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LEGISLATIVE DEVELOPMENTS

CALIFORNIA REWORKS AFFORDABLE HOUSING FINANCE THROUGH AB 179

Governor Gavin Newsom signed into law Assembly Bill 179 on July 13 as part of California's 2026-27 budget package. The measure, which lists the Assembly Committee on Budget as author, is designed to reorganize how the state finances affordable housing, direct more financing capacity toward rental projects, lower development costs by prohibiting impact fees, and attach new conditions to state housing and homelessness funds.

Background

According to a press release issued by the Newsom administration on the date he signed the bill, AB 179 is the next phase of the state's housing strategy, and its combined financing and impact fee changes could reduce affordable housing costs by an estimated $60,000 to $70,000 per unit on average. The new law also addresses sustainable community grants, disaster rebuilding, homelessness funding, residential care facilities, and clinic building standards. Because AB 179 is a budget trailer bill, it took effect immediately, although several provisions begin in 2027 or operate on later schedules.

Assembly Bill 179

A One Stop Financing Structure

A central feature of the bill is the consolidation of state housing finance decisions around the State's newly created Housing Development and Finance Committee (HDFC). AB 179 codifies the committee created by the Governor's 2025 reorganization plan, adds the State Treasurer, Controller, and specified nonvoting members to its executive committee, and requires annual supplemental reporting to legislative committees through April 2029.

Beginning January 1, 2027, and through the end of 2036, the California Debt Limit Allocation Committee (CDLAC) must devote at least 90 percent of the state's annual tax-exempt private activity bond cap to qualified residential rental projects. The CDLAC may, by unanimous vote, lower that share to as low as 80 percent for one year. At least half of the rental project allocation must initially be reserved for projects awarded funding by the new HDFC. If lawmakers do not reauthorize that reservation by July 1, 2029, it falls to 40 percent, subject to an automatic increase back to 50 percent when an annual demand survey supports an increase.

For projects selected through the new process, the CDLAC and, when applicable, the California Tax Credit Allocation Committee, must make ministerial allocations after receiving the application from the HDFC. The intended result is a single coordinated award process instead of overlapping substantive reviews by several state bodies. AB 179 also makes conforming changes to programs including the Multifamily Housing Program and the Joe Serna Jr Farmworker Housing Grant Program.

Development Fees and State Awards

Much of the public attention on the bill was focused on its provisions regarding development fees, also known as impact fees. Local governments rely on such fees to pay for parks, streets, and other public improvements required to accommodate growth, but these fees can add substantial project costs and negatively affect project feasibility. One local news report about the bill cited a Santa Rosa affordable senior housing developer who reported impact fees of roughly $40,000 to $60,000 per unit, and who said that rising costs limited the project's planned expansion.

Despite the public focus on the bill's effects on development fees, the new bill does not directly limit or ban such fees. Instead, the bill works by limiting the availability of state housing funds to projects that are subject to local fees which are not waived by the jurisdiction. For notices of funding opportunity issued after July 1, 2027, a state housing entity must reduce an award when a city or county is the lead applicant for a covered affordable multifamily project and the jurisdiction has not committed to waive development

impact fees it otherwise would impose. The awarding entity must also consider quantifiable in-kind local contributions when scoring competitive funding for new affordable multifamily construction, to the extent feasible. The bill's approach uses eligibility for state assistance to encourage local fee relief while leaving local fee authority otherwise in place.

Housing Climate and Rebuilding Programs

AB 179 divides administration of the Affordable Housing and Sustainable Communities Program for funding rounds initiated on or after July 1, 2026. The HDFC will oversee the housing allocation, with an emphasis on infill projects, while the Strategic Growth Council will manage the sustainable communities allocation for infrastructure, community improvements, greenhouse gas reduction, and land use goals. The bill sets cross program allocation targets and preserves a specified share of sustainable communities funding for protection of agricultural land facing conversion pressure.

The bill also creates a Disaster Rebuilding Assistance Program within the California Housing Finance Agency. Authorized tools include construction loan loss guarantees and interest rate buydowns for properties damaged or destroyed in a qualifying disaster. The Governor's announcement described $100 million for the rebuilding initiative. AB 179 requires an early program evaluation and annual reporting beginning in 2028, and it requires advance information for the Department of Finance and legislative budget staff before more than $10 million is spent on an additional form of assistance.

Homelessness Funding with Conditions

The measure provides $900 million for the Homeless Housing Assistance and Prevention program. Ninety-seven percent of these new funds are designated for large cities, counties, and continuums of care, with three percent available for tribes. The broader budget package also includes $500 million in enhanced state low-income housing tax credits and $200 million for the Multifamily Housing Program, according to the Governor's office.

Release of the homelessness funds by the Housing and Community Development Department (HCD) depends on fiscal readiness, housing element compliance, and other requirements that vary by recipient. Covered cities and counties must maintain a prohousing designation, provide matching funds, and adopt encampment policies consistent with state guidance. The second disbursement also depends in part on improvement in at least half of a region's system performance measures. HCD may reduce a future allocation when a grantee fails to meet a prior round spending deadline after technical assistance and an opportunity to correct, then redirect the unspent amount within the region or through a specified bonus process.

Conclusion and Implications

AB 179 changes the machinery of affordable housing finance rather than affecting the underlying economics of construction. Coordinated reviews and ministerial bond and tax credit allocations may reduce delay and uncertainty, while fee waivers may allow limited public subsidies to support more units. The effect will depend on implementation rules, demand for bonds and credits, local participation, construction costs, interest rates, and the capacity of state agencies to operate the new process. For more information on AB 179, see: https://legiscan.com/CA/text/AB179/id/3451651.

(Neal Parish, Darien Key)

REGULATORY DEVELOPMENTS

U.S. BUREAU OF RECLAMATION RELEASES NEPA FINAL EIS DETAILING OPERATIONAL GUIDELINES AND STRATEGIES FOR LAKE POWELL AND LAKE MEAD

The U.S. Bureau of Reclamation (Reclamation), in conjunction with the Secretary of the Interior (Secretary), released a Final Environmental Impact Statement (EIS) analyzing various decision-making frameworks and their impacts on the management of Lake Powell and Lake Mead and the greater Colorado River Basin (collectively referred to as the Basin). The Final EIS outlines Reclamation's preferred alternative that will guide the management of the Basin beginning October 1, 2026, along with several other decision-making frameworks that were considered but not adopted. On August 21, 2026, the Department of the Interior (Department) issued a Record of Decision adopting the preferred alternative's Decision Framework and, pursuant to that framework, issued the first set of operating guidelines, which govern operating years 2027 and 2028.

Factual Background

The Basin supplies water for roughly 40 million people and approximately 5.5 million acres of agricultural land across seven states in the western United States, 30 Tribal Nations, and Mexico. For the past 26 years, the Basin has experienced severe drought conditions resulting in low runoff and reservoir levels. Notably, the combined contents of Lake Powell and Lake Mead have reached lows unseen since Lake Powell began filling in 1963. Consequently, Reclamation has taken unprecedented measures to combat the drought that included the release of up to an additional one million acre-feet of water from Flaming Gorge Reservoir and a reduction in releases from Lake Powell to the Lower Basin. However, these novel actions have been insufficient to halt the Basin's declining hydrologic conditions.

In 2022, the Department, along with Reclamation, began engaging the public in an effort to develop new operating guidelines, working extensively with the Basin States, Basin Tribes, and other interested parties affected by the Basin's management. Despite the engagement, the Department and Reclamation were unable to develop consensus-based, long-term operational guidelines for the Basin.

The Department published a draft EIS in January 2026 because new management operations and guidelines must be in place by October 1, 2026. The draft EIS did not identify a preferred alternative; the preferred alternative later analyzed in the Final EIS fell within the range of alternatives the draft EIS had considered. During this time, the Department and Reclamation continued to engage in negotiations with entities operating in the Basin in hopes of reaching a consensus. Ultimately, consensus was not reached, and the Department was required to complete the National Environmental Policy Act (NEPA) process to have new management solutions ready for the October 1 deadline.

Reclamation's Preferred Alternative

Broadly, the Secretary and Reclamation analyzed a range of management strategies and the tradeoffs associated with selecting a particular approach. Reclamation and the Secretary identified as their preferred alternative an adaptive decision framework that will allow the Department to develop and maintain consensus-based guidelines for operating years 2027 through 2036.

The Final EIS analyzed several management strategies: the No Action Alternative, the Basic Coordination Alternative, the Enhanced Coordination Alternative, the Maximum Operational Flexibility Alternative, the Supply Driven Alternative, and the Preferred Alternative. The Department selected its preferred alternative as the decision-making framework to guide the management of the Basin for the next decade. The decision-making framework of the preferred alternative establishes operational principles, key thresholds and ranges for operational elements, and a process that would govern the development and issuance of operating guidelines that

would be implemented in two-year intervals unless a consensus-based agreement provides for a longer duration. The preferred alternative did not establish specific operating guidelines for managing the Basin; rather, it provides a structure within which operating guidelines can be developed, reviewed, and implemented through 2036.

Operating principles for the Department's preferred alternative center on several management priorities, including the following: operations should be responsive to hydrology, critical federal infrastructure must be protected through practical and deliberate operations, operating guidelines should implement the Long Range Operating Criteria while also providing direction to address extraordinary circumstances, and operating guidelines should prioritize consensus-based recommendations.

The Department concluded that no singular decision-making framework could maximize the protection of critical water level elevations, minimize reduction in water deliveries, and maximize hydropower generation all at once. However, the Department found that its preferred alternative appropriately balances tradeoffs across key metrics and provides protection under hydrologic conditions drier than those of the current drought. Additionally, the Department concluded that the preferred alternative protects critical infrastructure and maintains a moderate balance of performance among reservoir elevations, shortages, and Glen Canyon Dam releases, even in the driest hydrologic conditions.

Overall, the Department's position is that the preferred alternative appropriately balances inherent system tradeoffs and constitutes a practical approach to "robust protection of critical infrastructure while considering adverse impacts to water users and avoiding unnecessary impacts to other resources."

Conclusion and Implications

The Department and Reclamation's selection of the preferred alternative signals a continued emphasis on the creation and implementation of consensus-based management strategies to combat the drought in the Basin. While the framework does not itself prescribe long-term operating guidelines, the preferred alternative makes clear that the Department and Reclamation are focused on creating a flexible decision-making framework that may accommodate any future consensus-based agreements.

The flexibility afforded by this framework may allow management decisions to better balance the differing needs of those who use and rely on the Basin. However, the lack of consensus highlights the difficulty surrounding the Basin's management over the past several decades. Despite a concerted effort from all parties, a long-term consensus on Basin-wide water management strategies has yet to be reached, meaning the solutions discussed in the Final EIS are meant to function in the interim. Without a long-term agreement, management of the Basin may remain unsettled, potentially affecting those who rely on finalized guidelines and key metrics in the Basin's management. For more information, see: https://www.usbr.gov/ColoradoRiverBasin/post2026/final-eis/index.html. The Record of Decision and the 2027–2028 Operating Guidelines are available at: https://www.usbr.gov/ColoradoRiverBasin/post2026/decision-doc/index.html.

(David Cameron)

RECENT FEDERAL DECISIONS

U.S. BUREAU OF RECLAMATION NOT REQUIRED TO CONDUCT NEPA REVIEW OR ESA CONSULTATION WHEN CONVERTING WATER SERVICE CONTRACTS UNDER WIIN ACT

Center for Biological Diversity v. United States Bureau of Reclamation, ___F.4th___, Case No. 25-5137 (9th Cir. Aug. 17, 2026).

In *Center for Biological Diversity v. United States Bureau of Reclamation*, the United States Court of Appeals for the Ninth Circuit issued a published opinion on August 17, 2026, affirming that the Bureau of Reclamation (Bureau) was not required to complete environmental review under the National Environmental Policy Act (NEPA) or engage in consultation under the federal Endangered Species Act (ESA) when converting water service contacts under the Water Infrastructure Improvements for the Nation Act (WIIN Act or Act). The WIIN Act developed a new contracting mechanism to allow water districts to prepay for water infrastructure projects. The Bureau converted over 60 water service contracts to repayment contracts under the Act. The issue on appeal was whether the Bureau violated NEPA and the ESA by not completing environmental review and consultation with each contract conversion. Affirming the U.S. District Court's holding, the Ninth Circuit determined environmental review and consultation were not required because the WIIN Act imposed a mandatory duty to convert the contracts and did not afford the Bureau discretion to benefit protected species or consider environmental effects in doing so.

Background

The WIIN Act was enacted in 2016 and provided a mechanism for water districts to change the payment structure of their contracts so that the water districts could prepay the costs of their water service contracts with the federal government. The government could then in turn use the prepaid funds to build new water storage infrastructure. This Act applies to the Central Valley Project, which is a federally owned network of dams, canals, and power plants that transports water from northern California to central and southern California water districts.

Many water districts took advantage of the conversional mechanism under the Act; the Bureau converted 67 water service contracts into repayment contracts between 2020 and 2021. The terms governing the water delivery, including maximum quantity of water and purpose of delivery, remained the same in each contract. However, unlike service contracts which expire and must be renewed, repayment contracts continue indefinitely so long as the payments are made.

At the U.S. District Court

The Center for Biological Diversity, Restore the Delta, and Planning and Conservation League sued the Bureau of Reclamation, Department of Interior, and the Secretary of the Interior alleging the Bureau was required to perform environmental review under NEPA and consultation under the ESA before it converted each water service contract to a repayment contract under the WIIN Act. Failure to do, they alleged, violated NEPA, the ESA, and the Administrative Procedure Act. The Plaintiff asserted that the water allocations under the converted contracts would harm the Bay-Delta eco-system including four species of protected fish. The District Court compelled joinder of the water districts with the converted contracts.

The District Court granted summary judgment for the Bureau and the water districts, holding that the conversion of the contracts under the WIIN Act did not require contract-specific NEPA review or ESA consultation. The District Court found the WIIN Act restricted the Bureau from exercising any "discretion to modify any water contractual rights other than those related to the financial terms specifically addressed by the WIIN Act." Resultantly, the WIIN Act did not afford the Bureau discretion to benefit protected species or consider environmental effects as

part of the contract conversion process. The Plaintiffs appealed.

The Ninth Circuit's Decision

NEPA instructs agencies to prepare environmental impact statements for "major Federal actions significantly affecting the quality of the human environment." (42 U.S.C. § 4332(2)(C).) However, it excludes the review requirement for activities "that are non-discretionary and made in accordance with the agency's statutory authority. (Id. § 4336e(10)(B)(vii).) Environmental review is not required for federal actions where the "agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action." (Id. at § 4336(a)(4).)

The ESA directs agencies to engage in consultation to:

> . . .insure that any action authorized, funded, or carried out by such agency ... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification" of a critical habitat. (16 U.S.C. sec. 1536(a)(2).)

But like NEPA, the ESA only requires an agency to engage in consultation when the agency has some discretion to act for the benefit of the protected species. (*Nat. Res. Def. Council v. Jewell*, 749 F.3d 776)

Plain Reading of the WIIN Act

Looking to the plain meaning of the text, the Ninth Circuit found the WIIN Act commands the Bureau to convert contracts upon request by the water districts and provides the Bureau with discretion to change only contract terms that relate to the contract's payment structure.

The court pointed to two sections of the WIIN Act leading to this conclusion. Section 4011(a)(1) states:

> . . .[u]pon request of the contractor, the Secretary of the Interior shall convert any water service contract […] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.

This section creates a mandatory duty for the Bureau to convert the contracts upon request because of the word "shall." Section 4011(a)(4) states, in part:

> . . .[a]ll contracts entered into pursuant to [this section] shall … not modify other water service, repayment, exchange and transfer contractual rights between the water users' association, and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association and their landowners as provided under State law.

The court found this section bars the Bureau from changing other existing rights in the prior water service contract, including the amount or manner of water delivered.

Considering each of these sections, the court found the Bureau must convert contracts upon request and cannot consider environmental effects or take actions to benefit protected species when doing so. Since the Bureau lacks discretion to take actions to benefit protected species or alleviate environmental harms as part of the WIIN Act conversions, NEPA and the ESA do not require the Bureau to conduct environmental review or consultation.

The court also found the purpose of the WIIN Act further supports its interpretation. The WIIN Act was created to fund water storage construction projects in response to a period of prolonged drought. Restricting agency modification of the contracts encourages water district engagement in prepayment without risking their previous water service rights and arrangements.

The Court Rejected Plaintiffs' Interpretation of the WIIN Act

The court disagreed with the Plaintiffs' interpretation of section 4011(a). Citing to *Natural Resources Defense Council v. Houston*, 146 F.3d 1118 (9th Cir. 1998) (Houston), the Plaintiffs argued the WIIN Act's language allowing for negotiation of "mutually agreeable terms and conditions" granted the Bureau discretion to modify contractual terms in ways beneficial to the environment. In Houston, the Ninth Circuit found the Bureau had discretion under the Reclamation Act in contract renewals where the government could renew the contracts on "mutually agreeable terms" and had discretion to set rates and

reduce overall available water supply to protect species. But the court distinguished the Reclamation Act from the WIIN Act. The court found the WIIN Act expressly limits the scope of contract negotiations with language stating the Bureau "shall… not modify other water service… contractual rights." There was no similar limitation in the Reclamation Act. The court determined Houston did not apply.

Plaintiffs also pointed to converted contracts as indicating that the Bureau's actions were inconsistent with its position that it does not have discretion to modify terms of a contract beyond the contracts' payment structure. Plaintiffs identified one converted contract which deleted a section from the original contract that included obligations to conduct environmental review. However, this section was titled "term of contract," and the court determined that this was merely the process of converting a renewal contract into a repayment contract, the purpose of the WIIN Act. Renewal of contracts under the Reclamation Act require environmental review. But repayment contracts remain in place indefinitely and do not require renewal. Thus, the environmental review contract provisions would no longer apply to the converted contracts.

The court further determined that its interpretation of section 4011(a) complied with the WIIN Act's savings clauses that preserve obligations under the Central Valley Project Improvement Act (CVPIA), the ESA, and "existing law." The court found no conflict between its interpretation of the WIIN Act and the CVPIA, ESA, or existing law.

Conclusion and Implications

The Ninth Circuit affirmed the District Court's grant of summary judgment in favor of the Bureau and the water districts. The Ninth Circuit held that the Bureau's conversions of contracts under the WIIN Act without environmental review or consultation did not violate NEPA or the ESA.

The Ninth Circuit noted that this decision is limited and water deliveries remain subject to NEPA and the ESA as part of the Bureau's operation of the Central Valley Project. The opinion is not intended "to suggest that water deliveries secured by the converted repayment contracts are no longer subject to environmental review." The Ninth Circuit's opinion is available here: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/08/17/25-5137.pdf.
(Sara Helms)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT CLARIFIES INDEPENDENT JUDGMENT STANDARD OF REVIEW APPLIES TO CITY CONDEMNATION OF PRIVATE UTILITIES

Town of Apple Valley v. Apple Valley Ranchos Water, ___Cal.5th___, Case No. S289391 (Cal. Aug. 24, 2026).

In the face of rising utility costs, reliability concerns, and wildfires, residents of more than one California municipality have wondered whether their city should just own relevant utilities itself. This isn't a purely hypothetical proposition. The Los Angeles Department of Water and Power (LADWP), the largest municipal utility in the country, has run the city's water and power since the early 1900s. The Sacramento Municipal Utility District (SMUD) has served Sacramento since the 1940s, after voters created the district and it acquired a private predecessor's facilities. These systems prove municipal ownership can operate at scale.

But LADWP and SMUD came into existence through negotiated deals and municipal votes decades before today's legal landscape existed. The much harder modern question is whether a jurisdiction can forcibly condemn a currently operating, privately owned utility over its owner's objection. That's what the Town of Apple Valley in San Bernardino County has spent over a decade trying to do to Apple Valley Ranchos Water Company. On August 24, 2026, the California Supreme Court ruled in that fight in *Town of Apple Valley v. Apple Valley Ranchos Water*, in a decision that clarified the standard of review governing such municipalization attempts.

Factual Background

Apple Valley Ranchos Water Company long served as the private water utility for the Town of Apple Valley. In 2010, the company was sold to the Carlyle Group and then sold again to Liberty Utilities (a subsidiary of Canada's Algonquin Power & Utilities) in 2015. Alarmed by rate increases, the Town Council adopted resolutions of necessity in 2015 providing for "the public ownership, operation and maintenance of the Apple Valley Water System to provide water service to the public.Not long after issuing these resolutions, the Town filed an eminent domain complaint against the private water utility. The utility objected, arguing that the Town had not established the elements necessary to support eminent domain.

The trial court ruled for the private utility, finding the Town had not established the requisite elements for eminent domain. The Town appealed, and in January 2025 California's Fourth District Court of Appeal, Division Two (Case No. E078348) reversed, holding that the trial court should have applied the deferential "gross abuse of discretion" standard to the Town's resolutions of necessity, rather than independently weighing the evidence. The Supreme Court took the case in April 2025.

Relevant Eminent Domain Law

Under California Code of Civil Procedure § 1240.030, a public entity that is seeking to condemn private property for a public project must establish three key findings: (1) that the public interest and necessity require the project in question; (2) that the project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (3) that the property that the public entity seeks to acquire is necessary for the project. Ordinarily, a government's "resolution of necessity" conclusively establishes these findings needed to condemn property as a matter of law. (Code Civ. Proc. § 1240.250(a)). Under California Code of Civil Procedure §§ 1245.250(a) and 1245.255(b), a property owner can only challenge the validity of a government's resolution of necessity by showing that the government "grossly abused its discretion" in adopting it. This standard is highly deferential to the government entity in question.

In 1992, the Legislature amended the law to add Code of Civil Procedure § 1240.030(b), addressing public entities that seek to condemn privately owned

electric, gas, and water public utility property specifically. In those cases, a public entity's resolution of necessity creates a "rebuttable presumption" that the statutory findings required under § 1240.030 are true. (Code Civ. Proc. §§ 1240.650(c), 1245.250(b)).

The Town, and the Court of Appeal after it, read "rebuttable" narrowly: the utility gets to raise a challenge, but the underlying standard of review of any such challenge is still the deferential gross-abuse-of-discretion test.

The Supreme Court's Decision

Writing for a unanimous court, Justice Leondra Kruger rejected the Court of Appeal's approach directly. Describing the Town's position—that judicial review should be limited to whether the Town "grossly abused its discretion"—the opinion states plainly: "The Court of Appeal accepted this argument. We do not."

The Court's reasoning is based on its understanding of the 1992 amendments. The Court noted that under ordinary circumstances, a city's resolution of necessity conclusively establishes as a matter of law, the requisite elements under California Code of Civil Procedure § 1240.030. In these ordinary circumstances, the statute "leav[es] challengers with no choice but to attack the resolution of necessity under the gross abuse of discretion standard." However, the Court distinguished condemnation of private utility property from these ordinary circumstances. In the context of utility property, a resolution of necessity creates only a "presumption" that the findings under California Code of Civil Procedure § 1240.030 have been established. Therefore, a challenger does not need to attack the validity of the resolution of necessity itself to challenge the condemnation, it can instead rebut the presumption. Applying gross-abuse-of-discretion deference to this rebuttable presumption, the Court held, "cannot be squared with the 1992 amendments," since it would functionally restore the conclusive presumption that the Legislature purposefully abandoned under the 1992 amendments.

Instead, the Court determined that a trier of fact must exercise its independent judgment to determine whether the utility owner has rebutted the statutory presumptions and has established, by a preponderance of the evidence, that the taking is not authorized under the Eminent Domain Law. The Court derived this standard from Evidence Code § 115, which sets preponderance of the evidence as the default standard when no other standard is specified. In doing so, the Court rejected an argument raised by the Town that requiring judges to independently second-guess a legislative body's necessity findings violates separation of power by intruding on territory reserved for elected officials. Again, the Court found that this concern cannot survive the Legislature's own considered decision to make the presumption rebuttable for utility takings specifically, and that the Court's review does not question a public entity's decision to adopt a resolution of necessity; rather it examines whether that entity has separately satisfied the necessary elements under California Code of Civil Procedure § 1240.030.

Having settled the standard, the Court reversed the Court of Appeal's judgment and remanded the case for further proceedings—it did not decide whether the trial court's original judgment against the Town should be reinstated.

Conclusion and Implications

For municipalities considering the LADWP or SMUD path to public ownership, the decision raises the practical bar: a challenge to condemnation of a privately owned utility is reviewed under independent judgment, not the deferential gross-abuse-of-discretion standard. That means the necessity findings under Code of Civil Procedure § 1240.030 will likely be contested on the merits at trial rather than resolved on a deferential paper record. This comes with the potential for a corresponding increase in litigation time and cost—the Apple Valley litigation itself has now run more than a decade without a final resolution on the merits, and the Supreme Court's remand means that trial-level factfinding under the correct standard still lies ahead. The Supreme Court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/S289391.PDF.

(Niran Somasundaram)

FOURTH DISTRICT COURT REQUIRES DEEPER CEQA REVIEW OF WATER SUPPLY AND SALTON SEA AIR IMPACTS FOR IMPERIAL COUNTY LITHIUM PROJECT

Comite Civico del Valle v. County of Imperial,
___Cal.App.5th___, Case No. D085747 (4th Dist. Aug. 11, 2026).

In *Comite Civico del Valle v. County of Imperial*, the Fourth District Court of Appeal held that Imperial County's Environmental Impact Report (EIR) for a geothermal power and lithium extraction project near the Salton Sea did not adequately address long-term water availability, water-shortage mitigation, and related air-quality impacts. The Court of Appeal affirmed in part, reversed in part, and remanded for a limited writ of mandate requiring compliance with the California Environmental Quality Act (CEQA).

On September 2, 2026, the court certified the opinion for partial publication, excluding its discussions of cumulative water impacts, tribal consultation, and cumulative project impacts from publication.

Background

The project, developed by Controlled Thermal Resources (US), Inc. and related entities, would use geothermal brine to generate electricity and extract lithium and other minerals. It would require approximately 6,500 acre-feet of raw water annually from the Imperial Irrigation District (IID). Comite Civico del Valle and Earthworks challenged the County's certification of the EIR and project approvals. The trial court denied their petition for writ of mandate.

The Court of Appeal's Decision

CEQA Review and the Water-Supply Record

The court applied familiar CEQA principles: judicial review examines whether the agency prejudicially abused its discretion by failing to proceed as required by law or by making a determination unsupported by substantial evidence. Although courts defer to supported factual determinations, CEQA's procedural and informational requirements are enforced independently.

The court treated the project as having a 50-year life because the respondents so represented on appeal, despite repeated inconsistencies in the EIR, water supply assessment, findings, and mitigation documents that described a 30-year term. That distinction was material. The final water supply assessment could support, at most, a conclusion that IID might supply water for approximately 30 years, subject to important assumptions, including IID's receipt of its full Colorado River entitlement.

IID had advised that the water contemplated under its Interim Water Supply Policy was not a presently available reserve. Rather, water for new nonagricultural users would need to be created through future conservation, contracted for, and funded. IID also stated that its assessment template did not extend to a 50-year analysis and that it could not assure a 50-year supply.

Long-Term Water Availability

Relying on Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, the court explained that CEQA does not require an EIR to identify a guaranteed water source. It does, however, require an adequate discussion of water sources that are reasonably likely to become available. An EIR cannot rest on speculative supplies or unrealistic allocations sometimes described as "paper water."

The court found no substantial evidence that IID could supply the project for its asserted 50-year life. The record did not identify alternative supplies for the remaining years, feasible independent conservation or augmentation projects, or the environmental consequences of using replacement supplies. In an area with scarce and contested water resources, the deficiencies deprived decisionmakers and the public of information necessary to evaluate the project's water demands.

Inadequate Water-Shortage Mitigation

The court also held that mitigation measure UTIL-1 inadequately addressed foreseeable reductions in IID's Colorado River supply. The original measure merely required the applicant to work with IID if a governmental agency reduced water availability. A

late revision added potential operational responses: using groundwater, temporarily using recycled drain water, and reducing production rates.

Those possibilities did not satisfy CEQA. The prospect of mandated Colorado River reductions was foreseeable, particularly because IID had identified the risk and the mitigation measure was specifically intended to address it. The EIR was therefore required to analyze potentially significant environmental effects caused by its proposed mitigation, including effects from groundwater pumping and diversion of drain water.

The court further found insufficient evidence that the listed measures were feasible. The record described underlying groundwater as poor quality and unsuitable for ordinary uses, contained no evidence that drain water could be used or that IID would authorize access to it, and did not explain how reduced production would be operationally or economically feasible. The EIR's conclusion that a reduced project size was infeasible also conflicted with the suggestion that reduced production could address a material water reduction.

Salton Sea Air-Quality Effects

The EIR also failed to analyze a probable air-quality consequence of supplying the project with conserved agricultural water. Agricultural runoff contributes to inflows to the Salton Sea. Reduced inflows can expose additional playa, which can increase dust emissions and associated air-quality concerns in nearby communities.

IID had directly warned that the project would create a net reduction in drainage flows to the Salton Sea and that the issue warranted evaluation and mitigation. The court concluded that the County's characterization of the impact as theoretical lacked substantial evidence. Because the project would use water conserved from agricultural or other existing uses without returning that water to IID drains, reduced drainage flows and related playa exposure were reasonably foreseeable consequences.

The County's conclusory assertion that the developer would work with IID did not constitute the good-faith, reasoned response to significant comments CEQA requires. Nor did IID's 2009 negative declaration for the Interim Water Supply Policy eliminate the need for project-specific review. That document expressly left environmental review of future water-use projects to the County.

Conclusion and Implications

The opinion is significant because it distinguishes the statutory 20-year focus of a water supply assessment from CEQA's broader obligation to disclose reasonably foreseeable impacts over the project's full operational life. A lead agency may not use the statutory assessment period as a substitute for analysis of acknowledged longer-term uncertainty.

Comite Civico del Valle reinforces that CEQA review of water-intensive development must address the project actually approved, including its full represented duration. For projects depending on conservation-generated supplies, agencies should distinguish between allocated water, potentially conserved water, and water that remains subject to future contracts, funding, approvals, and environmental review.

The published portions of the decision also underscore that water-shortage mitigation must be supported by evidence of feasibility and accompanied by appropriate analysis of its own environmental effects. Where project water use may reduce Salton Sea inflows or affect other sensitive hydrologic systems, lead agencies should directly address agency comments and evaluate linked air-quality consequences rather than defer analysis through generalized commitments to future coordination. The court's partially published opinion is available here: https://www4.courts.ca.gov/opinions/documents/D085747.PDF.

(Darien Key)

FIRST DISTRICT COURT STRIKES DOWN SAN FRANCISCO'S "EMPTY HOMES TAX"

Debbane v. City and County of San Francisco,
___Cal.App.5th___, Case No. A172067 (1st Dist. Sept.11, 2026).

On September 11, 2026, the First District Court of Appeal addressed San Francisco's authority to levy a tax on vacant residential units. The case arose from a challenge to the City's 2022 voter-approved Proposition M, commonly known as the "Empty Homes Tax." The Court of Appeal affirmed the trial court's judgment in favor of the property owners and concluded that Proposition M is preempted by California's Ellis Act (Act).

Background

In January 2022, San Francisco's Budget and Legislative Analyst's Office issued a report addressing residential vacancies in San Francisco. The report indicated that there were over 40,000 vacant housing units in 2019, accounting for approximately ten percent of the City's housing stock. The report identified several categories of vacant units, including units that had been rented or sold but were not yet occupied, units held vacant for personal or family reasons, and units used part-time, such as second homes. The report identified a vacancy tax as a potential policy response to prolonged vacancies.

Subsequently, Proposition M was submitted to San Francisco voters via the initiative process. The measure created an annual tax on certain residential units that remained vacant for more than 182 days during a tax year. The tax applied to residential units in buildings containing more than two units, and the cost depended on the square footage of the unit and the number of years the unit remained vacant. For the first year, the annual tax was $2,500 for units smaller than 1,000 square feet, $3,500 for units between 1,000 and 2,000 square feet, and $5,000 for units larger than 2,000 square feet. Those amounts increased for the second and third consecutive year of non-compliance.

Proposition M defined a residential unit as "vacant" if it was "unoccupied, uninhabited, or unused" for more than 182 days during a tax year, whether consecutive or nonconsecutive. The measure also contained several exemptions.

The purpose of this measure was to discourage prolonged residential vacancies and increase the number of housing units available for occupancy. Revenue collected under this measure was to be directed toward rental subsidies and affordable housing programs. The court noted that the measure was not presented as a revenue-generating measure. Instead, its stated purpose was to change behavior of property owners by encouraging them to offer vacant units for residential use.

Several property owners and organizations challenged Proposition M. The plaintiffs asserted several constitutional and statutory claims, including that Proposition M violated the Fifth Amendment's Takings Clause, conflicted with the Ellis Act, and violated equal protection and the constitutional right to privacy. The trial court sided with the plaintiffs and prohibited the City from enforcing Proposition M. The City appealed.

The Court of Appeal's Decision

The Court of Appeal held that the Ellis Act was sufficient to invalidate Proposition M. Unlike the trial court, the Court of Appeal did not reach the constitutional claims, finding that the preemption issue alone was conclusive. The court relied on the principle that courts should resolve statutory issues before reaching constitutional questions where possible. Because Proposition M could be invalidated under the Ellis Act, the court did not need to decide whether it also contained constitutional violations.

The Ellis Act provides that no statute, ordinance, regulation, or administrative action shall "compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease…." (Gov. Code, § 7060, subd. (a).) The Act does not eliminate local authority over land use. However, it specifically restricts governmental efforts to compel an owner to offer residential property for rent.

In considering whether Proposition M was preempted by the Ellis Act, the court applied the frame-

work established in *California Fed. Savings & Loan Assn. v. City of Los Angeles* (1991) 54 Cal.3d 1.

The Court first considered whether the law concerns a municipal affair and whether it presents an "actual conflict" with state law. If an actual conflict exists, the court then considered whether the state law addresses a matter of statewide concern, whether it is reasonably related to resolving that concern, and whether it is narrowly tailored to avoid interference with local authority.

Home Rule Argument and 'Actual Conflict' under the Ellis Act

The City first argued that Proposition M is within the City's home rule powers. The Court of Appeal concluded that although determining whether a municipal enactment concerns municipal affairs is the first step in considering a preemption challenge, it does not insulate the law from conflicting with the directives of state law. Thus, the court considered whether Proposition M was in "actual conflict" with the Ellis Act.

The City argued that there was no "actual conflict" between Proposition M and the Ellis Act because the Ellis Act protects an owner's right to exist the rental market, while Proposition M merely encourages owners to enter the market. In determining whether a conflict existed, the court focused on the wording of the Ellis Act. The court found that the plain meaning of the Ellis Act covered both a property owner's decision to exit the rental business as well as the decision to remain outside of it. The statute prohibits government action that would compel an owner to "offer" a unit for rent, as well as action that would compel an owner to "continue to offer" the same. The court rejected the distinction, reasoning that an owner's right to "remain exited" from the rental market is covered by the Ellis Act

To emphasize this point, the court pointed to a line of cases that struck down local requirements imposed a "prohibitive price" on the exercise of rights protected by the Ellis Act. Those cases established that a local government cannot impose additional financial or regulatory conditions that effectively interfere with an owner's ability to withdraw a residential property from the rental market. The court found that the purpose of Proposition M—to incentivize property owners from keeping residential units out of the housing market to avoid facing a tax—was itself contrary to the protections of the Ellis Act. The court further found that the tax constituted a "prohibitive price" on a residential property owner's exercise of Ellis Act rights.

The City argued that owners could avoid paying the tax by using their units for non-residential purposes. The court was not persuaded. It pointed to the language of Proposition M, as well as the 2022 report, to show that the text does not suggest that the tax would not apply if the vacant units were put to a non-residential use. The tax applies to units that are not put to residential use for more than 182 days per year, and therefore a non-residential use would not disqualify a unit from that definition. The court further found that using a residential unit for a non-residential use would run afoul of the San Francisco Planning Code, which states that such non-residential "accessory" uses should not impede the "principal" residential use of a residential unit.

The court also considered the City's argument that an owner could simply reside at their property to avoid the tax. The court found that this missed the point, as Proposition M was targeted at owners who had already decided not to live at their property and the Ellis Act protects that decision.

Lastly, the City contended that Proposition M imposes a "modest tax" and not a "prohibitive price," citing *Pieri v. City and County of San Francisco* (2006) 137 Cal.App.4th 886. The Court distinguished this case, which involved mitigation for an ordinance that was expressly permitted by the Ellis Act. As discussed, the Ellis Act does not expressly authorize Proposition M.

Additional Preemption Factors

After concluding that Proposition M was in "actual conflict" with the Ellis Act, the Court of Appeal considered the additional preemption factors set forth in California Fed. Savings & Loan Assn. v. City of Los Angeles, 54 Cal.3d 1 (1991). Notably, the City did not argue that these factors did not apply, and the court readily found that the Ellis Act addressed a matter of "statewide concern, was reasonably related to the resolution of that concern, and was "narrowly tailored."

Conclusion and Implications

In this case, the Court of Appeal considered whether a local government could impose a financial burden on a property owner for choosing not to offer residential property for rent. Because the Ellis Act protects an owner's rights in this sphere, and because Proposition M impose a financial burden on owners who exercised that right, the court concluded that Proposition M was preempted by state law. This case clarifies that the Ellis Act applies not only to a property owner's decision to exit the rental market, but to their decision to not enter the rental market as well. While the Ellis Act does leave significant land use authority to local control, a municipality may not impose a tax on qualifying residential vacancies in order to encourage owners to offer those units for residential use. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A172067.PDF.

(Hannah Rider)

THIRD DISTRICT COURT LIMITS SCOPE OF REGULATORY FEES UNDER SGMA TO OWNERS AND OPERATORS OF GROUNDWATER WELLS

Garst v. Tehama County Flood Control and Water Conservation District, 121 Cal.App.5th 507 (3rd Dist. 2026).

In *Garst v. Tehama County Flood Control and Water Conservation District*, the Third District Court of Appeal reviewed a 29-cent-per-acre fee imposed on all land in Tehama County to fund the costs of groundwater management planning under the Sustainable Groundwater Management Act (SGMA). The Court of Appeal held that the authority of a Groundwater Sustainability Agency (GSA) to impose such regulatory fees was limited to owners and operators of groundwater wells, both on statutory and on constitutional grounds.

Background

The California Legislature enacted SGMA in 2014 with the goal of sustainably managing California's groundwater resources by 2040. The statute provides for local public agencies to become or to form GSAs to manage all or part of a groundwater basin. GSAs are required to prepare a Groundwater Sustainability Plan (GSP), a planning document that compiles and analyzes data regarding the groundwater resources it is managing, sets objectives and thresholds for avoiding what SGMA calls "undesirable results," and sets out a plan for projects and management actions to make the basin sustainable by 2040.

To fund these activities, SGMA provides GSAs with several statutory tools for imposing fees, and it also allows them to use their existing authorities as public agencies to collect funds for SGMA purposes. One of statutory authorities granted by SGMA is Water Code Section 10730, which allows a GSA to impose:

> …fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.

The other primary funding authority for GSAs, Water Code Section 10730.2, allows GSAs to impose "fees on the extraction of groundwater" provided they do so under the procedures set forth in Article 13D, Section 6 of the California Constitution (Prop 218). Fees under Water Code Section 10730, by contrast, have often been imposed without following those procedures, with the GSA arguing they are non-tax fees under Article 13C, Section 1 (Prop 26).

The Tehama County Flood Control and Water Conservation District (District) serves as a GSA in 11 different groundwater subbasins, which collectively underlie the County of Tehama. In order to fund its activities as a GSA, the District required all groundwater wells to be registered with the District

and imposed an annual charge of $0.29 on each acre of land in the County, collected on the ad valorem tax roll with ordinary property taxes, to fund that registration program.

David Garst, a landowner, brought this action contesting the registration charge's validity, arguing it violated SGMA and Prop 26. He prevailed in the trial court, and the District appealed. The Court of Appeal upheld the judgment invalidating the registration charge on both statutory and constitutional grounds.

The Court of Appeal's Decision

Statutory Interpretation of Water Code Section 10730

The court held that Section 10730 must be read in the context of the surrounding sections. Most importantly, Section 10730.6 provides that groundwater fees imposed under SGMA are "due and payable to the groundwater sustainability agency by each owner or operator on a day established by the groundwater sustainability agency." Reading this text in conjunction with Section 10730, the court concluded that groundwater fees under SGMA may only be imposed on "owners" or "operators" of groundwater wells.

However, the court acknowledged that the District had other statutory authority to impose fees. Therefore, assuming for the sake of argument that the District was authorized to impose the fee under one of those authorities, it proceeded to consider the constitutionality of the fee.

Constitutional Interpretation of Prop 26

Prop 26 provides that all exactions of money by local government agencies are "taxes" subject to the 2/3 vote requirements of Prop 13 unless they fall into one of seven exceptions. The District asserted that its per-acre charge qualified for the "regulatory fee" exception under Prop 26, which permits

> …[a] charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

The court reviewed the pre-Prop 26 case law that was implicitly incorporated into Prop 26 by the voters and concluded that the premise of a regulatory fee is to shift the cost of a regulatory program from the general public to those engaged in the regulated activity. Therefore, a per-acre fee, which imposes the costs on landowners whether or not they engage in the regulated activity of groundwater pumping could not be characterized as a regulatory fee.

Conclusion and Implications

The *Garst* decision is relevant to future SGMA fee litigation in several ways. Beyond the core holdings discussed in this article, it also discussed issues regarding the statute of limitations and the prerequisites for refund claims. But it is most significant in those GSAs that have adopted per-acre charges to fund SGMA compliance. Some GSAs may have made that choice because they lacked the data to impose a charge only on well owners, and some may have done so for other policy reasons. For instance, all lands within a basin theoretically have a right to some portion of the groundwater supply, even if they are not presently operating a well. *Garst* seems to foreclose many of those approaches, at least within the regulatory-fee framework. It remains to be seen, in future cases, whether other theories could authorize per-acre charges under Prop 26. The court's opinion is available online here: https://www4.courts.ca.gov/opinions/documents/C103356.PDF.

(Brett Stroud)

FOURTH DISTRICT COURT FINDS WHOLESALE CHANGES TO LOCAL HISTORIC RESOURCE INVENTORY REQUIRE SUBSTANTIVE CEQA REVIEW

Laguna Beach Historic Preservation Coalition v. City of Laguna Beach, ___Cal.App.5th___, Case No. G065723 (4th Dist. Aug. 31, 2026).

On August 31, 2026, the Court of Appeal for the Fourth District issued its decision *Laguna Beach Historic Preservation Coalition v. City of Laguna Beach*. The case evaluated whether the City of Laguna Beach (City) lawfully amended the Historic Resources Element of its General Plan, consistent with the requirements of the California Environmental Quality Act (CEQA).

Background

In the early 1980s, the City hired a consultant to perform a historic survey of properties. That study identified over 700 structures that retained their original appearance and architectural integrity. This resulted in an inventory which formed the basis of the General Plan's Historic Resources Element. Over the next several years, the City took steps to recognize historically significant architecture, and then to establish a voluntary historic property register that was independent of the inventory contained in the Historic Resources Element.

By the 2010s, the inventory had become outdated, both underinclusive and overinclusive of historic properties in the City. Rather than update the inventory, the City instead updated its historic preservation program, which eliminated references to the inventory in the municipal code and the Historic Resources Element. These amendments clarified that property owner consent was required for eligibility in any local historic resources register.

In 2020, a consultant for the City conducted an initial study to evaluate the environmental impact of these amendments under CEQA. The initial study purportedly concluded that the amendments would not result in a significant impact to historic properties, noting that the inventory was "more than 36-37 years old." It concluded that, because the inventory did not meet the requirements of Public Resources Code section 5024.1(g) (requiring such historic resource inventories be updated every five years), which did not result in a presumption that identified properties are historic.

CEQA and its Treatment of Historic Properties

While CEQA generally aims to protect the ecological environment, the law has expanded to protect historic resources, including historic structures. If an activity subject to CEQA (i.e. a "project") will result in a substantial adverse change to a historic resource's significance, then the project may have a significant effect on the environment. (Pub. Res. Code, § 21084.1.) Further, a structure is "presumed to be" historically significant under CEQA if it is either: (1) included in a local register of historic resources as defined in Section 5020.1(k) of the Public Resources Code, or (2) is deemed significant pursuant to criteria established in Section 5024.1(g) of the Public Resources Code. (Pub. Res. Code, § 21084.1.) Section 5020.1(k) essentially defines such a local register as a list of properties officially designated or recognized by a local government.

The Court of Appeal's Decision

Since the City formally approved the inventory as part of its Historic Resource Element in 1982, the court found that the City's inventory constituted a "valid local register" for the purposes of Section 5020.1(k). Consequently, the court concluded, each of the properties listed in the inventory are presumptively historic:

> We agree with the trial court that the properties on the Inventory qualify as presumptive historical resources under the California Environmental Quality Act and are thus entitled to certain protections. However, we conclude rebutting that presumption requires more than showing the Inventory as a whole is outdated, overbroad, or underinclusive; instead, the City was required to find that each and every property on the Inventory is not in fact historically significant.

To overcome such a presumption—that each of the properties are historically significant—the City needed to have found that a preponderance of evidence demonstrated that all listed properties are not in fact historically significant. Rather than do this, however, the court noted that the City flatly deemed the entire list flawed, focusing on the inventory's inaccuracies, as well as its outdated nature.

As a result, the court ordered the City to set aside its approval of the revised Historic Resources Element and prepare a mitigated negative declaration or an environmental impact report, as is typically required under CEQA.

Conclusion and Implications

This case should advise local agencies that maintain historic resource inventories that wholesale changes to such inventories likely require substantive environmental review under CEQA. Based on this decision, however, it is unclear the extent of such a review. For example, does this require a property-by-property environmental review for minor changes to a list? What about when updating a list to remove damaged or demolished properties? What are the supposed impacts to the historic resources when a local agency merely eliminates a historic resource inventory? In other words, assuming the activity is to eliminate a historic resource inventory, how does a local agency adjudge impacts to those resources when there is no imminent project and the identified resources are spread out across a jurisdiction?

This could also both encourage and discourage the creation of historic districts in localities across California. Lately, anti-development organizations (especially in San Francisco) have sought to designate large swaths of their communities as "historic" in order to "protect" those neighborhoods from development under new state housing laws. One could view this decision as a one-way ratchet, tightening local historic designations, and rendering extremely difficult subsequent changes to those designations. Alternatively, other localities may shy away from widespread historic designations, considering the difficulty in making future changes to those inventories. Finally, to the extent this decision impacts housing development amidst a dire housing crisis, the State Legislature may adopt its own revisions to CEQA. The court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/G065723.PDF. **(Braeden Mansouri)**

FIRST DISTRICT COURT FINDS COUNTY WHICH INVOKED THE PUBLIC TRUST DOCTRINE FOR WELL PERMITTING ORDINANCE AMENDMENTS FAILED TO ANALYZE THE ORDINANCE UNDER CEQA

Russian Riverkeeper v. County of Sonoma,
122 Cal.App.5th 382 (1st Dist. 2026).

On August 4, 2026, the Court of Appeal for the First District decided *Russian Riverkeeper v. County of Sonoma*, which evaluated the County of Sonoma's (County) approval of a new ordinance regulating its groundwater permitting process. The case evaluated the state's "public trust doctrine" in regulating groundwater wells, as well as the County's sought exemptions from the California Environmental Quality Act (CEQA) for the ordinance.

Background

The County relies on more than 45,000 water wells to supply water for agriculture, residential, commercial, and industrial uses in the County's unincorporated areas. As a result, this requires the County to regulate groundwater wells under a County ordinance, under which the County issued permits on a largely ministerial basis.

Following separate litigation, the County commenced the process for updating its ordinance regulating groundwater wells. After several working group meetings and expert feedback, the County Board of Supervisors considered a draft ordinance that created two categories of groundwater well permit applications: discretionary applications and ministerial applications. Applications that the county considered

to be not subject to the "discretionary public trust limitation," would be subject to ministerial review. The ordinance additionally created additional classes of wells exempt from discretionary public trust review (i.e. subject to ministerial approval) because they posed a "low potential for impacts to public trust resources." The County adopted the ordinance without evaluating it under CEQA, concluding that the ordinance was exempt pursuant to the Class 7 and 8 categorical exemptions, as well as the common-sense exemption.

The plaintiffs filed suit, claiming that the County adopted the ordinance lacking evidence in support of the public trust and that the adoption of the ordinance violated CEQA.

The Public Trust Doctrine

The State of California has long-recognized a "public trust doctrine," under which it holds that the state owns public trust resources as a trustee for public purposes and has an obligation to regulate the use of those lands for the general benefit of the community. It essentially imposes an affirmative duty on the state to protect the people's common resources. Whereas the state is generally recognized as the "sovereign . . . primarily responsible for administration of the trust," a county is recognized as a subdivision of the state and shares responsibility for administering the public trust.

The Court of Appeal's Decision

In *Russian Riverkeeper*, the Court of Appeal rejected the County's argument that the County did not share in the state's public trust duties. To the contrary, the court explained that there are "circumstances in which [the public trust] affirmative duty also belongs to other state agencies." (Citing *Planning & Conservation League v. Department of Water Resources*, 98 Cal. App.5th 726, 769 (2024).) Duty under the public trust doctrine "is triggered" when the county takes an action that impacts public trust uses. Consequently, the County's regulation of well permits carried "an affirmative duty" to take the public trust into account.

Despite that finding, the court recognized that, when carrying out the public trust doctrine, the state recognizes that counties may consider conflicting policy considerations. Considering the efforts put into Sonoma County's ordinance here, the court could not find that the County's ordinance amendments were arbitrary, capricious, or lacking in evidentiary support. The County spent extensive resources evaluating the technical aspects of the ordinance.

CEQA

Among its other contentions, the plaintiffs here alleged that the County violated CEQA by erroneously invoking several exemptions when approving the ordinance. Generally, CEQA establishes a comprehensive scheme to provide protection to the environment.

The first step in a CEQA analysis is to determine whether an activity is subject to CEQA in the first place—in other words, determining whether the proposed activity is a "project" as defined under CEQA. After determining that an activity is a "project," the lead agency may evaluate the applicability of any exemptions from CEQA. The burden of demonstrating applicability of a CEQA exemption lies with the agency invoking the exemption.

CEQA creates classes of projects that the state has generally determined to be exempt from the statute (i.e. the "categorical exemptions"). Applicable to the ordinance here, the County claimed that the ordinance amendment was exempt under the Class 7 and Class 8 categorical exemptions. The Class 7 exemption applies to "actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (14 Cal. Code Regs. (CEQA Guidelines), § 15307.) The Class 8 exemption applies to "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." (*Id.*, § 15308.)

The Court of Appeal concluded that the County failed to support the conclusion with the requisite substantial evidence. Sonoma merely "anticipated" and "expected" that the ordinance would reduce overall water usage, but this was not enough to satisfy CEQA's substantial evidence standard for supporting the use of the categorical exemptions.

Finally, the court also rejected the County's use of the "common sense exemption," which applies only to projects where "there is no possibility that the activity in question may have a significant effect on the

environment, the activity is not subject to CEQA." (*Id.*, § 15061(b)(3).) Again, the court concluded that the County did not offer the sufficient "substantial evidence" that the ordinance would "result in fewer wells or a decrease in water use," in order to support the use of the common sense exemption.

Conclusion and Implications

The *Russian Riverkeeper* decision should remind local agencies that, in order to support the use of the public trust doctrine, the agencies should support their decision with a thorough factual record to prevail on that claim. However, lead agencies should continue to evaluate ordinances for environmental impacts under CEQA, to the extent that any exemption cannot be supported by substantial evidence. The court's opinion is available here: https://www4.courts.ca.gov/opinions/documents/A172760.PDF. **(Braeden Mansouri)**

SIXTH DISTRICT COURT RULES THAT LOT LINE ADJUSTMENTS WITH DEDICATIONS ARE NOT MINISTERIAL

Steer v. Town of Los Gatos,
Unpub., Case No. H053166 (6th Dist. Sept. 3, 2026).

California land use practitioners often take it as a given that lot line adjustments processed under Government Code section 66412(d), are about as close to CEQA-proof as local land use approvals get. State law does not require lot line adjustments to undergo typical mapping procedures, with no tentative map, no parcel map, and no discretionary hearing required. Instead, state law confines the local agency's review to a checklist: four or fewer adjoining parcels, no new parcels created, conformance with the general plan, any specific or coastal plan, and the zoning and building code. Reviewing courts have gone so far as to describe lot line adjustments as a "prototypical ministerial approval process." (*Sierra Club v. Napa County Board of Supervisors*, 205 Cal.App.4th 162, 179 (2012)). However, the Court of Appeal for the Sixth Appellate District's September 3, 2026, unpublished decision in *Steer v. Town of Los Gatos* is a reminder that wrinkles in these prototypical processes can occur, holding that approval of an application for a lot line adjustment bundled with dedication of a cul-de-sac to a municipality is not ministerial.

Background

The Town of Los Gatos approved an application for a three-parcel lot line adjustment that cured nonconforming lot sizes. The approval included a condition of approval that the landowners offer, and the Town accept, a dedication of an easement for a new cul-de-sac to give two of the previously landlocked parcels street frontage. However, nothing in the approval required or authorized construction of any physical street. The Town filed a notice of exemption, treating the whole package as ministerial, citing to Government Code section 66412(d).

A project opponent filed a writ of mandate against the Town, alleging that the approval was not ministerial because the Town's creation of a new cul-de-sac was a discretionary decision. The trial court disagreed, reasoning that Government Code section 66412(d) did not grant the Town discretion to address environmental concerns unless an applicable general plan, specific plan, zoning ordinance, or building ordinance explicitly grants such authority. The trial court further found that it was unclear if the Town had any discretion at all to refuse an offer of dedication that was required to provide the new parcels with street frontage needed to bring those parcels into compliance with the Town's zoning code.

The Court of Appeal's Decision

The Court of Appeal rejected the trial court's framing. It began from the settled test in *Protecting Our Water & Environmental Resources v. County of Stanislaus*, 10 Cal.5th 479 (2020): a decision is discretionary, and thus triggers compliance with the California Environmental Protection Agency (CEQA), where:

> . . .the agency is empowered to disapprove or condition approval of a project based on environmental concerns that might be uncovered by CEQA review.

The court then noted that the scope of the project in question included the:

> . . .whole of the action [. . .] contained within the lot line adjustment application and approval itself, which included the subsequent dedication and acceptance of property, and the resulting delineation of the cul-de-sac on the Town map.

In applying the *County of Stanislaus* test to the project at hand, the court held that the Town's decision was governed by both the Subdivision Map Ace and common law applicable to offers of dedication. The court ruled that under common law, the Town can use its subjective judgment to decide whether to accept the dedication including to shape the project, or outright deny it. In fact, in reviewing state law, including the Subdivision Map Act, the court found "no authority suggesting that a public agency is required to accept an offer of dedication in any circumstance."

The court also rejected the Town's argument that section 66412(d) placed it in a ministerial box. While the court acknowledged the *Sierra Club* precedent, it noted that the *Sierra Club* decision relied, in part, on the language of the local Napa lot line ordinance at issue in that case. The court opined that "*Sierra Club* does not stand for the proposition that every approval of a lot line adjustment is ministerial." While the court did not articulate any universal test for determining when a lot line adjustment is not ministerial, it noted that the Town's inclusion of a separate discretionary dedication approval within the context of a lot line adjustment application was sufficient to render the project discretionary.

The court did not entertain some of the plaintiff's more speculative theories on CEQA application. It declined to sweep the plaintiff's prediction of future construction of the cul-de-sac, or houses on the newly conforming parcels, into its analysis. The court treated the project as the lot line adjustment, the dedication, and the resulting cul-de-sac on paper. However, because the Town's notice of exemption relied solely on the ministerial nature of the approval, the court held that the harmless-error defense raised by the Town was unavailable, ruling the failure to comply with the law subverts the purposes of CEQA if it omits material necessary to informed decision-making.

Conclusion and Implications

The core takeaway from *Steer v. Town of Los Gatos* is a narrow but consequential one: an application can be for a lot line adjustment that is, on its own terms, ministerial under section 66412(d), and still lose that protection if it bundles in an action that a court determines is independently discretionary. Courts will not treat the ministerial character of the adjustment as absorbing or neutralizing a discretionary act riding alongside it, even where that act (accepting frontage-curing right-of-way) is a routine, paper exercise.

The decision also highlights the potential risks of an agency placing all the CEQA eggs in a single exemption basket. The Town's notice of exemption relied solely on the ministerial exemption; it never asserted a categorical exemption (such as Guidelines section 15305, for minor lot line adjustments) or the "common sense" exemption under section 15061(b)(3) as a backstop. The Sixth District's holding is confined solely to the ministerial-exemption theory actually before it; however, the Court of Appeal's explicit rejection of plaintiff's argument that speculative future construction of the cul-de-sac or houses on the resulting parcels should have been considered part of the project suggests that the Town may have found greater success in defending a determination that the project, though discretionary, had no possibility of having a significant effect on the environment. The court's unpublished opinion is available here: https://www4.courts.ca.gov/opinions/nonpub/H053166.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 signed by the Governor and chaptered on September 29, 2026. This bill establishes 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, the 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 signed by the Governor and chaptered on September 30, 2026. This bill makes minor changes to the definition of "geothermal exploratory projects" under CEQA. Provisions included in prior versions of the bill that would have created geothermal technology pilot projects and required the Geologic Energy Management Division (CalGEM) to be the lead agency for such geothermal technology pilot projects were removed prior to the Governor signing.

AB 2410 (Ellis/Gallagher)—This bill did not make it out of committee before the end of the legislative session. The bill would have exempted 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.

AB 2569 (Hart)—This bill did not make it out of committee before the end of the legislative session. The bill would have revised the definitions of "environment" and "significant effect on the environment," to include impacts on "people," as specified. Specifically, the term "environment" would have included 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 have also required that an 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.

SB 887 (Padilla)—This bill was signed by the Governor and chaptered on September 21, 2026. The bill defines "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 specifies 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 vetoed by the Governor on September 18, 2026. This bill would have revised 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. The bill would have also revised the exemption for advanced manufacturing facility projects to require those projects meet certain specified requirements. The Governor's veto stated that the exemp-

tion for advanced manufacturing was enacted only a year ago and he could not support a bill that would roll back the exemption by substantially narrowing its applicability.

SB 1085 (Durazo)—This bill was signed by the Governor and chaptered on September 30, 2026. This bill extends 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 ND/MND. This bill applies 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 requires 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 did not make it out of committee before the end of the legislative session. The bill would have modified 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 have also revised 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 have required 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 were determined to be infeasible, the bill would have 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 have authorized 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 have also required the lead agency, if it elected 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 signed by the Governor and chaptered on September 29, 2026. This bill aims to ensure that projects receiving a density bonus deliver affordable units as part of the project. As amended, the bill revises 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 requires the city or county to provide the applicant with a determination that the project is eligible for a density bonus. The bill also revises the calculations related to incentives or concessions available to an eligible project.

Planning and Zoning Law

AB 1751 (Quirk-Silva/Wicks)—This bill was signed by the Governor and chaptered on September 29, 2026. The bill, called the "Missing Middle Townhome Ownership Act," establishes a new streamlined, ministerial approval process for townhome development projects on residentially zoned lots that meet specified objective planning standards. The bill defines "townhome" as a single-family dwelling unit of no more than three stories that shares a common wall or is separated from neighboring units by an air gap, and defines "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 authorizes 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 authorizes a local agency to adopt an ordinance to implement its provisions and provides that the adoption of such an ordinance is not a project under CEQA.

AB 1997 (Lee)—This bill was vetoed by the Governor on September 30, 2026. This bill would have required 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 environmental impact report (EIR). The bill would have also required that, prior to the application being deemed complete, the lead agency must have received written notice from the applicant that an application was 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 was prior confirmation that the application had been made prior to certification of the EIR.

AB 2074 (Haney)—This bill was signed by the Governor and chaptered on September 29, 2026. The bill requires major transit cities, as defined, to designate one or more regional transit hub districts, as specified. The bill requires a downtown housing development, as defined, to be an allowed use by right within a regional transit hub district and prescribes requirements for downtown housing developments, including requiring specified labor standards and requiring the developments to be eligible for streamlined ministerial approval. The bill also requires the California Housing Finance Agency to conduct a housing construction loan and financing study by March 1, 2028.

AB 2601 (Lee)—This bill signed by the Governor and chaptered on September 30, 2026. This bill requires that an application for a proposed housing development containing no more than 2 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. The bill also authorizes 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 allows 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 did not make it out of committee prior to the end of the legislative session. This bill would have amended 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 have also provided that an action brought to enforce its provisions is subject to a 3-year statute of limitations and that the bill's provisions apply retroactively to any pending action or proceeding.

SB 677 (Wiener)—This bill was signed by the Governor and chaptered on September 30, 2026. As amended, the bill prohibits an interested person from filing an appeal of a subdivision map decision related to a housing development project if the site of the project is located entirely within a city that contains an urban area or within an urban area in a county with a population greater than 250,000 people. The site must also have been previously developed with an urban use or must be substantially surrounded by urban uses, and meet other specified requirements.

SB 1014 (Grayson)—This bill was signed by the Governor and chaptered on September 29, 2026. This bill requires cities and counties to disclose all infrastructure requirements (such as sidewalks and sewers) within 30 days of submittal of a housing application and prohibits the local agency from adding new requirements more than 30 days after submis-

sion of a permit application unless certain specified circumstances are met.

SB 1116 (Caballero)—This bill was signed by the Governor and chaptered on September 29, 2026. This bill streamlines the construction of smaller, lower-cost "starter" homes for home ownership. The bill amends 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 also prohibits 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 also requires 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 signed by the Governor and chaptered on September 29, 2026. This bill amends Planning and Zoning law requirements for accessory dwelling units to make it less costly to build 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 exceeding 750 square feet of interior livable space, instead of the entirety of the ADU.

Sustainable Communities Strategies

SB 1087 (Cabaldon)—This bill was signed by the Governor and chaptered on September 30, 2026. The bill makes 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 also extends GHG reduction targets to 2045 and make changes to certain transportation funding programs to support implementation of the strategies. As amended, the bill no longer includes an exemption for the preparation and adoption of RTPs/SCSs from the requirements of CEQA.

California Coastal Act

AB 1740 (Zbur)—This bill was signed by the Governor and chaptered on September 30, 2026. The bill requires the City of Santa Monica to submit a complete local coastal program to the Coastal Commission by January 1, 2029. The bill further streamlines active transportation measures in the Coastal Zone.

SB 963 (Laird)—This bill was signed by the Governor and chaptered on July 16, 2026. This bill sets 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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