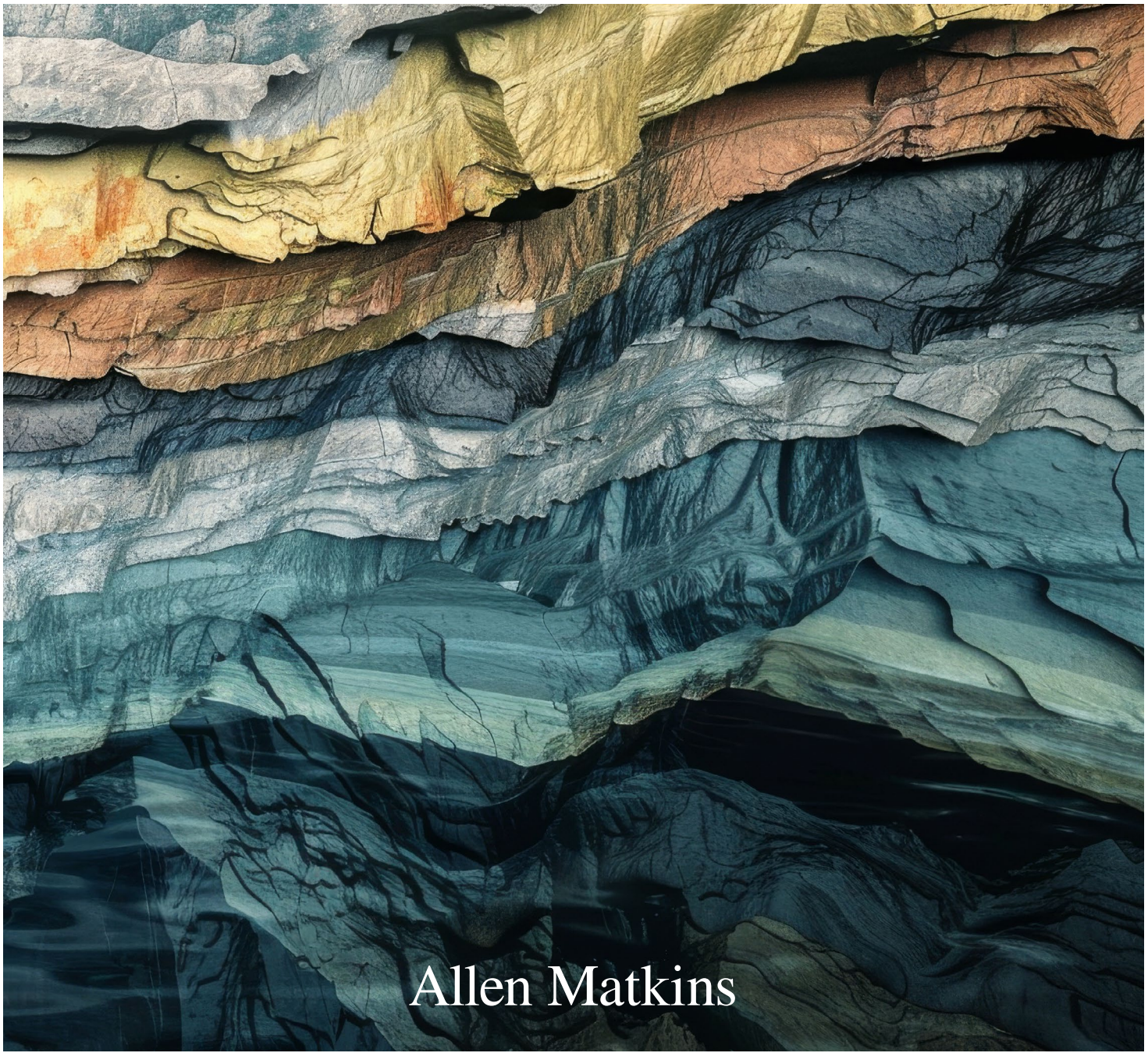
2025

Land Use, Environmental & Natural Resources

Update



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HOUSING CONTINUED

2025 Land Use, Environmental & Natural Resources Update

Introduction

California stands at a pivotal juncture in 2025, confronting an array of environmental and housing challenges. As usual, the California State Legislature is considering numerous strategies to address these issues. This year's LUENR Update explores these developments, examining their implications for California's environmental resilience and housing landscape.

The state has experienced devastating wildfires, notably in the Los Angeles area, where over 60,000 acres burned in January, resulting in the destruction of more than 16,250 structures. As rebuilding begins, communities face the dual challenge of restoring infrastructure while addressing long-term environmental risks.

Simultaneously, California is advancing its commitment to environmental conservation through updates to species protections and water law reforms. Efforts to modernize infrastructure are evident in the state's push towards renewable energy, with significant investments in battery storage projects and the implementation of stringent climate reporting requirements for corporations.

On the housing front, the California State Legislature introduced a "Fast Track Housing" package that started with more than 20 bills "aimed at making housing more affordable by slashing red tape, removing uncertainty, and drastically diminishing the time it takes to get new housing approved and built." The legislative package was based in part on the recommendations made by the Assembly Select Committee on Permitting Reform. The majority of the bills continue to progress through the legislative process relatively unscathed, with the exception of two bills introduced by Senator Wiener pertaining to CEQA reform (SB 607) and amendments to existing laws pertaining to streamlined ministerial approval of housing development projects (SB 677). Those bills are effectively dead, but CEQA reform provisions could be included in budget "trailer" bills by Governor Newsom, who has declared his support for SB 607.

Throughout the year, we look forward to offering updates on new decisions and policies as they arise, including in our weekly newsletters – California Environmental Law & Policy Update, Renewable Energy Update, and Sustainable Development & Land Use Update. Please do not hesitate to contact the authors of any of these articles should something pique your interest.

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Los Angeles
Wildfires

Rebuilding After Wildfires: The Role of the California Coastal Commission

BY SPENCER KALLICK AND KORI ANDERSON

For property owners in California's coastal zone hoping to rebuild after the wildfires in the Los Angeles area, including the Pacific Palisades and Malibu, obtaining building permits from their local government may not be sufficient. The California Coastal Commission regulates development over a large swath of the burned land in the coastal zone, and individuals and businesses within that area will also be subject to the California Coastal Act. What Coastal Commission approval looks like, however, has become a battle between the Coastal Commission and Governor Newsom, and has even attracted White House attention.

As of the date of this article, Coastal Commission approval is not required for reconstruction, so long as property owners rebuild essentially the same structure or structures (as specified below), which may include a new Accessory Dwelling Unit (ADU) as allowed under the state's ADU regulations. Qualifying projects are also not subject to appeal to the Coastal Commission, which was generally the prior practice where there is a certified Local Coastal Program (LCP). Further, existing Coastal Development Permits, or CDPs, for affected properties are extended for three years. But given the politicization of the Coastal Commission's regulatory power following January's devastating wildfires, today's requirements could evolve.

COASTAL COMMISSION OVERVIEW

Established by voter initiative in 1972 and later made permanent via the California Legislature's 1976 passage of the Coastal Act, the Coastal Commission regulates development in the coastal zone. The coastal zone goes beyond beaches; it can extend inland from approximately several hundred feet to up to five miles, including in the area north of the Pacific Coast Highway between the Pacific Palisades and Malibu. Many property owners who sustained damages in the Palisades Fire may thus be surprised to learn that their properties fall within the Coastal Commission's jurisdiction.

Under the Coastal Act, development within the coastal zone generally requires a CDP. An exception exists, however, for repairing or replacing structures destroyed by a disaster. Such replacement projects must conform to current zoning requirements, have the same use as the destroyed structure, not exceed the destroyed structure's floor area, height, or bulk by more than 10%, and be sited in the same location.

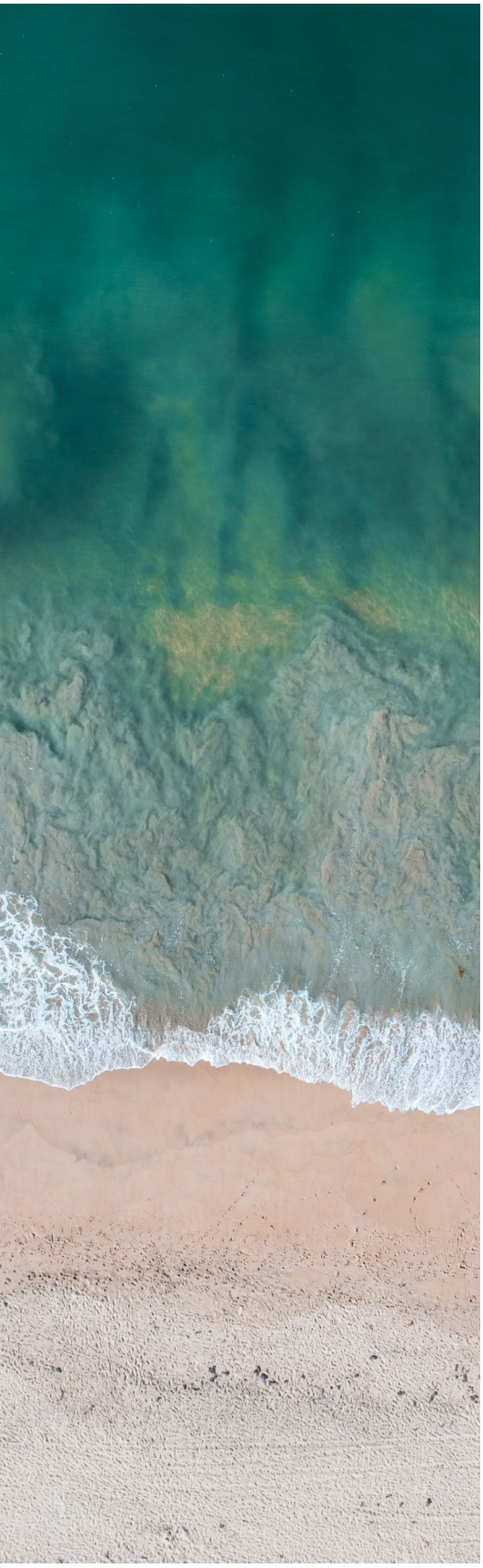
Additionally, each local government within the coastal zone must prepare a LCP, which the Coastal Commission then certifies. The Coastal Commission's role in processing CDPs varies depending on whether a property is in a certified LCP. The Palisades Fire burned through three separate LCPs: the City of Los Angeles Palisades Segment LCP, the City of Malibu LCP, and the Los Angeles County LCP. Although Los Angeles County and Malibu both have certified LCPs, the City of Los Angeles Pacific Palisades segment does not.

GOVERNOR NEWSOM'S EXECUTIVE ORDERS

On January 12, 2025, Governor Newsom issued Executive Order (EO) N-4-25, which suspended Coastal Act requirements for repairing or replacing any damaged or destroyed structure so long as the location remained "substantially" the same as before and the new building does not exceed 110% of the prior footprint and height. This order differs in key areas from the Coastal Act exception: it does not require the new project to conform to current zoning requirements or be for the same use, it does not restrict "bulk," and it allows for slight changes in location. A few days later, on January 16, 2025, Governor Newsom issued EO N-9-25, which further extended the Coastal Act suspensions to include new Accessory Dwelling Units.

THE COASTAL COMMISSION'S GUIDANCE

Around the time of EO N-4-25 and EO N-9-25, the Coastal Commission issued its own undated guidance on rebuilding in the coastal zone that partially contradicted Governor Newsom's orders. This guidance generally affirmed the codified Coastal Act exemption, including that replacements must conform to current zoning requirements and be for the same use in the same location. It also stated that either the local jurisdiction or the Coastal Commission would need to provide a written exemption, which would be appealable to the Coastal Commission.



RESPONSE TO THE COASTAL COMMISSION

In reaction, Governor Newsom on January 27, 2025, issued EO N-14-25 directly refuting the Coastal Commission's guidance. EO N-14-25 stated that the Coastal Commission's guidance was "legally erroneous" and "purports to impose conditions beyond those specified in the Executive Orders." The new executive order reiterated his prior orders and clarified that exemption criteria and procedures, appeal periods, and other submission requirements under the Coastal Act were suspended for damaged or destroyed structures. It also directed the Coastal Commission to stop issuing guidance interfering with his executive orders or attempting to enforce conflicting permitting requirements. On February 13, 2025, Governor Newsom issued EO N-20-25, which made minor changes to the prior executive orders and clarified that local agencies, not the Coastal Commission, will determine whether a repair or replacement project qualifies for the suspension, a decision not appealable to the Coastal Commission. EO N-20-25 also extended any existing CDP for three years for affected properties.

LOOKING AHEAD

The Coastal Commission subsequently removed its guidance from its website. Still, additional changes could occur in coming months. Governor Newsom could issue additional executive orders, or the California Legislature could pass legislation that further restricts or expands the Coastal Act. President Donald Trump even stated that he would "override the Coastal Commission," although he did not provide further details about how his office could do so. Additionally, the existing executive orders do not fully address the role of LCPs. As such, the CDP process could ultimately differ depending on the assigned LCP. Finally, neither the Governor, the Coastal Commission, nor the Legislature have issued guidance focused on projects that would expand the prior footprint by more than 110%.

Ultimately, wildfire cleanup is anticipated to continue for as long as 18 months, which will delay rebuilding and associated permitting. In the meantime, affected property owners should pay attention to what actions are taken in Sacramento — and Washington, D.C. — in the coming months.

Air District Asbestos Rule Will Affect Demolition Activities for Facilities

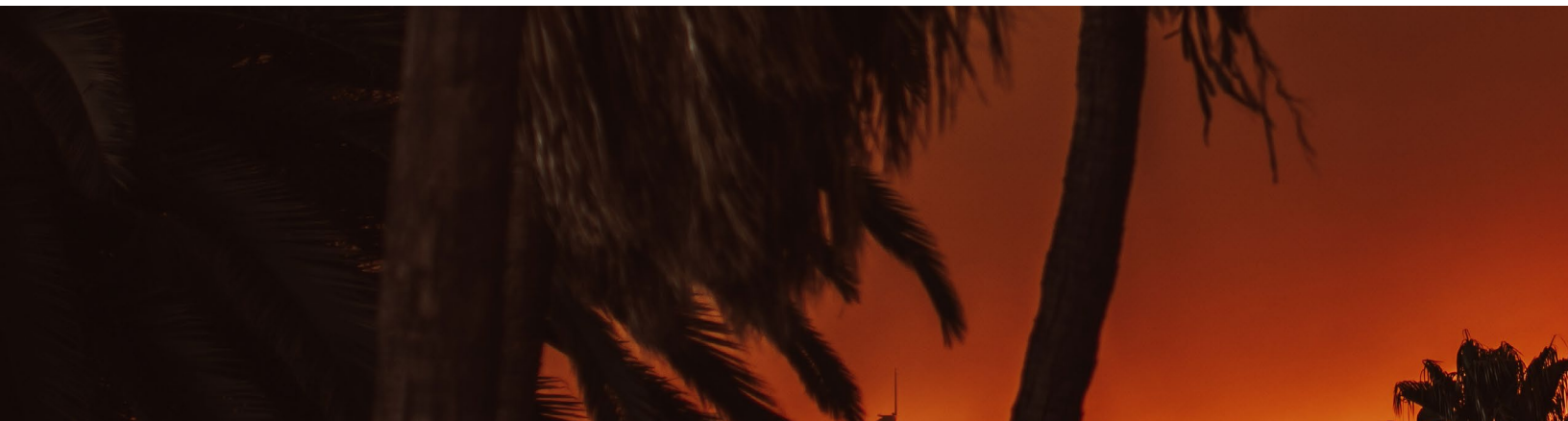
BY SHAWN COBB AND ZACHARY REGO

Owners and operators of facilities damaged or destroyed by the recent Los Angeles-area wildfires should be aware of the risks posed by toxic contaminant releases during cleanup and, in particular, the regulatory requirements imposed by South Coast Air Quality Management District (Air District) Rule 1403 to protect the public from such releases. Owners and operators are ultimately responsible for compliance with Rule 1403, even when contractors perform most or all the work.

BACKGROUND

Generally, Rule 1403 imposes survey, notification, work practice, and recordkeeping requirements on owners and operators who engage in "demolition" and "renovation" activities to protect workers and the public from the potential release of airborne asbestos fibers. Rule 1403 is clear that "a facility destroyed by fire… remains subject to this rule's provisions," and debris cleanup activities may — and often do — qualify as the "renovation" or "demolition" of the facility.

Asbestos, which is a type of toxic contaminant covered by Rule 1403, is commonly found in facilities built or renovated prior to the early 1980s, particularly in roofing and flooring products, caulks, mastics, and insulation, and may also be found in facilities constructed or renovated after that time. When inhaled, asbestos is known to cause damage to the lungs and may result in long-term serious health problems. It has been classified by multiple federal agencies as a human carcinogen and can also cause asbestosis, a chronic lung disease characterized by shortness of breath, coughing, fatigue, and other serious symptoms. Due to these health hazards and its common use in construction and other industries, asbestos was one of the first hazardous air pollutants to be regulated under the Environmental Protection Agency's National Emission Standards for Hazardous Air Pollutants (NESHAP) regulations in the early 1970s.



COMPLIANCE

Again, owners and operators are ultimately responsible for compliance with Rule 1403, even when contractors perform most or all the work. The risks of noncompliance are substantial. In addition to the health and safety risks posed by improper handling and release of asbestos-containing materials, civil and even criminal penalties are possible. Civil penalties currently start at $5,000 *per violation, per day* for strict liability violations, and quickly rise to $25,000 for negligent violations, $75,000 for intentional violations, and up to $1 million for corporations that engage in intentional, willful, or reckless violations that cause great bodily injury or death.

In response to the damage caused by the recent Los Angeles-area wildfires, Governor Newsom recently issued executive orders waiving or suspending certain regulatory requirements that may impede rapid response and rebuilding efforts. Rule 1403 has not been the subject of any such order and may not be included in any future orders because it addresses a serious health risk for the public, relief workers, and contractors, and it implements the federal NESHAP regulations, which are not waivable by the state. In recently issued guidance for cleaning up fire-damaged debris, see https://www.aqmd.gov/home/rules-compliance/compliance/asbestos-demolition-removal, the Air District confirmed that owners and operators that opt out of the "no-cost-to-residents" debris cleanup being conducted by the U.S. Army Corps of Engineers must comply with Rule 1403.

RULE 1403 REQUIREMENTS

Pre-Activity Survey and Notification

Before any demolition or renovation activity may begin, the owner/operator must contract with a Cal/OSHA certified inspector to survey the facility for the presence of asbestos-containing materials (ACM). If the survey identifies any suspected ACM, a sample of that material must be taken and analyzed in a qualified laboratory according to specified procedures. Analysis

of suspected ACM is not required if the owner/operator elects to treat it as ACM. If the asbestos survey identifies ACM that will be disturbed by the renovation or demolition work (or the owner/operator elects to treat building materials as ACM), the owner/operator must contract with a Cal/OSHA registered Abatement Contractor to properly address the ACM. The Abatement Contractor must be from a different entity than the certified inspector.

Notification requirements depend on whether the work is categorized as a demolition (the "wrecking or taking out of any load-supporting structural member") or renovation (any other alteration of a facility). The Air District must be notified prior to the start of any demolition activities whether the survey identified ACM or not. For non-exempt renovation activities, the Air District must be notified only if the initial survey identified ACM that will be removed. Notification is required no later than 10 working days before any work begins, though shorter notification periods may be available for emergency demolition or renovation operations.

Renovation and Demolition Procedures

Rule 1403 contains specified procedures that Abatement Contractors must implement when removing ACM. Generally, Abatement Contractors are free to choose among these procedures, but where ACM has been damaged in a fire, or an owner/operator elects to treat building materials as ACM without a survey or laboratory analysis, they must use "Procedure 5–Approved Alternative." Procedure 5 requires an Abatement Contractor to develop a customized plan for the removal of ACM from a facility and, importantly, obtain Air District approval prior to the start of any related renovation or demolition activities. The Air District has affirmatively stated that the review and approval of Procedure 5 plans is required even in emergencies and specifically for the cleanup of wildfire debris. To date, the Air District has not released any approved standardized "Procedure 5" plan for wildfire debris cleanup, which means individual plan development and approval is required.

Once renovation or demolition activities have begun, the Abatement Contractor must follow specific requirements for the removal, handling, and disposal of ACM. The owner or operator of the facility being demolished or renovated must keep certain records for at least three years, including copies of survey-related documents, notifications to the Air District, waste shipment records, and Abatement Contractor qualifications.

Key Exemptions

- Owner–occupants of residential single-unit dwellings that personally conduct a renovation are exempt from the Rule 1403 requirements.
- Renovations of single-unit dwellings where less than 100 square feet of ACM will be removed or stripped are exempt from the survey requirements of 1403.
- Renovations where less than 100 square feet of ACM will be removed or stripped are exempt from the notification requirements of Rule 1403.

Allen Matkins will continue to monitor and report on state and local government activities that may affect responses to the Los Angeles-area wildfires, including clean-up and rebuilding efforts.


Natural
Resources

Birds, Trees, and Bees – Oh My! Practical Guidance for Addressing Candidate Species in CEQA Analysis

BY JENNIFER JEFFERS AND BENJAMIN BROWN

Several high-profile species — including the burrowing owl, Crotch's bumble bee, western Joshua tree, western spadefoot toad, and the monarch butterfly — have recently been elevated to candidate status under either the California Endangered Species Act (CESA) or proposed for listing under the federal Endangered Species Act (FESA). This growing list of species carry significant implications for project proponents navigating environmental review under the California Environmental Quality Act (CEQA).

UNDERSTANDING THE LEGAL LANDSCAPE

Under CESA, candidate species receive the same legal protections as listed species, meaning any potential "take" (defined as hunting, pursuing, catching, capturing, or killing) is prohibited without an Incidental Take Permit (ITP) or other express authorization from the California Department of Fish and Wildlife (CDFW). Conversely, species proposed for listing under FESA are not afforded legal protections until and unless formally listed.

Nonetheless, CEQA requires evaluation and mitigation of project impacts to all special status species, including candidates and those proposed for listing. This is especially relevant for projects with a federal nexus (e.g., those involving federal funding, permits, or approvals), as federal agencies must ensure their actions do not jeopardize species proposed for listing under FESA. As a result, agencies frequently assess impacts on such species and may incorporate proactive mitigation measures.

CEQA IMPLICATIONS: WHY EARLY REVIEW MATTERS

For project proponents, identifying special-status species during early due diligence is critical under CEQA. Early recognition of such species can help avoid costly delays during biological studies, agency consultation, and permitting.

Biological technical reports should be prepared with an understanding of the evolving regulatory landscape and incorporate agency-approved survey methods and mitigation protocols. These reports have a direct influence on mitigation cost, scope, and timing.

CEQA documents should anticipate the potential for future listings under CESA or FESA. Failure to adequately assess biological resources may lead to unauthorized take, trigger regulatory enforcement or litigation, or necessitate supplemental CEQA review, resulting in further project delays and increased costs.

Accordingly, mitigation measures proposed in CEQA documents should reflect current species-specific requirements and be grounded in applicable regulatory guidance. It is also prudent to include language confirming that additional permits (such as ITPs) will be obtained if necessary, and that mitigation will be implemented in consultation with CDFW or the U.S. Fish and Wildlife Service (USFWS).

CANDIDATE SPECIES SNAPSHOT

- As detailed in our previous legal alerts, the western burrowing owl (Athene cunicularia hypugaea) was designated a CESA candidate in October 2024 and remains under review. Full take protections apply during this candidacy period. CDFW's 2012 Staff Report on Burrowing Owl Mitigation continues to largely guide burrowing owl avoidance, minimization and mitigation approaches. However, CDFW has, in some cases, asserted that ITPs may now be necessary for certain relocation or habitat modification activities.
- Crotch's bumble bee (Bombus crotchii) was initially declared a candidate species in 2019. Following litigation and reinstatement as a CESA candidate species in 2022, CDFW issued new survey protocols for candidate bumble bees in 2023. These require site-specific surveys in areas with suitable habitat and recommend biological monitoring where bees are not observed but habitat remains viable. If bees are detected, project proponents must either avoid impacts entirely or obtain an ITP.
- The western Joshua tree (Yucca brevifolia) is currently protected under the Western Joshua Tree Conservation Act (Act), following a deadlocked vote by the California Fish and Game (Commission) in 2022 as to whether to formally list the species under CESA. As detailed in our previous alerts, the Act prohibits take without express authorization and mitigation, and requires CDFW to draft and implement a conservation plan. CDFW first released a draft Conservation Plan in December 2024, which remains under agency and public review. Final adoption is expected by June 30, 2025. In the meantime, CEQA mitigation should accommodate fee payments, relocation plans, and/or other CDFW-approved measures.

- The western spadefoot toad (Spea hammondii) was proposed for listing under FESA in December 2023. While the public comment period closed in February 2024, a final listing decision has not yet been issued. The species remains a candidate, and although no critical habitat has been proposed, it is already recognized as a California Species of Special Concern and must be evaluated under CEQA. While USFWS has not released species-specific guidance, best management practices developed for military installations by the Department of Defense offer practical frameworks for surveys, monitoring, and mitigation.
- The monarch butterfly (Danaus plexippus) was proposed for listing as a threatened species under FESA in December 2024, as discussed in our prior legal alert. The proposed rule includes critical habitat designations across seven coastal California counties, as well as a 4(d) rule exempting certain conservation activities from take prohibitions. While the original public comment period closed in March 2025, USFWS subsequently reopened it, and comments last closed on May 19, 2025. A 12-month status is now underway. Although the monarch is not yet listed, CEQA documents — especially for projects with a federal nexus — should evaluate potential impacts and incorporate avoidance or mitigation measures where appropriate.

RECOMMENDATIONS FOR PROJECT PROPONENTS

To reduce permitting risk and ensure CEQA defensibility, project proponents should:

- Conduct early biological due diligence, particularly where candidate or proposed species habitat may be present.
- Prepare clear, defensible biological technical reports using current survey protocols and best available data.
- Incorporate mitigation strategies into CEQA documents that reflect current agency guidance — even while CESA or FESA listing decisions are pending.
- Include mitigation language in CEQA documents anticipating the need for future permits and consultation with resource agencies if listings become final.

FINAL THOUGHTS

With multiple listing decisions anticipated over the next one to two years, early planning and adaptive CEQA strategies are essential. By proactively addressing the potential presence of candidate and proposed species, project proponents can reduce regulatory and legal risk while keeping entitlement timelines on track.

Natural Resources Updates

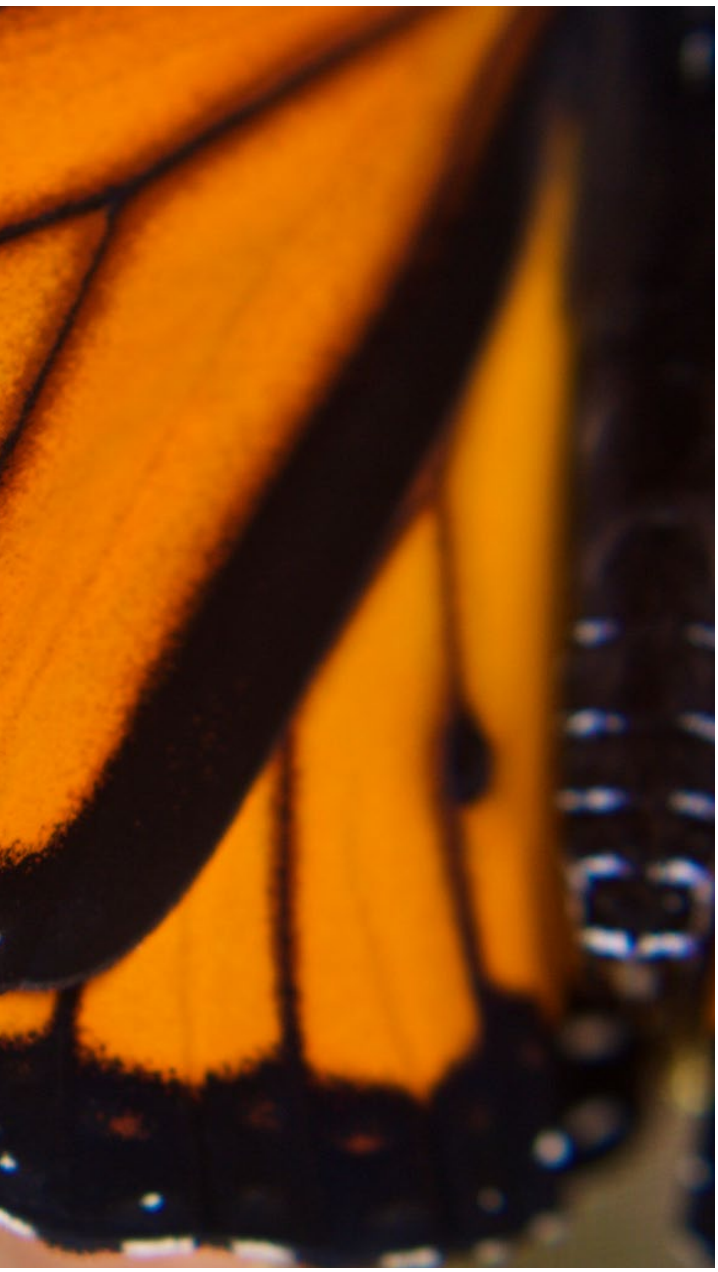
BY BARRY EPSTEIN, NICHOLAS DuBROFF, JENNIFER JEFFERS, AND ZACHARY REGO

FEDERAL AGENCIES PROPOSE RECISSION OF "HARM" DEFINITION UNDER ENDANGERED SPECIES ACT

On April 17, 2025, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services) published a proposed rule in the Federal Register to rescind their respective regulatory definitions of the term "harm" under the federal Endangered Species Act (ESA). The proposal would eliminate language that explicitly includes "significant habitat modification or degradation" as a form of prohibited "take" when it "actually kills or injures wildlife."

The proposed rule reflects a broader shift in federal environmental policy under the new Administration in Washington, D.C. — a trend also evident in recent efforts to scale back federal agency authority under the National Environmental Protection Act (NEPA) (as we summarized here) and in other recent Executive Branch actions.

To read our full analysis of this development, please click here.



WHITE HOUSE COUNCIL ON ENVIRONMENTAL QUALITY RELEASES DRAFT NEPA TEMPLATE FOLLOWING CEQ'S RECISSION OF LONGSTANDING REGULATIONS

Last week, several news outlets reported that the White House Council on Environmental Quality (CEQ) circulated a draft template dated April 8, 2025 among federal agencies to assist in updating their procedures for implementing the National Environmental Policy Act (NEPA). CEQ included a cover letter with the template clarifying that federal agencies may adopt, modify, or disregard the suggested procedures, which do "not establish new requirements, create legal obligations, or represent CEQ's final position on how agencies should implement NEPA."

Nonetheless, the draft template includes notable potential departures from NEPA practice under CEQ's previous regulations — originally adopted in 1978 — and appears to prioritize shorter environmental review periods and greater adherence to statutory time limits, while narrowing opportunities for public input.

To read our full analysis of this development, please click here.

Western Burrowing Owl's CESA Candidacy Triggers New Compliance Obligations for Developers

BY JENNIFER JEFFERS AND RYAN CHEN

On October 10, 2024, the California Fish and Game Commission (Commission) unanimously voted to designate the western burrowing owl (Athene cunicularia hypugaea) as a candidate species under the California Endangered Species Act (CESA), with coverage extending statewide. As a result, the species is now subject to the full protections of CESA during the California Department of Fish and Wildlife's (CDFW) 12-month status review period. This review will culminate in a peer–reviewed report assessing whether the species should be formally listed as threatened or endangered. The report will be made publicly available on CDFW's website at least 30 days before the Commission considers action on the petition.

EXISTING PROTECTIONS – NOW ELEVATED

Even prior to its candidacy, the burrowing owl was recognized as a California Species of Special Concern and a federal Bird of Conservation Concern. The species also benefits from protections under the federal Migratory Bird Treaty Act and California Fish and Game Code §§ 3503, 3503.5, and 3513, which prohibit the take or destruction of nests and eggs. However, CESA candidacy elevates these protections significantly.

Under CESA, "take" — defined as hunt, pursue, catch, capture, or kill, or attempt to do so — is strictly prohibited without an Incidental Take Permit (ITP) or other express authorization from CDFW. Although habitat degradation or modification is not explicitly included in CESA's "take" definition, CDFW has interpreted take to include the "killing of a member of a species which is the proximate result of habitat modification."

The applicability of CESA protections creates new and immediate legal exposure for projects that could impact the species or its habitat, particularly in regions where burrowing owl populations are known or expected to occur.

REEVALUATING PROJECT MITIGATIONS

Developers — including those with already-entitled projects supported by certified or adopted California Environmental Quality Act (CEQA) documents — should reevaluate their mitigation strategies in light of the owl's CESA status. While CEQA-based mitigation may have previously satisfied entitlement requirements, such measures do not, standing alone, provide legal protection from CESA liability during the candidate review period.

CEQA-Approved Projects Still Face CESA Exposure

CEQA compliance does not exempt a project from the CESA prohibition on unauthorized take. This is especially critical for entitled projects with approved mitigation measures for burrowing owl impacts. Unless those measures entirely eliminate the potential for take — an extremely high standard — the project may still require take authorization through a Section 2081 ITP or under a broader species conservation framework such as a Habitat Conservation Plan (HCP) or Natural Community Conservation Plan (NCCP). The ITP process can significantly increase project costs and timelines.

Recommended Developer Action: Evaluate whether your project is covered under an HCP, NCCP, or other permitting program that includes burrowing owl protections and take authorizations. If not, early engagement with CDFW to pursue an ITP may be necessary.

Shifting Regulatory Guidelines May Create Future Conflicts

Currently, CDFW's 2012 Staff Report on Burrowing Owl Mitigation (the 2012 Guidelines) forms the basis for evaluating project impacts and mitigation under CEQA. However, the pending CESA listing petition recommends substantial updates to these guidelines. In addition, CDFW has already indicated that, in some cases, previously accepted practices — such as passive relocation or certain habitat modifications — may no longer be permissible without an ITP.

If adopted, revised guidelines could:

- Redefine CEQA mitigation standards.
- Conflict with approved mitigation protocols under existing HCPs, NCCPs, lake and streambed alteration agreements (LSAAs), or other permitting frameworks.
- Introduce uncertainty and inconsistency across projects and jurisdictions.

Why It Matters: Developers and local agencies relying on previously approved CEQA or regional plan mitigations may find these measures insufficient under new guidance — either during the review period or upon formal listing.

CEQA and CESA Mitigation Thresholds Are Not Legally Equivalent

It is critical to understand that CEQA's mitigation threshold of "less than significant" is not interchangeable with CESA's "fully mitigate" and maintain over time threshold. CDFW has authority to impose additional or different mitigation measures under CESA, even for projects that have completed CEQA review.

These may include:

- Additional avoidance and minimization measures.
- Compensatory mitigation, such as:
    - Purchasing mitigation bank credits
    - Acquiring and preserving offsite burrowing owl habitat
    - Establishing conservation easements

Practical Implications: These additional requirements can significantly increase project costs and timelines. Delays may occur if suitable mitigation credits or land are not readily available.

Regulatory Uncertainty During the Review Period

While a final listing recommendation is not expected before October 25, 2025, regulatory uncertainty will persist throughout the status review period. Although CDFW may continue to largely apply the 2012 Guidelines in the interim, changes could also be proposed. Developers should plan for evolving regulatory expectations and build flexibility into project timelines and budgets.

CESA Candidacy Does Not Automatically Trigger Supplemental CEQA Review

Importantly, a change in a species' status under CESA does not, by itself, require subsequent or supplemental CEQA review. Projects with certified or adopted CEQA documents generally remain valid unless additional discretionary approvals are required, or project modifications are proposed. Nonetheless, lead agencies may consider addressing the burrowing owl's candidacy in future CEQA documents as a matter of legal prudence and risk management.

KEY TAKEAWAYS FOR DEVELOPERS

- CEQA compliance does not automatically equate to CESA compliance. Even if your project is fully entitled, it may still require additional permits under CESA.
- Programmatic Coverage. Double-check whether your project falls under existing take authorization like an HCP, NCCP, or other similar agreements. If your project is covered, it can save time and effort.
- Prepare for ITPs. If take is likely and no existing coverage applies, initiate discussions with CDFW early.
- Cost Considerations. If compensatory mitigation is required (such as restoring habitat or funding conservation efforts), be prepared for the possibility of significant cost increases.
- Stay Informed. Monitor CDFW's status review process and public review period. Stay informed on any updates to the 2012 Guidelines or changes to CDFW's enforcement posture.

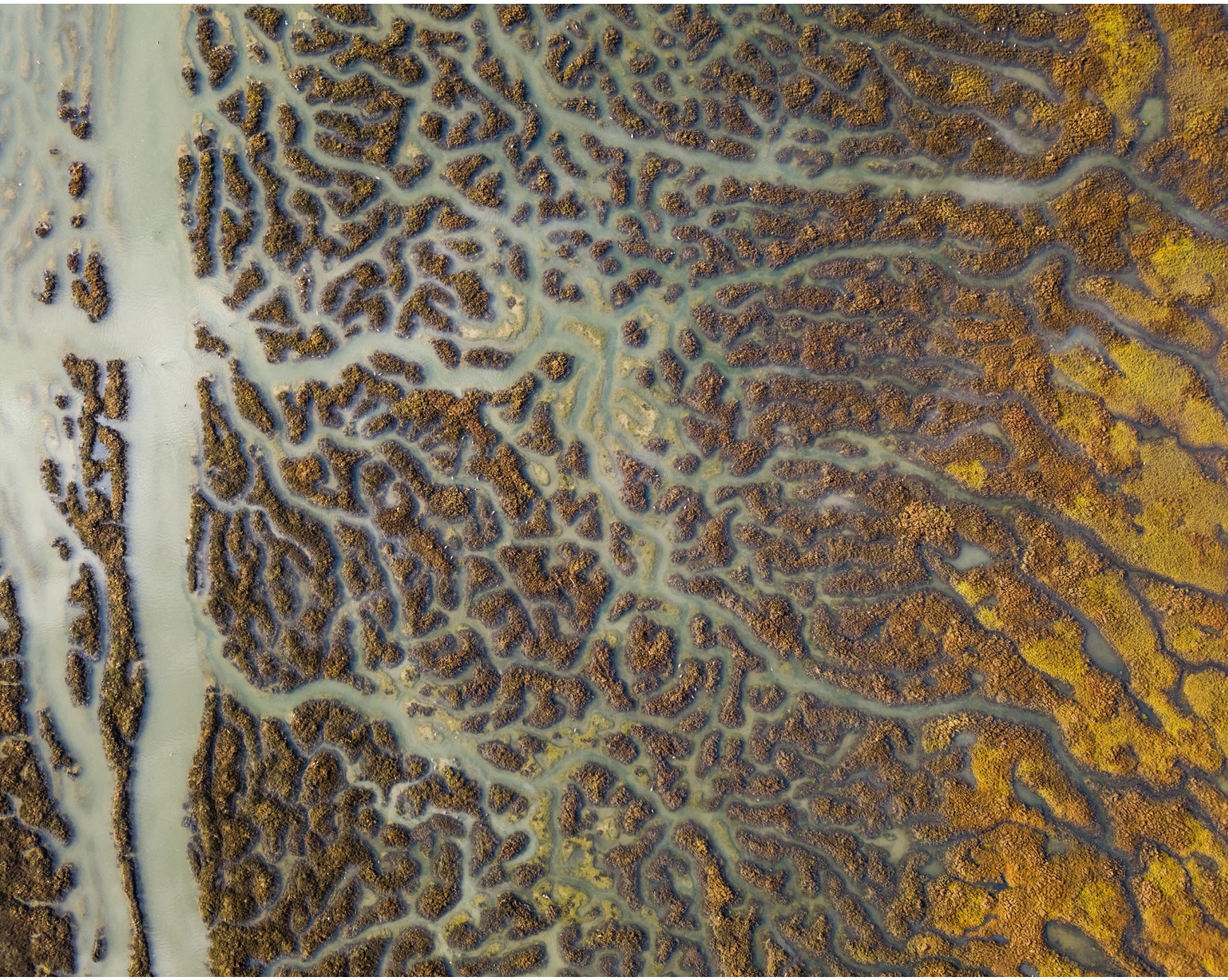
Beyond *Sackett*: California's Expanding Role in Wetlands Permitting and the Future of "Waters of the State"

BY JENNIFER JEFFERS, SHAWN COBB, AND LAURA TEPPER

California's regulatory authority over "waters of the state" continues to grow even as the federal definition of "Waters of the United States" (WOTUS) narrows under shifting legal and regulatory frameworks. In *Sackett v. EPA* (598 U.S. 651 (2023)), the U.S. Supreme Court significantly restricted the scope of federal authority over waters and wetlands under the Clean Water Act (CWA), rejecting the "significant nexus" test from *Rapanos v. United States* (547 U.S. 715 (2006)). The Court held that only "relatively permanent, standing or continuously flowing" waters with a "continuous surface connection" to navigable, interstate waters qualify as federally jurisdictional WOTUS.

While the full impact of *Sackett* remains in flux, it is clear many aquatic features previously protected under federal law are no longer considered jurisdictional WOTUS. This includes non–wetland features such as isolated waters and ephemeral streams, as well as wetlands that do not physically adjoin a jurisdictional waterbody.

In California, the practical result of *Sackett* is that the state is now poised to take on an expanded role in wetlands protection. Although California has not yet adopted comprehensive regulatory reforms to address the jurisdictional gap left by *Sackett,* recently proposed Senate Bill 601 (SB 601) signals the state's intention to assert regulatory authority over formerly federally protected waters. This shift could have significant implications for developers, local governments, and permitting agencies.



FEDERAL DEVELOPMENTS

Building on *Sackett*, recent federal agency actions signal a further narrowing of federal jurisdiction. In March 2025, the U.S. Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (Corps) issued a joint memorandum to field staff, clarifying implementation of *Sackett's* "continuous surface connection" test. Around the same time, these agencies also published a notice in the *Federal Register* — colloquially dubbed the "WOTUS Notice: The Final Response to SCOTUS" — announcing a forthcoming public process to solicit stakeholder input on future rulemaking related to WOTUS and wetlands. Both documents reflect an intent to further restrict the federal reach of the CWA.

As a result, more land development activities that involve wetlands or aquatic features may proceed without triggering the need for federal permits under CWA §§ 402 (National Pollutant Discharge Elimination System (NPDES) permitting) or 404 (dredge and fill).

CALIFORNIA'S WETLAND DEFINITION AND POLICY LANDSCAPE

Wetlands no longer regulated under the CWA remain protected in California under the Porter-Cologne Water Quality Control Act (Porter-Cologne), which governs discharges to "waters of the state." In 2024, Assembly Bill 2875 established a state policy to achieve both no net loss and long-term net gain of California's wetlands, reinforcing this broader regulatory mandate.

Historically, California collaborated closely with the Corps in the review and permitting of projects impacting wetlands, particularly through the CWA § 401 water quality certification process. With federal jurisdiction curtailed post–*Sackett*, this collaboration has diminished, and California agencies — especially the State Water Resources Control Board (State Water Board) and the nine Regional Water Quality Control Boards (Regional Water Boards) — are expected to fill the regulatory void.

Although the State Water Board adopted a wetlands definition and state dredge-and-fill procedures in 2021, these rules predate *Sackett*. In 2023, the State Water Board issued a set of frequently asked questions (FAQs) acknowledging the *Sackett* Court's decision and previewing several of the regulatory issues that have since materialized.

With fewer projects eligible for 401 certification, the Regional Water Boards have shifted toward processing more state-only Waste Discharge Requirements (WDRs). Unlike the streamlined, administrative CWA § 401 process, WDRs typically involve a minimum three-month public process. While General Orders and Programmatic WDRs offer

expedited pathways, the most efficient option remains structuring a project to maintain a federal hook, thereby preserving access to the 401-certification route. Post-*Sackett*, however, this is increasingly difficult for many projects.

PROPOSED SENATE BILL 601

State legislators are seeking to reaffirm California's commitment to filling any regulatory gaps left by *Sackett* through SB 601, which would expressly extend protections to "nexus waters" — a newly defined term intended to encompass waters no longer covered by federal law. While many of the bill's provisions are largely of existing state authority under Porter-Cologne, several provisions of SB 601 would expand enforcement tools and compliance obligations, raising potential concerns within the development community.

Among its current provisions, SB 601 would:

- Define "nexus waters" broadly to include all waters of the state that are also not navigable waters, with limited exceptions.
- Add a citizen suit provision, allowing an action to be brought in the public interest in superior court, by any "person who has suffered an injury in fact," to enforce either state water quality standards or federal standards in effect as of January 19, 2025. *(Note: this provision may ultimately be removed based on comments made by Senator Allen at the June 4 Senate floor session.)*
- Eliminate the requirement that Regional Water Boards consider factors such as economic impacts and housing needs when establishing water quality objectives for nexus waters.
- Authorize the State Water Board to adopt water quality control plans for all nexus waters.
- Make a failure to file a required report of waste discharge under WDRs subject to civil liability and criminal penalties under California law and incorporate analogous provisions of the CWA.
- Require the State Water Board's executive director to increase civil monetary penalties for certain violations of WDRs to account for inflation, but not to exceed 150% each year other than the first year.

LOOKING AHEAD

Taken together, the narrowing of the federal CWA's reach and proposed SB 601 may impose additional burdens on project proponents, including regulatory uncertainty, permitting delays, and higher compliance costs associated with wetlands and water quality regulation. As SB 601 advances through the legislative process, stakeholders should monitor its progress closely and prepare for continued evolution in California's approach to wetlands permitting.


Water Law

Every Drop Counts: Urban Water Retailers and the Future of California Water Conservation

BY DAVID OSIAS AND TARA PAUL

Beginning January 1, 2025, the "Making Conservation a California Way of Life" regulatory framework requires urban retail water suppliers — not individual households or businesses — to adopt a series of "urban water use objectives." And beginning January 1, 2027, the regulations require urban retail water suppliers to annually demonstrate compliance with those objectives. The objectives are calculated based on indoor residential water use; outdoor residential water use; commercial, industrial and institutional irrigation use; and potable reuse. Implementation of the objectives includes setting and meeting specific targets for reducing water use per capita, improving system efficiency, and reporting progress to state regulators. Urban retail water suppliers are also required to implement water conservation programs, support the development of drought–resilient infrastructure, and encourage customers to adopt water-saving practices such as using "climate ready" landscapes.

The regulation, adopted in 2018 by the California State Water Resource Control Board, is part of the 2018 California Water Conservation Legislation (Senate Bill 606, Assembly Bill 1688) which is a comprehensive effort by the state to address ongoing challenges of water supply and environmental sustainability due to climate change. The framework targets inefficient urban water use and aims to reduce use by 500,000 acre-feet per year by 2040, consistent with the goals of the Water Supply Strategy, the California Water Plan, the Water Resilience Portfolio, and the Climate Adaptation Strategy which all recognize the importance of "Making Conservation a California Way of Life" in safeguarding water resources and preparing California communities for more extreme drought and precipitation conditions.

Under the regulation, most large urban retail water suppliers are required to comply with individualized water conservation targets. However, certain coastal cities with mild climates and historically lower per capita water usage are projected to meet their 2040 conservation goals without additional reductions. These cities include San Francisco, San Diego, San Luis Obispo, and Oceanside. In contrast, inland regions such as the community of Atwater in Central Valley, face stringent conservation requirements due to higher water use and climate conditions.

While the regulation seeks to secure California's water future, the framework will present challenges for urban retail water suppliers including balancing the demands of indoor residential use; outdoor residential use; and commercial, industrial, and institutional irrigation use with supply amid drought conditions, aging infrastructure, and evolving climate patterns. During drought conditions, there may also be disparities in how water restrictions impact different communities, particularly those with fewer resources. Thus, ensuring equitable access to water-saving technologies and managing customer compliance can be complex.

This framework will also present challenges for individuals, developers, and businesses in various industries. Not only will these stakeholders have to adapt to more water-efficient practices, they may also be subject to new regulations on the use of land, water, and natural resources and face new costs or restrictions that affect project timelines, environmental assessments, or resource allocation.

The "Making Conservation a California Way of Life" regulation is a key initiative to ensure the preservation of the State's natural resources, but they could bring significant challenges for urban retail water supplies and stakeholders. These sectors will need to adapt to new policies and practices that prioritize sustainability while balancing economic and operational demands.

DWR and Water Board Propose Key Updates to Desalination Policy Framework

BY DAVID OSIAS AND TARA PAUL

As climate variability and drought continue to challenge California's water supply, the state is renewing its focus on seawater desalination as part of a diversified water portfolio. While only a handful of large-scale desalination facilities have been approved along the California coast — including the Carlsbad, Dana Point, and Marina plants — desalinated water remains a small but potentially expandable component of the state's water strategy. Over the past year, the Department of Water Resources (DWR) and State Water Resources Control Board (Water Board) have taken significant steps to evaluate and update the regulatory and planning frameworks that govern these projects.

In April 2024, the Department of Water Resources (DWR) released the 2023 California Water Plan Update (Water Plan), a key planning document that informs water resource decisions for water districts, cities, and counties across the state. The Water Plan identified a goal to increase desalinated product water by 28,000 acre–feet per year by 2030 and 84,000 acre–feet per year by 2040. It also included Desalination Resource Management Strategies (Desalination RMS), which assess the current landscape of desalination projects in California and identify both challenges and opportunities for future development.

The Desalination RMS outlines a series of policy recommendations aimed at integrating desalinated water into the state's water supply portfolio. One notable recommendation calls for identifying potential updates to the Water Board's California Ocean Plan (Ocean Plan) to address the permitting and operation of offshore desalination facilities. DWR also emphasized the need for increased stakeholder engagement and streamlined permitting processes to support responsible expansion of desalination.

In alignment with these recommendations, the Water Board held a public scoping meeting on October 28, 2024 to explore potential amendments to the Ocean Plan's seawater desalination provisions. The Ocean Plan sets statewide standards to protect water quality and beneficial uses of the ocean along the California coastline and implements Water Code § 13142.5(b), which requires new or expanded coastal industrial facilities using seawater to use "the best available site, design, technology, and mitigation measures feasible shall be used to minimize the intake and mortality of all forms of marine life."

At the October meeting, the Water Board presented 11 broad topics under consideration for revision. Some of its key proposals include the following:

- Enhanced Stakeholder Engagement and Interagency Coordination: Future projects could be subject to requirements to engage with broader community interests, including Tribal communities and environmental justice groups. The permitting process, however, could be streamlined to require concurrent agency review of necessary approvals to improve overall efficiency.
- Clarification on Subsurface Intake Requirements: While subsurface intakes are the preferred method for minimizing marine life intake, the Water Board currently allows exceptions when it is shown that subsurface intake is not feasible. The Water Board is considering amendments that would clarify when exceptions are permitted and what constitutes a valid feasibility analysis.
- Protection of Coastal Freshwater Aquifers: The current Ocean Plan lacks guidance on assessing impacts to nearby freshwater aquifers from subsurface intake systems. Proposed revisions could include new instructions on the appropriate siting and design of subsurface intakes, as well as recommended management practices to protect those freshwater resources.
- Volumetric Annual Reporting: There is no requirement to report the volume of desalinated seawater produced to the Water Board. While the state tracks volumes of desalinated brackish groundwater and brackish surface water, it does not have similar data for desalinated seawater. The proposed amendment to the Ocean Plan would establish an annual reporting requirement for seawater desalination facilities. This reporting would support a more comprehensive understanding of the state's water supply portfolio, enable assessment of desalinated seawater efficiency, and advance DWR's objectives for increased desalinated product water by 2030 and 2040.
- Timing and Completion of Mitigation Measures: Under existing rules, facilities must submit a Marine Life Mortality Report and fully mitigate impacts from construction and operation of desalination facilities on marine life — but the timeline for doing so is unclear. The Water Board is proposing to clarify when such reports and mitigation measures must be completed to prevent facilities from beginning operations before risks are adequately assessed.

Although most of the proposed changes would apply to future projects, certain revisions — such as those clarifying mitigation timelines — could affect existing facilities. The Water Board is currently reviewing the comments it received during the public comment period, which closed on November 13, 2024. Although no additional meetings have been announced, further stakeholder engagement is expected as the Board refines its proposals. These ongoing efforts reflect a broader statewide push to balance the potential benefits of desalinated water with California's environmental protection goals and regulatory clarity for project proponents.

For more information on certain legal questions concerning desalination projects and coastal aquifers, see *From Waves to Wells: Seawater Desalination and Coastal Groundwater Basins*, by David Osias and Tara Paul and published in the Fall 2024 issue of the American Bar Association's Natural Resources and Environment publication.

Infrastructure & Permitting

Legislature's Report Captures California's Permitting Reform Zeitgeist and Creates the Launchpad for More Than 20 New Housing Bills

BY NICHOLAS DuBROFF AND ZACHARY REGO

In the summer of 2024, the State Assembly Select Committee on Permitting Reform began convening public hearings, interviews, and forums to understand how to reform land use permitting to address California's ongoing "housing crisis and climate crisis." This effort culminated in two parts: on March 4, 2025 the Select Committee released its Final Report on Permitting Reform, and on March 27, legislators operationalized the Final Report's recommendations in a sweeping "Fast Track Housing package" of over 20 bills intended to make housing "more affordable by slashing red tape, removing uncertainty, and drastically diminishing the time it takes to get new housing approved and built." We separately review these bills here.

The Final Report itself does not propose specific legislation. Instead, it reiterates that California needs to build more housing, renewable energy facilities, and climate-resilient infrastructure "at an unprecedented scale" to achieve its climate and housing goals. And to do so, the Final Report explains that California must transform its permitting processes from "time-consuming, opaque, confusing" endeavors into "timely, transparent, consistent, and outcome-oriented" sequences.

The Final Report unpacks four areas of permitting that underpin the housing and climate crises: Housing, Electricity, Water, and Transportation. Key recommendations for each topic are summarized on the next page.

HOUSING

The Final Report lists five recommendations to improve permitting for housing development projects:

- Eliminate uncertainty in the application process.
- Minimize uncertainty in the entitlement process.
- Create more consistency across permitting entities.
- Focus CEQA review of housing developments on addressing potential environmental harms (versus nonenvironmental concerns often raised by project opponents).
- Minimize uncertainty for post-entitlement permits.

Echoing the Final Report's overarching themes, these recommendations focus on increasing certainty for housing developers throughout the permitting process. Stakeholders testifying about permitting challenges emphasized the need for clear, predictable local permitting requirements and decreased permitting timelines.

Regarding CEQA, the Final Report explains that "CEQA has proven highly susceptible to being leveraged to prevent development of projects for nonenvironmental reasons, such as dislike of development by those living near the proposed project, desire to lock in labor agreements by labor unions, desire for community benefits by community groups, and as a way for businesses to hurt their competitors. To facilitate the best environmental outcomes, and facilitate necessary projects, the environmental review of projects must be focused on those aspects of the project that are potentially harmful to the environment."

ELECTRICITY

The Final Report identifies five opportunities to improve permitting for electrical infrastructure projects:

- Improve implementation of Assembly Bill (AB) 205 (which allows the California Energy Commission, rather than a local agency, to permit a clean energy project).
- Facilitate conversion of fallowed agricultural land to clean energy purposes.
- Minimize unnecessary restrictions on battery storage.
- Reduce barriers to reconductoring.
- Facilitate alignment between local, state, and federal agencies.

Emphasizing the need to "deploy new electricity infrastructure at a scale and speed never before seen," these recommendations focus on removing unnecessary or redundant barriers to constructing new energy facilities. As one stakeholder put it: "Meeting [California's clean energy goals] is literally a moonshot. It requires a total of 70 gigawatts of utility-scale solar, 48 gigawatts of utility-scale battery storage by 2045 by the state's own projections. And to succeed, we have to figure out how to build, on average, three times more than the fastest year we've ever built before."

WATER

The Final Report identifies three opportunities to improve permitting for water storage, conveyance, and flood control projects:

- Eliminating uncertainty in the application process.
- Enhancing interagency coordination and consistency.
- Creating distinct permitting pathways for drought resilience and flood risk reduction projects.

Stakeholders testifying about the challenges of permitting water infrastructure projects emphasized that long, complex, and multi-jurisdictional permitting processes can compound rather than surmount the urgent need to increase water capture and protect other critical infrastructure.

TRANSPORTATION

The Final Report notes that the transportation sector is California's largest producer of greenhouse gas emissions and identifies three opportunities to improve permitting for transportation projects:

- Increase consistency across local permitting entities.
- Remove inefficiencies in repeat engagements.
- Create distinct permitting pathways for important transit projects.

According to the Final Report, shifting trips from personal vehicles to alternative modes of transportation is an essential step in reducing greenhouse gases from California's transportation sector. However, such projects often require approvals from multiple agencies, and that process is not always coordinated or consistent. Stakeholders testifying about these challenges recommended that the state legislature require local and state agencies to standardize the permitting process for transit projects.

IMPLEMENTING THE FINAL REPORT'S RECOMMENDATIONS

Legislators have sought to promptly implement the Final Report's recommendations. The "Fast Track Housing package" unveiled on March 27 is based on the Final Report and includes over 20 bills aimed at reducing housing production delays. According to Assemblymember Buffy Wicks, who chaired the Select Committee on Permitting Reform, "The Fast Track Housing package is about making our systems work better: clearer rules, faster timelines, and fewer bureaucratic hoops." Our full analysis of the new bills is available here.

City of Los Angeles Approves New Ordinances to Encourage Housing Development

BY LINDSAY TABAIAN, AMARVEER BRAR, AND SARA WOLF

California's housing crisis has necessitated innovative legislative solutions at the state and local level to increase the supply of affordable housing across the state. Cities are required by state law to plan for a specified amount of new housing development in accordance with the targets set by the Regional Housing Needs Allocation (RHNA). According to the RHNA Allocation Plan, the City of Los Angeles has an allotment of 456,643 new units for the period from 2021 to 2029, which is more than five times greater than the City's previous RHNA allotment. The City acknowledged in its 2021-2029 Housing Element that it is experiencing a severe housing crisis and would come up significantly short of its allotment based on its then-existing zoning.

As required by state law, the City designed a Housing Element Rezoning Program (Rezoning Program) to accommodate its housing allotment, which aims to increase the supply of housing across the City. The Rezoning Program includes updates to the Downtown Community Plan and the Hollywood Community Plan as well as the adoption of three related ordinances, which were approved by the Los Angeles City Council on February 7, 2025. These ordinances are referred to as the Citywide Housing Incentive Program (CHIP) Ordinance, the Housing Element Sites and Minimum Density Ordinance, and the Resident Protections Ordinance. These amendments to the Los Angeles Municipal Code are expected to benefit multi-family housing developers by streamlining review processes for project approvals and providing additional incentives for qualifying mixed-income and 100% affordable housing projects.

Some pro-housing advocates believe that the Rezoning Program is inadequate to meet the City's housing obligations, as evidenced by a recent lawsuit filed by YIMBY Law and Californians for Homeownership against the City of Los Angeles. While the results of that litigation remain to be seen, the CHIP Ordinance does provide a helpful starting point by offering incentives and removing procedural barriers to project approval for qualifying projects across the City.

CITYWIDE HOUSING INCENTIVE PROGRAM ORDINANCE

The CHIP Ordinance includes three options for local density bonus programs, updating the City's implementation of the State's Density Bonus Program (DBP), adopting a Mixed-Income Incentive Program (MIIP), and creating an Affordable Housing Incentive Program (AHIP) for 100% affordable housing projects. These programs provide new incentives for qualifying mixed-income and 100% affordable housing projects with an aim towards increasing the supply of housing across the City, particularly near public transit, along major corridors, and in areas identified as Higher Opportunity Areas.

CITY'S DENSITY BONUS PROGRAM

The CHIP Ordinance revises the City's implementation of the State DBP to align the review processes and incentives under the state and local programs. The DBP incentivizes providing affordable units by offering increased density as well as additional incentives and waivers of certain development standards for qualifying housing projects that include the requisite percentages of affordable housing units.

One upshot of the CHIP Ordinance is that it allows for increased density bonus of up to 100% in line with Assembly Bill (AB) 1287, which Governor Newsom signed into law on October 11, 2023. AB 1287 included an amendment to the State Density Bonus Law to provide an additional density

bonus and incentives for qualifying projects providing moderate income units or very low-income units. Specifically, under AB 1287, a project providing the requisite percentage of affordable units can obtain the 50% maximum density bonus under the prior law as a base bonus as well as an additional density bonus up to 100% as an additional bonus in exchange for the provision of the requisite percentage of additional affordable units.

The CHIP Ordinance incorporates the additional bonus and incentives provided by AB 1287 into the City's implementation of the State's DBP. Like the State's DBP, the CHIP Ordinance outlines the requisite percentages of affordable units provided for each income level. For units offered for rent, the minimum percentages of units provided for each income level to qualify for the Program are 5% very low income or 10% lower income. For units offered for sale, the minimum percentages of units are 5% very low income, 10% lower income, or 10% moderate income. The percentage of density bonus units that a project is entitled to depends on the percentage of very-low income, lower income, and moderate income (if for sale) provided. Like the State's DBP, the maximum density bonus a project is entitled to is a 50% base bonus if it provides 15% very-low income or 24% lower income units for rent or 44% moderate income for sale. In addition, the CHIP Ordinance provides that a project may qualify for an additional bonus ranging from 20% up to 50% if the project provides the requisite percentage of very-low income or moderate-income units.

The CHIP Ordinance also provides new density bonuses and incentives for qualifying projects that provide housing for specified target populations, including senior citizens, transitional foster youth, disabled veterans, homeless persons, and lower income students.

The CHIP Ordinance updates the City's DBP to reflect that a qualifying project may request up to four on- or off-menu incentives subject to the review process below.

Under the CHIP Ordinance, more projects will be eligible for ministerial review, avoiding uncertain and lengthy review processes, including environmental review under the California Environmental Quality Act (CEQA). The CHIP Ordinance updates the review processes for housing projects depending on the type of request under the DBP. Projects that request only the allotted number of incentives from the base incentives and menu of incentives provided in the CHIP Ordinance are entitled to a ministerial approval by the City's Department of Building and Safety unless certain limited exceptions apply. This language in the CHIP Ordinance is consistent with the Department of City Planning's current policy to ministerially review qualifying housing projects requesting only on-menu incentives.

The CHIP Ordinance also creates a new ministerial review process referred to as the Expanded Administrative Review (EAR) process, which applies to projects requesting public benefit options or off-menu incentives. The EAR process entails submitting an application and eligibility checklist to the Affordable Housing Services Section at the Metro/ Downtown Development Services Center. The submitted documents are reviewed by the Department of City Planning to assess compliance with applicable regulations and standards. An informational public hearing may be required depending on the project or if otherwise required by the Code. Upon the Department's determination that the proposed project complies with applicable standards and regulations, projects must be developed in keeping with the approved plans. Modifications of no more than ten percent may be permitted, but, for more extensive modifications, an applicant is required to restart the EAR process.

If the applicant requests to waive or reduce development standards, exceed the maximum density bonuses, or proceed with any other actions requiring discretionary approval, then the applicant will be required to obtain a Class 3 Conditional Use Permit, which is subject to discretionary approval by the City Planning Commission. Note that the CHIP Ordinance does not streamline other discretionary actions that may be applicable to a housing project, such as a General Plan Amendment, Zone Change, Project Review, or other discretionary action.

MIXED-INCOME INCENTIVE PROGRAM

The Housing Element identifies The Mixed-Income Incentive Program (MIIP) consists of three sub-programs designed to incentivize mixed-income housing development near public transit stops and in higher-opportunity areas: the Transit Oriented Incentive Area Program, the Opportunity Corridors Program, and the Opportunity Corridors Transition Program.

To qualify under these sub-programs, the housing project must meet the generally applicable requirements of MIIP as well as the specific requirements of the sub-program. Regardless of which program the project is applying for, the project must meet certain requirements, including providing a baseline of either four or five units depending on the program, meeting specific program requirements, reserving the requisite percentage of affordable units, and meeting applicable zoning and other requirements.

TRANSIT ORIENTED INCENTIVE AREA PROGRAM

The Transit Oriented Incentive Area (TOIA) program is intended to increase the supply of affordable housing near public transportation, particularly in areas identified as Higher Opportunity areas. Eligible projects under the Transit Oriented Incentive Area (TOIA) program are those located within the requisite distance to a major transit stop based on the criteria in the CHIP Ordinance. The TOIA program differentiates projects into particular incentive sets based on proximity to a qualified major transit stop and location within one of the City's Opportunity Areas as identified on the California Tax Credit Allocation Committee (CTAC) Opportunity Area map. The base incentives are specified for each incentive set. Within each set, projects in Higher Opportunity Areas receive increased density and floor area ratios (FAR) compared to projects located in the Moderate or Lower Opportunity Areas within the same incentive set.

As with the City's DBP, eligible projects qualify for up to four incentives. Compared to the City's DBP, the TOIA program offers additional base incentives, including FAR and height, tailored to the incentive sets as well as additional on-menu incentive options. Significantly, the TOIA program allows for density increases beyond the density bonuses provided under the City's DBP. If the property's zoning allows for at least five units, then projects are eligible for density bonuses starting at 100% for Moderate and Lower Opportunity Areas in the T-1 incentive set and rising up to density limited only by FAR in Higher Opportunity Areas in the T-2 and T-3 incentive sets.

OPPORTUNITY CORRIDORS PROGRAM AND OPPORTUNITY CORRIDORS TRANSITION PROGRAM

The Opportunity Corridors (OC) program envisions new mid-rise affordable housing developments along major transit-served corridors within the City's Higher Resource Areas as identified on the CTAC Area map. Like TOIA, OC differentiates projects into particular incentive sets. Like TOIA, OC offers additional base incentives, including FAR and height, and on-menu incentives compared to the City's DBP. The base incentives are specified for each incentive set for the FAR and height. The OC program provides more generous base incentives than the TOIA program, including density limited only by floor area and increased FAR.

The Opportunity Corridors Transition (OCT) program permits low-rise housing development on properties in higher opportunity areas zoned as R2 or RD, allowing for small-scale development in low-density multi-family zones near Opportunity Corridors. The concept is that these low-rise housing developments will provide transitions between single-family houses and mid-rise multi-family apartment buildings. The OCT program differentiates by subareas based on proximity to an Opportunity Corridor as discussed above (CT-1, CT-2, and CT-3). The number of units required at each income level in order for the project to qualify for incentives depends on the OCT Incentive Area in which it is located. The program allows for between four to sixteen units depending on the subarea in which it is located. The other base incentives are also tailored to the applicable subarea but include a range of FAR and height allowances. Note that the floor area ratio incentives are determined based on the number of density bonus units. A project approved under the OCT program must also meet various performance standards, including satisfying specific requirements related to common open space and entryway standards.

AFFORDABLE HOUSING INCENTIVE PROGRAM

The Affordable Housing Incentive Program (AHIP) provides new incentives for 100% affordable housing projects in addition to the incentives offered under the State DBP. Like the MIIP programs, AHIP is intended to encourage housing development near transit and in areas identified as Higher Opportunity Areas. For example, AHIP provides additional incentives for projects located in Higher or Moderate Opportunity Areas or within a half mile of a major transit stop or very low vehicle travel area, including density limited only by floor area. AHIP also provides tailored incentives for qualifying 100% affordable housing projects citywide. Compared to the other programs in the CHIP Ordinance, AHIP provides an additional incentive for a total of up to five incentives for qualifying projects.

Additionally, AHIP adds "P" Parking zones and "PF" Public Facilities zones to the types of zones eligible for 100% affordable housing projects and covers a variety of project types, including public land projects, faith-based organization projects, and shared equity projects that provide the required percentage of restricted affordable units and meet specific ownership criteria based on the project type. Specifically, AHIP incentivizes 100% affordable housing on Public Facilities "PF" zones and on land owned by public agencies, 80-100% affordable housing on land owned by faith-based organizations, and 80-100% affordable housing on land owned by community land trusts or limited equity housing cooperatives. Under certain circumstances, these project types may be subject to the new ministerial EAR process described above.

STREAMLINED CEQA ENVIRONMENTAL REVIEW

One strategy that opponents of affordable housing projects frequently employ is leveraging the lengthy environmental review process under CEQA to delay and drive up the costs of housing projects. These delay tactics can be fatal, particularly for affordable housing projects which are often already limited by tight cost margins. Even the threat of CEQA-related delays influences whether developers and investors are willing to proceed with an affordable housing project due to uncertainties about timing and costs.

The City's Housing Element addresses these concerns by streamlining the environmental review process under CEQA for most new housing developments. Pursuant to CEQA, an Environmental Impact Review was approved for the City's Housing Element, which examines a vast range of environmental impacts from the proposed housing programs, including the potential environmental impacts of housing projects expected to qualify for the programs outlined above. Thus, rather than undergoing a full CEQA review for each individual housing development utilizing these programs, housing developers are permitted to use the standardized CEQA Streamlining Checklist Form (Form CP-4089) as the environmental review document. Streamlining CEQA review significantly reduces the timeline for project approvals and removes another barrier for developers and investors considering moving forward with a housing project.

CONCLUSION

The incentives programs included in CHIP Ordinance and the streamlined CEQA environmental review process are aimed at lowering procedural barriers that steer developers and investors away from affordable housing projects. While some pro-housing advocates believe that these changes are inadequate to meet the City's obligations under state law, these programs do provide a helpful starting point for developers trying to make affordable housing projects pencil out.
Allen Matkins has a dedicated team following changes affecting housing development in the City of Los Angeles and is prepared to assist with any questions related to siting such projects.

San Diego City Council Proposes to Limit Applicability of Successful ADU Bonus Program

BY TIM HUTTER AND BO PETERSON

The San Diego City Council voted on March 4, 2025, to begin the process of revising its Accessory Dwelling Unit (ADU) Bonus Program (ADU Bonus Program or Program), which has served, to date, as one of the state's most innovative and successful local infill housing programs.

ADU BONUS PROGRAM BACKGROUND

While state law generally authorizes ADUs on all residential properties, the City's ADU Bonus Program currently allows developments to exceed the ADU minimums specified by the state. To qualify under the Program, a project must be located a Sustainable Development Area, which is determined based on a site's proximity to transit. After the state-mandated ADUs that are allowed by right (typically one detached ADU in single-family zones), qualifying projects may earn one additional market-rate (i.e., unrestricted) bonus ADU for each ADU that is restricted for low- or moderate-income households. Project scale is limited by the floor-area ratio and height limits imposed by a site's base zone.

The City's ADU Bonus Program has been praised as a successful housing incentive because it allows for increased density near transit to help the City achieve its climate and mobility goals, while requiring that about half of new ADUs be deed-restricted as affordable to lower or moderate-income households. The Terner Center for Housing Innovation at UC Berkeley lauded the Program's success at producing missing middle-income housing without public subsidies. The Program earned the City a 2024 Ivory Price for Housing Affordability, a national award recognizing scalable solutions to housing affordability.

ADU BONUS PROGRAM REVISIONS

Unfortunately, the City's ADU Bonus Program has faced opposition from single-family homeowners who were surprised to see additional housing in neighborhoods dominated by single-family homes. After a previous attempt to repeal the Program was marred by a potential Brown Act violation, the City Council considered the Program again on March 4, 2025, at the end of a marathon City Council meeting.

While the City Council stopped short of completely repealing the ADU Bonus Program, they instructed City staff to bring back an action item within 60 to 90 days to remove eligibility for the Program from lower density residential areas (i.e., zoning districts with a minimum lot size of 10,000 square feet or greater). The City Council also proposed to further modify the Program as outlined in a February 28, 2024, memorandum from the Planning Director as a part of the City's regular 2025 Land Development Code Update process. These changes are expected to include eliminating the Program in Very High Fire Hazard Severity Zones as well as applying more stringent Fire Code standards to ADUs created through the Program, among other revisions.

These changes are meaningful locally because the ADU Bonus Program has generated a notable amount of development activity in some of the City's least-dense residential zones. The Program revisions also are relevant at a state level because the City is currently a leader among large California cities in promoting infill development. Previous innovations, such as the City's 50% density bonus and stacking of density bonuses, have been pushed by City legislators and adopted in state law.

IMPLICATIONS

The City Council's actions to modify the ADU Bonus Program are surprising given the City's history of proactively fighting the housing crisis by approving new housing development and implementing innovative strategies to encourage mixed–income projects. San Diegans who support new development remain hopeful that this is an isolated effort to reform, rather than kill, a successful program, and that this will not signal a changing tide against housing among elected officials in California's second largest city. Our firm is on top of the shifting ADU Bonus Program regulatory environment, and we have a leading understanding of evolving local issues more broadly. Please contact us if you need assistance navigating the local land use regulatory environment, particularly to develop new housing projects.

SB 937: Deferral of Residential Development Impact Fees

BY MATTHEW FOGT, ALLYSON THOMPSON, AND MADISON MONTAGUE

Senate Bill (SB) 937 (Wiener) went into effect on January 1, 2025. SB 937 eases the financial burden on residential developers by prohibiting local agencies from imposing fees on specified residential development projects until the final inspection date or certificate of occupancy date. This article summarizes the benefits of SB 937, the projects it applies to, and its caveats.

BENEFITS OF SENATE BILL 937

SB 937 delays upfront payment of Development Impact Fees (DIFs), which are typically due at building permit issuance, to the date of the final inspection, or the date the certificate of occupancy is issued, whichever occurs first. Specified exceptions are discussed below. Local agencies are also prohibited from charging interest or other fees and charges for the deferred DIF payment.

DIFs are a burden to developers because they impose significant early costs on development projects. SB 937 provides welcome relief to developers by delaying DIF payments, allowing developers to defer accumulation of upfront construction loans, and eliminating the accrued interest that accompanies such loans. With developers enjoying added flexibility and decreased costs and local agencies receiving the same amount in DIFs, SB 937 is a win-win for both residential developers and the areas they are developing in.

WHICH PROJECTS DOES SB 937 APPLY TO?

SB 937 applies to "designated residential development projects," which are residential development projects that meet any of the following conditions:

- Projects that designate 100% of units as low-income housing. (Cal. Gov. Code § 66007(c)(4)(A)).
- Projects that serve as Low Barrier Navigation Centers (i.e., residential projects that offer temporary homeless housing and services to connect people to permanent housing). (Cal. Gov. Code § 66007(c)(4)(B)).
- Projects approved pursuant to Assembly Bill (AB) 2011, as amended by AB 2243 (effective January 1, 2025). As explained in our prior legal alert, AB 2011 provides for "by right" streamlined ministerial (i.e., no CEQA) approval of qualifying mixed-income and affordable housing development projects without the need for rezoning. In exchange, specified affordable housing and labor requirements must be met.
- Projects that meet the SB 35 requirements under Gov. Code § 65913.4(a). Such projects must include affordable housing units and construction workers must be paid prevailing wages, as specified. (Cal. Gov. Code § 66007(c)(4)(D)). Please see our prior legal alert for more information about SB 35.
- Projects that meet the criteria of Gov. Code § 65913.16(c) (Affordable Housing on Faith and Higher Education Lands Act of 2023), which provides for streamlined review of qualifying residential developments on land owned by a higher education or religious institution, as specified. (Cal. Gov. Code § 66007(c)(4)(E-F)).
- Projects entitled to a density bonus pursuant to Gov. Code § 65915(b), meaning that a specified percentage of affordable units are provided on-site. (Cal. Gov. Code § 66007(c)(4)(G)).
- Projects that include 10 or fewer dwelling units. (Cal. Gov. Code § 66007(c)(4)(H)).

POTENTIAL EXCEPTIONS

The local agency may require fees be paid at an earlier time if the local agency determines fees or charges will be collected for public improvements or facilities for which an account has been established and funds appropriated and for which the local agency has adopted a proposed construction schedule or plan before final inspection or issuance of the certificate of occupancy. The local agency may also collect fees at an earlier time if the fees or charges are to reimburse expenditures previously made. Utility connections fees may be collected when an application for service is received, provided those fees do not exceed the costs incurred by the utility provider resulting from the connection activities. Moreover, the definition of designated residential development projects is fairly limited, and developers should take precautions to ensure their project qualifies for delayed DIF payments.

Renewables, Energy, & Climate

California Continues to Promote Clean Energy Transition Despite Federal Backstepping on Clean Energy and Hydrogen Funding

BY DANA PALMER AND MEGHAN CLARK

The first quarter of 2025 has been marked by a turbulent transition between presidential administrations as indicated by regulatory course reversals, and clean energy regulations have been no exception. On January 20, 2025, President Trump issued an executive order entitled Unleashing American Energy, which instructed federal agencies to immediately pause disbursement of funds provided by the Inflation Reduction Act of 2022 and the Infrastructure Investment and Jobs Act and to submit a report to the Director of the National Economic Council analyzing its consistency with the order, which included funds set aside for clean energy projects. In the wake of the executive order, there is a widespread sense of uncertainty in the regulatory future of the clean energy industry under the current administration.

Amidst federal backstepping on clean energy, the state of California remains committed to promoting a clean energy transition. California has set ambitious greenhouse gas emissions reduction goals with the overarching goal to shift away from reliance on fossil fuels and towards increased reliance on renewable energy resources. Specifically, California has a goal of cutting greenhouse gas emissions by 48% below 1990 levels by 2030 and 85% below 1990 levels by 2045. Progress towards these decarbonization goals on the state level will require the passage of new laws to incentivize renewable energy projects, encourage research into the viability of cleaner sources of energy, and promote a just transition. One source of energy that has become increasingly prominent is hydrogen, particularly green hydrogen, which is the process by which hydrogen is produced by using renewable energy sources to drive the electrolysis process by which water is broken down into its component parts — hydrogen and oxygen.

Senate Bill (SB) 1420 (Caballero) is a relatively new state law, which Governor Newsom signed into law on September 25, 2024, intended to incentivize green hydrogen projects. The bill was introduced by Senator Anna Caballero during the 2024 Legislative Session. Senator Caballero is currently serving her second term representing the 14th State Senate district, which includes the majority of Merced, Madera, and Fresno Counties. Senator Caballero also serves as the Chair of the Appropriations Committee and a member of the Housing, Public Safety, Insurance, Judiciary, Energy, Utilities, and Communications Committee. SB 1420 aims to incentivize clean hydrogen projects and renewable energy projects by making more qualifying projects eligible for permit streamlining benefits, expedited review under the California Environmental Quality Act (CEQA), and expedited judicial review of CEQA challenges.

The bill adds qualifying hydrogen projects as eligible for centralized permitting by the California Energy Commission (CEC) under its Opt-In Certification Program by expanding the definition of a "facility" to include qualifying hydrogen production or storage and processing facilities.

The bill makes more qualifying hydrogen projects eligible for expedited judicial review of CEQA litigation by expanding the definition of "energy infrastructure project" as defined in the Public Resources Code in two significant ways. First, SB 1420 expands the definition of "energy infrastructure project" by excluding "resources that combust biomass fuels" rather than all "resources that use biomass fuels." Second, SB 1420 extends the definition of "energy infrastructure project" to include qualifying hydrogen production facilities and associated storage and processing facilities among the projects eligible for expedited review under CEQA. Prior to this bill, all "projects utilizing hydrogen as a fuel" were specifically excluded.

Under SB 1420, to qualify for expedited judicial review or the centralized permitting under the CEC Opt-In Certification Program, the hydrogen production or storage and processing facility must meet the following two criteria: the Facility must "not derive hydrogen from a fossil fuel stock" and the Project must have received funding from a listed funding source. The first requirement reflects the fact that the overall environmental impact of hydrogen as an energy source largely depends on the source of energy that drives its production. Modern technological advancements have led to the development of production processes that utilize renewable resources — instead of fossil fuels — in the hydrogen production process.

The second requirement is that the project must have received funding from one of the following three sources: (1) the state-funded Hydrogen Program under Public Resources Code Section 25664.1; (2) the 2024 climate bond approved by voters in the November 2024 election; or (3) the Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) as awarded by the United States Department of Energy (DOE).

The latter of these funding sources has been in the news and is, as of the date of this article, in jeopardy as the current administration reconsiders funding awarded by the prior administration. In 2022, the federal government passed the

Bipartisan Infrastructure Law, which set aside $7 billion in funding for the creation of the Regional Clean Hydrogen Hubs Program (H2Hubs) to be awarded by the DOE. The purpose of the program funding was to encourage the creation of regional clean hydrogen hubs to create a national network that will ultimately lead to the formation of a national hydrogen economy. The California Hydrogen Hub, which proposed various hydrogen projects across the state, was among the projects selected to receive the H2Hubs designation and a $1.2 billion slice of the federal funding. On March 26, 2025, *Politico* reported that a list circulating within the DOE indicates that the California Hydrogen Hub is among the four H2Hubs that may face funding cuts related to the President's executive order.

FORWARD LOOKING: PENDING BILLS IN THE 2025 LEGISLATIVE SESSION

Amidst the shifting energy regulations on the federal level, the state government is holding fast to its clean energy commitments, introducing new bills in the 2025 Legislative Session related to hydrogen, including, among others, Assembly Bill (AB) 35 (Alvarez), SB 88 (Caballero), and SB 714 (Archuletta).

AB 35 (Alvarez) would allow for limited CEQA review of an application for a discretionary permit or authorization for a clean hydrogen transportation project, which is defined as "a pipeline project composed of a system that transports hydrogen, and any associated facilities necessary for the system's operation," that meets stated criteria in the bill. The limited CEQA review involves completing a clean hydrogen environmental assessment rather than a full environmental impact report or mitigated negative declaration as is typically required by CEQA. The bill would also expedite the review process by requiring that the lead agency make its determination about whether to approve the clean hydrogen environmental assessment and issue the discretionary permit or authorization within 270 days of when the application is deemed complete.

SB 88 (Caballero) would require the State Energy Resources Conservation and Development Commission to consider the potential of using biomass to produce low and negative carbon fuels, including hydrogen, in its reports and documents.

SB 714 (Archuletta) would state the intent of the Legislature to enact legislation to establish a Clean Energy Workforce Training Council to analyze the workforce and infrastructure needs as well as the needs of hydrogen and other clean energy technologies and a Zero-Emission Vehicle Workforce Development Pilot Project for use at community colleges. These programs would be under the purview of the Deputy Secretary for Climate within the Labor and Workforce Development Agency.

Should you have any questions related to the siting and permitting of clean hydrogen projects, California's energy transition, or the applicability of these new laws, Allen Matkins has a dedicated team actively working on these issues and would be happy to assist.

California Battery Energy Storage Update

BY DANA PALMER AND CAROLINE PARKS

California has set ambitious clean energy standards, mandating that 100% of the state's electricity be supplied by renewable and zero-carbon resources by 2045, with interim targets of 60% by 2030 and 90% by 2035. In order to meet these goals, California must be able to successfully store solar and wind energy generated only when the sun is shining, and the wind is blowing. In 2024, California made significant progress, bringing more than 7,000 megawatts of clean energy and over 4,000 megawatts of new battery storage online. Battery storage systems are key to California's ability to meet energy demand, but the current installed battery storage capacity is over 20% of California's peak demand. The state's projected need for battery storage capacity is estimated at 52,000 megawatts by 2045.

To help achieve this ambitious target, since 2022, the California Energy Commission (CEC) was given temporary authority to permit certain renewable energy projects, including energy storage facilities capable of storing 200 megawatt-hours or more, through its Opt-In Certification Program originally enabled under AB 205. The Opt-In Certification Program is an optional permitting process through which project developers receive a permit from the CEC in lieu of any local permit and most, but not all, state permits. Since the enactment of the program, Allen Matkins has developed significant experience supporting Opt-In projects. As of this publication, there are eight Opt-In projects in the CEC's queue, with the first receiving approval from the commission on June 11, 2025.

The January 2025 fire that destroyed a portion of the 300-megawatt Moss Landing energy storage facility near Santa Cruz, California has brought increased attention to safety standards at storage facilities. This legislative session, three bills, AB 303, AB 434, and SB 283 were introduced, each proposing different standards for energy storage safety.

AB 303: BATTERY ENERGY SAFETY & ACCOUNTABILITY ACT

AB 303, introduced by Assemblymember Dawn Addis, proposes to remove energy storage facilities from the CEC's Opt-In Certification Program and return land use authority back to local agencies. Additionally, AB 303 would establish restrictions for locations of new energy storage facilities. If passed, new facilities could not be constructed in high fire and high flood zones and a 3,200-foot setback from environmentally sensitive sites, such as homes, schools, hospitals, and prime agricultural land would be required. As drafted, AB 303 would not impact existing energy storage facilities but would seek to address safety concerns for new facilities across the state. At the beginning of June, AB 303 became a two-year bill by not passing through to the Senate by the applicable deadline.

AB 434

AB 434, introduced February 5th by Assemblymember Carl DeMaio, would similarly exclude energy storage facilities from the CEC's Opt-In Certification Program. However, AB 434 would further prohibit, until January 1, 2028, a public agency from authorizing the construction of new energy storage facilities and would require the State Fire Marshal, on or before January 1, 2028, to adopt guidelines and minimum standards for the construction of energy storage facilities. Further, AB 434 would require public agencies authoring new energy storage facilities on or after January 1, 2028, to require the facility to meet either the standards adopted by the State Fire Marshal or more stringent guidelines as determined appropriate by the public agency. At the beginning of June, AB 434 became a two-year bill by not passing through to the Senate by the applicable deadline.

SB 283

SB 283, introduced February 5th by Senator John Laird, would require new energy storage facilities to meet the National Fire Protection Association (NFPA) 855 standards for battery storage safety and hazard mitigation. Further, prior to submitting an application for a new energy storage facility through either the CEC's Opt-In Certification Program or a local approval process, developers would be required to engage and confer with local fire authorities to address facility design, assess potential risks, and integrate emergency response plans. As of this writing, SB 283 is being considered in the Assembly and will be heard before the Energy, Utilities and Communications and Local Government committees.

California's New Climate-Related Disclosure Laws: Requirements, Compliance Costs, and Deadlines for Impacted Businesses

BY SHAWN COBB

California is often the vanguard of climate-related policies and programs. From legislation requiring the state to reduce overall greenhouse gas (GHG) emissions and procure electricity from renewable and carbon-free sources to the Cap-and-Trade Program and Low Carbon Fuel Standard, businesses operating in California must constantly stay informed of the shifting regulatory landscape.

In 2023, California enacted two laws continuing this trend. Senate Bill (SB) 253, known as the Climate Corporate Data Accountability Act, is the first law in the United States to require businesses to disclose their GHG emissions in an annual report submitted to the California Air Resources Board (CARB). SB 261, known as the Climate-Related Financial Risk Act, requires businesses to assess and report every two years to CARB on how climate-related financial risks may impact their market position, operations, and supply chains. In 2024, SB 219 amended both SB 253 and SB 261 to clarify reporting requirements and extend certain deadlines.

SB 253 requires businesses to begin reporting emissions data in 2026, while SB 261's climate-related financial risk reports are due on January 1, 2026. If they haven't already, covered businesses should begin preparing now. This article summarizes SB 253's and SB 261's reporting requirements, processes, and penalties for noncompliance. It also provides an update on litigation challenging both laws in federal court and steps taken by CARB to implement SB 253 and SB 261.

SB 253: CLIMATE CORPORATE DATA ACCOUNTABILITY ACT

SB 253, as amended by SB 219, directs CARB to adopt regulations by July 1, 2025, requiring "reporting entities" — businesses with total annual revenues over $1 billion that are formed under state or federal law and do business in California — to annually disclose their Scope 1, Scope 2, and Scope 3 emissions. SB 253 defines each scope as follows:

- Scope 1 emissions are "all direct greenhouse gas emissions that stem from sources that a reporting entity owns or directly controls, regardless of location, including, but not limited to, fuel combustion activities."
- Scope 2 emissions are "indirect greenhouse gas emissions from consumed electricity, steam, heating, or cooling purchased or acquired by a reporting entity, regardless of location."
- Scope 3 emissions are "indirect upstream and downstream greenhouse gas emissions, other than Scope 2 emissions, from sources that the reporting entity does not own or directly control. These may include, but are not limited to, purchased goods and services, business travel, employee commutes, and processing and use of sold products."

Examples of Scope 1 emissions (direct emissions) include company-owned vehicles or heavy machinery; on-site fuel combustion (e.g., diesel backup generators or natural gas boilers); and process emissions (e.g., from cement production or refining operations). Scope 2 emissions (indirect) are associated with the generation of purchased energy.

Scope 3 emissions, typically the largest share of a company's GHG footprint, are the most complex and resource-intensive to measure. These emissions result indirectly from a company's operations and are not directly emitted by the company. Upstream examples include employee travel, waste disposal, capital goods, and inbound transportation. Downstream examples include delivery, use, and disposal of sold products, franchises, and investments. SB 219's amendments to SB 253 delayed Scope 3 reporting requirements until 2027.

To accurately measure emissions, reporting entities will likely need legal counsel, environmental consultants, and accounting/auditing support. The California Chamber of Commerce estimates initial compliance costs exceed $1 million per company, with ongoing annual costs between $300,000 and $900,000, plus additional costs for supply chain data collection and verification. SB 253 allows penalties up to $500,000 for misreporting but includes a safe harbor provision for good-faith Scope 3 emissions reporting through 2030. The law also requires third-party assurance of emissions reports, with specific requirements to be defined by CARB.

SB 261: CLIMATE-RELATED FINANCIAL RISK ACT

SB 261 applies to any "covered entity" with total annual revenues over $500 million that is formed under state or federal law and does business in California. Beginning January 1, 2026, covered entities must biennially disclose on their website a report covering two categories of climate-related financial risk information, defined as information related to the "material risk of harm to immediate and long-term financial outcomes due to physical and transition risks." This report must also be submitted to CARB.

The two required categories are:

- The covered entity's climate-related financial risk, following the framework and disclosures recommended in the Final Report of Recommendations of the Task Force on Climate-related Financial Disclosures (June 2017); and
- The covered entity's measures adopted to reduce and adapt to the disclosed risks.

Unlike SB 253, SB 261 is self-executing and does not depend on CARB regulations, although the law directs CARB to adopt rules specifying administrative penalties — capped at $50,000 — for failure to publish a report or for inaccuracies. Business groups estimate initial compliance costs to range from $300,000 to $750,000, with recurring biennial costs between $150,000 and $500,000.

CARB'S IMPLEMENTATION OF SB 253 AND SB 261

On December 5, 2024, CARB issued an Enforcement Notice stating that it would "exercise its enforcement discretion" for the first reporting cycle, provided that reporting entities demonstrate good-faith efforts to comply. CARB explained that it understood businesses "may need some lead time to implement new data collection processes" and that, for the first reporting year, businesses may rely on information already in the businesses' possession to determine their scope 1 and scope 2 emissions.

This prompted criticism from SB 253 and SB 261 authors, California State Senators Scott Wiener and Henry Stern, in a December 11, 2024 letter. They stated they were "beyond frustrated" with CARB's lack of progress and warned that, unless CARB acts swiftly, they would consider calling leadership before the Legislature for oversight hearings in 2025.

On December 16, 2024, CARB issued an Information Solicitation requesting stakeholder input on the implementation of SB 253 and SB 261 (as amended by SB 219). Though the comment deadline (February 14, later extended to March

21) has passed, the questions and stakeholder feedback offer valuable insight for affected businesses who will have another opportunity to comment during CARB's formal rulemaking process.

As of this publication, CARB has not yet issued its notice of proposed rulemaking in the California Regulatory Notice Register, which would initiate the formal rulemaking process and a 45-day public comment period. CARB conducted a widely-attended virtual workshop on May 29, 2025 to discuss the rulemaking efforts and its current views of potential regulatory approaches. Rulemaking proceedings, especially for proposed regulations that generate substantial public interest often require close to the full year allowed by statute to promulgate the regulations.

LEGAL CHALLENGES TO SB 253 AND SB 261

After the enactment of SB 253 and SB 261 in October 2023, the U.S. Chamber of Commerce and various other business groups filed suit in January 2024 in the U.S. District Court for the Central District of California. The complaint alleges violations of the First Amendment, the Supremacy Clause, and limits on extraterritorial regulation, including the Dormant Commerce Clause.

In November 2024, the District Court denied the plaintiffs' motion for summary judgment that SB 253 and SB 261, on their face, violate the First Amendment. On February 3, 2025, the District Court granted CARB's motion to dismiss the Supremacy Clause claim as to SB 261 with prejudice, finding no preemption issue between SB 261's required disclosures and the federal Clean Air Act. The District Court also found the Supremacy Clause and Dormant Commerce Clause challenges not yet ripe for review and thus dismissed those claims without prejudice. Although the District Court allowed plaintiffs to plead additional facts regarding their Dormant Commerce Clause challenge

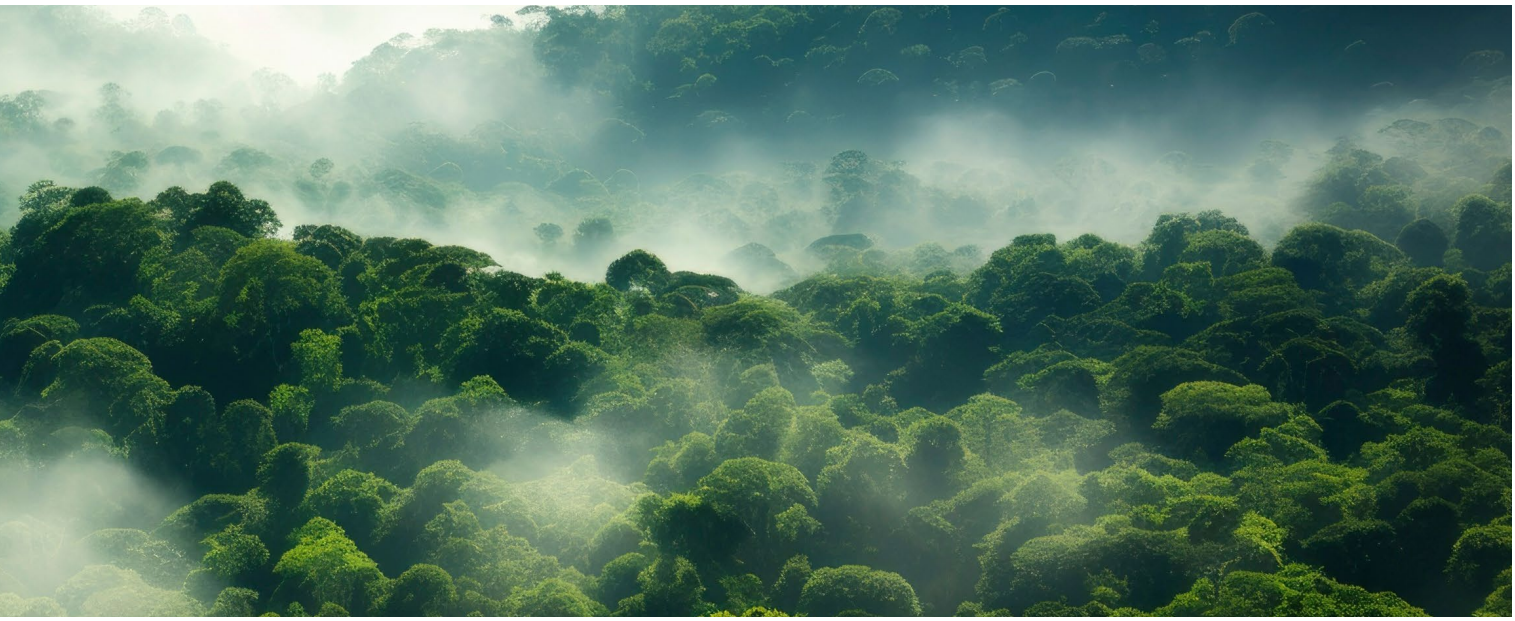
to SB 261, plaintiffs opted not to amend their complaint. As of now, plaintiffs' First Amendment claim will proceed to discovery and plaintiffs will likely re-file their Dormant Commerce Clause and Supremacy Clause challenges to SB 253 once CARB adopts regulations.

On February 25, 2025, plaintiffs filed a motion for a preliminary injunction to stop CARB from enforcing both laws based on their First Amendment claim. California filed its opposition on April 7, 2025, arguing that SB 253 and SB 261 merely compel the disclosure of factual information rather than an affected company's position on the topic of climate change. Plaintiffs responded on April 21, 2025, arguing that strict scrutiny is required because the speech compelled by SB 253 and SB 261 is not purely factual and climate change is a controversial topic subject to vigorous debate. The motion for preliminary injunction is currently scheduled to be heard on July 1, 2025, though a ruling may not issue until later this summer.

NEXT STEPS

Amid active litigation and delayed regulatory implementation, significant uncertainty remains around SB 253's reporting requirements and general compliance timelines. However, consistent with CARB's Enforcement Notice, reporting entities and covered entities should begin good-faith efforts to comply with both SB 253 and SB 261 by 2026. Companies subject to California's new climate disclosure laws should take immediate steps to engage consultants and establish internal systems to collect the required data.

We will continue to monitor the implementation and legal developments surrounding SB 253 and SB 261 and provide timely updates.




Industrial

Citizen Suit Enforcement Under the Industrial General Permit: How Businesses Can Avoid Substantial Costs Associated with Notice Letters

BY SHAWN COBB

Each year, many California businesses receive letters from private entities, typically environmental nongovernmental organizations (Citizen Groups), alleging that those businesses' facilities are in violation of applicable stormwater permits. The letters, commonly referred to as Notices of Violations and Intent to File Suit (Notice Letters), are authorized by the Clean Water Act's citizen suit provision and often threaten litigation with steep civil monetary penalties up to $68,445 per violation, per day.

Resolving Notice Letters is costly and typically requires a business to retain legal counsel and an environmental consultant. Although most Notice Letters are resolved through settlement and do not result in extensive litigation, settlement payments can be substantial. Settlement agreements also often include terms for injunctive relief that obligate the owner/operator of a facility (or discharger) to make certain stormwater-related improvements, further adding to the costs associated with resolving Notice Letter allegations.

Receiving a Notice Letter that threatens legal action is a stressful experience for any business owner. This article provides an overview of California's Clean Water Act permitting programs for industrial dischargers, including the Industrial General Permit (IGP), and offers practical tips on how dischargers subject to those permits can reduce the risk of receiving a Notice Letter. A copy of the IGP and its attachments is available here.

BACKGROUND

The Clean Water Act (CWA) prohibits discharges from point sources to waters of the United States unless the discharges are in compliance with a National Pollutant Discharge Elimination System (NPDES) permit. Section 402(p) of the CWA specifically regulates discharges of stormwater associated with industrial activity. Like most states, California has been delegated permitting authority under the CWA and, through the State Water Resources Control Board, develops its own NPDES permits for stormwater discharges associated with industrial activities, which are then implemented by one of California's nine Regional Water Quality Control Boards.

California has a "general" industrial discharge permit — the IGP — which allows many prospective permittees to obtain NPDES coverage in a fairly consistent and uniform manner in exchange for agreeing to a similarly consistent and uniform set of permit conditions and requirements. The IGP applies to a wide variety of industries such as heavy manufacturing (paper mills, petroleum refineries, and chemical plants); mineral mining and oil and gas exploration and processing; and metal fabricators, scrapyards, and automobile junkyards. A comprehensive discussion of covered facilities is found in Attachment A to the IGP, available here.

For permittees that do not qualify or otherwise choose not to seek coverage under the IGP, California also issues site-specific industrial discharge permits. These site-specific permits are often utilized by large manufacturing facilities and/or dischargers with unusual or complex operations and ideally provide permit conditions tailored to the facility and operations at issue.

Under the IGP and virtually all site-specific industrial discharge permits, dischargers are required to take certain actions to protect waters of the United States from facility discharges, including the following:

- Develop a Stormwater Pollution Prevention Plan (SWPPP) (a site-specific document that identifies potential sources of pollutants in stormwater and Best Management Practices (BMPs) to reduce any discharges associated with those pollutants).
- Adequately train on-site personnel (and maintain training log documentation) to implement the BMPs identified in the SWPPP.
- Collect and analyze stormwater samples (up to four times per year under the IGP) to confirm the effectiveness of the SWPPP and BMPs.

Finally, the IGP requires permittees to upload documentation to a publicly accessible database maintained by the SWRCB and known as the Stormwater Multiple Application and Report Tracking System (SMARTS), while site-specific permittees are typically required to upload documentation to a similar database known as the California Integrated Water Quality System (CIWQS).

BEST PRACTICES FOR AVOIDING A NOTICE LETTER

The best approach for dischargers to avoid a Notice Letter is to be proactive with compliance at their facilities, particularly with regard to submitting timely and correct documentation to SMARTS and/or CIWQS. Citizen groups seldom identify a facility with potential violations by visiting or personally observing that facility. Instead, citizen groups will often search SMARTS and CIWQS for signs that facilities are not in compliance with permit conditions.

Below are some of the most common reasons facilities are targeted by citizen groups:

- Outdated SWPPPs: Numerous facilities operate under a SWPPP that is several years old and does not contain permit-required information or accurately reflect current facility operations.
- Lack of Sampling: A failure to sample the requisite number of times, usually twice between July 1 and December 31 and twice between January 1 and June 30, may constitute a violation of the IGP. Of course, if a storm event does not have sufficient precipitation to produce a discharge, or occurs outside the facility's operating hours, then no sampling is required. However, a prolonged lack of sampling in an area with documented storm events will draw the attention of citizen groups.
- Overdue Ad Hoc Monitoring Reports and Annual Reports: Under the IGP, stormwater sampling results are required to be submitted to SMARTS within 30 days of receiving the lab report while the Annual Report must be submitted no later than July 15 following each reporting year. Facilities that submit required reports after these deadlines are attractive targets for citizen groups.

As the above points illustrate, many facilities become targets for citizen suits not based on actual discharge violations or egregious harm to the environment, but from the failure to properly and timely follow procedural requirements set forth in the applicable permit. Ensuring compliance with these procedural requirements is one of the most simple and cost-effective ways dischargers can reduce the risk of receiving a Notice Letter and becoming a target for citizen suit enforcement.

CONCLUSION

Clean Water Act permit requirements can be onerous and industrial dischargers, in particular, face significant scrutiny from citizen groups. Taking proactive steps to ensure compliance with the procedural requirements of these permits can be an efficient and highly effective method of dissuading citizen groups from issuing Notice Letters and bringing citizen suits. If a discharger is either unaware of its compliance status or is having difficulty ensuring compliance, it should consider retaining an outside environmental consultant to assist with this work. Allen Matkins has extensive experience successfully representing dischargers in connection with Notice Letters and citizen suits and can provide references to highly qualified consultants if desired.

Challenging the Industrial Exodus: Legal Lessons from Santa Ana's Planning Reboot

BY JONATHAN SHARDLOW, PAIGE GOSNEY, AND MATTHEW NICHOLS

The City of Santa Ana (City) has recently undertaken an ambitious — and highly controversial — effort to reshape the landscape of its historically industrial-centric Transit Zoning Code (TZC) district. Through the adoption of a development moratorium and the introduction of Zoning Ordinance Amendment (ZOA) No. 2024-02 (the Zoning Code Update), the City has sought to restrict, phase out, and ultimately eliminate industrial uses within the TZC area. Together, these legislative tools illustrate a growing trend among municipalities to leverage interim ordinances and zoning amendments as instruments of long-range planning, often to the detriment of long-established industrial users. Similar efforts have been pursued in recent years by a number of other Southern California cities — including Pomona, Redlands, Rialto, Pico Rivera, Rancho Cucamonga, and Lynwood — through the use of zoning overlays, targeted use restrictions, and industrial moratoria. This list is not exhaustive, but reflects a broader regional shift in policy toward phasing out legacy industrial activity.

This article examines the legal underpinnings of the City's approach, with particular focus on the statutory limits governing moratoria, the erosion of legal nonconforming rights under the Zoning Code Update, and the vested rights framework that enabled certain property owners to successfully defend against overreach. For landowners, developers, and practitioners across California, the City of Santa Ana case study offers timely insights into the risks — and opportunities — of navigating land use regulations in a shifting policy landscape.

DEVELOPMENT MORATORIA AS PLANNING TOOLS AND THEIR LEGAL LIMITS

A growing trend has emerged among Southern California municipalities: the use of moratoria to freeze industrial development while more permanent land use regulations are drafted and baked into existing zoning codes. Many cities have expressed concern that their industrial zoning codes — often decades old — are no longer equipped to address the intensity, scale, and externalities associated with modern warehousing and logistics operations. Often styled as temporary "pauses," these moratoria are increasingly being deployed to sidestep political or procedural delays in controversial rezonings. The City's approach is emblematic of this shift.

In April 2024, the City adopted Urgency Ordinance No. NS-3063, establishing an immediate 45-day moratorium on industrial use approvals in the TZC area. The urgency measure term was initially extended to April 15, 2025 via the City's adoption of Ordinance No. NS-3064, ostensibly to provide the City with time to "alleviate conditions" associated with industrial impacts on surrounding neighborhoods. Yet, in practice, the moratorium functioned less as a temporary regulatory pause and more as a de facto blanket ban on industrial activity blocking even ministerial permits for minor tenant improvements and routine facility upgrades for existing facilities. In some jurisdictions, such as Pomona, staff went even further — interpreting local moratoria as grounds to withhold business licenses altogether, compounding the regulatory chilling effect.

While cities are authorized by State law to impose interim ordinances under California Gov. Code § 65858, that authority is narrowly tailored. Subsection (a) requires a city to make express findings that "there is a current and immediate threat to the public health, safety, or welfare," and that the approval of certain land uses "would result in that threat to public health, safety, or welfare." These findings must be supported by specific and demonstrable facts, not merely policy preferences or speculative concerns. Notably, establishing a moratorium requires a higher approval threshold (a four-fifths vote), yet many cities routinely adopt moratoriums without adequately substantiated findings meeting this elevated standard.

Moreover, Gov. Code § 65858(c) limits extensions (moratoria may be in place for up to a maximum of two years) of interim ordinances to cases where the city adopts "new findings" evidencing continued urgency. Courts have interpreted this to mean that local governments may not simply recycle generalized concerns from the original ordinance; instead, they must produce fresh and substantial evidence justifying continued restrictions. As one court observed, the power to adopt moratoria "must not be used as a subterfuge to accomplish through interim action what would otherwise require permanent legislation subject to full procedural safeguards." (See *San Diego Gas & Electric Co. v. City of Carlsbad* (1998) 64 Cal.App.4th 785, 792.)

The City's blanket application of its moratorium — even to longstanding industrial businesses performing non-expansion work — ultimately tested the boundaries of lawful urgency regulation. In practice, we have observed in multiple jurisdictions that planning and building department staff frequently misapply moratoria by freezing all permit activity, regardless of whether a proposed action would establish a new industrial use or expand or intensify an existing one. This overreach leads to delays for purely ministerial work, such as tenant improvements, equipment upgrades, or basic maintenance for long-standing businesses, even when no land use intensification is proposed.

Such was the case for Adams Iron Co., whose long-operating facility at 811 N. Poinsettia Street was denied a ministerial permit for internal dust collection upgrades during the moratorium period. Allen Matkins submitted a formal letter to the City Attorney on September 4, 2024, later covered by various media outlets, arguing that the City's refusal to issue the permit violated Adams Iron's vested rights under California law. The letter cited long-standing case law, including *Avco Community Developers, Inc. v. South Coast Regional Com*. (1976) 17 Cal.3d 785, and emphasized that Adams Iron had expended significant resources in reliance on existing zoning and permits. The City's blanket denial, we argued, was not only unsupported by the moratorium's express terms but also exposed the City to potential liability for unconstitutional takings and inverse condemnation.

Ultimately, the City relented. Adams Iron received its permit — one of the few granted during the moratorium — illustrating how careful legal positioning and a clear articulation of vested rights can successfully overcome unlawful regulatory applications.

This episode illustrates a broader caution: moratoria are not planning shortcuts. They are statutory tools of last resort, meant to address genuine emergencies — not a means for incrementally phasing out disfavored uses without going through appropriate legislative processes.

REZONING AND THE EROSION OF NONCONFORMING RIGHTS

While the moratorium temporarily paused industrial activity in the City's TZC area, the City simultaneously moved to make such restrictions permanent through a sweeping legislative overhaul. Specifically, the City initiated the Zoning Code Update, consisting of Zoning Ordinance Amendment (ZOA) No. 2024-02 and Amendment Application (AA) No. 2024-03. These measures proposed major revisions to permitted land uses, nonconforming use regulations, and operational standards within the TZC.

The centerpiece of the Zoning Code Update is a dramatic reclassification of large swaths of formerly industrially zoned land — including M1 (Light Industrial) and M2 (Heavy Industrial) designations — into a newly created "Urban Neighborhood" zoning. Industrial uses are no longer permitted under the Urban Neighborhood zoning designation and existing industrial businesses (including standard warehousing) are reclassified as legal nonconforming uses, subject to heightened scrutiny and eventual phase-out.

Among the most concerning features of the Zoning Code Update were:

- Amortization provisions allowing the City to forcibly terminate nonconforming uses after an undefined "reasonable" period.
- Transfer restrictions that prohibit the continuation of a nonconforming use upon sale or lease to a new operator, effectively undermining financing, succession planning, and property value.
- Operational standards that retroactively impose new noise, environmental, and performance obligations on existing businesses.

These mechanisms pose an existential threat to industrial operators. As California courts have long recognized, the right to continue a legal nonconforming use is a "vested right that runs with the land" (*Edmonds v. County of Los Angeles* (1953) 40 Cal.2d 642). By conditioning continued operation on an arbitrary amortization timeline or restricting successor use rights, the Zoning Code Update risked unlawfully extinguishing these protected interests.
Equally problematic was the City's attempt to justify the Zoning Code Update by relying on its Transit Zoning Code Environmental Impact Report (EIR No. 2006-02), certified in 2010. That EIR was prepared 15 years ago and does not evaluate the displacement, cumulative socioeconomic, or environmental impacts of a wholesale elimination of industrial land uses. Nevertheless, the City merely prepared an addendum to that EIR, claiming that the proposed changes fell within the scope of prior review under CEQA Guidelines section 15162.

Allen Matkins, on behalf of multiple affected property owners — including Adams Iron — submitted formal comment letters, provided public testimony, and engaged in direct negotiation with City staff to raise legal concerns with the procedural and substantive adequacy of the EIR addendum and the substantive legal risks embedded in the Zoning Code Update.

While these advocacy efforts did not halt the Zoning Code Update entirely, they produced meaningful improvements. The City ultimately incorporated several clarifying provisions and exceptions in response to public comments — including a more flexible approach to abandonment determinations, refined amortization language, and narrowly tailored allowances for specific industrial sites. These changes significantly reduced the burden on our clients and preserved key operational rights.

With the City Council scheduled to vote on final adoption of the Zoning Code Update on May 5, 2025, continued attention is warranted. The City's approach illustrates the increasing use of comprehensive rezoning as a policy tool to phase out disfavored uses. For industrial property owners, it also underscores the importance of early engagement, robust legal analysis, and clear documentation of vested rights when facing existential regulatory change.

TERMINATION OF THE MORATORIUM AND LESSONS LEARNED

Faced with vocal opposition and detailed legal scrutiny, the City Council surprisingly allowed the moratorium to expire on April 15, 2025, after failing to achieve the required statutorily required four-fifths vote for extension. This termination represented a significant legal victory, validating the arguments advanced by businesses and highlighting the necessity for municipal transparency and statutory adherence.

City Council recently adopted the permanent Zoning Code Update for the Transit Zoning Code (TZC) area on June 3, 2025, after introducing several last-minute amendments during the public hearing. We are actively assisting clients in navigating the newly enacted regulations, interpreting their impacts, and developing strategies to protect vested rights and maintain operational continuity.

Looking forward, the City is now in the initial stages of stakeholder outreach and drafting a broader Comprehensive Zoning Code Update. Unlike the TZC update, this forthcoming comprehensive revision will affect zoning citywide, impacting property owners and businesses throughout Santa Ana. Businesses and property owners should proactively engage in this planning process, clearly document and assert their vested rights, and remain prepared to leverage precise legal arguments grounded in statutory compliance and constitutional protections. Continued vigilance will be essential to successfully navigating these extensive zoning reforms.

PRACTICAL IMPLICATIONS AND FORWARD–LOOKING GUIDANCE

The City of Santa Ana's recent experiences offer critical insights:

- Municipalities must strictly adhere to statutory standards: Property owners should scrutinize local governments' "findings" supporting urgency ordinances, challenging vague or insufficient evidence.
- Documentation of vested rights is crucial: Clear records demonstrating continued use and permits become essential to asserting constitutional and statutory rights against municipal overreach.
- CEQA compliance matters: Advocating against reliance on outdated EIRs ensures legally adequate environmental review and protects against arbitrary zoning amendments.

In navigating similar municipal strategies elsewhere, proactive and assertive legal engagement remains critical. As municipalities increasingly adopt aggressive planning tools, particularly those targeting industrial uses, businesses and property owners must remain informed and strategically prepared to defend their vested rights.


Housing

Pending State Housing Laws: New CEQA Exemptions and Expanded Opportunities for Streamlined Ministerial Approval

BY CAROLINE CHASE AND JORDAN WRIGHT

Various state housing bills are currently making their way through the California State Legislature that are expected to benefit mixed-income multifamily housing developers. The following summaries reflect the status of the pending legislation as of June 6, 2025. Future amendments are expected. Important upcoming dates in the legislative process include:

- September 12, 2025 – final date for the Legislature to pass bills.
- October 12, 2025 – final date for the Governor to sign or veto passed bills.
- January 1, 2026 – default effective date for approved bills (unless otherwise specified).

ASSEMBLY BILL 609: NEW CEQA EXEMPTION FOR QUALIFYING HOUSING DEVELOPMENT PROJECTS

AB 609 (Wicks, Alvarez, Carrillo, Flora, Quirk-Silva, Wilson, and Wiener) would create a new categorical exemption under CEQA for qualifying urban multifamily housing development projects.

Project and Project Siting Requirements

As currently proposed, AB 609 would exempt multifamily housing development projects from CEQA where all of the following requirements are met:

- The project must qualify as a "housing development project," meaning that the project must dedicate at least two-thirds of the square footage for residential use, unless the project proposes at least 500 net new residential units and qualifies for 50% residential pursuant to Gov. Code § 65589.5(h)(2).
- The project must be consistent with the applicable general plan, zoning ordinance, and local coastal program (if applicable). If the zoning and general plan are inconsistent, the project shall be deemed consistent with both if consistent with one. The project shall be deemed consistent if there is substantial evidence to allow a reasonable person to come to that conclusion.
- The proposed residential density must be at least 50% of the minimum residential density deemed appropriate to accommodate housing for the jurisdiction, as specified in Gov. Code § 65583.2(c)(3)(B). That calculation would translate to at least 15 dwelling units per acre for a jurisdiction within a metropolitan county and 10 dwelling units per acre for a suburban jurisdiction.
- The project site must be no more than 20 acres.
- The project site must be within the boundaries of an incorporated municipality or located within an urban area, as defined by the United States Census Bureau.
- The project site must have been "previously developed with an urban use" or at least 75% of the perimeter of the site must adjoin (as defined) parcels that are developed with urban uses. The term "urban use" is defined to mean "any current or previous residential or commercial development, public institution, or public park that is surrounded by other urban uses, parking lot or structure, transit or transportation passenger facility, or retail use, or any combination of those uses."
- If the project site is "not developed with urban uses" (defined above), it must not contain tribal cultural resources (found pursuant to a tribal consultation described in Public Resources Code § 21080.3.1) that would be affected by the project unless potential impacts would be mitigated, as specified.
- The project site must meet all of the SB 35 siting criteria under Gov. Code § 65913.4(a)(6). Recall that SB 35 siting criteria prohibit projects within environmentally sensitive areas, including certain coastal zone areas, habitat for protected species, wetlands, very high fire hazard severity zones, hazardous waste sites, delineated earthquake fault zones, special flood hazard areas, regulatory floodways, and land dedicated for conservation in an adopted natural community conservation plan or conservation easement (as defined and specified and subject to certain exceptions).
- The project must not require the demolition of a historic structure that was placed on a national, state, or local historic register.

- A Phase I Environmental Assessment (ESA) must be conducted for the project site (as a condition of project approval), and if a recognized environmental condition is found, specified requirements must be met.
- For any housing developed within 500 feet of a freeway: (i) the building must have a centralized heating, ventilation, and air-conditioning system and the outdoor intakes for that system cannot face the freeway; (ii) the building must provide air filtration media for outside and return air that provide a minimum efficiency reporting value of 16, which must be replaced as specified; and (iii) the building must not have any balconies facing the freeway.

IMPLICATIONS

AB 609 would provide a useful alternative to the Class 32 urban infill exemption for multifamily housing development projects, and would be particularly relevant for larger projects not eligible for the Class 32 exemption (i.e., over five acres). AB 609 should also expedite the processing of categorical exemptions for urban infill housing development projects (as compared to the Class 32 exemption) because AB 609 would not require an analysis of potential impacts related to traffic, noise, air quality, or water quality. Rather, AB 609 projects would be required to meet stringent SB 35 siting criteria (as specified above).

AB 609 also specifies that housing development projects falling under this new categorical exemption would be eligible for the benefits set forth under the State Density Bonus Law.

AB 609 was passed by the Assembly on May 19, 2025, and has been ordered to the Senate.

SENATE BILL 79: NEW CEQA EXEMPTION FOR PROJECTS ON TRANSIT AGENCY LAND

As currently proposed, SB 79 (Wiener) would create a new CEQA exemption for a private project or public project (i.e., a project ultimately operated by a public agency) that proposes residential, commercial or mixed-uses and meets the following requirements:

- The project must either be: (i) located "entirely or principally" on land owned by a public transit agency; or (ii) at least partially encumbered by an existing operating easement in favor of a public transit agency, in which case all parties must consent to the application (as specified) and the easement must either authorize the project or be terminated prior to the commencement of construction.
- The project must include at least one of the following:
  - A project component identified in Public Resources Code § 21080.25(b)(1)-(5) or (7). This includes pedestrian and bicycle facilities; wayfinding projects; transit prioritization projects (as defined); new high-occupancy vehicle lanes, bus-only lanes, or part-time transit lanes; a public project within the boundaries of an urbanized area or urban cluster for bus rapid transit, bus, or light rail service; and a public project to construct or maintain infrastructure or facilities for powering zero-emission public transit buses, trains, or ferries (as each is specified).
  - A public project for passenger rail service facilities (other than light rail service), including the construction, reconfiguration, or rehabilitation of stations, terminals, rails, platforms or existing operations facilities, which will be used exclusively by zero-emissions or electric trains.
  - An agreement between the project applicant and public transit agency to finance the transit capital infrastructure, transit maintenance, or transit operations, including through a proposed public financing district, community financing district, or tax increment generated by the project.

If the project requires the construction of new passenger rail storage and maintenance facilities at an offsite location distinct from the principal project site, the new CEQA exemption would not apply to that component of the project.

SB 79 was passed by the Senate on June 3, 2025, and has been ordered to the Assembly. Please see our separate article titled "Pending State Housing Law: High-Density Transit-Oriented Development Projects" for more information about the other amendments proposed under SB 79.

SENATE BILL 607: CEQA REFORM

SB 607 (Wiener, Wicks and Ahrens) was ordered to the inactive file at the request of Senator Wiener on June 5, 2025. The bill was gutted by the by the Senate Appropriations Committee and replacement placeholder language was inserted for continued negotiations after backlash from environmental justice and conservation organizations and labor unions, notwithstanding Governor Newsom's declared support for the bill. SB 607 now provides that the Legislature "intends to enact legislation as part of the 2025 state budget process that expedites projects such as those that provide housing, clean energy jobs, and critical transportation and lead to economic development for hardworking California families" to "ensure that critical projects are not delayed or impeded by the numerous outdated requirements in the California Environmental Quality Act, without compromising environmental protections."

As previously proposed, SB 607 would have amended CEQA in several significant ways. The proposed amendments to render the "unusual circumstances" exception inapplicable to the Class 32 urban infill exemption and to revise the standard of review to be more deferential to the local agency on its decision to adopt a Mitigated Negative Declaration or Negative Declaration would have created greater legal certainty and helped expedite CEQA review. Under current law, it is not uncommon for a lead agency to prepare an EIR for legal defensibility purposes even if the project would not result in any significant unavoidable impacts. Limiting the scope of CEQA review for a project that narrowly misses qualifying for a statutory or categorical exemption would have served a similar purpose.

SB 607 would have also expanded the applicability of Class 32 exemption pursuant to mapped urban infill sites. The objective and measurable "safe harbor" thresholds for significant traffic, noise, air quality, and water quality impacts would have also expanded the applicability and defensibility of Class 32 exemption.

SENATE BILL 677: AMENDMENTS TO EXISTING LAWS: SB 9 AND SB 35/SB 423

SB 677 (Wiener and Wicks) failed to advance by a vote of 4 to 3 at the Senate Housing Committee meeting on April 22, 2025, but reconsideration was granted. SB 677 would have amended SB 35/SB 423 and SB 9 in significant ways to expand opportunities for the streamlined ministerial approval of qualifying housing development projects.

For example, the bill would have required more frequent Regional Housing Needs Allocation (RHNA) progress reporting and would have reduced the current 50% project affordability requirement (where applicable) to 20%, which would have expanded opportunities for SB 35/SB 423 projects pursuant to the most recent (and forthcoming) HCD statewide RHNA compliance determinations.

It is not uncommon for a housing development project to be disqualified from SB 35/SB 423 due to required compliance with SB 35 siting criteria. SB 677 would have shifted the burden of proof to the local agency, which would have been required to demonstrate with a preponderance of the evidence that the project does not qualify with SB 35 siting criteria, which would have created a high threshold for the local agency.

The proposed exception to the housing demolition and alteration prohibitions under SB 9 and SB 35/SB 423 in the event of involuntary damage or destruction by "an earthquake, other catastrophic event, or the public enemy" would have also been an important change to accommodate redevelopment after natural disasters and other destructive events.

ASSEMBLY BILL 1206: HOUSING PROJECTS UTILIZING PRE-APPROVED PLANS

AB 1206 (Harabedian and Haney) would provide for the streamlined ministerial (i.e., no CEQA) approval of qualifying housing projects. AB 1206 would require local agencies to develop a program for the preapproval of single-family and multifamily housing plans by July 1, 2026. The local agency would thereafter be required to approve a qualifying project within 30 days of receipt of a "completed" application without discretionary review.

As currently proposed, the following requirements would need to be met to qualify under AB 1206:

- The project cannot propose more than 10 dwelling units.
- The project must use a plan that has been preapproved by the local agency within the then-current triennial California Building Standards Code rulemaking cycle.
- The project site must "meet the soil conditions, topography, flood zone, zoning regulations, and design review standards for which the preapproved plan was designed."

Local agencies would be authorized to voluntarily accept additional plans at higher densities and in additional zoning districts into the preapproved housing plan program.

AB 1206 was passed by the Assembly on May 8, 2025, and has been ordered to the Senate.

ASSEMBLY BILL 507: ADAPTIVE REUSE PROJECTS

AB 507 (Haney and Stefani) would provide for streamlined ministerial (i.e., no CEQA) approval of qualifying projects that propose to adapt nonresidential buildings for residential or mixed uses. The residential component of a qualifying adaptive reuse project would be deemed a use "by right" regardless of existing zoning.

ADAPTIVE REUSE PROJECT REQUIREMENTS

As currently proposed, the following requirements must be met for a project to qualify as an "adaptive reuse project" under AB 507:

Threshold Requirements

- The project must involve "the retrofitting and repurposing of an existing building to create new residential or mixed uses including office conversion projects."
- At least 50% of the square footage (excluding underground space) must be designated for residential uses. Mixed-use projects would be permitted, but any nonresidential use must be "consistent with the zoning or continuation of an existing zoning nonconforming use."
- If the existing building proposed for conversion is more than 50 years old, specified requirements must be met.
- The existing building cannot be an industrial building unless the building is no longer economically viable for industrial use. Any proposed nonresidential use cannot be industrial.
- The existing building cannot be a tourist hotel unless the hotel use has been discontinued for at least five years. Any proposed tourist hotel use would be subject to the existing approval process required by the local agency (e.g., conditional use authorization), which could separately trigger CEQA review.
- Subject to multiple specified siting requirements, an adaptive reuse project could include the development of new residential or mixed-use structures on undeveloped and parking areas on the same parcel as, or on an adjacent parcel to, the building proposed for conversion. Notably, the developer must comply with specified labor requirements, including payment of prevailing wages, for any adjacent new construction (as specified).

Site Requirements

As currently proposed, AB 507 provides that:

- The project site cannot exceed 20 acres.
- The project site must be within a city that has an urbanized area (as defined) within its boundaries, or within an urbanized area of a county.
- At least 75% of the site perimeter must adjoin (as defined) parcels that are developed with urban uses (not defined in AB 507 but separately defined in AB 2011).
- A Phase I Environmental Site Assessment (ESA) must be conducted for the project site, and if a recognized environmental condition is found, specified requirements must be met.
- The project cannot violate the terms of any conservation easement applicable to the project site.

Affordability Requirements

As currently proposed, AB 507 provides that:

- For rental housing, either: (i) 8% of the units must be designated for very low-income households and 5% of the units must be designated for extremely low-income households; or (ii) 15% of the units must be designated for lower-income households. The units must be affordable for a period of 55 years.
- For owner-occupied housing, either: (i) 30% of the units must be designated for moderate-income households; or (ii) 15% of the units must be designated for lower-income households. The units must be affordable for a period of 45 years.
- Where different local affordability requirements apply, the project must include the higher percentage requirement and the lowest income target, unless local requirements require greater than 15% lower-income units (only), in which case other specified requirements apply.
- Affordable units must be distributed evenly throughout the project and must be comparable to market rate units in bedroom and bathroom count and type and quality of appliances, fixtures, and finishes.

Project Review and Approval

As currently proposed, AB 507 provides that:

- Once the project is determined by the local planning director (or equivalent) to be consistent with AB 507 requirements, the local agency must approve the project within 60 or 90 days, depending on whether the project proposes more than 150 housing units. The consistency determination must be based on whether there is "substantial evidence that would allow a reasonable person to conclude that the project is consistent with the objective planning standards." If the local agency fails to make a timely consistency determination, the project shall be deemed consistent as a matter of law.
- Any subdivision application associated with the project must be approved on the same timeline and would also be exempt from CEQA.
- The local agency may require the project to comply with the objective planning standards set forth in a local adaptive reuse ordinance adopted pursuant to AB 507 (as specified). However, the local agency cannot require studies, information, or materials that are irrelevant to determining the project's consistency with applicable

objective planning standards or evidence of consistency with standards for post-entitlement permits prior to project approval.

- Any required design review must be objective and strictly focused on assessing compliance with AB 507 criteria.
- If an existing building proposed for conversion does not have existing onsite parking, parking cannot be required for that portion of the project, except to comply with applicable bicycle, electric vehicle, and disability parking requirements. Parking may be required for new construction (where applicable) under specified circumstances (but see the reduced parking requirements under the State Density Bonus Law and Gov. Code § 65863.2).
- The project will be eligible for the benefits under the State Density Bonus Law, meaning that a density bonus, incentives/concessions, and/or waivers or reductions in local development standards may be requested. AB 507 specifies that the threshold affordability requirements for an adaptive reuse project (see above) would only apply to the base density.
- The project may include rooftop structures that exceed any applicable height limit by one story, if the rooftop is used for shared amenities or equipment (e.g., exercise facilities). A density bonus waiver or incentive/concession cannot be used to circumvent this limitation.
- An existing building to be adapted shall be exempt from all impact fees that are not reasonably related to the impacts resulting from the change from nonresidential to residential or mixed use. Fees charged must be roughly proportional to the difference in impacts caused by the change of use. This exemption would not apply to any new construction.
- The local agency cannot require alteration of an existing building envelope, unless required by any applicable building code.
- The local agency cannot adopt or impose any requirement, including but not limited to increased fees or inclusionary housing requirements, that would apply partially or solely on the basis that the project is an adaptive reuse project.
- The local agency must issue any subsequent permit (i.e., grading, demolition, encroachment, building permit, final map) without imposing additional procedural requirements and without unreasonable delay.

IMPLICATIONS

As detailed in our prior legal alert, a substantially similar adaptive reuse bill, AB 3068, was proposed during the previous legislative cycle. However, that bill was ultimately vetoed by the Governor on the basis that certain provisions regarding labor standards lacked clarity or were written too broadly. The primary difference between AB 507 and AB 3068 is that labor requirements have been removed, except for new construction (where applicable). The absence of labor requirements would make an adaptive reuse project more financially feasible.

As currently proposed, AB 507 would also authorize local agencies to establish an adaptive reuse incentive program, whereby specified funds would be set aside to subsidize affordable housing units in qualifying adaptive reuse projects for up to 30 years. Local incentive programs would help offset the cost of adaptive reuse projects.

AB 507 was passed by the Assembly on May 23, 2025, and has been ordered to the Senate.

Pending State Housing Law: High-Density Transit-Oriented Development Projects

BY CAROLINE CHASE

Various state housing bills are currently making their way through the California State Legislature that are expected to benefit mixed-income multifamily housing developers. The following summaries reflect the status of the pending legislation as of June 6, 2025. Future amendments are expected. Important upcoming dates in the legislative process include:

- September 12, 2025 – final date for the Legislature to pass bills.
- October 12, 2025 – final date for the Governor to sign or veto passed bills.
- January 1, 2026 – default effective date for approved bills (unless otherwise specified).

SENATE BILL 79: TRANSIT-ORIENTED DEVELOPMENT PROJECTS

SB 79 (Wiener) would provide for the approval of qualifying housing development projects within close proximity to a transit-oriented development (TOD) stop, provided that specified requirements are met.

TOD stop is defined to mean a major transit stop (as defined in Public Resources Code § 21155) served by heavy rail transit, very high frequency commuter rail, high frequency commuter rail, light rail transit, bus service (meeting the standards of Public Resources Code § 20160.2(a)(1)), frequent commuter rail service, or ferry service, or "otherwise so designated by the applicable authority" (as each is defined and specified).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Threshold Requirements

As currently proposed, SB 79 provides:

- The project site must be "zoned for residential, mixed, or commercial development."
- If the project would propose more than 10 dwelling units, the project must provide lower-income units pursuant to the applicable local inclusionary zoning ordinance or local affordable housing fee. If there is no such ordinance or fee, the project must meet the requirements to qualify for a density bonus under the State Density Bonus Law pursuant to Gov. Code § 65915(b) (e.g., if lower-income units are provided, at least 10% of the total units must designated as affordable) or the local density bonus ordinance, which should be consistent with the State Density Bonus Law.
- The project must be within close proximity (as specified below) to a Tier 1, Tier 2 or Tier 3 TOD stop, which are defined as follows:
    - Tier 1: a TOD stop within an urban transit county (defined to mean a county with more than 15 rail transit stations) served by heavy rail transit (as defined) or very high frequency commuter rail (as defined).
        - According to the bill analysis, this is intended to apply to the following: BART, LA Metro B and D lines, and 25 unspecified commuter rail stations.
    - Tier 2: a TOD stop (that is not a Tier 1 TOD stop) within an urban transit county served by light rail transit (i.e., streetcar, trolley or tramway service), by high-frequency commuter rail (as defined), or by bus service meeting the requirements of Public Resources Code § 21060.2(a)(1).
        - According to the bill analysis, this is intended to apply to the following: SacRT Light Rail, SF Muni Metro, SF Muni streetcars, SF Van Ness BRT, VTA Light Rail, LA Metro A, C, E, G, J, and K lines, San Diego MTS Trolley, Santa Ana streetcar, 15 unspecified commuter rail stations and 13 unspecified additional light rail or BRT stations.
    - Tier 3: a TOD stop (that is not a Tier 1 or Tier 2 TOD stop): (i) within an urban transit county served by frequent commuter rail service (as defined) or by ferry service; or (ii) not within an urban transit county; or (iii) any major transit stop (as defined in Public Resources Code § 21155) "otherwise so designated by the applicable authority." It is specified that the board of a transit agency may vote to designate a major transit stop served by the agency as a Tier 3 TOD stop.
        - According to the bill analysis, this is intended to apply to the following: 60 unspecified commuter rail stations and 10 unspecified ferry stations.
- The project must comply unspecified with anti-displacement requirements under the Housing Crisis Act of 2019 (Gov. Code § 66300.6).

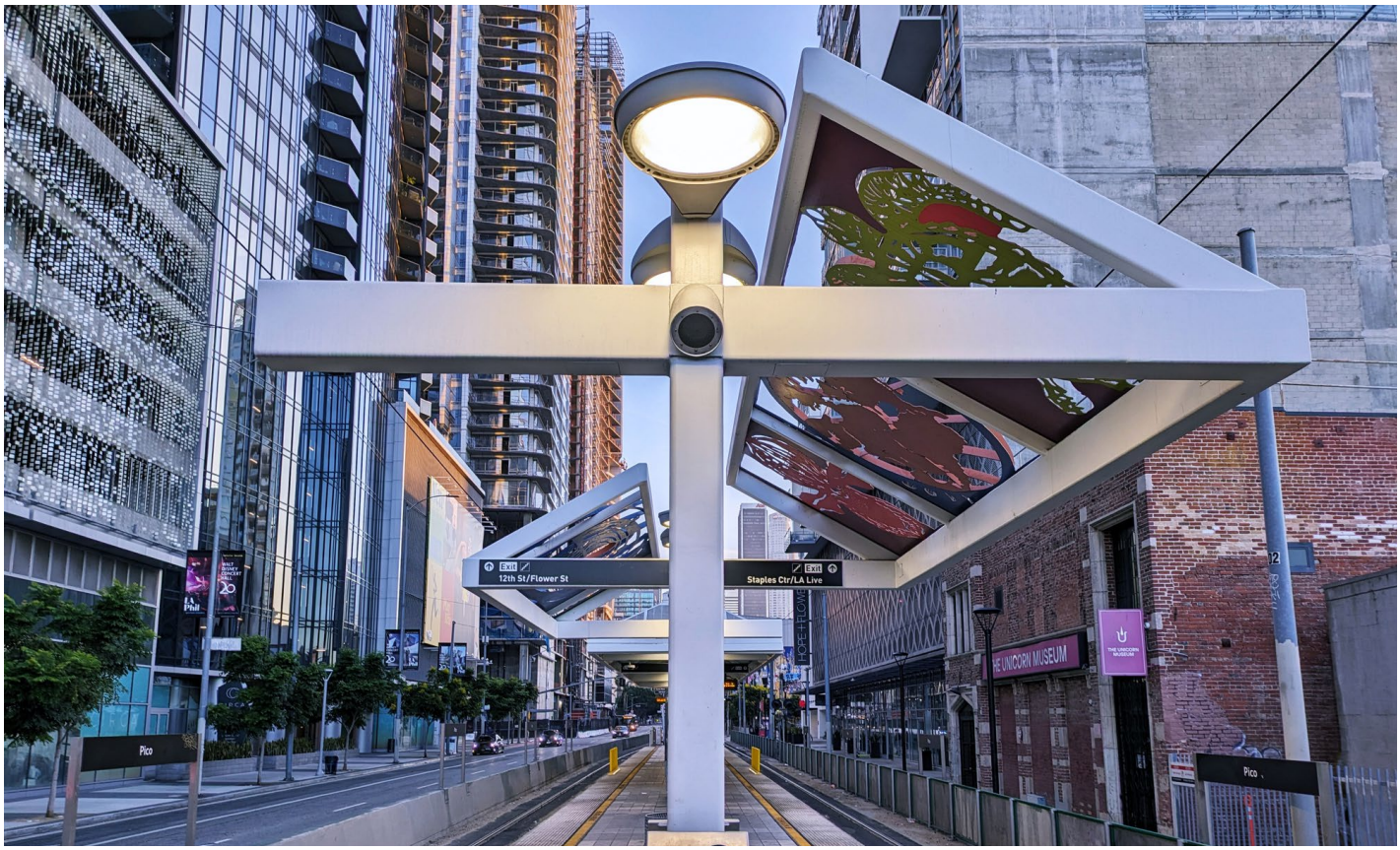
Development Standards

As currently proposed, SB 79 provides:

- For projects within one-quarter mile of a Tier 1 TOD stop: (i) the maximum building height will be 75 feet or the applicable local height limit, whichever is greater; (ii) the local agency cannot impose any maximum density of less

than 120 dwelling units per acre, which may be increased pursuant to the State Density Bonus Law; (iii) the local agency cannot enforce any other local development standard (or combination of standards) that would prevent a FAR of 3.5; and (iv) three additional incentives/concessions must be granted for projects that are eligible for a density bonus under the State Density Bonus Law.

- For projects within one-half mile of a Tier 1 TOD stop or one-quarter mile of a Tier 2 TOD stop: (i) the maximum building height will be 65 feet or the applicable local height limit, whichever is greater; (ii) the local agency cannot impose any maximum density of less than 100 dwelling units per acre, which may be increased pursuant to the State Density Bonus Law; (iii) the local agency cannot enforce any other local development standard (or combination of standards) that would prevent a FAR of 3.0; and (iv) two additional incentives/concessions must be granted for projects that are eligible for a density bonus under the State Density Bonus Law.
- For projects within one-half mile of a Tier 2 TOD stop or one-quarter mile of a Tier 3 TOD stop: (i) the maximum building height will be 55 feet or the applicable local height limit, whichever is greater; (ii) the local agency cannot impose any maximum density of less than 80 dwelling units per acre, which may be increased pursuant to the State Density Bonus Law; (iii) the local agency cannot enforce any other local development standard (or combination of standards) that would prevent a FAR of 2.5; and (iv) one additional incentive/concession must be granted for projects that are eligible for a density bonus under the State Density Bonus Law.
- For projects within one-half mile of a Tier 3 TOD stop: (i) and within an urban transit county, the maximum building



height will be 45 feet or the applicable local height limit, whichever is greater (otherwise, the maximum building height will be the applicable local height limit); (ii) the local agency cannot impose any maximum density of less than 60 dwelling units per acre, which may be increased pursuant to the State Density Bonus Law; and (iii) the local agency cannot enforce any other local development standard (or combination of standards) that would prevent a FAR of 2.0.

- Notwithstanding the foregoing, an "adjacency intensifier" would be available for residential developments immediately adjacent to a Tier 1, Tier 2, or Tier 3 TOD stop (i.e., sharing a property line with the transit station or transit stop, including any parcels that serve a related parking or circulation purpose) to increase the height limit by an additional 20 feet, the maximum density standard by an additional 40 dwelling units per acre, and available FAR by an additional 1.0.
- If the project proposes a building height in excess of the local height limit pursuant to the provisions above, then the local government shall not be required to grant a waiver, incentive, or concession under the State Density Bonus Law for additional height beyond that specified above. There is an exception for 100% affordable housing projects that qualify for an automatic height increase under the State Density Bonus Law, as specified in Gov. Code § 65915(d)(2)(D).
- The local government "may still enact and enforce standards, including an inclusionary zoning requirement that applies generally within the jurisdiction, that do not, alone or in concert, prevent achieving the [foregoing] applicable development standards." The omission of the word "objective" in this provision may have been inadvertent. SB 79 separately provides that "any local zoning standard" conflicting with SB 79 requirements shall not apply and that a local TOD ordinance (see below) may include "any applicable objective design standards" for TOD developments.
- A transit agency may adopt objective standards for projects proposed on land owned by the transit agency (or on which the transit agency has a permanent operating easement), so long as the land is within ½ mile of a TOD stop and the objective standards allow for the same or greater development intensity as that allowed by local standards or applicable state law.

PROJECT APPROVAL PROCESS

As currently proposed, SB 79 provides:

- SB 79 projects shall be eligible for streamlined ministerial (i.e., no CEQA) review and approval under SB 35/SB 423 (Gov. Code § 65913.4) in accordance with the following:
  - To qualify for streamlined ministerial approval, the project shall comply with most SB 35/SB 423 requirements, including that specified labor requirements must be met.
  - Among other requirements, the project site must meet the SB 35 siting criteria under Gov. Code § 65913.4(a)(6) (except as specified below). Recall that SB 35 siting criteria prohibits projects within environmentally sensitive areas, including certain coastal zone areas, habitat for protected species, wetlands, very high fire hazard severity zones, hazardous waste sites, delineated earthquake fault zones, special flood hazard areas, regulatory floodways, and land dedicated for conservation in an adopted natural community conservation plan or conservation easement (as defined and specified and subject to certain exceptions).
  - However, the project shall be exempt from specified requirements under Gov. Code § 65913.4(a), meaning that a SB 79 project (i) does not need to be located in a jurisdiction that is otherwise subject to SB 35/423 streamlining (due to insufficient RHNA progress); (ii) does not have to be consistent with local objective standards (but see above); and (iii) can be located on a parcel within the coastal zone (where applicable) that is not zoned for multifamily housing. (Gov. Code § 65913.4(a)(4)(A), (a)(5), (a)(6)(A)(iv).)
  - The project shall comply with the affordability requirements under Gov. Code § 65913.4(a)(4)(B)(i)(I)-(III). For example, for-rent projects must dedicate at least 10% of the total number of units (prior to calculating any density bonus) to very low-income households (below 50% AMI), unless the local ordinance requires a greater percentage of very low-income units or the project is located in the nine-county Bay Area, in which case there is an alternate option for compliance (as specified). Please recall that threshold affordable housing requirements would need to be met to qualify as a SB 79 project in the first instance (see above).
  - Please recall that if the project site is zoned for commercial or light industrial uses, the requirements of SB 35/423 necessitate that the applicable general plan or zoning designation also allows residential or residential mixed-uses (or the project must separately qualify under SB 6: the Middle-Class Housing Act of 2022).
- SB 79 "shall not require a ministerial approval process" (unless the project otherwise qualifies for ministerial approval). Therefore, if the SB 79 project does not qualify for streamlined ministerial approval under SB 35/SB 423, the project "shall be reviewed according to the jurisdiction's development review process" and the Housing Accountability Act (Gov. Code § 65589.5) (HAA), except that any local zoning standard conflicting with SB 79 requirements shall not apply. See also the new CEQA exemption proposed by SB 79.
- SB 79 projects will qualify for the protections under the HAA, including but not limited to Gov. Code § 65589.5(j) (i.e., limits on a local agency's ability to disapprove the project or to impose a condition that the project be developed at a lower density), because the SB 79 project "shall be deemed consistent, compliant, and in conformity with the applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" for purposes of the HAA.

- If the local agency denies a qualifying SB 79 housing development project that is located in a "high-resource area" (as defined) the local agency will be presumed to be in violation of the HAA (and liable for penalties under the HAA) unless the local agency provides substantial evidence to demonstrate that there is "a health, life, or safety reason for denying the project."

Local TOD Alternative Plan

As currently proposed, SB 79 would allow a local government to enact a local TOD alternative plan as an amendment to the housing element and land use element of its general plan, subject to review by the California Department of Housing and Community Development (HCD), as specified.

The TOD alternative plan may include amendments to the local zoning ordinance, which, among other things, may reduce the SB 79 residential density for any individual TOD site by up to 50%. However, the TOD alternative plan must maintain at least an equal feasible development capacity (total units and residential floor area) as the baseline established under SB 79 across all TOD zones (i.e., eligible areas around qualifying TOD stops) within the jurisdiction.

The TOD alternative plan may also designate any other major transit stop or stop along a high-quality transit corridor that is not already identified as a Tier 3 TOD stop.

New CEQA Exemption for Projects on Transit Agency Land

As currently proposed, SB 79 would create a new CEQA exemption for a private project or public project (i.e., a project ultimately operated by a public agency) that proposes residential, commercial or mixed-uses and meets specified requirements. Please see our separate article titled "Pending State Housing Laws: New CEQA Exemptions and Expanded Opportunities for Streamlined Ministerial Approval" for more information about the new CEQA exemption proposed under SB 79.

IMPLICATIONS

As explained by Senator Wiener: "California needs to build millions of new homes in sustainable locations to meet state housing goals, slash climate emissions, and reduce the cost of living, but overly restrictive zoning codes make building such homes illegal" and accordingly, "SB 79 allows building more homes near transit to lower costs for families while bolstering public transit use and supporting cash-strapped agencies." SB 79 would effectively eliminate single-family zoning districts within ½ mile of any qualifying TOD stop by imposing state-mandated minimum density requirements.

Please note that SB 79 includes provisions that allow for some local flexibility, including the ability to enact an ordinance to revise applicable zoning requirements on individual sites within a TOD zone, which could result in up to a 50% reduction in permitted residential density. Other properties in a TOD zone could benefit from up to a 200% increase in permitted residential density to compensate for any such reductions.

SB 79 was passed by the Senate on June 3, 2025, and has been ordered to the Assembly.


STOP
STOP

Pending State Housing Laws: Expedited Approval of Post-Entitlement Permits

BY CAROLINE CHASE AND NICHOLAS DuBROFF

Various state housing bills are currently making their way through the California State Legislature that are expected to benefit mixed-income multifamily housing developers. The following summaries reflect the status of the pending legislation as of June 6, 2025. Future amendments are expected. Important upcoming dates in the legislative process include:

- September 12, 2025 – final date for the Legislature to pass bills.
- October 12, 2025 – final date for the Governor to sign or veto passed bills.
- January 1, 2026 – default effective date for approved bills (unless otherwise specified).

BACKGROUND

As explained in our prior legal alert, existing law (AB 2234) requires local agencies to process post-entitlement phase permits (defined below) for housing development projects (as defined) within specified timeframes. A local agency must determine whether an application for a post-entitlement phase permit application is complete within 15 days of receiving the application. The local agency must complete its review within 30 to 60 business days after the application is deemed complete (depending on the size of the project) and either: (i) provide a full set of comments with a comprehensive request for revisions; or (ii) approve the permit application within that timeframe (subject to specified exceptions). AB 2234 provides that any failure to do so is a violation of the Housing Accountability Act (Gov. Code § 65589.5) (HAA).

AB 1114 (Haney) and AB 281 (Grayson) amended AB 2234, effective January 1, 2024. AB 1114 extended these required review timeframes to all post-entitlement building permits, whether discretionary or nondiscretionary. This clarification is important because certain local agencies, such as the City and County of San Francisco, consider all building permits to be discretionary. AB 281 extended the required review timeframe to post-entitlement phase permits related to service from a special district, as defined in Gov. Code § 56036, such as a water district.
Under existing law, "post-entitlement phase permit" means a permit issued by a local agency (defined to mean a city,

county or city and county) after the entitlements process has been completed to begin construction of a project that is at least two-thirds residential and includes, but is not limited to: (i) building permits; (ii) permits for minor or standard off-site improvements; (iii) demolition permits; and (iv) permits for minor or standard excavation and grading.

ASSEMBLY BILL 660: DEADLINES FOR LOCAL AGENCIES

AB 660 (Wilson, Ransom, Blanca Rubio, Wicks, and Haney) would amend the post-entitlement phase permit review and approval process for qualifying housing development projects (as defined) under Gov. Code §§ 65913.3 and 65913.3.1.

As currently proposed, AB 660 would:

- Provide that if a local agency fails to determine whether a post-entitlement phase permit application complies with applicable permit standards within 30 to 60 business days after the application is deemed complete (depending on the size of the project), the applicant may retain a licensed professional engineer or architect to check the plans and specifications for compliance with applicable permit standards (at the applicant's own expense).
- Provide that a post-entitlement phase permit includes plan checking and building inspection for the issuance of a building permit (in addition to all required interdepartmental review) and prohibit local agencies from requiring or requesting more than two plan check and specification reviews in connection with a building permit application.
- Remove the tolling provision related to review by outside entities.
- Prohibit local agencies from requesting or requiring "any action or inaction as a result of a building inspection undertaken to assess compliance with applicable building permit standards that would represent a deviation from a

previously approved building plan or similar approval for the building permit" (unless specified findings are made based on substantial evidence in the record related to, e.g., a specific adverse impact on the public health and safety).

- Require a final written determination on an administrative appeal of a local agency's decision on a post-entitlement phase permit (where applicable) to be made within 15 to 30 business days after receipt of the applicant's written appeal (depending on the size of the project) versus 60 to 90 business days under existing law. All administrative appeals would be heard by the local agency's governing body (versus the planning commission, or both, at the applicant's option, under existing law).
- Provide that if a decision on appeal is not made within that timeframe, if the appeal is denied, or an appeals process is not provided as required, the applicant may seek a writ of mandate to compel approval of the post-entitlement phase permit. That writ "shall be granted if there is substantial evidence in the record that a reasonable person could find that the application is complete and compliant with applicable standards."

AB 660 was passed by the Assembly on June 4, 2025, and has been ordered to the Senate.

ASSEMBLY BILL 1026: DEADLINES FOR ELECTRICAL CORPORATIONS

AB 1026 (Wilson, Haney, and Wicks) would newly impose deadlines on the review and approval of post-entitlement phase permits for housing development projects (as defined) by electrical corporations (as defined in Public Utilities Code § 218).

As currently proposed, AB 1026 would:

- Revise the definition of local agency to include electrical corporations, thereby requiring such entities to comply with requirements relating to post-entitlement phase permits.
- Revise the definition of post-entitlement phase permit to include permits required by utilities that are not owned and operated by a local agency.

AB 1026 was passed by the Assembly on May 29, 2025, and has been ordered to the Senate.

ASSEMBLY BILL 1308: DEADLINES FOR BUILDING DEPARTMENTS

AB 1308 (Hoover and Wicks) would apply to building permits for new residential construction, a residential addition, or a residential remodel where the project: (i) includes between one to ten dwelling units; and (ii) contains no floors used for human occupancy located more than 40 feet above ground level.

As currently proposed, AB 1308 would:

- Require building departments to provide an estimated timeframe for completion of inspection of the permitted work under a qualifying residential building permit. If that timeframe exceeds 30 days from receipt of a notice of completion – or the building department has not conducted the inspection within 30 days – the applicant may retain a private professional provider (as defined) to inspect the permitted work (at the applicant's own expense).
- Incentivize building departments to conduct an inspection of permitted work within 60 days of receipt of a notice of completion. If that deadline is not met, the permittee would be entitled to reimbursement of any permit fees paid (unless the inspection was performed by a private professional provider).
- Require building departments to respond to the inspection report (as specified) from the private professional provider within 14 days. If the permitted work is compliant (as specified), the building department must issue a certificate of occupancy (or equivalent final approval) within that timeframe.

AB 1308 was passed by the Assembly on May 23, 2025, and has been ordered to the Senate.

SENATE BILL 328: DEADLINES FOR DEPARTMENT OF TOXIC SUBSTANCES CONTROL

SB 328 (Grayson) would impose deadlines on the Department of Toxic Substances Control (Department) for the review and approval of post-entitlement phase permits for housing development projects (as defined) that a local agency has deemed complete pursuant to AB 2234 (Gov. Code § 65913.3(b)) and that requires a response from the Department. If SB 328 is passed by the Legislature and approved by the Governor, the deadlines below would go into effect on July 1, 2028.

As currently proposed, SB 328 would:

- Require the Department to provide written notice to a request regarding subsequent actions in the Department's post-entitlement phase permit review process, including whether any additional information is required to review the request, within a specified time period.
- Upon receipt of a request, the Department shall respond within: (i) 60 business days of receipt of the request for a housing development project with 25 units or less; or (ii) 120 business days for a housing development project with 26 or more units.
- Require the Department to comply with the applicable 60 or 120-day time period in all responses to requests for additional information from the requestor.

SB 328 was passed by the Senate on May 29, 2025, has been ordered to the Assembly.

Pending State Housing Laws: Rebuilding After a Natural Disaster

BY CAROLINE CHASE

Various state housing bills are currently making their way through the California State Legislature that are expected to benefit mixed-income multifamily housing developers. The following summaries reflect the status of the pending legislation as of June 6, 2025. Future amendments are expected. Important upcoming dates in the legislative process include:

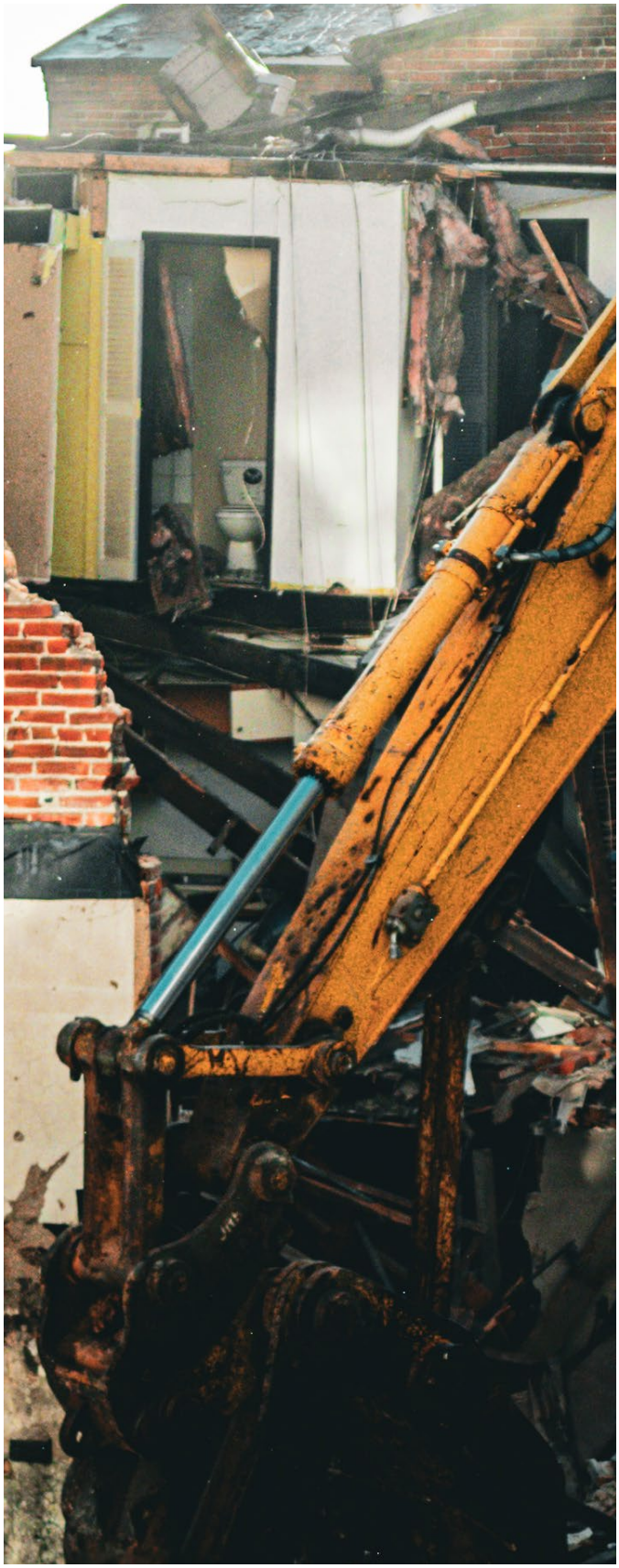
- September 12, 2025 – final date for the Legislature to pass bills.
- October 12, 2025 – final date for the Governor to sign or veto passed bills.
- January 1, 2026 – default effective date for approved bills (unless otherwise specified).

ASSEMBLY BILL 818: REBUILDING ON RESIDENTIAL PROPERTY

AB 818 (Ávila Farías and Wicks) would address residential rebuilding after a disaster, which is defined to mean "a fire, flood, storm, tidal wave, earthquake, terrorism, epidemic, or other similar public calamity that the Governor determines presents a threat to public safety."

AB 818 would apply to residential real property that was affected by a disaster (that resulted in a declared local emergency) and as a result, the property was destroyed, was declared a substandard building (as defined), and/or is effectively a substandard building (Affected Property). The Affected Property must have been deemed safe for development by the state and/or local agency (Safe Affected Property).

The term "local emergency" is defined to mean "a condition of extreme peril to persons or property proclaimed as such by the governing body of the local agency affected" pursuant to Gov. Code § 8630, which in turn requires the governing body to review the need for a proclaimed local emergency at least every 60 days until the local emergency is terminated.



As currently proposed, AB 818 would:

- Require a local agency to approve an application, within 14 days of receipt, for a construction permit for any of the following structures on a Safe Affected Property that is intended to be used by a person until the rebuilding or repairing of a Safe Affected Property is complete:
  - A state or federally-approved modular or prefabricated home.
  - A detached structure that would meet the applicable requirements to be an accessory dwelling unit (ADU) on the Safe Affected Property.
  - A structure "similar to those" described above.
- Provide that specified state law requirements for solar panel installations and associated energy storage systems shall not apply to a project for which an application for a permit necessary to rebuild or repair a Safe Affected Property is approved by a local agency.
- Provide that if a local agency approves a permit to rebuild or repair a Safe Affected Property, the utility provider must provide a written notice describing the next steps in the approval process for a connection request for the project within 30 days of receipt of the connection request, unless connection is infeasible due to the disaster.

- Require local agencies to provide: (i) a checklist of the conditions for a substandard building; (ii) notice that a confidential third-party code inspection from a licensed contractor may be obtained prior to application submittal; and (iii) a dashboard that tracks permitting timelines and agency performance. Local agencies must comply with these requirements by March 31, 2028.

AB 818 would facilitate the speedy approval of modular and prefabricated homes and ADUs on residential properties destroyed (or effectively destroyed) due to a natural disaster or other similar public calamity. AB 818 was initially intended to apply more broadly, but has since been amended to exclude provisions related to local agency approval of a permit necessary to otherwise rebuild or repair a residential property affected by a disaster within a specified time frame. AB 818 was passed by the Assembly on May 23, 2005, and has been ordered to the Senate.

ASSEMBLY BILL 961: EXTENSION OF CALIFORNIA LAND REUSE AND REVITALIZATION ACT OF 2004

AB 961 (Ávila Farías) would extend the California Land Reuse and Revitalization Act of 2004 (which would be repealed on January 1, 2027 under current law) to January 1, 2037. As explained in AB 961:

> The California Land Reuse and Revitalization Act of 2004 provides, among other things, that an innocent landowner, bona fide purchaser, or contiguous property owner, as defined, qualifies for immunity from liability from certain state statutory and common laws for pollution conditions caused by a release or threatened release of a hazardous material if specified conditions are met, including entering into an agreement for a specified site assessment and response plan. The act prohibits the Department of Toxic Substances Control, the State Water Resources Control Board, and a California regional water quality control board from requiring one of those persons to take a response action under certain state laws, except as specified.

Among other scenarios, AB 961 could help address site contamination issues that result from a natural disaster. AB 961 passed by the Assembly on June 2, 2025, and has been ordered to the Senate.

Pending State Housing Laws: State Housing Element Law Amendments and New Developer Protections

BY JORDAN WRIGHT

Various state housing bills are currently making their way through the California State Legislature that are expected to benefit mixed-income multifamily housing developers. The following summaries reflect the status of the pending legislation as of June 6, 2025. Future amendments are expected. Important upcoming dates in the legislative process include:

- September 12, 2025 – final date for the Legislature to pass bills.
- October 12, 2025 – final date for the Governor to sign or veto passed bills.
- January 1, 2026 – default effective date for approved bills (unless otherwise specified).

SENATE BILL 786: STATE HOUSING ELEMENT LAW AMENDMENTS

SB 786 (Arreguin) would amend the State Housing Element Law to provide clarity for local governments, project applicants, and courts.

As currently proposed, SB 786 would:

- Specify that if there are conflicting "quantified development standards" in different elements of a local general plan, the provisions of the most recently adopted element shall supersede. "Quantified development standard" is defined to mean a site's maximum density or requirements for a height limit, setback, maximum or minimum unit size, lot coverage, or floor area ratio.
- Provide that if a local agency has established a deadline to amend a local ordinance, development standard, condition, or policy applicable to housing development projects and the local agency has failed to make that amendment by the specified deadline, the California Department of Housing and Community Development (HCD) shall undertake review of the local agency's compliance with the State Housing Element Law.
- Extend the court-supervised compliance period from 60 days to 120 days for a local agency that must: (i) correct an action that was inconsistent with its Housing Element; or (ii) complete its rezoning. If HCD review is required as part of a court order and is not timely completed, the court may grant a reasonable extension for the local agency to comply with the court order to bring its housing element into compliance.

- Authorize the reviewing court to: (i) grant a continuance for an action challenging the validity of a general plan, including but not limited to the Housing Element, on its own motion; and (ii) limit the time period for the continuance to 60 days. The reviewing court shall grant initial or continued temporary relief in such action as necessary.
- Establish that an order or judgment issued in any action brought to challenge the validity of a general plan or any mandatory element, including the Housing Element, is immediately appealable regardless of whether a final judgment has been issued.
- Specify that remedies associated with a finding of invalidity of a local agency's general plan or mandatory element, including the Housing Element, are not stayed during the pendency of an appeal unless the court decides, upon a showing that the local agency would suffer irreparable harm, that a stay is necessary.
- Specify that during the pendency of any action challenging the validity of a general plan or any mandatory element, including the Housing Element, a request for temporary relief shall be granted upon a showing of probable success on the merits. A request for temporary relief must be heard no later than 30 days after the filing of a request for such relief, unless the hearing is continued (maximum one 30-day continuation permitted). If the court does not hear the motion by the applicable deadline, the petitioner may file an ex parte application requesting temporary relief on the 61st day after the initial filing of the request.

SB 786 was passed by the Senate on May 29, 2025, and has been ordered to the Assembly.

ASSEMBLY BILL 610: GOVERNMENTAL CONSTRAINTS DISCLOSURES

AB 610 (Alvarez) would ensure transparency with respect to the governmental circumstances that impede new development and ensure that a local agency does not create additional obstacles prior to the next Housing Element cycle.

As currently proposed, AB 610 would require the Housing Element to include a governmental constraints disclosure statement and prohibit the adoption of any new or more stringent government constraint, unless the government constraint was included in the governmental constraints disclosure statement and the local agency has completed specified commitments to eliminate or mitigate previously identified constraints.

"Covered governmental constraints" are defined broadly to include fees, exactions, affordability requirements, development policies or standards that would have the effect of reducing the intensity of land use for residential development or would increase procedural burdens or narrow or otherwise restrict potential benefits under the State Density Bonus Law, and new or more stringent historic district designations affecting sites within a city's Housing Element sites inventory.

AB 610 was passed by the Assembly on June 5, 2025, and has been ordered to the Senate.

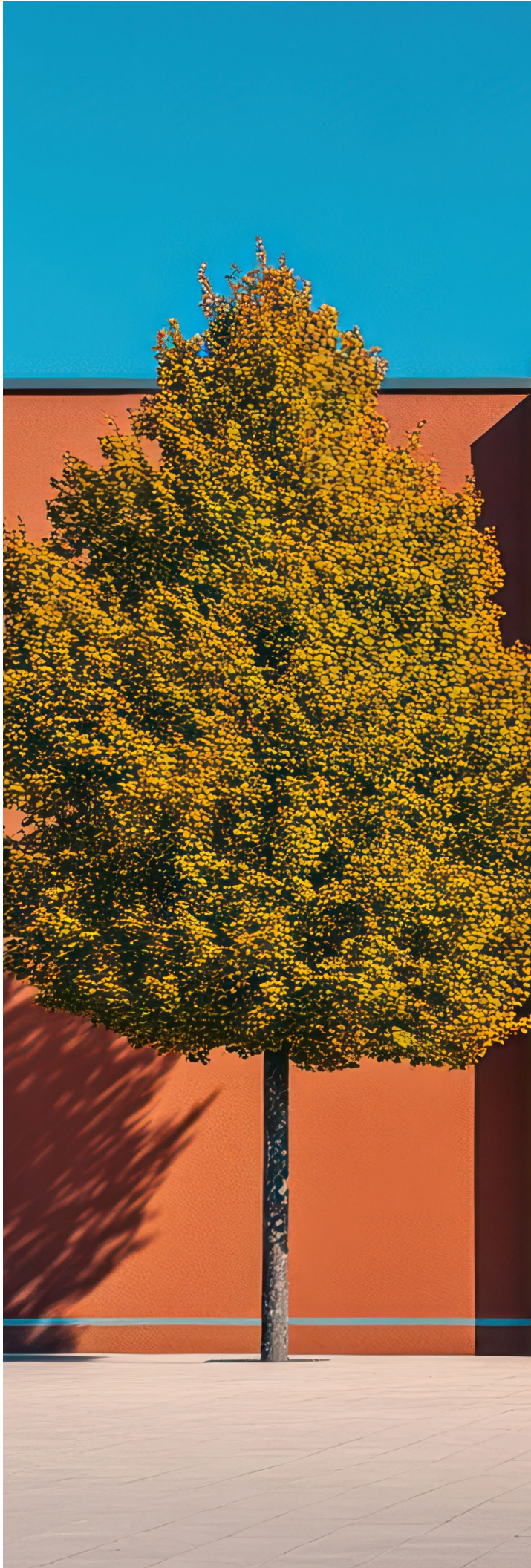
ASSEMBLY BILL 712: NEW DEVELOPER PROTECTIONS

AB 712 (Wicks) would provide additional developer protections, namely attorneys' fees, where a local agency violates any "housing reform law" intended to incentivize housing development, which is defined to include "any law or regulation, or provision of any law or regulation that establishes or facilitates rights, safeguards, streamlining benefits, time limitations, or other protections for the benefit of applicants for housing development projects, or restricts, proscribes, prohibits, or otherwise imposes any procedural or substantive limitation on a public agency for the benefit of a housing development project…".

As currently proposed, AB 712 would:

- Expand the remedies for a developer or nonprofit housing corporation that prevails in a lawsuit to enforce a housing reform law against a local agency to include reasonable attorneys' fees and costs of suit (under existing law, only reasonable costs may be awarded).
- Require a court to impose fines on the local agency under specified circumstances.
- Prohibit a local agency from requiring a developer to indemnify, defend, or hold harmless the agency in any action relating to a violation of the developer's rights or a deprivation of certain benefits or protections under any housing reform law.

AB 712 was passed by the Assembly on May 12, 2025, and has been ordered to the Senate.



Other Pending State Housing Laws

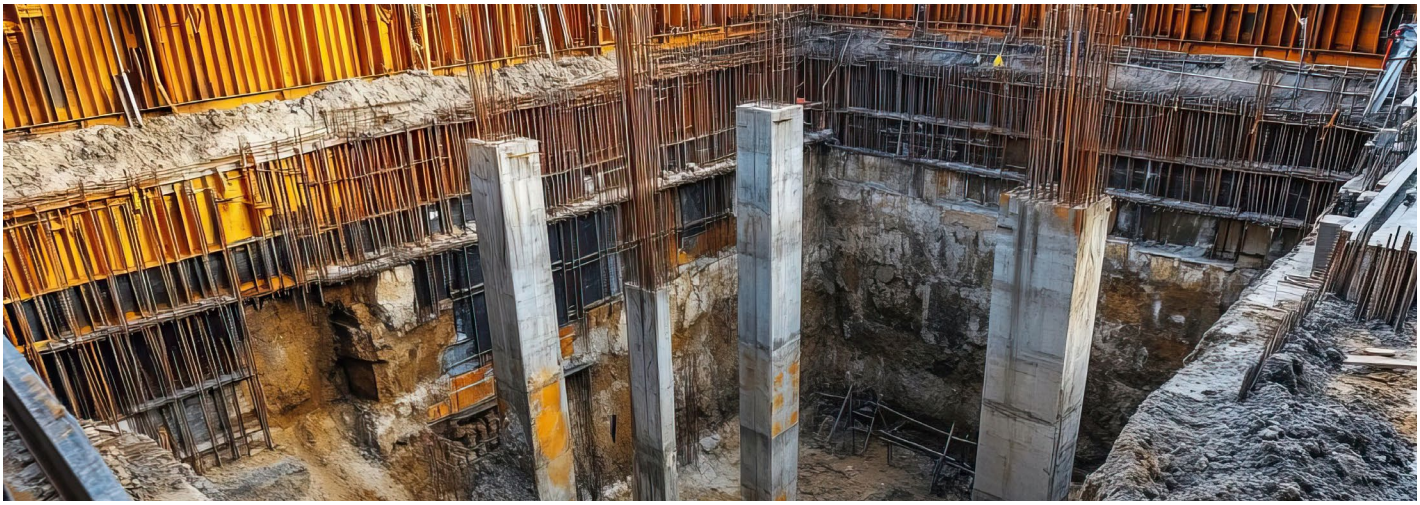
BY JORDAN WRIGHT

Our firm is tracking a myriad of other pending state housing laws, most of which were proposed as part of the "Fast Track Housing" package. Some of these bills are briefly summarized below. Please contact us if you would like additional information. The following summaries reflect the status of the pending legislation as of June 6, 2025. Future amendments are expected. Important upcoming dates in the legislative process include:

- September 12, 2025 – final date for the Legislature to pass bills.
- October 12, 2025 – final date for the Governor to sign or veto passed bills.
- January 1, 2026 – default effective date for approved bills (unless otherwise specified).

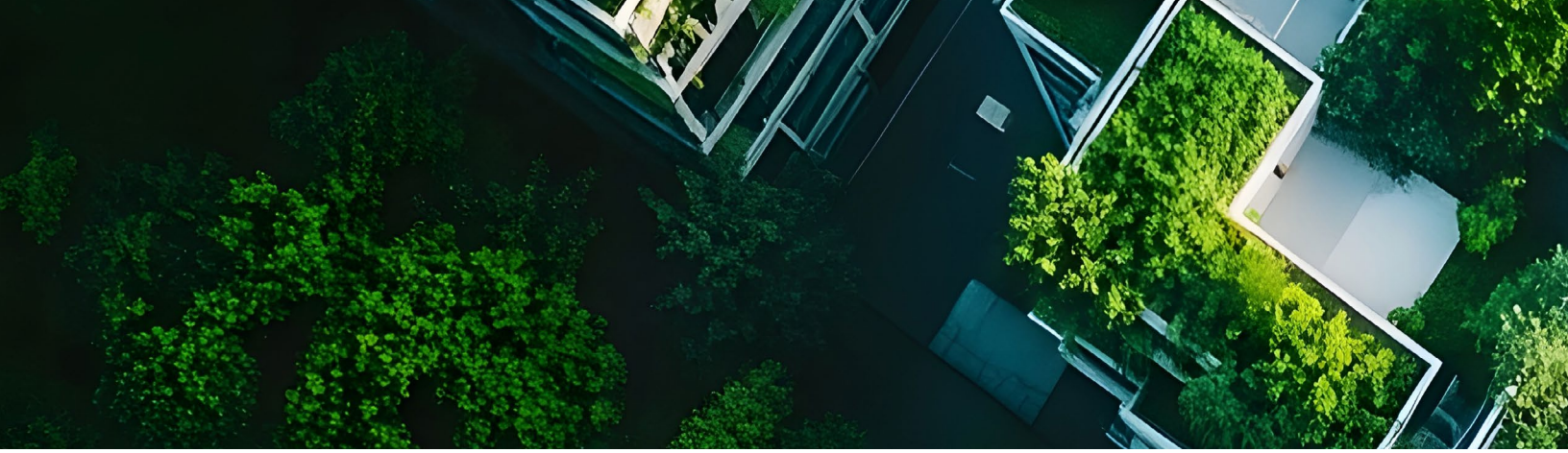
PROJECT VESTING & PROJECT APPROVAL DEADLINES

- SB 489 (Arreguin). As currently proposed, this bill would amend the definition of "development project" for purposes of the Permit Streamlining Act to include a "housing development project" as that term is defined in the Housing Accountability Act (Gov. Code § 65589.5) (HAA). The bill would additionally require that all local agency formation commissions establish written policies and procedures to encourage planned, well-ordered, efficient urban development patterns and post those policies and procedures online.
- AB 1007 (Rubio). As currently proposed, this bill would reduce the deadline from 90 days to 45 days for responsible agency (other than the California Coastal Commission) to approve or disapprove a housing development project (as defined) for which an Environmental Impact Report (EIR) is required.
- AB 1276 (Cabrillo). As currently proposed, this bill would extend existing vesting provisions under SB 330 to apply to "rules, regulations, determinations, and other requirements adopted or implemented by other public agencies" (as defined in Gov. Code § 65932) and post-entitlement permit standards. This bill would also require use of a "reasonable person" standard by those agencies when determining whether a housing development project is compliant.



UNIFORM APPLICATIONS & COMPLETENESS DETERMINATION REQUIREMENTS

- AB 1294 (Haney). As currently proposed, this bill would require that an application for a housing entitlement be deemed complete upon the provision of specified information and would require HCD to adopt a standard housing development project application form that every local agency is required to accept by October 1, 2026. It would additionally set forth associated restrictions on a local agency's discretion to require additional information from or actions by the developer and establish it as a violation under the HAA in any instance where the local agency attempts to do so. As currently proposed, a local agency may not require any of the following as a precondition to a determination that a housing development application is complete:
  - Any requirement for preapplication submissions, approvals, reviews, meetings, consultations, public outreach, notices, or any other preapplication requirements or any application submittal appointment, except as provided.
  - Any approval or determination by any official, body, department, or subdepartment of the local agency.
  - Any expert studies or plans (traffic studies, arborist reports, noise studies, air quality impact studies, stormwater management plan etc.), except as provided.
  - Any information solely required for the purpose of reviewing an application for or issuing a permit for a post-entitlement phase permit.
  - A listing or depiction of the local agency's development standards.
  - Any requirement that limits the architects, engineers, or other consultants or professionals the applicant may use, except as required by state law.
  - Any requirement that the proposed project be consistent with local development standards or that the applicant demonstrate such consistency.
- AB 920 (Cavallo). As currently proposed, this bill would require any city or county with a population of 150,000 or more to develop an online portal for housing development project applications and require that the portal allow for tracking of application status.



REDEVELOPMENT OF UNDERUTILIZED COMMERCIAL SITES

- AB 1050 (Shultz). Existing law permits the owner of an affordable housing development to remove any covenant, condition, restriction, or private limit on the use of that land. As currently proposed, this bill would expand the existing process to land that has a condition, restriction, or private limit requiring the property to be used exclusively for commercial purposes. Expansion of this process is intended to facilitate development of residential uses on such sites.

COST SAVINGS

- AB 782 (Quirk-Silva). As currently proposed, this bill would prohibit a local agency from requiring the furnishing of additional security in connection with the performance of any act or agreement related to an improvement that will be privately owned and maintained, and from conditioning a subdivision or other approval on such security. The bill would likewise prohibit the Real Estate Commissioner, in issuing a public report for a residential development, from requiring the furnishing of a security in connection with the performance of any act or agreement related to an improvement that will be publicly owned and maintained, if the Real Estate Commissioner has determined that sufficient security has been furnished to a local agency for the same improvement.
- AB 557 (McKinnor). As currently proposed, this bill would require plans or specifications of factory-built housing to be approved by serial number and would authorize the approved plans or specifications to be used in subsequent development projects unless building standards relating to factory-built housing are modified, as specified. It would additionally limit HCD and design approval agencies to review only portions of a plan that have not previously been approved.

STUDENT HOUSING PROJECTS

- AB 357 (Alvarez). As currently proposed, this bill would specify that a complete coastal development permit application for a student housing project or faculty or staff housing project shall be approved or denied by the California Coastal Commission within 90 days of submittal. An extension is permitted if a university proposes substantial changes that may involve new or increased identified significant effects or there are changes in environmental circumstances due to natural disasters, including but not limited to floods, earthquakes, mudslides, sea level rise, coastal erosion, and wildland or urban fires.

GREEN HOUSING DEVELOPMENT PROJECTS

- AB 945 (Fong). This bill was referred to the Assembly Committee on Housing and Community Development and the Assembly Committee on Local Government on March 10, 2025, but failed to advance out of committee. AB 945 would have amended the State Density Bonus Law to incentivize green housing development projects (as defined). AB 945 would have provided for additional State Density Bonus Law incentives/concessions (as specified) and would have eliminated parking requirements altogether for qualifying green housing development projects.

"BUILDER'S REMEDY" PROJECTS

- SB 457 (Becker and Stern). This bill failed to advance by a vote of 1 to 2 at the Senate Housing Committee meeting on April 29, 2025, but reconsideration was granted. SB 457 would have required that a complete (full) development application (pursuant to Gov. Code § 65943) be filed for a Builder's Remedy project to vest. Under existing law (AB 1886), Housing Element compliance status is determined at the time the SB 330 preliminary application (pursuant to Gov. Code § 65941.1) is submitted for the Builder's Remedy project. SB 457 would have also provided that a Housing Element shall be considered substantially compliant with State Housing Element Law on the date when the governing body of the local jurisdiction adopts the Housing Element, provided that specified requirements are met. Under existing law (AB 1886), a Housing Element will be deemed substantially compliant with State Housing Element Law when: (i) the Housing Element has been adopted by the local jurisdiction and; (ii) the local jurisdiction has received an affirmative determination of substantial compliance from HCD or a court of competent jurisdiction.
- AB 650 (Papan and Pacheco). As originally proposed, AB 650 would have provided that notwithstanding Gov. Code § 65589.5, the Builder's Remedy would no longer be available during either of the following periods: (i) the duration of HCD's review of the revised Housing Element (where applicable) or; (ii) 90 days from the date that HCD notifies the local jurisdiction of additional deficiencies not previously identified by HCD in response to the prior submission of the Housing Element. This would have thwarted the vesting of Builder's Remedy projects during existing windows of opportunity under existing law. AB 650 was subsequently amended to remove the foregoing provisions and now focuses on State Housing Element Law and the Regional Housing Needs Allocation (RHNA) process.

Recent Amendments to Affordable Housing & High Roads Job Act of 2022 (AB 2011)

BY CAROLINE CHASE

Assembly Bill (AB) 2243 (Wicks) amended AB 2011 effective January 1, 2025. As explained in our prior legal alert, AB 2011 provides for "by right" streamlined ministerial (i.e., no CEQA) approval of qualifying mixed-income and affordable housing development projects without the need for rezoning.

The following is a summary of the notable AB 2011 amendments that apply to mixed-income housing development projects under AB 2243. Please recall that **specified labor requirements** must be met under AB 2011.

PROJECT "GRANDFATHERING"

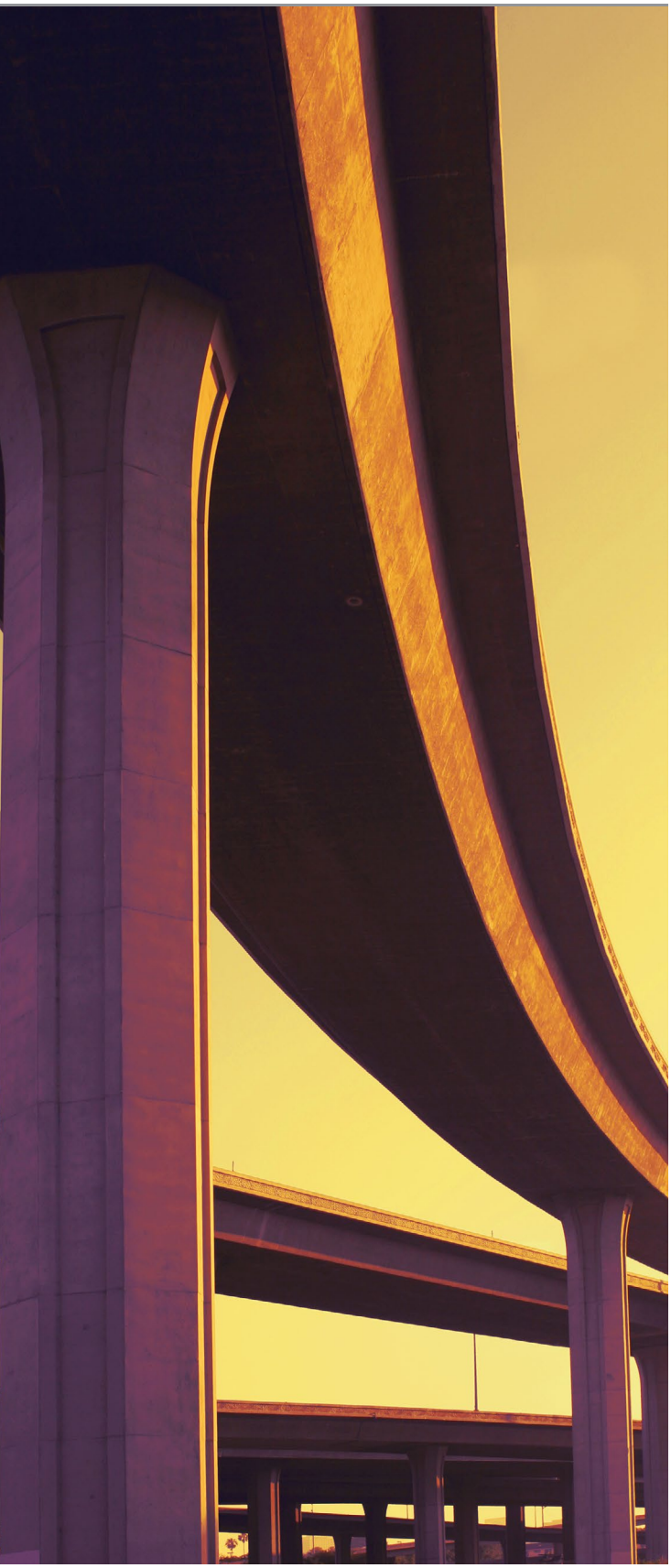
AB 2243 provides:

- If an AB 2011 application was submitted on or before December 31, 2024, the prior version of AB 2011 will apply to the project unless the project sponsor chooses to be subject to any of the new or modified provisions under AB 2243.

PROJECT REVIEW AND APPROVAL

AB 2243 provides:

- Once the project is determined to be consistent with applicable objective planning standards, the local government is required to approve the project within 90 days (for projects with more than 150 housing units) or 60 days (for projects with 150 or fewer housing units).
- The local government must determine project consistency or inconsistency with applicable objective planning standards within 30 days when a project is resubmitted to address written feedback. The otherwise applicable timeframe is within 60 or 90 days, with the longer timeframe applying to projects with more than 150 housing units.
- A density bonus under the State Density Bonus Law, including related incentives/concessions and waivers/reductions of development standards, "shall not cause the project to be subject to a local discretionary government review process" (or CEQA review) even if the requested incentives/concessions or waivers/reductions of development standards are not specified in a local ordinance. This is important because some local governments purported to require discretionary approval for specified "off menu" incentives/concessions and waivers/reductions of development standards.



- The Phase I Environmental Assessment (ESA) requirement will now be imposed as a condition of project approval (versus required as part of the AB 2011 application). If any remedial action is required due to the presence of hazardous substances on the project site, that would need to occur prior to issuance of a certificate of occupancy (as specified).

PERMITTED USE REQUIREMENTS

AB 2243 provides:

- Parking uses will now be deemed "principally permitted" under AB 2011 even if a conditional use permit is required. Recall that the project must be located in a zoning district where office, retail, and/or parking are a principally permitted use.
- Any applicable "neighborhood plan" (as defined; e.g., a specific plan) must have been adopted by the local government before January 1, 2024, and within 25 years of the date that an AB 2011 application is filed for the project. Recall that if the project is within a neighborhood plan area, that neighborhood plan must permit multifamily housing on the project site. This new provision prohibits the enforcement of outdated neighborhood plans.

RESIDENTIAL DENSITY

AB 2243 provides:

- The AB 2011 (base) residential density, which varies depending on the location and size of the project site, is now the "allowable" density (prior to any density bonus) instead of a minimum (meet or exceed) density requirement.
- For sites within a "very low vehicle travel area" (as defined in Gov. Code § 65589.5(h)), the AB 2011 (base) residential density is increased to 70 dwelling units per acre (non-metropolitan jurisdiction) or 80 dwelling units per acre (metropolitan jurisdiction). Under the prior version of AB

2011, that increased density only applied to projects within one-half mile of a major transit stop.

- The required minimum residential density now depends on when the AB 2011 application has been determined by the local government to be consistent with applicable objective planning standards. If that consistency determination occurs before January 1, 2027, the project must be developed at 50% (or greater) of the applicable "allowable" residential density. A higher requirement applies to project sites within one-half mile of an existing passenger rail or bus rapid transit station, in which case the project must be developed at 75% (or greater) of the applicable "allowable" residential density. The 75% requirement will apply to all projects where the consistency determination is made on or after January 1, 2027.
- The imposition of applicable objective planning standards "shall not preclude a development from being built at the residential density required (under AB 2011) and shall not require the development to reduce unit size to meet the objective standards."

FREEWAY AND INDUSTRIAL USE PROXIMITY

AB 2243 provides:

- The term "freeway" does not include freeway on-ramps and off-ramps that serve as a connection between the freeway and other roadways that are not freeways. Recall that under AB 2011, housing is strictly prohibited within 500 feet of a freeway so this revised definition is important, particularly since the California Department of Housing and Community Development (HCD) previously opined that freeway on-ramps and off-ramps are included.
- Rather than a flat prohibition, for any housing located within 500 feet of a freeway: (i) the building must have a centralized heating, ventilation, and air-conditioning system and the outdoor intakes for that system cannot face the freeway; (ii) the building must provide air filtration media for outside and return air that provide a minimum efficiency reporting value of 16, which must be replaced as specified; and (iii) the building must not have any balconies facing the freeway. This new provision allows for appropriate flexibility, similar to SB 4 (Affordable Housing on Faith and Higher Education Lands Act of 2023).
- "Dedicated to industrial use" does not include sites: (i) where the most recently permitted use was industrial, but that use has not existed on the site for over three years; or (ii) where the site is designated industrial by a general plan adopted before January 1, 2022, but residential uses are principally permitted on the site. Recall that under AB 2011, project sites are disqualified where more than one-third of the square footage is dedicated to industrial use or the project site adjoins a site exceeding that threshold. This revised definition is important because it allows for AB 2011 projects on sites that are appropriate for residential development.
- "Industrial use" does not include: (i) power substations or utility conveyances such as power lines, broadband wires, and pipes; (ii) a use where the only source permitted by a district is an emergency backup generator; or (iii) self-storage for the residents of a building. This revised definition is important because it avoids confusion about what types of uses should be deemed industrial uses for purposes of AB 2011.

CONVERSION PROJECTS

AB 2243 provides:

- There is no residential density limit for the conversion of existing buildings to residential, except where the project would include net new square footage exceeding 20% of the "overall square footage of the project."
- The local government is prohibited from requiring common open space beyond "what is required for the existing project site" versus required pursuant to the objective standards that would otherwise apply pursuant to the closest zoning district that allows for the AB 2011 residential (base) density, where applicable.
- The local government must provide a development impact fee "credit" for any existing office, commercial, or "similar use" that is converted to residential use (as specified) "so that the amount of the fee is attributable only to the development's incremental impact on public facilities and services."

LARGE SHOPPING MALL REDEVELOPMENT PROJECTS

AB 2243 provides:

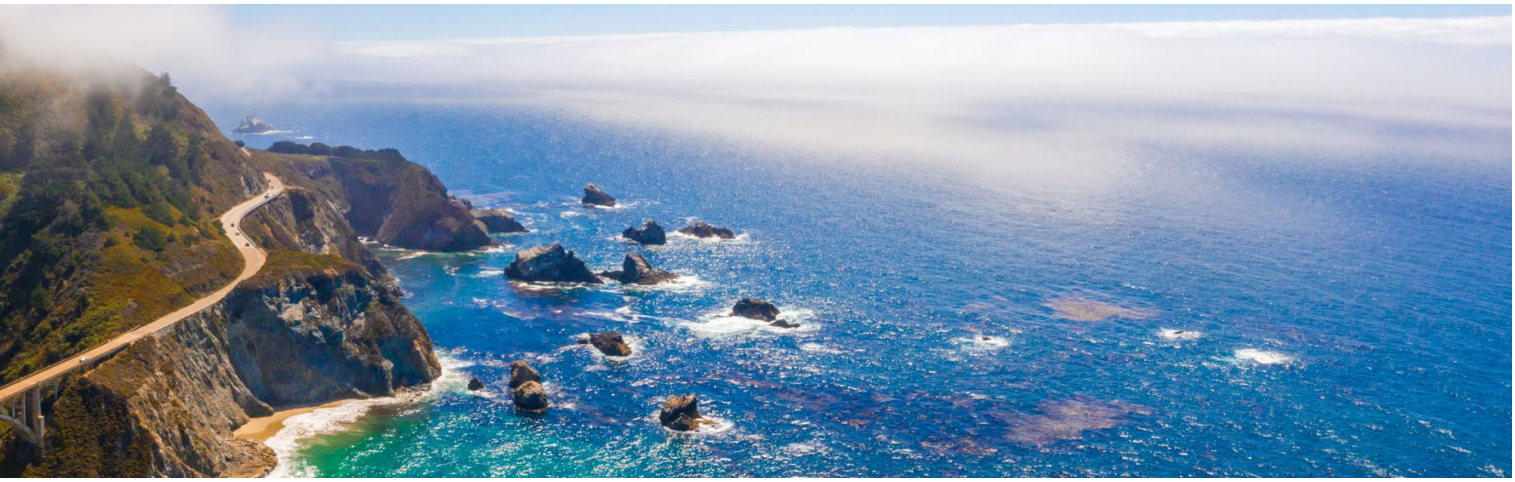
- A "regional mall" site may be up to 100 acres (versus the otherwise applicable 20 acre-project site size maximum). Regional mall is defined to include a mall where: (i) the permitted uses on the site include at least 250,000 square feet of retail; (ii) at least two-thirds of the permitted uses on the site are retail; and (iii) at least two of the permitted retail uses on the site are at least 10,000 square feet.
- The following additional requirements must be met for AB 2011 projects on regional mall sites that

are over 20 acres: (i) the average size of a block (as defined) cannot exceed three acres; (ii) at least 5% of the project site must be dedicated to open space; and (iii) buildings must abut within 10 feet of the street for at least 60% of the frontage along any newly created street that has a right-of-way of less than 70 feet (i.e., does not qualify as a commercial corridor).

COASTAL ZONE PROJECTS

AB 2243 provides:

- AB 2011 projects are prohibited in the coastal zone unless SB 35 coastal zone requirements are met (pursuant to Gov. Code § 65913.4(a)(6)(A)), as recently modified by SB 423, with the exception of the requirement that the project site must be zoned for multifamily housing.
- Where a project site is located in the coastal zone, the public agency with coastal development permitting authority, as applicable, must approve the permit if it determines that the project is consistent with all objective standards of the local government's certified local coastal program or certified land use plan, as applicable.



- Any density bonus, incentives/concessions, waivers/reductions of development standards, and/or (reduced) parking ratios granted pursuant to the State Density Bonus Law "shall not constitute a basis to find the project inconsistent with the local coastal program."

SETBACK REQUIREMENTS

AB 2243 provides:

- Density bonus incentives/concessions or waivers/reductions of development standards permitted under the State Density Bonus Law may now be utilized to deviate from specified AB 2011 setback requirements related to existing adjacent residential uses.

CLARIFICATIONS

AB 2243 clarifies:

- The "allowable" density under AB 2011 is calculated prior to any density bonus under the State Density Bonus Law.
- The number of on-site affordable housing units required under AB 2011 is based on the number of housing units in the project prior to any density bonus (i.e., the "base" units), which is consistent with the State Density Bonus Law.
- "Urban uses" includes a public park that is surrounded by other urban uses.
- The width of the right-of-way includes sidewalks for purposes of determining whether it is a "commercial corridor."

AB 2243 also clarifies the process for calculating the on-site affordable housing requirement under AB 2011 where the local government requires a higher percentage of affordable units and/or a deeper level of affordability.

IMPLICATIONS

AB 2243 makes important clarifications and provides for additional flexibility for AB 2011 projects, including lower density options in light of recent economic challenges. The new "regional mall" provisions highlight the importance of accommodating AB 2011 projects on larger redevelopment sites. That could be expanded to include underutilized business parks and other large redevelopment sites to accommodate additional housing production.

Recent Amendments to Starter Home Revitalization Act

BY CAROLINE CHASE, JENNIFER JEFFERS, AND LAURA TEPPER

SB 684 and SB 1123 (Caballero) expand the Starter Home Revitalization Act to further facilitate the construction of "starter" home projects consisting of up to 10 dwelling units (not exceeding an average of 1,750 net habitable square feet) on up to 10 parcels. SB 684 provides for a streamlined ministerial (i.e., no CEQA) approval process for qualifying housing development projects in multifamily zoning districts, effective January 1, 2024. SB 1123 extends the same streamlined ministerial approval process to qualifying housing development projects on vacant lots in single-family zoning districts, effective July 1, 2025.

STREAMLINED MINISTERIAL APPROVAL PROCESS

The Starter Home Revitalization Act requires ministerial and expedited approval of qualifying housing development projects. The Act provides:

- The local agency must ministerially consider an application for a qualifying housing development project, including the parcel map or tentative and final map, without discretionary review or a hearing. This means that the project will not be subject to environmental review under CEQA or administrative appeal.
- The local agency must approve or deny an application for a qualifying housing development project and the associated parcel map or a tentative map within 60 days of receipt of a "completed" application. If it makes no decision within that time limit, the project will be deemed approved as a matter of law.
- The local agency may only disapprove a qualifying housing development project, including the parcel map or tentative and final map, if it makes a written finding, based on the preponderance of the evidence, that the project would have a specific adverse impact, as defined in Gov. Code § 65589.5(d)(2), upon the public health and safety for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse, impact. This creates a high threshold for the local agency.
- Except as specified below (minimum parcel square footage), the local agency cannot impose minimum requirements on the size, width, depth, or dimensions of an individual parcel created by a qualifying housing development project. As of July 1, 2025 (the effective date of SB 1123), the local agency also cannot impose minimum parcel frontage requirements.
- The proposed subdivision must conform to all applicable objective requirements of the Subdivision Map Act. The local agency may also impose local objective zoning, subdivision, and design standards during the project approval process but cannot: (i) require setbacks between the units, except as required under the California Building Code; (ii) require side and rear setbacks greater than four feet from the original lot line (no setback shall be required for an existing structure or replacement structure in the same location, as specified); (iii) impose a FAR limit of less than

1.25 (for projects with 8-10 units) or less than 1.0 (for projects with 3 to 7 units); (iv) impose certain parking requirements (as specified); or (v) impose requirements that only apply to Starter Home Revitalization Act projects.

- The imposition of local objective zoning, subdivision and design standards also cannot physically preclude the development of a qualifying housing development project built to the densities specified in Gov. Code § 65583.2(c)(3)(B) (e.g., at least 30 dwelling units per acre for a jurisdiction in a metropolitan county and at least 20 dwelling units per acre for a suburban jurisdiction). There is one exception to this rule, which pertains to the maximum building height for qualifying housing development projects in single-family zoning districts (see below). This provision should make it more challenging for local agencies to impose local standards.
- The local agency must approve the building permit for an approved housing development project before the final subdivision map has been recorded, meaning that construction can begin even though the official subdivision process is not yet fully complete. However, a certificate of occupancy will not be issued until the final map is recorded.
    - As explained in our prior legal alert, Assembly Bill (AB) 2234 separately requires local agencies to process post-entitlement phase permit applications, including but not limited to building permit applications, for housing development projects within specified timeframes. The local agency must determine whether an application for a post-entitlement phase permit application is complete within 15 days of receiving the application. For housing development projects with 25 or fewer units, the local agency must complete its review within 30 business days after the application is deemed complete and either: (i) provide a full set of comments with a comprehensive request for revisions; or (ii) approve the permit application within that timeframe (subject to specified exceptions).
    - AB 2234 provides that any failure to meet the foregoing deadlines is a violation of the Housing Accountability Act (Gov. Code § 65589.5) (HAA).
    - See also the amendments currently proposed under AB 660, which is discussed in our separate article titled "Pending State Housing Laws: Expedited Approval of Post-Entitlement Phase Permits."
- The local agency may condition issuance of the building permit on the project applicant fulfilling certain requirements, such as a guarantee that a final map will be recorded or the provision of security for the fulfillment of conditions of approval and construction of any necessary infrastructure improvements.

QUALIFYING PROJECTS: THRESHOLD REQUIREMENTS

The following threshold requirements must be met for a housing development project to qualify for streamlined ministerial approval under the Starter Home Revitalization Act. Additional requirements vary depending on whether the project is proposed in a multifamily zoning district or a single-family zoning district (see below).

- The project cannot propose more than 10 dwelling units on more than 10 lots. As of July 1, 2025 (the effective date of SB 1123), the local agency may choose (but is not required) to also permit accessory dwelling units or junior accessory dwelling units, which would not count toward the 10-unit maximum. See also SB 1211 (Skinner), which expands opportunities for building ADUs.
- Minimum density requirements must be met:
    - If the lot proposed to be subdivided is identified in the local jurisdiction's legally compliant housing element, the project must result in at least as many dwelling units projected for the parcel in the housing element and must include any low- or very low-income housing units assumed for the parcel to meet the local jurisdiction's regional housing needs allocation (RHNA), as specified in the housing element. This is consistent with the "no net loss" rule under state law.
    - If the lot proposed to be subdivided is not identified in the housing element, or the housing element is non-compliant, the project must result in at least as many dwelling units as the maximum allowable residential density under local zoning. As of July 1, 2025 (the effective date of SB 1123), under this scenario, the project must result in the greater of: (i) at least 66% of the maximum allowable residential density under local zoning; or (ii) at least 66% of the applicable residential density specified in Gov. Code § 65583.2(c)(3)(B) (e.g., at least 19.8 dwelling units per acre for a jurisdiction in a metropolitan county and at least 13.2 dwelling units per acre for a suburban jurisdiction).
        - It is unclear how these minimum density requirements are intended to be reconciled with the 10-unit maximum under the law. To illustrate, if the single-family zoned lot proposed to be subdivided is 1.5 acres (the maximum), is not identified in the housing element, and is located in a metropolitan county, the minimum residential density requirements above would require a total of at least 30 dwelling units (rounded up), which exceeds the 10-unit maximum.
- The lot proposed to be subdivided must be a legal parcel located within an incorporated city, urbanized area, or urban cluster (as defined) and must be served by public water and municipal sewer systems.
- The lot proposed to be subdivided must be substantially surrounded by qualified urban uses, which include residential, commercial, retail, public institutional, and transit or transportation passenger facility. The term "substantially surrounded" means that "at least 75% of the perimeter of the project site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses" and "[t]he remainder of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that have been designated for qualified urban uses in a zoning, community plan, or general plan for which an environmental impact report was certified."
- The new dwelling units cannot exceed an average of 1,750 net habitable square feet. SB 1123 (effective July 1, 2025) newly defines "net habitable square feet."

- The dwelling units may be constructed on fee simple ownership lots, as part of a common interest development, as part of a housing cooperative (as defined), or on land owned by a community land trust (as defined). As of July 1, 2025 (the effective date of SB 1123), a tenancy in common may also be proposed. A homeowners' association is not required unless otherwise required under the Davis-Stirling Common Interest Development Act.
- As of July 1, 2025 (the effective date of SB 1123), the proposed subdivision cannot result in any existing dwelling unit being alienable separate from the title to any other existing dwelling unit on the lot.
- The lot proposed to be subdivided cannot have been previously subdivided pursuant to SB 9 or the Starter Home Revitalization Act.
- The lot proposed to be subdivided cannot be subject to specified environmental conditions including habitat for protected species, wetlands, high or very high fire hazard severity zone, hazardous waste site, delineated earthquake fault zone, special flood hazard area, regulatory floodway, land dedicated for conservation in an adopted natural community conservation plan, or conservation easement (as defined and specified and subject to certain exceptions).
    - This criteria is similar to, but not exactly the same as, the SB 35 siting criteria under Gov. Code § 65913.4(a)(6). For example, the Starter Home Revitalization Act does not include an exception to the fire hazard severity zone prohibition where specified fire hazard mitigation measures have been adopted.
- Any applicable local inclusionary affordable housing requirements must be met.

QUALIFYING PROJECTS: MULTIFAMILY ZONING DISTRICTS

In addition to the threshold requirements above, the following requirements must be met for a housing development project in a mixed-family zoning district to qualify for streamlined ministerial approval under the Starter Home Revitalization Act:

- The lot proposed to be subdivided must be zoned for multifamily residential development and cannot exceed five acres.
- The newly created parcels must be at least 600 square feet (unless the local agency has adopted a smaller minimum parcel size for Starter Home Revitalization Act projects).
- The project cannot require the demolition or alteration of specified types of protected units including: (i) designated affordable housing (as specified); (ii) rent or sales-price controlled housing (as specified); (iii) housing occupied by tenants within five years preceding the date of the application, even if that housing has since been demolished or is no longer occupied by tenants; or (iv) housing where the tenants were evicted under the Ellis Act, which was exercised by the owner within 15 years preceding the date of the application. There is currently no natural disaster exception.

QUALIFYING PROJECTS: SINGLE-FAMILY ZONING DISTRICTS

In addition to the threshold requirements above, the following requirements must be met for a housing development project in a single-family zoning district to qualify for streamlined ministerial approval under the Starter Home Revitalization Act. Please recall that these provisions will not be operative until July 1, 2025 (the effective date of SB 1123).

- The lot proposed to be subdivided must be zoned for single-family residential development and cannot exceed one and a half acres.
- The lot proposed to be subdivided must be vacant, which is defined as "having no permanent structure, unless the permanent structure is abandoned and uninhabitable." The following housing types cannot be considered "vacant:" (i) designated affordable housing (as specified); (ii) rent or sales-price controlled housing (as specified); or (iii) housing occupied by tenants within five years preceding the date of the application, even if that housing has since been demolished or is no longer occupied by tenants. There is currently no natural disaster exception.
- The newly created parcels must be at least 1,200 square feet (unless the local agency has adopted a smaller minimum parcel size for Starter Home Revitalization Act projects).
- The project must comply with any height limit imposed by the local agency, but that height limit cannot be less than the height allowed pursuant to the existing zoning designation applicable to the lot. Please note that this height limit may be imposed even if it would physically preclude the development of the project.

IMPLICATIONS

We expect a flurry of development activity under SB 1123 once that law is effective on July 1, 2025. The streamlined ministerial approval process, which must be completed within 60 days, is highly advantageous for housing developers and should result in higher density housing development projects on underutilized properties throughout the State of California. The key will be identifying qualifying properties, particularly vacant properties in single-family zoning districts. It is possible that SB 1123 could result in new development activity in neighborhoods destroyed by the recent Southern California fires, provided that the property is not subject to specified environmental conditions, including but not limited to a high or very high fire hazard severity zone.

Now Effective: Builder's Remedy 2.0

BY CAROLINE CHASE AND JORDAN WRIGHT

AB 1893 (Wicks) significantly modifies the so-called "Builder's Remedy" under the Housing Accountability Act (Gov. Code § 65589.5) (HAA) effective January 1, 2025.

As explained in our prior legal alert, the Builder's Remedy applies when a local jurisdiction has not adopted an updated Housing Element in substantial compliance with State Housing Element Law (Gov. Code § 65580, et seq.), in which case the local jurisdiction cannot deny a qualifying housing development project even if it is inconsistent with the local general plan and zoning ordinance (subject to limited exceptions).

The following is a summary of the notable HAA amendments that apply to qualifying Builder's Remedy projects under AB 1893. Please note that AB 1893 also amends other sections of the HAA.

PROJECT "GRANDFATHERING" AND CONVERSIONS

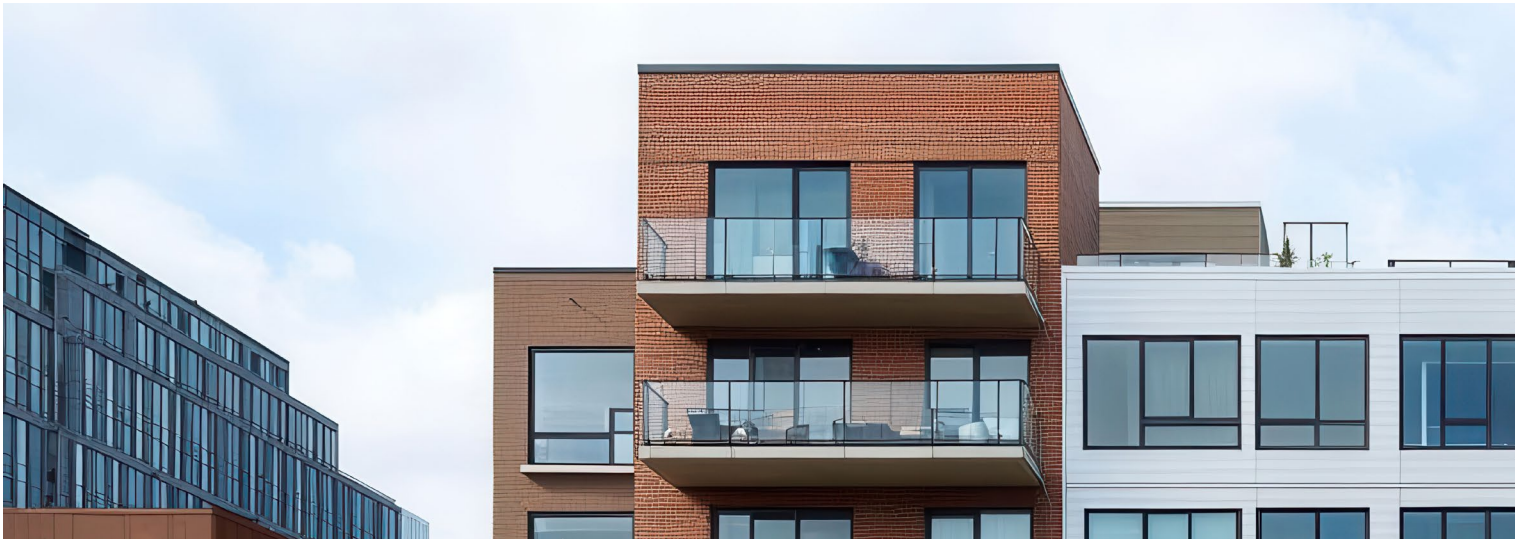
AB 1893 includes the following provisions to help advance pipeline projects:

- Builder's Remedy projects with a housing development project application "deemed complete" before January 1, 2025 are "grandfathered," meaning that the prior version of the HAA applies to the project unless the project sponsor chooses to be subject to any of the new or modified HAA provisions under AB 1893.
- "Deemed complete" is defined to mean that a SB 330 preliminary application (pursuant to Gov. Code § 65941.1) has been submitted or, absent that, a complete (full) development application has been submitted (pursuant to Government Code section 65943).
- An existing Builder's Remedy project may be converted to an AB 1893 Builder's Remedy project, so long as the original housing development project application is "deemed complete" before January 1, 2025 — "even if the revision results in the number of residential units or square footage of construction changing by 20% or more" (i.e., even if vesting under SB 330 would not otherwise be retained). This means that under that scenario, the density of the Builder's Remedy project could be increased or decreased to meet AB 1893 maximum and minimum density requirements (see below) without losing vesting.

COMBINED PROJECTS — POTENTIAL STREAMLINED MINISTERIAL REVIEW

AB 1893 contemplates the combination of a Builder's Remedy project with other state housing laws that provide for streamlined ministerial (i.e., no CEQA) project approval:

- A Builder's Remedy project may be combined with AB 2011, in which case it "shall be deemed to be in compliance with the residential density standards for purposes of complying with [AB 2011]" (Gov. Code § 65912.123). This means that if the Builder's Remedy project otherwise qualifies for streamlined ministerial approval under AB 2011, non-compliance with AB 2011 minimum and maximum density requirements will be disregarded.
- A Builder's Remedy project may be combined with SB 35, in which case it "shall be deemed to be in compliance with the objective zoning standards, objective subdivision standards, and objective design review standards for purposes of complying with [SB 35]" (Gov. Code § 65913.4(a)(5)). This means that if the Builder's Remedy project otherwise qualifies for streamlined ministerial approval under SB 35, non-compliance with objective local standards will be disregarded. Please refer to our prior legal alert for information about SB 35, which was recently amended by SB 423 (Wiener).



REDUCED AFFORDABILITY REQUIREMENTS

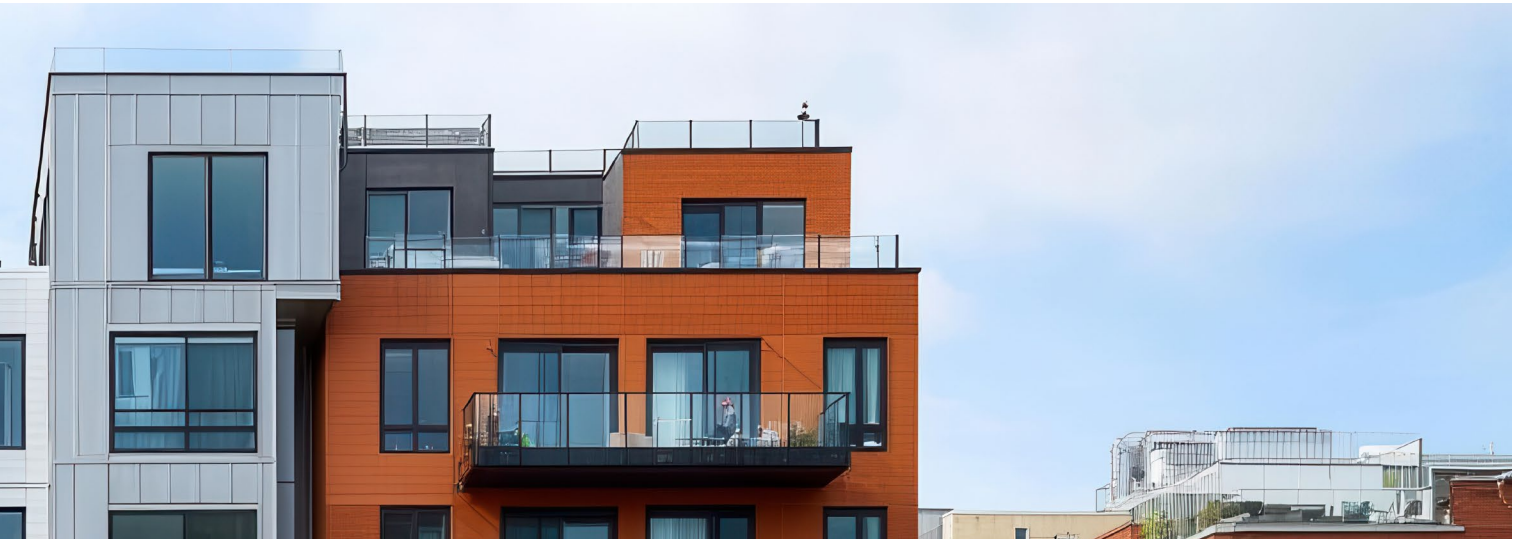
AB 1893 modifies on-site affordability requirements for Builder's Remedy projects as follows:

- Reduces the affordability requirement for mixed-income Builder's Remedy projects from 20% lower income to 13% lower income, 10% very low-income, or 7% extremely low-income (as each is defined).
- Requires compliance with local affordable housing requirements that, as of January 1, 2024, required a greater percentage of affordable units or a deeper level of affordability, unless compliance would render the project infeasible — pursuant to written findings by the local agency supported by a preponderance of evidence. This creates a high threshold for the local agency and if a "reasonable person" could find otherwise, "the project shall not be required to comply with that requirement."
- Caps the local affordable housing requirement, if any, to a maximum of 20% and where 20% is required, the required income level cannot be deeper than lower income.
- Eliminates the affordability requirement for Builder's Remedy projects consisting of 10 units or fewer (excluding any density bonus units) if the project site is smaller than one acre and the project proposes at least 10 dwelling units per acre.
- Requires the affordable units to be affordable for 45 years (rental) or 55 years (ownership) and have a comparable bedroom and bathroom count as the market rate units.

MIXED-USE PROJECTS

AB 1893 allows for a wider variety of mixed-use housing development projects:

- Recall that under prior law, at least two-thirds of the project square footage must be designated for residential use to qualify as a "housing development project" under the HAA. That requirement has been reduced to 50% for projects proposing at least 500 net new residential units, so long as no portion of the project would be designated for use as a hotel, motel, bed and breakfast inn, or other transient lodging (except for a residential hotel, as defined in Health and Safety Code § 50519) (collectively, Transient Lodging).
- That requirement has also been reduced to 50% for qualifying projects involving the demolition of existing non-



residential use(s) on the site, as specified. Transient Lodging would also be prohibited under that scenario.

- Recall that the HAA definition for a "housing development project" is cross-referenced in AB 2011, so these amendments will also benefit mixed-use AB 2011 projects.

MAXIMUM DENSITY

AB 1893 newly imposes **the greater of** the following density maximums for Builder's Remedy projects — prior to any density bonus under the State Density Bonus Law:

- 50% greater than the minimum density deemed appropriate to accommodate housing for the local jurisdiction pursuant to Gov. Code § 65583.2(c)(3)(B) (e.g., 30 dwelling units per acre in a metropolitan jurisdiction, which translates to 45 dwelling units per acre).
- Three times the density allowed by the general plan, zoning ordinance, or state law (whichever is greater).
- The density specified for the project site in the Housing Element.
- 35 **additional** units per acre if the project site is within one-half mile of a "major transit stop" or is a "very low vehicle travel area" or a "high or highest resource census tract" (as each is defined).

MINIMUM DENSITY

AB 1893 newly imposes the following density minimums for Builder's Remedy projects:

- On sites that have a minimum density requirement and are located within one-half mile of a "commuter rail station" or a "heavy rail station" (as each is defined), the residential density of the project must not be less than the minimum residential density required on the site.
- On all other sites that have a minimum density requirement, the residential density of the project must not be less than the lower of: (i) the local agency's minimum residential density; or (ii) 50% of the minimum residential density deemed appropriate to accommodate housing for the jurisdiction, as specified in Gov. Code § 65583.2(c)(3)(B) (e.g., 30 dwelling units per acre in a metropolitan jurisdiction, which translates to 15 dwelling units per acre).

DENSITY BONUS PROJECTS

AB 1893 includes provisions that pertain to Builder's Remedy projects that also utilize the State Density Bonus Law:

- A Builder's Remedy project that is also a density bonus project will qualify for two additional incentives/concessions.
- The local agency must grant a density bonus based on the number of dwelling units "proposed and allowable" under the Builder's Remedy (see above).
- The State Density Bonus Law does not specifically address extremely low-income units, which may be provided to satisfy AB 1893 affordability requirements (see above). Accordingly, AB 1893 provides that: (i) all on-site affordable units (including extremely low-income units) must be counted as affordable units in determining whether the project qualifies for a density bonus; and (ii) projects with extremely low-income units will be eligible for the same density bonus benefits provided to a project that dedicates three percentage points more units to very low-income households.

INDUSTRIAL USE PROXIMITY PROHIBITION

AB 1893 newly prohibits Builder's Remedy projects on a project site that abuts a site where more than one-third of the square footage on the site has been used within the past three years by a "heavy industrial use" or a "Title V industrial use" (as each is defined in Gov. Code § 65913.16). Notably, this prohibition does not apply to the project site itself.

LOCAL REQUIREMENTS

AB 1893 specifically authorizes a local agency to require a Builder's Remedy project to comply with local objective, quantifiable, written development standards, conditions, and policies (collectively, "Local Requirements"), subject to the following limitations:

- Local Requirements must not render the project infeasible, and the local agency will bear the burden of proof in making that finding.
- Local Requirements must not involve "personal or subjective judgement by a public official and [must be] uniformly verifiable by reference to an external and uniform benchmark or criterion...".
- Local Requirements must be based on the general plan designation and zoning classification that allow the density and unit type "proposed by the applicant," which is defined to mean "the plans and designs as submitted by the applicant, including, but not limited to, density, unit size, unit type, site plan, building massing, floor area ratio, amenity areas, open space, parking, and ancillary commercial uses."
- Local Requirements may be modified via incentives/concessions, waivers/reductions of development standards and/or reduced parking ratios authorized under the State Density Bonus Law.
- The local agency cannot "preclude" a Builder's Remedy project that meets applicable Local Requirements, as modified pursuant to the State Density Bonus Law (where applicable), "from being constructed as proposed by the applicant."

LOCAL AGENCY RESTRICTIONS

AB 1893 provides that a qualifying Builder's Remedy project:

- Shall not require a general plan amendment, specific plan amendment, rezoning, or other legislative approval.
- Shall not require any approval or permit not generally required of a project of the same type and density.
- Shall be deemed consistent, compliant, and in conformity with an applicable plan, program, policy, ordinance, standard, requirement, redevelopment plan, and implementing instruments (or other similar provision) for all purposes and shall not be considered or treated as a nonconforming lot, use, or structure for any purposes.
- Shall not be subject to any additional Local Requirements (e.g., increased fees) based on utilization of the Builder's Remedy.

NEW DEVELOPER PROTECTIONS

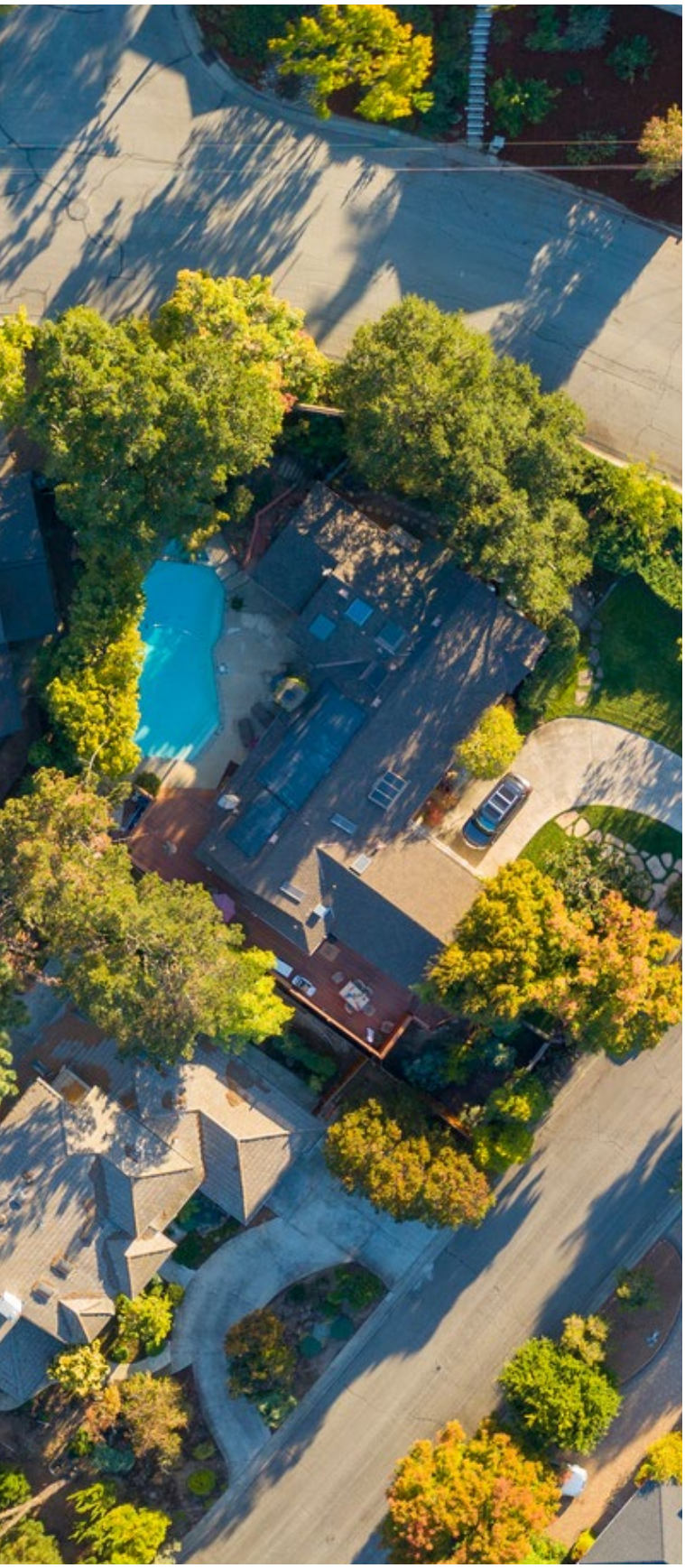
- AB 1893 provides that disapproval of a qualifying housing development project (including but not limited to a qualifying Builder's Remedy project) by a local agency also includes any instance where the local agency "[f]ails to cease a course of conduct undertaken for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the proposed housing development project, that effectively disapproves the proposed housing development without taking final administrative action" if specified conditions are met (which pertain to notice by the applicant and findings made by the local agency if it disagrees).
- Recall that a local agency cannot disapprove a qualifying housing development project unless it makes specified findings based on a preponderance of the evidence in the record. (Gov. Code § 65589.5(d).) Therefore, this new provision would make it easier for project sponsors to prove that a local agency stalling for the purpose of suspending a disfavored housing development project has violated the HAA.
- See AB 1893 (Gov Code § 65589.5(h)(6)) for additional grounds which constitute disapproval of a housing development project under the HAA, which includes amendments under AB 1413 (Ting).

IMPLICATIONS

AB 1893 is an attempt to modernize the Builder's Remedy by providing clarity to developers, local jurisdictions, and courts to avoid the "legal limbo"

described by Attorney General Rob Bonta. As part of that compromise, specified requirements will be imposed on Builder's Remedy projects, including a new "cap" on residential density where no codified limit currently exists. In return, the clarifications made by AB 1893 and the reduced affordability requirement for mixed-income projects could help prompt additional Builder's Remedy projects in jurisdictions that have failed to comply with State Housing Element Law.

There are still opportunities to utilize the Builder's Remedy. According to HCD, as of the date of this article, over 100 local jurisdictions are still out of compliance with State Housing Element Law and subject to the Builder's Remedy. Furthermore, local jurisdictions with a certified Housing Element could become subject to the Builder's Remedy in the future if rezoning required pursuant to the Housing Element's schedule of actions is not completed by the applicable deadline. Under that scenario, HCD may seek to revoke Housing Element certification. That deadline has already passed for many jurisdictions but for others (where the Housing Element was timely certified) we expect to see HCD enforcement activity in early 2026 (three years after the applicable Housing Element certification date) pursuant to Gov. Code § 65583(c)(1)(A).



COMPANION BILL: AB 1886

AB 1886 (Alvarez) became effective on January 1, 2025 and will also help facilitate Builder's Remedy projects by making the following clarifying amendments to existing law:

- A local jurisdiction cannot "self-certify" its Housing Element. AB 1886 ratifies a prior HCD determination, which provides that HCD will consider an "adopted" Housing Element to be an initial draft because "a jurisdiction does not have the authority to determine that its adopted element is in substantial compliance but may provide reasoning why HCD should make a finding of substantial compliance."
- A Housing Element will be deemed substantially compliant with State Housing Element Law when: (i) the Housing Element has been adopted by the local jurisdiction; and (ii) the local jurisdiction has received an affirmative determination of substantial compliance from HCD or a court of competent jurisdiction.
- Housing Element compliance status is determined at the time the SB 330 preliminary application (pursuant to Gov. Code § 65941.1) is submitted for the Builder's Remedy project, which is consistent with HCD's prior determination that the Builder's Remedy is vested on that filing date. If an SB 330 preliminary application is not submitted, then the compliance status will be determined when a complete (full) development application is filed for the Builder's Remedy project (pursuant to Gov. Code § 65943).

Please see our prior legal alert for more information about the Builder's Remedy lawsuit that appears to be the impetus for the clarifying amendments under AB 1886.

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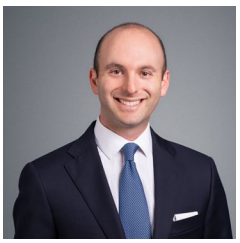

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Land Use, Environmental & Natural Resources

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