acres of public lands, approximately 15% of the state's land mass, plus 47 million acres of subsurface mineral

estate. Because the BLM's California holdings span deserts, rangelands, forests, high mountains, and coastal areas, statewide effects are likely to vary by region and resource decision.

These California lands support renewable energy, mining, grazing, timber harvesting, recreation, cultural resources, and conservation. Although the rollback is often discussed as a forest or land-protection issue, it applies specifically to BLM-managed public lands, not every federal forest or protected area. National forests are generally managed by the U.S. Forest Service, while national parks and wildlife refuges operate under other frameworks.

The rescission does not automatically approve drilling, logging, mining, or development on any particular parcel. Instead, it changes the rulebook the BLM uses when weighing conservation, restoration, and development interests in future planning and project reviews. The final rule notes that practical effects will depend on future management decisions rather than on the rescission alone.

Supporters and Critics

Supporters of the rollback argue that the 2024 rule exceeded the BLM's authority and risked restricting economic uses of public lands. In the final rule, the agency said rescission is expected to indirectly benefit businesses involved in ranching, energy production, energy transmission, and natural resource extraction. Industry and agricultural groups also argued that the Biden rule placed too much weight on non-development uses and could complicate access for energy, minerals, grazing, and recreation.

Critics argue that the rollback weakens safeguards for habitat, clean water, climate resilience, cultural resources, and long-term restoration. Conservation groups generally supported the 2024 rule because it placed conservation on more equal footing with industrial uses and gave the BLM a formal mechanism for restoration leases. They contend that removing those tools may make it harder for the agency to address drought, wildfire risk, habitat fragmentation, and other landscape-scale pressures.

What Happens Next?

Future impacts will depend on how BLM field offices and state offices apply land-use plans, resource management plans, and project-level environmental reviews. Proposals for mining, logging, energy development, grazing, recreation, transmission lines, or restoration projects may still require separate review under federal planning and environmental laws. The rescission does not end environmental review, but it removes a national policy that had instructed the BLM to consider conservation, landscape intactness, and restoration as affirmative management tools.

In California, the most important developments may occur through revisions to resource management plans, responses to new project applications, and decisions about ACECs or other sensitive landscapes. Local governments, tribes, conservation organizations, ranchers, energy developers, recreation users, and nearby communities are likely to continue participating in those processes. The practical effect of the rollback will be measured less by the rule's publication date than by how future decisions balance development, access, restoration, and long-term resource protection.

Conclusion and Implications

The rollback represents a major change in the federal government's approach to Western public lands. Its practical effect will likely unfold over time, as individual land-use plans and permits determine whether development, conservation, or restoration priorities take precedence in particular places. For California and other western states, the central issue is not whether all BLM lands are suddenly open to development, but whether future decisions will give conservation the same structured role that the 2024 rule attempted to provide.
(Brent McManigal, Darien Key)

CALIFORNIA ATTORNEY GENERAL ISSUES WARNING TO LOCAL AGENCIES OVER GROUP-HOUSE ORDINANCES FOLLOWING FEDERAL *OHIO HOUSE* DECISION

In a June 3, 2026, legal alert, the California Attorney General's Office advised all California jurisdictions that the Ninth Circuit Court of Appeals' decision in *The Ohio House, LLC v. City of Costa Mesa,* 135 F.4th 645 (9th Cir. 2025 *Ohio House*) does not bind California state courts or the applicability of the state's fair housing laws. Further, the legal alert advised those local agencies that making decisions in reliance on the *Ohio House* decision could expose those jurisdictions to liability.

The *Ohio House* Decision

In *Ohio House*, the operator of a sober-living home for those recovering from addiction, challenged the City of Costa Mesa's (City) zoning laws that require such group-living facilities be separated from other similar facilities by at least 650 feet. The plaintiff claimed that the zoning regulation was discriminatory against individuals with disabilities in violation of the federal Fair Housing Act (FHA), the California Fair Employment and Housing Act (FEHA), and State Planning and Zoning Law. The Attorney General filed an amicus brief on behalf of two California agencies, supporting Ohio House's appeal and explaining how the U.S. District Court ruling conflicted with state law.

A jury trial at the U.S. District Court for the Central District of California returned a verdict in favor of the City. The plaintiff appealed and the Ninth Circuit which found that zoning laws benefitted (as opposed to harmed) the protected class of individuals with disabilities, that the City acted for a lawful purpose in enforcing its zoning law, and that the City's reasonable accommodation ordinance was not inconsistent with the FHA, among other holdings.

California Laws at Issue

FEHA and its implementing regulations prohibit housing discrimination, including when applied in land use practices. FEHA's protections also apply to persons with disabilities, which includes those recovering from addiction. FEHA requires making reasonable accommodations for disabled persons in rules, policies, practices, or services when the accommodations are necessary to afford a disabled person equal opportunity.

State Housing Element Law generally requires localities to plan for housing for all segments of its community. This includes analyzing fair housing issues for persons with disabilities, and the implementation of:

> . . .programs that promote, remove constraints on, and provide reasonable accommodations for, housing intended for occupancy by persons with disabilities.

State law additionally requires local agencies to affirmatively further fair housing (AFFH), which Section 8899.50 of the Government Code defines as:

> . . .taking meaningful actions, in addition to combating discrimination, that overcome patterns of segregation and foster inclusive communities free from barriers that restrict access to opportunity based on protected characteristics.

This AFFH law ties into Housing Element Law by requiring localities to craft and implement fair housing programs and to evaluate the results of such programs against the locality's goals.

The State's Concerns

Concerned that the *Ohio House* decision could embolden local agencies to craft new restrictions on group-living and recovery facilities, the California Attorney General's Office advised that state housing laws still apply to local agencies and such facilities. To that end, the Attorney General reminded local agencies that:

> California state courts are not bound by a federal court's interpretation of state law. State courts have independent authority over how to apply the state's housing laws to disputes over group homes. State courts are the "final arbiter" of how state law should be interpreted, providing state agencies with deference over the laws they enforce.

The Attorney General emphasized that the state may provide protections for group homes above and beyond those of federal law. Federal civil rights laws "set floors under, not ceilings over, state civil rights laws" and that the state's fair housing laws must be interpreted and applied broadly to provide "greater rights and remedies."

The Ninth Circuit did not address the impact to state law that the Attorney General highlighted in the amicus brief. This included FEHA, State Housing Element Law, and the AFFH law. Specifically, the court did not:

> . . .consider that California's housing laws require local governments to focus on objective standards when drafting land use laws and to subject their land use policies to rigorous, data-based analysis, especially when the policies restrict housing for persons with disabilities.

The Attorney General noted that, when that office provides guidance on group homes, the office considers decades of statutes, legislative history, and case law, none of which the Ninth Circuit considered.

Finally, the Attorney General argued that decades of state court precedent runs counter to the court's findings in *Ohio House*, including that separation requirements for group homes unlawfully discriminates against persons with disabilities.

Conclusion and Implications

The Attorney General's opinion functions as a warning to localities that may consider using the *Ohio House* decision to enact additional regulations that limit the development or expansion of group-living facilities. This alert essentially outlines how restrictions on such facilities violate state civil rights and state housing laws. Local agencies that violate such laws could face litigation, decertification of the housing element (potentially opening the door to the Builder's Remedy and other similar statutes), and revocation of a Prohousing Designation.

The Builder's Remedy is a penalty that allows developers to bypass local zoning controls for certain projects containing affordable units, when a local agency's housing element is not consistent with state law. The Prohousing Designation Program is managed by the Department of Housing and Community Development, which acknowledges and supports "jurisdictions that go above-and-beyond state housing law to help accelerate housing production. A jurisdiction with a Prohousing Designation may receive priority processing or funding points when applying for several funding programs."

Though the *Ohio House* decision found that zoning ordinances that require spacing between group houses does not violate federal housing laws, this alert underscores how such ordinances still can run afoul of numerous state laws. Planning agencies should be advised when considering such ordinances. Localities should continue to follow the state's guidance in documents such as the Department of Housing and Community Development's Group Home Technical Advisory to ensure that local ordinances and policies still comply with state law. For more information on the legal alert, *see:* https://www.oag.ca.gov/news/press-releases/attorney-general-bonta-newsom-administration-issue-legal-alert-reaffirming.
(Braeden Mansouri)

LEGISLATIVE DEVELOPMENTS

GOVERNOR NEWSOM SIGNS INTO LAW ASSEMBLY BILL 130 AND SENATE BILL 131—CEQA AND HOUSING IMPACTS

When Governor Newsom signed Assembly Bill 130 and its companion Senate Bill 131 on June 30, 2025, most of the attention justifiably focused on the new statutory California Environmental Quality Act (CEQA) exemption for qualifying infill housing projects, and a new near-miss provision allowing for substantially streamlined CEQA review of housing projects that meet every CEQA exemption criterion but one. However, SB 131 also included a less heralded, but very consequential CEQA exemption that could further support much-needed housing development. On May 19, 2026, the California Department of Housing and Community Development (HCD) issued a memorandum clarifying the scope of this new statutory exemption that removes CEQA review from an oft-litigated step in local housing planning: rezoning to implement a certified housing element.

Housing Element Rezonings: A Second Bite at the Apple

Prior to SB 131, jurisdictions faced the risk of CEQA litigation slowing or precluding the implementation of housing elements. When a jurisdiction adopts a new housing element, the document typically contemplates rezoning actions to allow certain sites to develop housing by right, certain sites to be developed at a higher density, or implement other policies to allow for more housing development. A jurisdiction's adoption of a housing element requires CEQA review, though typically at a programmatic level, without detailed study of specific sites or specific projects which are not foreseeable at the General Plan stage.

Pre-SB 131, jurisdictions could attempt to argue that rezonings implementing housing elements should be subject to CEQA streamlining or avoid CEQA altogether based on theories that the rezonings were consistent with the General Plan, or would not involve any new significant environmental impacts not studied under the underlying housing element EIR. However, these arguments can be risky — an opponent of the housing element could argue that the rezonings contain more project-specific or site-specific information, or have more foreseeable impacts than General Plan level amendments, therefore warranting more CEQA review. Even when these arguments are unsuccessful, they can create delays or expenses in the rezoning process that preclude the smooth delivery of housing units authorized by a housing element. In essence, even if an opponent of a housing element was unsuccessful at challenging the General Plan amendment itself, associated rezonings could provide a second chance for opponents to prevent or delay the actual development of housing provided for by a housing element.

The SB 131 Exemption for Housing Element Rezoning

Governor Newsom signed AB 130 and its companion SB 131 on June 30, 2025, to much fanfare as two of the more consequential housing and infrastructure reforms in recent state history. SB 131 contains a CEQA exemption codified at Public Resources Code section 21080.085, which now reads as follows, in relevant part:

This division does not apply to a rezoning that implements the schedule of actions contained in an approved housing element pursuant to subdivision (c) of Section 65583 of the Government Code.

Section 21080.085 contains two exceptions to the exemption: (1) rezonings that would allow for a warehouse distribution center of 50,000 square feet (or larger), or oil and gas infrastructure are not exempt from CEQA; and (2) rezoning of land that constitutes "natural and protected lands" are not exempt from CEQA.

HCD's May 2026 Memorandum

Even with these exceptions, the language of Section 21080.085 has a potentially large scope. HCD's May 2026 memorandum is the first authoritative interpretation of what this provision means and how

broadly it applies. The answer, according to HCD, appears to be: very broadly.

The memorandum makes clear that the exemption is not limited solely to rezoning actions explicitly needed to allow enough residential development to accommodate a jurisdiction's Regional Housing Needs Assessment allocation, even though demonstrating sufficient residentially-zoned sites to achieve this unit allocation is typically the driving force behind a jurisdiction's housing element. Instead, the exemption broadly applies to any zoning change identified in a housing element that is consistent with its implementation, including rezonings aimed at affirmatively furthering fair housing, reducing procedural barriers, increasing density, modifying development standards such as heights and parking requirements, or allowing for a broader range of housing types in single-family zones. The exemption also applies to qualifying amendments to any part of the zoning code, including changes to an adopted zoning map and changes to the text of a zoning ordinance. HCD also clarifies that the exemption is not limited to the first rezoning that a jurisdiction undertakes to implement its housing element. If, for example, a jurisdiction's housing element includes a requirement that additional sites be rezoned in the future to account for projects approved at a lower residential density than contemplated in the housing element, those future rezonings may use the Section 21080.085 exemption. Per HCD, there is no tribal notification or consultation requirement for a jurisdiction to qualify for the exemption (distinguishing it from the AB 130 infill housing exemption), though HCD notes that such requirements would typically come into play when an underlying housing element is first adopted. Lastly, HCD's memorandum confirms that use of the Section 21080.085 exemption is not contingent upon the underlying housing element having undergone a full Environmental Impact Report process; if the housing element itself was adopted pursuant to a CEQA exemption or a negative declaration, the exemption may still be used for associated rezonings.

That said, the HCD memorandum does establish some clear limitations on the Section 21080.085 exemption. The exemption only applies to rezonings that are specifically contemplated by the housing element, with clear language requiring the rezoning. It would not apply to rezonings that are not explicitly contemplated in the language of a housing element, but are later recommended pursuant to other actions required by a housing element, such as programs for further study of housing trends in a jurisdiction. HCD's memorandum also notes that the exemption applies to local rezoning of land within the State's Coastal Zone; however, HCD clarifies that any rezoning of land within the Coastal Zone is still subject to the procedural requirements of the California Coastal Act, including the submittal of such rezonings to the Coastal Commission. The Commission is ultimately responsible for CEQA compliance for such rezonings and may elect to utilize the Section 21080.085 exemption if it so chooses.

Conclusion and Implications

Taken together, AB 130's infill exemption and the SB 131 rezoning exemption represent a notable shift in how California approaches the relationship between housing planning and environmental review. While AB 130 addresses bottlenecks at the project-review level, SB 131's Section 21080.085 moves toward something different: exempting not just individual projects but the planning and zoning decisions that make those projects possible in the first place.

HCD's memorandum confirms that Section 21080.085 is not meant to be treated as a narrow or technical provision. The exemption reaches broadly to nearly all rezonings explicitly contemplated under a housing element, so long as they are not facilitating warehouse infrastructure, oil and gas projects, or rezoning of protected or sensitive land. For cities with certified housing elements that are now implementing their rezoning commitments, and for the looming statewide seventh cycle of housing elements, the HCD memo is a green light to facilitate large-scale housing development without some of the procedural drag that has slowed prior cycles. For more information on AB 130, *see:* https://legiscan.com/CA/text/AB130/id/3258333. For more information on SB 131, *see:* https://legiscan.com/CA/bill/SB131/2025. The HCD May 2026 Memorandum is available here: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/memos/ceqa-rezone-exemption-memo-051926.pdf.
(Niran Somasundaram)

RISING CONCERNS OVER POTENTIAL DATA CENTER DEVELOPMENTS AND EFFECTS ON STATE WATER SUPPLIES— CALIFORNIA SENATE BILLS 886 AND 887

Data centers are a growing concern for California's water supplies because of their potential to consume large volumes of water for their operations, which may impact other needs throughout the state and, further, place a burden on ratepayers. These concerns have prompted response from both state lawmakers, and local governments. At the local level, Monterey Park became the first city in the country to ban data centers in its jurisdiction, and the Coachella City Council recently approved a moratorium on the building of new data centers after extensive public opposition to a potential project. At the state level, California State Senator Steve Padilla introduced two bills : Senate Bill 886 and Senate Bill 887.

Background

As demand for data centers has increased, so has concern to the potential negative impacts these projects may create, specifically on California's water supplies. This concern has resulted in several actions across the state, including local efforts to preempt the construction of data centers, as was seen in the Monterey Park ban and, the Coachella City Council efforts to stall potential construction so that the City may be afforded more time to consider, and mitigate, any potential, detrimental effects on water supplies.

At the state level, several legislative efforts have been put forth including bills which would require annual water use and reporting as a condition of receiving necessary operating permits, special rate utility structures, as well as energy efficiency and reporting measures. Of those measures, Senator Steve Padilla introduced two bills: SB 886 and SB 887, which intend to implement measures aimed at offsetting the negative impacts of data centers.

SB 886 would compel the CPUC to impose a tariff on data centers that would offset utility rate increases, with an exception for data centers that transition from fossil fuels to renewable energy. SB 887 would prevent data centers from receiving certain California Environmental Quality Act (CEQA) exceptions, including CEQA's ministerial exception which would allow those data centers circumvent Program Environmental Impact Reports The bill would also allow for streamlining of other, certain CEQA requirements.

Senate Bill 887—Utility Rates

The proposed tariff in SB 887 is narrowly tailored to apply to data centers and prevent utility rate increases on other customers. However, the proposed bill's effectiveness might be limited. The bill would coerce the CPUC to issue a tariff to on "large load customer[s]," which the proposed bills defines as "customer[s] connecting transmission-level electricity service with an estimated peak demand of at least 75 megawatts." Furthermore, the bill would require large load customers to pay for utility infrastructure upgrades necessary to connect their facilities to the grid. However, the CPUC does not regulate publicly-owned utilities, such as the Los Angeles Department of Water and Power, so the tariff would only apply to investor-owned utility companies like Southern California Edison. While the proposed bill encourages publicly-owned utilities to adopt a similar tariff, many publicly-owned electric utility customers in the state would not necessarily benefit.

The exception to the proposed tariff in SB 887 might incentivize existing data centers to switch from fossil fuels to renewable energy by exempting new energy loads resulting from would be large load customers transitioning to renewable energy from the tariff. However, it is unclear from the statutory language what circumstances might actually trigger the exception, and it is unclear how effective the exception would actually be in incentivizing data centers to transition to renewable energy.

Senate Bill 886—CEQA

SB 886 would likely be effective in preventing public agencies and developers from utilizing CEQA's ministerial project exception to bypass Environmental Impact Reports (EIRs). The proposed statute's explicit statement that the ministerial exception "does not apply to a project proposed to be carried out or approved by a public agency for the development and operation of a data center" clearly exempts data centers from the ministerial exception. Furthermore,

the proposed statute's definition of the data center is broad.

Conclusion and Implications

Monterey Park's adoption of a data center ban is a major development because it is the first time a city has banned data centers in response to the concern of its residents. From a legal perspective, this ban could lead to other municipalities imposing similar bans, which could lead to litigation brought against those municipalities.

Data centers will continue to fuel public discourse, and create legal and legislative response, in the future. As demonstrated by SB 886, SB 887, the efforts of Monterey Park and the Coachella City Council, public officials are already taking legal steps to respond to Californian's concerns about the impacts of data centers on the environment and the state's water supplies. As the concerns, and efforts to regulate, continue to evolve, the state will likely see several more legislative proposals, and local actions, in the future, all of which will shape the way in which these data centers are permitted to develop in the state. For more information on Senate Bill 886, *see:* https://legiscan.com/CA/text/SB886/id/3311066?__cf_chl_f_tk=vIiULocNIBwYLJti0NiYqVeiLoHqYT4fuvLxsrbphi0-1782921794-1.0.1.1-avHn_nV.ay4BYC3ldVvVh-4vuzBZBAopPcQOsAYvDxLE. For more information on Senate Bill 887, *see:* https://legiscan.com/CA/bill/SB887/2025.

(Stephanie Cook, Miles Krieger)

REGULATORY DEVELOPMENTS

CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT ISSUES DRAFT GUIDELINES TO CLARIFY AB 2011 STREAMLINING FOR COMMERCIAL-SITE HOUSING

The California Department of Housing and Community Development (HCD) has released draft guidelines for the Affordable Housing and High Road Jobs Act of 2022, commonly known as AB 2011. The draft guidelines clarify how local governments and applicants should apply AB 2011's ministerial approval pathways for qualifying multifamily housing on commercially zoned sites and along commercial corridors.

Background

AB 2011 became operative on July 1, 2023, and was later amended by AB 2243 and AB 893. The statute facilitates housing on commercial sites by requiring a streamlined, ministerial review process for qualifying multifamily housing projects on sites where office, retail, or parking uses are already permitted.

The Draft Guidelines

Two Project Pathways

The draft guidelines classify AB 2011 into two principal pathways: one for 100 percent affordable developments and one for mixed-income developments. Both pathways require a multifamily housing development project with at least five residential units, and both may include mixed-use projects where at least two-thirds of the square footage is designated for residential use.

For 100 percent affordable projects, all new units, other than managers' units, must be dedicated to lower-income households, with affordability restrictions running 55 years for rental units and 45 years for owner-occupied units. Mixed-income rental projects must generally provide either 8 percent of base units for very low-income households and 5 percent for extremely low-income households, or 15 percent of base units for lower-income households. Mixed-income ownership projects must generally provide either 30 percent of base units for moderate-income households or 15 percent for lower-income households. The guidelines also address alternative affordability standards for qualifying developments in campus development zones.

Site Eligibility

The draft guidelines place substantial emphasis on site eligibility. For both pathways, the site must be in a zone where office, retail, or parking is a principally permitted use, must be located in an urban area, must have at least 75 percent of its perimeter adjoining parcels that are or were developed with urban uses, and generally may not be located on or adjoining a site substantially dedicated to industrial use.

Both pathways also incorporate environmental exclusions, including limitations related to certain coastal-zone locations, farmland, wetlands, very high fire hazard severity zones, hazardous waste sites, earthquake fault zones, flood hazard areas, floodways, conservation lands, protected species habitat, and conservation easements. The mixed-income pathway includes additional criteria: the site must generally abut a qualifying commercial corridor with at least 50 feet of frontage or be located within a campus development zone. Mixed-income sites are generally limited to 20 gross acres, although regional mall sites may be up to 100 gross acres, and the guidelines include restrictions protecting existing housing and tenants.

Development Standards and Review

For 100 percent affordable projects, the draft guidelines require compliance with Housing Element Law "default density" standards for lower-income housing, but state that these projects are not subject to a specified maximum density, subject to applicable objective planning standards. For mixed-income projects, allowable density depends on jurisdiction type, site size, commercial corridor width, proximity to major transit, very low vehicle travel area status, and

campus development zone status. Allowable densities range from 20 to 80 units per acre, or the local maximum residential density if higher, depending on those site characteristics.

The mixed-income pathway also includes minimum-density requirements, state-mandated height standards, setback and stepback standards, and a prohibition on required parking, including replacement parking, while preserving requirements for bicycle parking, electric vehicle charging infrastructure, and accessible parking. Local objective standards continue to apply, but the guidelines limit review to objective standards and statutory criteria. Subjective standards, such as undefined "neighborhood character," may not be applied as objective standards.

The draft guidelines emphasize that qualifying AB 2011 projects are processed as a use by right and through ministerial review. No aspect of the development project, including related permits, is a "project" for purposes of the California Environmental Quality Act (CEQA). If a local government finds a project inconsistent with applicable objective standards, it must provide an exhaustive written list of conflicts within 60 days for projects of 150 or fewer units, or 90 days for larger projects; resubmittals must be reviewed within 30 days. If the local government fails to provide timely written documentation, the project is deemed to satisfy the required objective planning standards.

Labor and Post-Approval Requirements

The draft guidelines also address post-approval processing and labor standards. Certain approvals do not expire where the project includes public investment in affordability beyond tax credits and at least 50 percent of units are affordable at or below 80 percent of area median income; other approvals generally remain valid for three years, subject to construction progress and a possible one-year extension. Subsequent permits must be processed without unreasonable delay where they substantially comply with the approved development, and project modifications before final building permit issuance are subject to a separate review framework.

All qualifying developments must comply with prevailing wage requirements. Projects of 50 or more units are subject to additional labor requirements related to apprenticeship programs, health care expenditures, monthly reporting, payroll records, and enforcement. For mixed-income projects, the guidelines also implement commercial tenant notice and relocation assistance requirements, with eligible assistance ranging from six months' rent to 18 months' rent depending on length of tenancy.

Conclusion and Implications

The draft guidelines provide a detailed administrative framework for a statute that already limits local discretion over qualifying housing projects on commercial sites. The practical effect is likely to shift many AB 2011 disputes toward threshold eligibility, objective-standard consistency, labor compliance, and post-approval implementation rather than traditional discretionary entitlement issues. For local governments, the guidelines underscore the need for clear objective standards and timely application processing. For applicants, they provide a more structured roadmap for assembling applications, preserving streamlining rights, and responding to inconsistency determinations. Since the guidelines remain in draft form, their final language may change, but they indicate HCD's intent to interpret AB 2011 as a robust ministerial housing production tool. HCD's primer on AB 2011 is available online at: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/aff-hsg-high-roads-jobs-act-ab-2011.pdf. The draft guidelines is available online at: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/draft-ab-2011-guidelines.pdf.
(Eric Giersch, Darien Key)

LAWSUITS FILED OR PENDING

MEMBERS OF CALIFORNIA STATE EMPLOYMENT UNION FILE LAWSUIT, CLAIM STATE "RETURN-TO-OFFICE" MANDATE IS SUBJECT TO CEQA REVIEW

As the California Secretary of State's office evaluates the signatures gathered for the most expansive California Environmental Quality Act (CEQA) reform measure that may appear on the November ballot, one of the most novel (if not bizarre) CEQA litigation threats ever issued was lodged against the Newsom Administration. [*California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. California Environmental Protection Agency,* Case No. 26CV192463 (Alameda County Superior Court)]

As discussed in the prior month's issue, CEQA's extremely low threshold for challenging (what are often) development projects incentivizes project opponents to use the environmental statute to slow, stop, or to extract benefits from a project. Generally, these lawsuits can increase a project's overall costs.

The Return to Office Mandate

On March 3, 2025, Governor Gavin Newsom issued an executive order requiring all state agencies and departments to return to office at least four days per week by July 1, 2025, reversing the state's major telework policy dating back to the early days of the COVID-19 pandemic. The Governor's rationale includes, increasing accountability, improving government services, and revitalizing downtown cores—especially that of the City of Sacramento. The mandate reflects the tension between workers and supervisors across the broader workforce.

In a separate lawsuit, a union representing state engineers initially sued the Newsom Administration, alleging that the order violated state labor law by failing to confer with the union with respect to the mandate's impacts. That union withdrew its lawsuit after the state agreed to postpone the implementation for one year. Now that the one-year extension is set to expire on July 1, state worker unions are again threatening to challenge the implementation of the office mandate.

Threatened Litigation

In one of the most unique applications of CEQA, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) representing approximately 90,000 legal workers, including attorneys, administrative law judges, and hearing officers, is challenging the mandate, claiming that the mandate is a "project" subject to CEQA review. Generally, CEQA only applies to discretionary "projects" approved by public agencies because such agencies would have authority over how such "projects" would be implemented and how the project could be revised to reduce environmental impacts.

CASE claims that the state agencies must comply with CEQA's public notice, hearings, analysis of environmental impacts—particularly impacting traffic, air pollution, and greenhouse gas emissions. The lawsuit, which the union filed in Alameda County Superior Court, alleged that the mandate will result in a significant environmental impact, citing a State Auditor report that found the state to have saved nearly 50 million commuting miles and avoided 18,000 metric tons of carbon dioxide in the month of December 2023 alone. Thus, the policy could arguably result

Is the Mandate a "Project"?

At the core of CEQA is the question of whether an activity is a "project" subject to environmental review. Section 15378(a) of the CEQA Guidelines defines a "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Section 15378(a) provides several examples of what could constitute a "project," including "public works construction and related activities," "clearing or grading of land," and "improvements to existing public structures." However, Subdivision (b) of that same section expressly states that a "Project does not include. . . administrative or maintenance activities,

such as . . . personnel-related actions [and] general policy . . . ." Thus, the CEQA Guidelines clearly exempts from a project definition, personnel-related actions—the exact type of action that the mandate addresses.

While the return to office policy does not result in a direct physical impact to the environment, CASE's lawsuit is emblematic of the widespread attempt to expand CEQA's applicability to any activity a special interest group finds offensive.

Other State Defenses

In addition to the exemption from the definition of a "project," the state may try to assert the "Common Sense Exemption" contained in Section 15061(b)(3) of the CEQA Guidelines. This applies where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." While administrative policies generally qualify for this exemption, it also requires the finding of "certainty" that there is "no possibility" that an activity will have a significant effect on the environment. CASE can easily point to the impacts to transportation and greenhouse gas emissions that the State Auditor found to be caused by office commuters.

The state may also invoke the "ministerial" activity exemption. As explained previously, CEQA only applies to discretionary projects and exempts ministerial activities. The state could argue that the mandate is a ministerial decision and that state agencies have no discretion in implementing the requirement. This would tie in with the definition of a "project" and whether the mandate constitutes as "project" for the purposes of CEQA.

Conclusion and Implications

While CASE's lawsuit is unlikely to prevail, the case may not be subject to an immediate dismissal. The petitioner's arguments, at least on their face, appear similar to those in *Make UC a Good Neighbor v. UC Regents* (2024), in which lower courts concluded that social noise from students constituted a significant environmental impact.

While the *UC Regents* case was ultimately mooted by legislation expressly exempting human-caused noise from CEQA analysis requirements, the return-to-office mandate may also be mooted. Assemblymember Lee has introduced AB 1729, which would encourage state agencies to continue to offer remote work as an option for state employees. The complaint is available here: https://calattorneys.org/wp-content/uploads/2026/06/2026.06.05-Writ-Petition-CASE-Return-to-Office.pdf.

On June 29, 2026, as this article was nearing publication the Alameda County Superior Court, issued an order denying the ex parte application for stay of the return to office order. *See:* https://drive.google.com/file/d/1WFVSO2yRBn_ckflbBtZvZUUodsT4ntVS/view. The letter of intent to sue by CASE is available online at: https://calattorneys.org/wp-content/uploads/2026/05/CASE-CEQA-Exhaustion-Letter-Caltrans.pdf.

(Braeden Mansouri)

RECENT FEDERAL DECISIONS

STANDING BEFORE SUBSTANCE: D.C. CIRCUIT DISMISSES PFAS CITIZEN SUIT AGAINST EPA

Public Employees for Environmental Responsibility, et al. v. Zeldin, et al., ___F.4th___, Case No. 24-5294 (D.C. Cir. May 1, 2026).

Public Employees for Environmental Responsibility and Center for Environmental Health v. Lee M. Zeldin, as Administrator of the U.S. Environmental Protection Agency, and Environmental Protection Agency, Inhance Technologies LLC, Intervenor was decided by the U.S. Court of Appeals for the District of Columbia Circuit on appeal from the federal District Court for the District of Columbia. The case arose from a Toxic Substances Control Act citizen suit by Public Employees for Environmental Responsibility and Center for Environmental Health against the U.S. Environmental Protection Agency (EPA). The organizations alleged that EPA had failed to address risks from perfluorooctanoic acid, a PFAS compound allegedly formed during the fluorination of plastic containers, including containers processed by Inhance Technologies LLC.

Background

The complaint asserted two nondiscretionary EPA duties. First, plaintiffs invoked the Toxic Substances Control Act (TSCA) section 4(f), which requires EPA, after receiving information indicating that a chemical may present a significant risk of serious or widespread harm, to initiate applicable action within 180 days or publish a finding that the risk is not unreasonable. Plaintiffs alleged that EPA possessed sufficient information by March 29, 2023, including data concerning perfluorooctanoic acid's (PFOA) toxicity and alleged presence in fluorinated containers, and therefore had to take substantive regulatory action.

Second, plaintiffs invoked TSCA section 7(a)(2), arguing that EPA had to bring an enforcement action to abate an imminent hazard posed by PFOA allegedly generated by Inhance's fluorination process. Before suit, plaintiffs and others petitioned EPA to initiate TSCA section 6 rulemaking. EPA granted the petition in July 2024 and later sought comment on PFAS formation during fluorination, container uses, alternatives, and possible regulatory measures.

Procedural History

Plaintiffs filed suit under TSCA section 20 in July 2024, after EPA granted the rulemaking petition but before the public comment notice issued. EPA moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The district court granted the motion.

As to section 4(f), the district court assumed for purposes of the motion that EPA had a nondiscretionary duty to act by a specified date but held that EPA's request for comment satisfied any such duty because it began the information-gathering process for potential regulation. The court therefore treated the section 4(f) claim as moot. As to section 7, the court questioned whether the provision imposed a nondiscretionary duty and held, in any event, that no such duty had arisen because EPA had not proposed a section 6 rule and declined to make it immediately effective.

The D.C. Circuit's Decision

The D.C. Circuit affirmed, but not on the District Court's statutory grounds. The panel held that the plaintiffs had not plausibly established associational standing. Because Article III standing is jurisdictional, that failure required dismissal regardless of whether the district court correctly resolved the section 4(f) mootness issue or the section 7 nondiscretionary duty issue.

The holding was procedural but dispositive. The court did not decide whether EPA's request for comment satisfied section 4(f), whether section 7(a)(2) creates a citizen-suit-enforceable nondiscretionary duty, or whether the alleged PFOA risks required further EPA action.

The Standing Analysis

PEER and CEH did not claim injury to the organizations themselves. Instead, they relied on associational standing. Under *Hunt v. Washington State Apple Advertising Commission*, an organization asserting associational standing must show that its members would have standing in their own right, the interests asserted are germane to the organization's purpose, and neither the claim nor requested relief requires individual member participation. The D.C. Circuit emphasized a threshold requirement implicit in *Hunt*: the organization must have members, or equivalent affiliates, whose interests it represents.

Plaintiffs conceded they were not traditional membership organizations. They argued instead that they were the functional equivalent of such organizations because of their relationships with board members, supporters, and staff. The court rejected that showing on the record before it. It declined to consider standing declarations submitted for the first time on appeal. It found the supporters theory insufficient because plaintiffs did not explain how supporters exercised the roles, responsibilities, or influence characteristic of members. It found the board theory inadequately developed.

The employee theory received the court's closest attention. Plaintiffs argued that staff could function as members because employees influenced the organizations through their responsibilities. The court rejected that theory. It reasoned that employees are the means by which an organization acts, not the constituency whose interests define the organization's mission. Employee influence derived from job duties is not member-driven control. Treating staff as members would collapse the distinction between representative and represented that associational standing requires.

Conclusion and Implications

For California practitioners, the decision is significant despite arising in the D.C. Circuit because PFAS regulation, TSCA citizen suits, and challenges to EPA action turn on federal standing principles. California advocacy organizations that are not formal membership entities should evaluate standing before filing, identify affected individuals with concrete injuries, and plead facts showing that those individuals are members or true member equivalents. General references to supporters, staff, or aligned constituencies may not suffice.

Defense counsel for regulated businesses, including companies involved with packaging, containers, or PFAS-related processes, should consider early standing challenges where nonprofit plaintiffs rely on representational standing without a clear membership structure. At the same time, the case does not approve or reject EPA's PFAS response, and it does not resolve the merits of TSCA section 4(f) or section 7 claims. Its practical lesson is narrower but important: in environmental litigation, jurisdictional architecture can be outcome determinative, and the standing record must be built in the district court. The court's opinion is available online at: https://www.leagle.com/decision/infco20260501305.
(Darien Key, Derek Hoffman)

RECENT CALIFORNIA DECISIONS

FIRST DISTRICT COURT FINDS SAN FRANCISCO BAY BRIDGE "BAY LIGHTS 360" PROJECT SURVIVES SECOND CEQA ATTACK— PRO PER LITIGANTS HELD TO THE SAME STANDARD AS AN ATTORNEY

Baker v. Bay Area Toll Authority,
___Cal.App.5th___, Case No. A174642 (1st Dist. June 5, 2026).

In *Baker v. Bay Area Toll Authority*, the First District Court of Appeal rejected Mark Baker's second attempt to stop the Bay Lights 360 art installation, which would add inward-facing lights to the Bay Bridge and double the amount of existing LEDs. The Court of Appeal grounded its decision in issue preclusion and the California Environmental Quallity Act's (CEQA) tight statutes of limitation and noted that "Baker's frequent and often repetitive filings are entering [the] territory" of "abusive litigation tactics" and "frivolous motions" under rule 8.276(a)(3). The court reminded Baker that:

> . . .[d]espite his self-representation, we hold [him] to the same standard as an attorney' when it comes to following rules of procedure and professional conduct and refraining from 'abusive litigation tactics. (citing to *Sheerer v. Panas* (2026) 119 Cal.App.5th 367, 370.)

Background

In 2013, a temporary LED art installation lit up the San Francisco Bay for the first time along the southern portion of the Bay Bridge, inspired by the artist's experience at Burning Man. In 2016, the project became a permanent fixture, and in 2023, after several years of heavy winds, salty air, moisture, and bridge vibrations, the project was taken offline for repairs. Shortly thereafter, the Bay Area Toll Authority (BATA) issued a Notice of Exemption (NOE) for the next iteration of the project: Bay Lights 360.

The upgraded project doubled the amount of LEDs from 24,000 to 48,000 and added street-facing lights. Caltrans, as a responsible agency, issued an encroachment permit for the new installation which required short-term traffic safety testing before the new inward-facing lights could be turned on permanently.

About a year later, Mark Baker, president of the Soft Lights Foundation and pro per litigant, sued BATA and Caltrans because the Project was never formally approved and a full EIR was never prepared. Baker lost on demurrer because the CEQA claim was barred by the 35-day statute of limitations on BATA's NOE and by the 180-day statute of limitations on BATA's decision to approve or carry out the Project, which the trial court ruled was made in early 2023.

Baker did not appeal his loss. Instead, he filed this action, asserting that the safety testing required under the Caltrans encroachment permit was itself a project under CEQA which the 2023 NOE did not address. BATA again demurred, arguing that the encroachment permit was not a separate project and it did not restart the statute of limitations. The trial court sustained the demurrer based on the preclusive effect of Baker's prior loss, and because Baker offered "no factual allegations demonstrating that th[e] study significantly changed the scope of the Project."

The Court of Appeal's Decision

The Court of Appeal first ruled on several notable evidentiary matters. First, the court rejected Baker's attempt to include documents from his first lawsuit in the joint appendix for his second lawsuit and instead took judicial notice of certain documents from the first lawsuit on the court's own motion, including the complaint, BATA's demurrer, Baker's opposition thereto, and the trial court's order sustaining BATA's demurrer without leave to amend. (Cal. Rules of Court, rule 8.155(c); Evid. Code, §§ 452 subd. (c), 459.) The court also upheld BATA's request for judicial notice of the 2023 NOE, the judgement in the first action, and the Caltrans encroachment permit.

Next, the court rejected Baker's uncertified administrative record because BATA properly rejected

his request to prepare it and refused to take judicial notice of emails and a news article that were not presented to the trial court. The court also rejected Baker's attempt to file supplemental briefing on new, undeveloped arguments regarding the validity of the 2023 NOE and alleged fraud. Finally, the court rejected Baker's motion to disqualify BATA's counsel for merely disagreeing with Baker's "legal" opinions, and rejected BATA's motion for sanctions, noting that "Baker's frequent and often repetitive filings are entering [the] territory" of "abusive litigation tactics" and "frivolous motions" under rule 8.276(a)(3). The court reminded "Baker that '[d]espite his self-representation, we hold [him] to the same standard as an attorney' when it comes to following rules of procedure and professional conduct and refraining from 'abusive litigation tactics.'" (citing to *Sheerer v. Panas* (2026) 119 Cal.App.5th 367, 370.)

Although the court did not address the advent of artificial intelligence, the author of this article notes that pro per litigants (and CEQA commenters, etc.) may leverage such freely available and remarkably sophisticated technology en masse, which ought to weigh in favor of truly holding pro per litigants to the same standard as attorneys. Without such a standard, judicial economy and efficiency will degrade exponentially in the coming years.

Regarding the merits, the court held that the safety testing required under the encroachment permit would induce the same environmental effects as the project itself. Baker's arguments did not transform the safety testing into a new or substantially different project compared to the project described in the NOE.

Separately, the court held that Baker's claims were subject to issue preclusion from the first lawsuit. There was no dispute that the first ruling was final and that Baker was the party against whom judgment was rendered. The issues were identical, too: both cases hinged on whether the 35-day and 180-day statutes of limitations applied. Additionally, that issue was actually litigated and necessarily decided in the prior litigation because the trial court's order clearly articulated as such.

Finally, the court held that the trial court's prior determination was on the merits. Baker argued that decisions based upon statutes of limitation are not on the merits, but the court clarified that they are, provided the second action rests upon the same facts alleged in the first, which was the case here. The court also held that its application of issue preclusion was consistent with the public policies of preserving the integrity of the judicial system, promoting judicial economy, and protecting litigants from harassment via vexatious litigation. Allowing Baker to relitigate these issues, especially without appealing the first order, would work against all of those policies. Additionally, the Legislature made CEQA's statutes of limitation unusually short which would render allowing this sort of repetitive litigation particularly harmful to public policy.

Conclusion and Implications

After two rounds of patently unsuccessful pro per CEQA litigation lasting several years, the Bay Lights 360 project survives. With the advent of artificial intelligence, the Court's admonition that pro per litigants are treated the same at attorneys ought to be taken seriously.

The court's *partially* published opinion is available at: https://www.courts.ca.gov/opinions/documents/A174642.PDF.

(Blaine R. Dyas)

FOURTH DISTRICT COURT HOLDS CALIFORNIA PUBLIC RECORDS ACT, STATUTORY TIMEFRAME FOR MAKING RECORDS "PROMPTLY AVAILABLE" IS FLEXIBLE AND CONTEXT-SPECIFIC

Voice of San Diego v. San Diego Unified School District,
___Cal.App.5th___, Case No. D084327 (4th Dist. May 11, 2026).

In *Voice of San Diego v. San Diego Unified School District*, the Fourth District Court of Appeal held that the California Public Records Act (CPRA) (Gov. Code, § 7920.000 et seq.) does not establish a precise deadline for agencies to produce records in response to a CPRA request. The court concluded that the statutory requirement to make records "promptly available" is inherently flexible and that, therefore, the appropriate timeframe for compliance depends on the circumstances of the request.

Background

The CPRA establishes a process for the public to obtain information from state and local agencies. After receiving a CPRA request, an agency must determine (generally within ten days, or up to 24 days in "unusual circumstances") whether the request seeks disclosable records in the agency's possession and notify the requester of that determination. If the request seeks disclosable records, Government Code section 7922.530, subdivision (a), requires the agency to make the records "promptly available."

Plaintiff Voice of San Diego (Voice), a local online news organization, brought a taxpayer action against the San Diego Unified School District (District) to enjoin the District from using public funds to implement allegedly unlawful CPRA practices. Specifically, Voice argued that the District routinely violated the CPRA's requirement to make records "promptly available" by allegedly delaying the production of public records pertaining to dozens of CPRA requests submitted by Voice from 2015 to 2020. The trial court rejected Voice's interpretation of the CPRA, and found the evidence did not prove the District engages in any unlawfulpractice of delaying or withholding public records. Because the court had previously adjudicated all other causes of action in favor of the District, it entered final judgment denying the petition for writ of mandate.

The Court of Appeal's Decision

The Court of Appeal affirmed the Superior Court decision, concluding that Voice was not entitled to relief on its taxpayer cause of action because the District's record production practices did not violate the CPRA. In the published portion of its opinion, the court concluded that the CPRA's requirement for agencies to make responsive records "promptly available" establishes a "deliberately flexible" timeframe, rather than a precise deadline.

The court was unpersuaded by Voice's reliance on *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180 (D.C. Cir. 2013) (*Citizens*), a case involving the federal Freedom of Information Act (FOIA). For purposes of complying with FOIA, the *Citizens* court suggested that making records "promptly" available "typically would mean within days or a few weeks …, not months or years." The Fourth District Court, however, dismissed this language from *Citizens* as an unhelpful, out-of-context dictum.

Citing the dictionary definition of "prompt," the court interpreted section 7922.530, subdivision (a), to require responding agencies "to produce records quickly and without delay *as the occasion demands*." Under this interpretation, an agency's promptness depends on various factors, including the scope and complexity of the CPRA request, the resources available to the responding agency, and any potential external circumstances beyond the agency's control.

In an unpublished portion of the opinion, the court reviewed the trial court's factual findings and concluded that, under the circumstances, Voice failed to demonstrate that the District's conduct violated the CPRA.

In the end, the Court of Appeal held as follows:

> The CPRA does not precisely define the timeframe for the actual production of requested records, and we cannot graft a "within days or a

few weeks" requirement onto section 7922.530, subdivision (a). Whether an agency has promptly produced records is to be determined case by-case considering the scope and burden imposed on the particular agency by the particular request. We further conclude substantial evidence supports the trial court's factual findings that the District did not maintain an unlawful practice of violating the CPRA. Because there is no basis for a taxpayer action where the challenged governmental conduct is legal, the trial court properly denied the petition for writ of mandate.

Conclusion and Implications

Whether an agency has complied with its duty to make records "promptly available" is a fact-intensive inquiry requiring a case-by-case determination. While there are many relevant factors that a court may consider in this analysis, the opinion cautions against accepting "'any and every reason' an agency proffers as a sufficient basis to find prompt disclosure." Reviewing courts must remain mindful of the "constitutional imperative that public access to government records is a fundamental right of citizenship." The court's opinion, certified for *partial* publication is available at: https://www4.courts.ca.gov/opinions/documents/D084327.PDF.
(Louisa I. Rogers, Blaine Dyas)

IN A FIRST, CALIFORNIA SUPERIOR COURT IMPOSES FINANCIAL PENALTIES ON CITY FOR FAILURE TO ADOPT HOUSING ELEMENT

People of California Ex Rel Rob Bonta vs. The City of Huntington Beach,
Case No: 30-2023-01312235-CU-WM-CJC (San Diego Super. Ct. May 15, 2026).

On May 15, 2026, the San Diego Superior Court provided the latest twist in the ongoing saga between the City of Huntington Beach and the State Legislature's relatively recent push to ensure compliance with State Housing Laws. The May 15, 2026, Order imposed a $10,000 a month penalty on the Orange County city for its failure to comply with California's Housing Element Law, with fines escalating to $50,000 per month beginning June 2026 until the city cures its violations. In doing so, the court imposed one of the most concrete financial consequences to date on a California city for defying the state's housing planning requirements.

Background on State Housing Element Law

The court's May 15 Order is the latest development in a standoff of sorts that began nearly five and a half years ago. Under State Housing Element Law, every eight years each city and county is subject to a Regional Housing Needs Assessment (RHNA) allocation setting forth the number of new homes that each jurisdiction is expected to accommodate during the eight-year period. Every city and county in the state must update the Housing Element of the jurisdiction's General Plan to identify sufficient sites to accommodate the RHNA allocation, including any necessary general plan amendments, updated policies and regulations, or rezoning necessary to ensure that the assigned quantity of housing can be legally developed. All cities within the Southern California Association of Governments region were required to submit a revised housing element for the sixth RHNA planning cycle by October 15, 2021.

The Huntington Beach Saga

Huntington Beach's RHNA allocation was 13,368 housing units. The City missed the October 15, 2021 deadline for updating its housing element, only preparing a draft element for review by the State Department of Housing and Community Development (HCD) by August 2022. This delay was not unique to Huntington Beach; many jurisdictions throughout California failed to adopt sixth cycle housing elements by the statutory deadline. However, after the draft received conditional approval from the State, Huntington Beach's City Council declined to adopt the element at the local level. Councilmembers claimed that the RHNA process had inflated the City's housing allocation and raised concerns about impacts on the "suburban character" of the com-

munity. In response, in February of 2023, HCD sent a notice of violation to the City Council and City officials stating that Huntington Beach had violated its duty under State law.

Huntington Beach was undeterred by the HCD notice and began an aggressive legal offensive against the state's authority to require a housing element.

Huntington Beach filed a federal lawsuit in the Central District of California, Case No. 8:23-CV-00421, challenging the constitutionality of the Housing Element Law. This federal case was ultimately dismissed, with the Ninth Circuit affirming the dismissal and the U.S. Supreme Court declining to hear an appeal. Huntington Beach also adopted Ordinance No. 4285, which purported to allow the City to deny applicants' use of the Builder's Remedy within the City – one of State Housing Law's most potent punishments for jurisdictions that fail to adopt a housing element.

California Files Suit

In March 2023, Attorney General Rob Bonta, Governor Newsom, and the Department of Housing and Community Development filed suit against Huntington Beach in response to the adoption of Ordinance No. 4285, later amending the complaint to include a cause of action against the City for its failure to adopt a compliant housing element. In May 2024, the San Diego County Superior Court determined that Huntington Beach had a ministerial duty under state law to adopt a legally compliant sixth cycle housing element by October 15, 2021, which it breached by failing to adopt a sixth cycle housing element altogether. However, the Superior Court Order was silent on remedy. The Order was appealed to the Court of Appeal, Fourth Appellate District, with the City arguing, among other things, that State Housing Element Law does not apply to Charter Cities, which are granted a larger scope of local regulatory power under the California Constitution. On September 11, 2025, the Court of Appeal denied Huntington Beach's argument, finding that State Housing Element Law is reasonably related to the resolution of a statewide concern and narrowly tailored to avoid unnecessary interference with local governance. The Court of Appeal remanded the case to the Superior Court, with direction to enter a new order compliant with State Housing Element law remedies.

The Superior Orders the City to Adopt Compliant Housing Element

On December 19, 2025, the San Diego County Superior Court issued a sweeping order requiring Huntington Beach to adopt a compliant housing element within 120 days, adopt conforming zoning code changes within 120 days from adoption of the compliant housing element, and affirming that the Builder's Remedy would continue to apply until the City did so. The State then moved for financial penalties.

On May 15, 2026, the Superior Court imposed the requested penalties, relying on the penalty provisions of Government Code Section 65009.1(a)(1), enacted on January 1, 2025, under Senate Bill 1037, which established mandatory minimum penalties for jurisdictions failing to adopt compliant housing elements on time. The Superior Court imposed a penalty of $10,000 a month for every month since the Section's effective date, with an escalation to $50,000 per month beginning in June 2026 until the City has adopted a housing element in substantial compliance with State law.

The Superior Court's penalties accomplished what years of HCD letters could not. Huntington Beach adopted a housing element on June 16, 2026, in an attempt to limit penalties, though HCD has not yet determined whether the adopted housing element is in compliance with State law. Under the Superior Court's Order, the City is already liable for $270,000 in penalties as of this writing.

Conclusion and Implications

In recent years, the California Legislature has attempted to give State housing laws greater teeth to spur local compliance. However, these laws have largely manifested themselves on a project-by-project basis. Huntington Beach's unwillingness to even engage with State Housing Elements presented a more systemic question: how far are courts willing to go to ensure that the State's Housing Laws are taken seriously?

The answer, at least from the San Diego County Superior Court, is clear. The financial penalties imposed by the Superior Court did what years of litigation had yet to accomplish—as of June 2026, more than halfway through the sixth RHNA cycle, Huntington Beach has adopted a sixth cycle housing element. By now, the majority of California's 539

jurisdictions are in compliance with the sixth cycle's housing element requirements. However, the penalties imposed on Huntington Beach may signal that local governments will face increased pressure to comply with State Housing Element Law timelines when the seventh cycle comes around. The court's order is available online here: https://oag.ca.gov/system/files/attachments/press-docs/30-2023-01312235-CU-WM-CJC_Minute%20Order%20SD%20%28JO%20Signature%29%5B1%5D.pdf.
(Niran Somasundaram)

LEGISLATIVE UPDATE

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

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

California Environmental Quality Act

AB 1699 (Rogers)—This bill was amended and re-referred to the Committee on Emergency Management on June 25, 2026. This bill would establish the Good Fire Act to extend the Prescribed Fire Liability Pilot Program and facilitate continued beneficial burning to meet the State's forest treatment goals. Among other things, this bill includes an exemption from the requirements of the California Environmental Quality Act (CEQA) for actions taken by CAL FIRE to assist in implementation of prescribed fire or cultural burning projects that do not otherwise require environmental review.

AB 2234 (Papan)—This bill was re-referred to the Committee on Natural Resources and Water on June 24, 2026. This bill would change the definition of "geothermal exploratory projects" under CEQA to include "equipment and activities necessary to establish interconnectivity between wells and reservoirs, temporary roads, electric distribution lines, and infrastructure to provide power for drilling and testing equipment." The bill would further specify that wells can be located within one half mile from a commercial scale geothermal development well, as measured from the bottom of the wells interaction point, so long as the owner or operator of the commercial-scale geothermal development provides written consent for its location within that one-half mile.

AB 2410 (Ellis/Gallagher)—This bill was re-referred to the Committee on Natural Resources and Water on June 24, 2026. The bill would exempt critical fuels reduction projects, as defined, done in communities in high fire threat districts or very high fire hazard severity zones from the requirements of CEQA, so long as the reduction meets one of the listed criteria defining a critical fuels reduction project. The bill includes a sunset date of January 1, 2030.

AB 2569 (Hart)—This bill was held under submission on May 14, 2026. The bill would revise the definitions of "environment" and "significant effect on the environment," to include impacts on "people," as specified. Specifically, the term "environment" would include the health and safety of people affected by the physical conditions at the location of the project and the term "significant effect on the environment" would include exposure of people, either directly or indirectly, to a substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment. The bill would also require that an Environmental Impact Report (EIR) include a statement on any significant effects that may result from locating a proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions.

AB 2552 (Farías)—This bill did not make it out of its house of origin by the May 29, 2026, deadline and will not be considered further during this legislative session. This bill would have applied to a project that has a significant transportation impact that the lead agency has decided to mitigate by requiring contributing to the Transit-Oriented Development Fund for purposes of the Transit-Oriented Development Implementation Program. As amended, the bill would have authorized a lead agency for a land use project to require that an application contribute to the fund if certain cost conditions are met and the Department of Housing and Community Development and Office of Land Use and Climate Innovation have validated the reductions in vehicle miles traveled that are attributable to the project.

SB 887 (Padilla)—This bill was read a second time and referred to the Committee on Appropriations on June 29, 2026. As amended, this bill would

define "data center" to include a facility, or part of a facility, that houses computing infrastructure, including graphics and central processing units, servers, storage devices, networking equipment, and associated power and cooling systems, for the primary purpose of processing, storing, or distributing electronic data. The bill would specify that data centers as defined are not ministerial projects that would be exempt from the requirements of CEQA. Nor would data centers be eligible for use of other categorical exemptions under CEQA. The bill provides; however, that the Jobs and Economic Improvement Through Environmental Leadership Act of 2021, which allows for certain CEQA streamlining benefits, would apply to data centers, subject to certain conditions.

SB 954 (Blakespear)—This bill was re-referred to the Committee on Appropriations on June 25, 2026. This bill would revise the definition of "natural and protected lands" under CEQA to include habitats for protected species identified as candidate, sensitive, or species of special status by State or federal agencies, thereby excluding such lands from a number of CEQA exemptions. This bill would also exempt projects consisting exclusively of a family day care home, as defined, if those homes are not located in an area zoned for industrial use or within 3,200 feet of a facility that actively extracts or refines oil or natural gas. The bill would also revise the exemption for advanced manufacturing facility projects to require those projects meet certain specified requirements. Finally, the bill would revise the CEQA exemption for rezoning actions that implement an approved housing element to not apply to rezoning that would allow for construction of a tourism facility, as defined, and would repeal the exception from the exemption for rezoning that would allow for construction of oil and gas infrastructure.

SB 1085 (Durazo)—This bill was amended and re-referred to the Committee on Local Government on June 17, 2026. This bill would extend the requirements of SB 610 (2001) and SB 221 (2021), often referred to as the "show me the water" bills, which require identification of a public water supply and preparation of a water supply assessment as part of preparation of an EIR or Negative Declaration/Mitigated Negative Declaration (ND/MND). This bill would apply those requirements to projects that rely on a CEQA exemption or ministerial approval process intended to streamline permitting for housing, commercial, and industrial development projects. The bill would require a local agency to identify any water system whose service area includes the project site and any water system adjacent to the project site that is a public water system that may supply water for the project at the time it determines whether CEQA applies, and if the local agency is not able to identify any public water system, a water supply assessment must be prepared.

SB 1326 (Wahab)—This bill was re-referred to the Committee on Appropriations on June 23, 2026. The bill would modify the definition of tribal cultural resource to, among other things, include a site, feature, place, cultural landscape, sacred place, or object with cultural value to a California Native American tribe that is identified by the Native American Heritage Commission as a sacred place, as provided, or included in a local tribal register. The bill would also revise and recast existing provisions of CEQA that require public agencies to avoid damaging effects to tribal cultural resources when feasible and provide avoidance and minimizations measures for consideration to instead require a public agency to adopt mitigation measures to avoid or minimize the significant adverse impacts to tribal cultural resources. The bill would require avoidance and preservation of the resource in place to be considered when requested by the consulting California Native American tribe, and if avoidance and preservation are determined to be infeasible, the bill would require the lead agency to demonstrate and document the basis for that determination with substantial evidence and to incorporate other measures to avoid or minimize significant adverse impacts to the resource. The bill would authorize the consulting California Native American tribe to identify culturally appropriate mitigation measures, which the bill would require the lead agency to consider and incorporate, to the extent feasible, in developing mitigation and treatment measures. This bill would also require the lead agency, if it elects not to use tribal methods and standards or tribal traditional knowledge in the identification of, and the adoption of avoidance, mitigation, and treatment measures for, tribal cultural resources, to explain its decision, supported by substantial evidence, in the environmental documents for the project.

Density Bonus Law

AB 2433 (Alvarez)—This bill was re-referred to the Committee on Appropriations on June 30, 2026. This bill aims to ensure that projects receiving a density bonus deliver affordable units as part of the project. As amended, the bill would revise and recast the provisions of Density Bonus Law to require a density bonus, incentive, or concession, or waiver or reduction, on sites that are the subject of one housing development application, as specified. If the local government notifies the applicant that the application is deemed complete, this bill would require the city or county to provide the applicant with a determination that the project is eligible for a density bonus. The bill would make revisions to the calculations related to incentives or concessions available to an eligible project. As revised, the bill would no longer provide that a housing development that satisfies the requirements for the existing CEQA exemption for housing projects consistent with applicable general plan and zoning requirements is a use by right and subject only to ministerial review.

Planning and Zoning Law

AB 1751 (Quirk-Silva/Wicks)—This bill was re-referred to the Committee on Local Government on June 29, 2026. The bill, called the "Missing Middle Townhome Ownership Act," would establish a new ministerial approval process for townhome development projects that meet specified objective planning standards. The bill would define "townhome" as a single-family dwelling unit of no more than 3 stories that shares a common wall or is separated from neighboring units by an air gap and would define "townhome development project" to mean a housing development project consisting entirely of residential dwelling units that satisfy this definition of townhome and meets specified floor area requirements and includes no more than 150 units. The bill would authorize a local agency to disapprove a townhome housing development project only if it makes written findings that the proposed townhome project would have a specific, adverse impact on public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the impact. The bill would authorize a local agency to adopt an ordinance to implement its provisions and would provide that the adoption of such an ordinance is not a project under CEQA.

AB 1997 (Lee)—This bill was re-referred to the Committee on Housing on June 18, 2026. As amended, this bill would require a lead agency to approve or disapprove a housing development project where 90 percent of the units are affordable to very low or extremely low-income households within 30 days of certifying an EIR. The bill would require that, prior to the application being deemed complete, the lead agency must have received written notice from the applicant that an application is being made for an allocation or commitment of financing, tax credits, bond authority or other financial assistance from a public agency or federal agency, and that there is prior confirmation that the application has been made prior to certification of the EIR.

AB 2074 (Haney)—This bill was amended and re-referred to the Committee on Housing on June 16, 2026. As revised, this bill would require major transit cities, as defined, to designate one or more regional transit hub districts, as specified. The bill would require a downtown housing development, as defined, to be an allowed use by right within a regional transit hub district and would prescribe requirements for downtown housing developments, including requiring specified labor standards and requiring the developments to be eligible for streamlined ministerial approval, as specified. The bill would establish the Downtown Revitalization Loan Fund and continuously appropriate funds to the California Housing Finance Agency to make loans for downtown housing developments, as specified.

AB 2601 (Lee)—This bill was re-referred to the Committee on Local Government on June 25, 2026. This bill would require that an application for a proposed housing development containing no more than two residential units within a single-family residential zone be eligible for concurrent processing with an application for a parcel map for an urban lot split, as provided. The bill would authorize a local agency to condition issuance of building permits, grading permits, or certificates of occupancy for a proposed housing development on the applicant first obtaining approval and recording a parcel map for eligible parcels pursuant to the existing urban lot split provisions. The bill would also allow the primary dwellings in an urban lot split under these provisions to be developed or converted to condominiums upon request of the

applicant, or, if the housing development includes an existing unit, allow the applicant to request a condominium conversion for that unit pursuant to state and local law.

AB 2676 (Gallagher)—This bill was re-referred to the Committee on Housing on June 24, 2026. This bill would amend the Housing Crisis Act of 2019 to expand the prohibition against enacting a development policy, standard, or condition that has the effect of imposing or enforcing a moratorium on housing development within all or a portion of the jurisdiction of a county or city where housing is an allowable use to also prohibit these policies, standards, or conditions within the sphere of influence of a city. The bill would define "moratorium or similar restriction or limitation on housing development" to include, but not be limited to, the electorate of a county or city subject to these provisions from exercising its referendum power in a manner that has the effect of extending an existing moratorium or similar restriction or limitation on housing development. The bill would also prohibit a county or city subject to these provisions from enforcing an initiative or referendum imposing a moratorium or other similar restriction on or limitation of housing development until the initiative or referendum receives approval from the Department of Housing and Community Development (HCD). The bill would provide that if HCD denies approval of the initiative or referendum, as specified, the initiative or referendum would be deemed void. This bill would also revise the definition of "reducing the intensity of land use" to mean any action that would individually or cumulatively reduce the site's residential development capacity, including reductions to height, density, or floor area ratio, new or increased open space or lot size requirements, new or increased setback requirements, minimum frontage requirements, or maximum lot coverage limitations. This bill would also provide that an action brought to enforce its provisions is subject to a three-year statute of limitations and that the bill's provisions apply retroactively to any pending action or proceeding.

SB 677 (Wiener)—This bill was re-referred to the Committee on Local Government on June 24, 2026. As amended, the bill would make a local agency's failure to take certain actions for housing development projects that include the issuance of tax-exempt private activity bonds a disapproval of a housing development project in violation of the Housing Accountability Act. The bill would further prohibit the appeal of subdivisions for housing development projects pursuant to the Subdivision Map Act or a local subdivision ordinance, as specified.

SB 1014 (Grayson)—This bill was re-referred to the Committee on Appropriations on June 25, 2026. This bill would require cities and counties to disclose all infrastructure requirements (such as sidewalks and sewers) within 30 days of submittal of a housing application and would prohibit the local agency from adding new requirements more than 30 days after submission of a permit application unless certain specified circumstances are met.

SB 1116 (Caballero)—This bill was re-referred to the Committee on Local Government on June 24, 2026. This bill would streamline the construction of smaller, lower cost "starter" homes for home ownership. The bill would amend existing planning and zoning requirements for certain housing development projects to require that height limits apply exclusively to the physical height of a building rather than the number of floors. The bill would also prohibit imposition of specified front or internal setbacks or a standard that would have the effect of physically precluding the construction of up to the number of units allowed for by minimum lot sizes. The bill would also require that provisions related to ministerial approval of housing developments on certain subdivided lots be interpreted liberally in favor of producing the maximum number of total housing units.

SB 1117 (Cervantes)—This bill was re-referred to the Committee on Local Government on June 10, 2026. This bill would amend Planning and Zoning law requirements for accessory dwelling units to make it less costly to build accessory dwelling units (ADUs) by removing the ability to impose impact fees on ADUs over 750 square feet. Specifically, the bill provides that any impact fees charged for an ADU with more than 750 square feet of interior livable space shall be charged only on the area in excess of 750 square feet of interior livable space, instead of the entirety of the ADU.

Sustainable Communities Strategies

SB 1087 (Cabaldon)—This bill was re-referred to the Committee on Appropriations on June 30, 2026. The bill would make numerous changes to existing Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) guidelines and requirements, including how greenhouse gas emissions (GHG) reduction targets are set, the timeline for updating the plans, and how GHG reduction strategies are evaluated. It would also extend GHG reduction targets to 2045 and make changes to certain transportation funding programs to support implementation of the strategies. As amended, this bill would no longer include an exemption for the preparation and adoption of RTPs/SCSs from the requirements of CEQA.

California Coastal Act

AB 1740 (Zbur)—This bill was re-referred to the Committee on Local Government on June 24, 2026. As amended, the bill would require the City of Santa Monica to submit a complete local coastal program to the Coastal Commission by January 1, 2029. The bill would further streamline active transportation measures in the Coastal Zone.

SB 963 (Laird)—This bill was read a second time and ordered to the consent calendar on June 25, 2026. This bill would set certain time limits for the California Coastal Commission to identify and review necessary information and hold a de novo and public hearing when a coastal development permit issued by a local jurisdiction is appealed to the commission and the commission determines a substantial issue exists, as provided.
(Amy Higuera)

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