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Land Use & CEQA Litigation Update

Cases Reported September 1, 2025, through April 15, 2026

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League of California Cities
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I. CEQA Case Summaries

A. *Save Our Access v. City of San Diego* (2025) 115 Cal.App.5th 388

HOLDING

The Court of Appeal held that:

(1) The City failed to analyze potential impact of ballot measure on noise levels, air quality, biological resources, and geological conditions in the area; and

(2) Deferral of full environmental analysis of ballot measure until individual site-specific projects were proposed was not adequate.

Facts

In 2020, voters in the City of San Diego approved a ballot measure relying on a 2018 Program EIR, which was invalidated by the Court of Appeal in *Save Our Access v. City of San Diego* (2023) (*Save Our Access I*) 92 Cal.App.5th 819 for inadequate CEQA review. While the appeal in *Save Our Access I* was pending, the City prepared a Supplemental EIR and voters again approved removal of the height limit in 2022, prompting a second CEQA challenge. In *Save Our Access v. City of San Diego* (2025) ("*Save Our Access II*") 115 Cal.App.5th 388, the Fourth District Court of Appeal considered San Diego voters' second attempt in five years to eliminate the 30-foot coastal height limit in the Midway-Pacific Highway Community Planning Area to facilitate redevelopment.

Claims Raised

Petitioners argued that the City had not complied with CEQA requirements to adequately inform the public of the potential environmental impacts of approving the *second* ballot measure to remove the height limit in the Midway-Pacific Highway area, to identify possible mitigation measures, and to disclose the reasons for approving removal of the height limit even if there are significant environmental impacts.

Analysis

The Court identified multiple topics—noise, air quality and greenhouse gases, biological resources, and geologic hazards—that, in its view, had not been sufficiently addressed in either the Program EIR or the Supplemental EIR. For example, with respect to noise, the Court determined that because the PEIR had assumed that the 30-foot height limit would remain in place, it had not assessed whether taller buildings could reflect and refract more ambient noise, or whether constructing taller buildings would itself increase noise.

The Court invited the parties to submit supplemental briefs addressing whether any changes to CEQA from recently enacted Assembly Bill No. 130 and Senate Bill No. 131 impact the issue presented in this appeal. The Court further held that the AB 130 CEQA exemption for infill housing applies only to specific development projects, not to legislative actions such as removing a height limit, even if that action would facilitate infill housing.

The Court of Appeal again invalidated the 2022 ballot measure, holding that the Supplemental EIR failed to adequately analyze the broader environmental consequences of eliminating the height limit and improperly relied on assumptions embedded in the earlier Program EIR that were premised on the continued existence of the 30-foot cap.

Practice Tip

Save Our Access II applies a fairly rigorous form of scrutiny to the City's conclusion that the assumptions underlying the Program EIR would remain valid even with the 30-foot height limit removed. If other courts follow that approach, some argue that it could significantly lessen the benefit (in the form of time and cost savings) of tiering off an earlier environmental document if some of the relevant conditions have changed.

B. *Tulare Lake Basin Water Storage District v. Department of Water Resources* (2025) 115 Cal.App.5th 342

HOLDINGS

The Court of Appeal held that:

(1) CEQA's whole-of-an-action requirement and prohibition against piecemealing is not incorporated into the Sacramento-San Joaquin Delta Reform Act's certification of consistency requirement; and

(2) Delta Reform Act did not require the California Department of Water Resources (DWR) to submit a certification of consistency before engaging in preconstruction geotechnical work

Facts

DWR planned to conduct preconstruction geotechnical work in the Sacramento-San Joaquin Delta and Suisun Marsh as part of preparations for the Delta tunnel project. Various municipal, tribal, and public interest entities objected, arguing that DWR could not begin this work until it certified that the tunnel project was consistent with the Delta Plan, as required by the Sacramento-San Joaquin Delta Reform Act of 2009. The Delta Reform Act created a new governance approach for the Sacramento-San Joaquin Delta, prioritizing the coequal goals of creating a more reliable water supply and protecting/restoring the Delta ecosystem. The disputed geotechnical work included soil borings, groundwater monitoring, test trenches, and other activities intended to inform the project's design and mitigation measures.

The Trial Court found that DWR's planned geotechnical work was an integral part of the tunnel project, which was a "covered action" under the Delta Reform Act, and concluded that DWR was required to certify consistency before initiating any part of the project, including the geotechnical work. Accordingly, the Trial Court issued preliminary injunctions preventing DWR from conducting the preconstruction geotechnical work until it submitted a certification of consistency with the Delta Plan. DWR subsequently approved a more limited set of preconstruction geotechnical tasks and filed an ex parte application to modify or stay the preliminary injunctions to allow those more limited geotechnical tasks to proceed. The Trial Court denied the ex parte application, concluding the scaled-down geotechnical work was still part of the covered action requiring DWR to complete the certification process before engaging in geotechnical work.

DWR then prepared and submitted a certification of consistency to the Delta Stewardship Council for the scaled-down geotechnical work and several of the plaintiffs appealed that certification to the Council. The Council dismissed the appeals, concluding that it lacked jurisdiction to rule on them because the geotechnical work was not a covered action under the Delta Reform Act.

Claims Raised

Petitioners argued that the Delta Reform Act's certification of consistency requirement incorporated CEQA's "piecemealing" and "whole-of-an-action" concepts so as to render the proposed preconstruction geotechnical work inseparable from the overall Delta Tunnel project and thus precluding DWR from proceeding with the geotechnical work absent a certification of consistency.

Analysis

The Court of Appeal disagreed with the Trial Court and concluded that the Delta Reform Act did not incorporate CEQA's piecemealing and whole-of-an-action concepts. It did so for three primary reasons. First, the purposes of the two statutory schemes (CEQA and the Delta Reform Act) differ. CEQA includes the whole-of-an-action and piecemealing concepts to make sure that EIRs fully inform decisionmakers of all reasonably foreseeable impacts before a project is considered for approval. The Delta Reform Act, on the other hand, requires certification of consistency with the Delta Plan after project approval, but before implementation of a covered action. In sum, the certification of consistency requirement is not an informational document like an EIR, but one geared to ensuring plan consistency. The Court cautioned parties against applying concepts from another law that serves a different purpose. Second, the Court of Appeal discussed why DWR's proposed preconstruction geotechnical work did not meet all of the Delta Reform Act's requirements to be considered a covered action, and the Court also found insufficient indication that the legislature, in enacting the Delta Reform Act, intended its certification requirement to include the CEQA concepts. Third, the Court of Appeal found that the Delta Stewardship Council's dismissal of the plaintiffs' appeals was entitled to great weight since its decision was an adjudication of law by an administrative agency with expertise regarding the Delta Reform Act and was well-reasoned.

Practice Tips

Be wary when importing concepts from one statute and attempting to apply them to a separate statute, especially when they entail separate statutory schemes with different purposes.

C. *Make UC a Good Neighbor v. Regents of University of California* (2025) 117 Cal.App.5th 282

HOLDING

Petitioners were not "successful parties" entitled to recover attorney fees under Code of Civil Procedure section 1021.5 where their temporary appellate victories were subsequently abrogated by legislation and reversed by the Supreme Court.

Facts

Make UC A Good Neighbor and the People's Park Historic District Advocacy Group ("Good Neighbor") brought action against Regents of the University of California ("UC Regents") alleging violations of the California Environmental Quality Act ("CEQA") and seeking writ of mandate voiding approvals of the university's development plan, the People's Park housing project in Berkeley, and related environmental impact report ("EIR"). The Trial Court denied the writ petition, and Good Neighbor appealed. The Court of Appeal (*Make UC a Good Neighbor v. Regents of University of California* (2023) 88 Cal.App.5th 656) reversed and remanded, ruling in favor of Good Neighbor. Both parties petitioned for review to the Supreme Court.

In 2023, via AB 1307 (Wicks), the California Legislature enacted legislation abrogating the Court of Appeal's holdings. AB 1307 specified that the effects of noise generated by project occupants and their guests on human beings is not a significant effect on the environment for residential projects for purposes of CEQA. The Legislature also provided that "institutions of public higher education shall not be required, in an environmental impact report prepared for a residential or mixed-use housing project, to consider alternatives to the location" of the proposed project if certain requirements are met.

The Supreme Court (*Make UC a Good Neighbor v. Regents of University of California* (2024) 16 Cal.5th 43) granted UC Regent's petition, denied Good Neighbor's petition, and subsequently reversed in light of AB 1307. On remand, the Trial Court entered judgment for UC Regents and denied Good Neighbor's motion for attorney fees. Petitioners appealed.

Claims Raised

Good Neighbor argued it was a "successful party" and thus entitled to recover its attorneys' fees under Code of Civil Procedure section 1021.5, the "private attorney general" statute, because it secured important legal precedents when the Court of Appeal ruled in its favor on two issues.

Analysis

To obtain an attorney fee award under section 1021.5, the movant must establish that (1) it is "a successful party" in an action; (2) the action resulted in the enforcement of an important right affecting the public interest; (3) the action conferred a significant benefit on the general public or a large class of persons; and (4) the necessity and financial burden of private enforcement (or enforcement by one public entity against another) make an award appropriate. This case turns on the "successful party" requirement. The successful party is "the party to litigation that achieves its objectives." The question is whether the Supreme Court's opinion is inconsistent with, or disapproved, the relevant parts of the Court of Appeal's opinion. If not, it remains citable, binding precedent.

Once the Supreme Court issues a decision, rule 8.1115(e)(2) governs its status: "[U]nless otherwise ordered by the Supreme Court under (3), a published opinion of a Court of Appeal in the matter ... is citable and has binding or precedential effect, except to the extent it is inconsistent with the decision of the Supreme Court or is disapproved by that Court." Under California Rules of Court, rule 8.1115, the Supreme Court's reversal disapproved the Court of Appeal's opinion on both issues, meaning they are not citable precedent. This is unambiguous disapproval, so Good Neighbor was not a successful party.

D. *Krovoza v. City of Davis* (2025) 117 Cal.App.5th 623

<u>HOLDING</u>

Petitioners failed to establish that the unusual circumstances exception applied to negate the City's claimed CEQA exemptions under either of the alternative tests for proving that exception because evidence a project would violate a standard in the City's noise ordinance standing alone does not constitute substantial evidence that the project will have a significant effect on the environment when the only substantial evidence in the record showed that the playground equipment relocation project would actually reduce noise at all measures locations.

<u>Facts</u>

The City installed Sky Track playground equipment (described to be akin to a zip line) at Arroyo Park in May of 2019. In response to noise complaints from neighbors, the City retained a noise expert who took noise measurements at the location of the equipment and at nearest residences which showed that the equipment's noise level at the nearest residences was under the City's noise threshold during the day but exceeded the noise threshold at night. In response, the City attempted to mitigate the nighttime noise by erecting signs and making social media posts indicating the park was closed from sunset to 8 am daily, installing additional rubber bumpers at both ends of the equipment to absorb noise from the track, and assigning staff to lock/chain the equipment to prohibit its use at night. While effective, vandalism of the lock mechanisms and City staffing challenges minimized the effectiveness of those efforts.

In response the City decided to explore relocating the equipment and hired a different noise consultant to assist in the evaluation. That consultant's noise measurements showed that the equipment's noise levels actually exceeded both the City's day and night noise thresholds at the nearest residences under certain circumstances and in response the City closed the Sky Track equipment pending its relocation. The new noise consultant studied four different alternative locations for the Sky Track equipment within the park and found that if the equipment was moved to any one of three of the four alternative locations (i.e., Alternatives A, B and C) the noise levels at the nearest residences would be reduced at all three testing locations and would meet the City's day and night standards at those nearest residences. The City approved the relocation of the Sky Track to alternative location B and found that the project was exempt under the CEQA Guidelines' categorical exemptions for Class 3 (new construction, installation, or conversion of limited number of small structures, facilities, equipment), Class 4 (minor alterations to land, water, vegetation), and Class 11 (construction or placement of accessory structures) pursuant to CEQA Guidelines sections 15303, 15304, 15311. Petitioners filed a writ petition challenging the exemption. The Trial Court denied the petition and petitioners appealed.

Claims Raised

Petitioners alleged that evidence the playground equipment created noise exceeding the City's noise standards established that the unusual circumstances exception is met under either of the two tests articulated by the California Supreme Court in *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086 and thus that the exception negated all three of the categorical exemptions relied upon by the City.

Analysis

Pursuant to the *Berkeley Hillside* decision, the unusual circumstances exception may be established by: (1) showing *with evidence* that the project *will* have a significant effect on the environment; or (2) showing the project has some feature that distinguishes it from others in the exempt class, such as its size or location and there is a reasonable possibility of a significant effect on the environment due to that unusual circumstance.

The Court of Appeal rejected the Petitioners' arguments under both tests. The Court started by highlighting several key legal principles, including that the party challenging the exemption has the burden of producing evidence supporting an exception and that under both of the *Berkeley Hillside* tests the phrase "significant effect on the environment" means "a substantial, or potentially substantial, *adverse change* in the environment. Applying these principles, the Court agreed with the City's position that a project's violation of an agency's noise ordinance, standing alone, cannot constitute substantial evidence that the project *will* have a significant noise impact unless there is evidence showing the project results in an adverse change in the environment. The Court next found that if anything, the playground equipment relocation project would reduce the equipment's noise at the nearest residences. Without evidence of an adverse change in the noise, the Petitioners' claims failed.

Practice Tips

Proving an exception to a CEQA exemption requires substantial evidence that the baseline conditions will actually change in an adverse way, which entails measuring project's effects against the baseline conditions, not just against a standard expressed in a City ordinance.

E. *Coalition of Pacificans for an Updated Plan v. City of Pacifica* (2025) 117 Cal.App.5th 647

HOLDINGS

The Court of Appeal held that:

(1) Government Code 65589.5(p)(1) does not prohibit courts from considering a housing development project's potential environmental impacts when deciding whether to award attorney fees in a case challenging the project's approval; and

(2) The Trial Court abused its discretion and erred: (a) in using a statewide benchmark (i.e., two million housing unit statewide deficit) to conclude the project's eight units did not further the HAA's policy of expanding the housing supply; and (b) in ruling that the City of Pacifica as a whole was not an "urban area" to conclude the project did not further the HAA's policy of encouraging in fill housing development in existing urban areas.

Facts

Petitioners partially prevailed on CEQA claims challenging the adequacy of an initial study/mitigated negative declaration prepared for an eight unit housing development project and the Trial Court entered judgment for Petitioners and issued a writ commanding the City to set aside the project approvals. Petitioners then sought to recover their attorneys' fees jointly and severally from the City and Real Parties in Interest by filing a motion under CCP section 1021.5. The Trial Court issued a tentative ruling indicating its intention to grant the motion but, after modifying the tentative during the hearing on the fee motion, directed Petitioners to prepare a formal order after meeting and conferring with the City and Real Parties. While the motion was still pending and before the Trial Court issued its final ruling, a new provision added to the Housing Accountability Act (HAA) by AB 1633 became effective.

Specifically, AB 1633 added subdivision (p) to Government Code section 65589.5 which, in the case of a successful challenge to the approval of a housing development project, requires a court in ruling on a fee motion under CCP section 1021.5 to give due weight to certain additional factors when considering whether section 1021.5's substantial benefit and necessity of private enforcement criterion were satisfied. Those additional factors include whether the approval furthered the policies of the HAA, the suitability of the site for housing, and the reasonableness of the approving agency's action. After requesting additional briefing and argument on the new HAA provision, the Trial Court issued its final order granting the motion and awarding Petitioners nearly $1.3 million.

In addition to ruling that Petitioners satisfied the requirements of section 1021.5 given they had provided expert evidence that the project may have significant impacts, the Trial Court also considered the new HAA factors and found that the project's eight units would not substantially advance the policies of the HAA given the statewide deficit of two million housing units. The trial Court also found that the policy encouraging urban infill development was not furthered because the City of Pacifica was not an urban area and that the City had acted unreasonably in approving the project given its potential environmental impacts. Both the City and Real Parties appealed the order granting the fee motion.

Claims Raised

The City and Real Parties contended that the Trial Court erred in its interpretation and application of the housing-related factors new Government Code section 65589.5(p)(1) required the court to give due weight to in determining whether the requirements for a fee award under CCP 1021.5 have been met.

Analysis

The Court first addressed and ultimately rejected Real Parties' argument that the new Government Code section 65589.5(p)(1) imposes significant restrictions on fee awards by requiring that Courts can consider *only* the factors listed in that provision and may not take into account a project's potential environmental impacts. The Court looked at both the plain language and legislative history of the statutory language at issue and concluded that because neither states that a Court is prohibited from considering other factors there is no basis to conclude a trial Court must ignore a project's potential environmental impacts when making the required determinations under CCP section 1021.5. However, the Court cautioned against relying on claims of the mere possibility of a significant impact that are enough to satisfy the low threshold fair argument standard of review applicable to MND challenges to support a finding that a project site is not suitable for housing development. As such, the Court made clear that if a Court is to weigh potential environmental impacts under Government Code section 65589.5(p)(1)'s "suitability" factor, it should do so in a manner consistent with the preliminary nature of its inquiry in the underlying proceeding.

Nonetheless, the Court went on to find the Trial Court abused its discretion twice over in finding that the project did not further the HAA's policies of expanding housing supply in urban infill sites. First, the Court found that the Trial Court erred when it downplayed the significance of the project's housing units by comparing the projects' eight housing units to the entire state's housing deficit. The Court held that by employing such a de minimis or drop-in-the-bucket analysis, the trial Court rendered the factor meaningless because no project alone could be found to make a significant impact on a the state's estimated two-million-unit shortfall. Second, the Court found the Trial Court erred when it concluded that the project did not further the HAA policy encouraging in fill housing development in existing urban areas because it found the City of Pacifica was not an urban area. The Court held that it was inappropriate for the Trial Court to use a categorical approach that designates an entire county or City as being urban or not urban.

Practice Tip

Practitioners seeking or opposing fees pursuant to a CCP section 1021.5 motion in cases challenging a local agency's approval of a housing development project must now carefully address and give due weight to the factors in Government Code section 65589.5(p) when considering section 1021.5's significant benefit and necessity of private enforcement prongs.

F. *City of Vallejo v. City of American Canyon (Buzz Oates)* (2026) 117 Cal.App.5th 1112

HOLDINGS

The Court of Appeal held that:

(1) An analysis of water supply in an EIR may incorporate by reference information in an urban water management plan;

(2) American Canyon waived its failure to exhaust administrative remedies defense by not raising it in the Trial Court;

(3) American Canyon's EIR was not legally inadequate for failing to disclose differences between contracted amounts of water and amounts delivered; and

(4) An EIR's failure to discuss place of use restrictions did not amount to an actionable abuse of discretion where the restrictions only affect the areas within a project where water subject to a license could be used, and not the quantity of water available as a while.

Facts

Developer proposed construction and operation of a 2.4 million-square-foot industrial warehouse complex on undeveloped, industrially zoned land in the City of American Canyon which would require 23.9 acre-feet (af) of potable water supply per year. American Canyon does not currently have access to groundwater so it relies on outside sources of water, receiving most of its water supply from the State Water Project, with the rest (approximately 23% in a normal year) supplied by the adjacent City of Vallejo pursuant to a contract (the "1996 Agreement") between the two cities. Vallejo also receives water from the State Water Project but Vallejo also holds an appropriative water right known as License 7848. The 1996 Agreement authorizes three types of water purchases: (1) up to 3,206 af of potable treated water per year; (2) up to 500 af of raw water diverted from the Sacramento-Bay Delta pursuant to License 7848; and (3) up to 500 af of emergency raw water in dry years only. The 1996 Agreement is the subject of a separate breach of contract lawsuit between American Canyon and Vallejo, the details of which are not part of the record.

American Canyon prepared an EIR under CEQA to assess the industrial warehouse project's potential environmental impacts that included a Water Supply Assessment which incorporated American Canyon's 2020 Urban Water Management Plan (the "2020 Plan"). 90 minutes before the public hearing scheduled to consider certification of the EIR and approval of the project, Vallejo sent an email to American Canyon attaching two letters alleging both the EIR and the 2020 Plan were inadequate. American Canyon continued deliberations on the project to review Vallejo's comment letters but after receiving a legal opinion from outside counsel that its water supply assessment for the project was legally sufficient it certified the EIR and approved the project. Vallejo and two environmental groups filed writ petitions in Napa County Superior Court. The actions were consolidated and transferred to Sacramento Superior Court. The environmental groups both settled and the Trial Court denied Vallejo's petition for writ of mandate and Vallejo appealed.

Claims Raised

Vallejo argued that the project EIR violated the water supply disclosure requirements of CEQA and also the provisions of Water Code sections 10910 and 10911. Specifically, Vallejo's CEQA claims alleged the EIR violated CEQA because it failed to disclose the actual volumes of water American Canyon purchased under the 1996 Agreement, failed to explain that the License 7848 water came with place of use restrictions, failed to disclose the impact of emergency curtailment orders on water supply availability and failed to disclose the contract litigation. Vallejo's non-CEQA claim essentially realleged its CEQA arguments under the Water Code statutes.

Analysis

Before addressing the merits of Vallejo's arguments the Court of Appeal first tackled American Canyon's assertion that Vallejo's claims were barred for failure to exhaust administrative remedies. Ultimately, the Court concluded that American Canyon had waived the defense because it failed to raise it in the Trial Court.

On the merits, the Court began by reviewing the four principles from the California Supreme Court's seminal decision in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412 concerning the sufficiency of an EIR's water supply analyses. Under *Vineyard*, an EIR must present sufficient facts for decisionmakers to evaluate water supply, must not defer analysis of future sources, must identify supplies bearing a reasonable likelihood of availability rather than relying on "paper water," and must discuss alternative sources where future supplies remain uncertain. At the same time, the Court emphasized, a project need not have "definitely assured water through signed, enforceable agreements."

The Court then applied those core water supply principles and rejected Vallejo's first claim that the contracted amounts under the 1996 Agreement represented "paper water" rather than a reliable source of supply, pointing out that American Canyon had received all of its contracted water under the 1996 Agreement for all but one year since 1999 and purchased less than its full allotment due to cost, not supply constraints. Because these water supplies were neither uncertain nor unlikely to be available, the Court found there was no evidence in the record to conclude the contracted water supply entitlements were merely "paper water."

The Court moved on to also reject Vallejo's argument that the EIR's failure to disclose place of use restrictions in the 1996 Agreement was prejudicial error. The Court emphasized that while those restrictions prevented delivery of the contracted supply directly to the project site, the restriction only affected where water could be used, not the overall volume of water available. Because the EIR concluded that total projected water supplies in American Canyon would be sufficient to meet the project's water demand in all years and scenarios, the omission of the place of use restrictions was not substantial and was harmless.

The Court also found Vallejo's claims that the EIR was inadequate due to the EIR's failure to disclose the possibility of emergency water curtailments on water supply availability were without merit because the EIR mentioned past curtailment and that American Canyon's water from both the State Water Project and from Vallejo came from the Delta watershed through the

North Bay Aqueduct and that both sources could be curtailed.

Finally, the Court similarly rejected Vallejo's claims that the EIR was inadequate for failing to discuss alternative water supply sources and the breach of contract litigation between the cities. The Court noted that alternative water supplies need only be discussed in an EIR if the lead agency is unable to determine whether a particular water supply source would be available, which was not the case here, and concluded that without any evidence in the record about the substance of the breach of contract litigation (which was due to Vallejo's failure to provide an adequate record on that point) there was no way for the Court to assess whether that omission undermined the EIR's conclusion of an available and sufficient water supply.

Practice Tips

Make sure to raise the failure to exhaust administrative remedies defense early and often to ensure it isn't deemed waived. An EIR's omission of relevant information does not automatically invalidate an EIR, it must be shown that the omission was prejudicial because it precluded informed decision making and public participation.

G. *Physicians for Social Responsibility - Los Angeles v. Dept. of Toxic Substances Control* (2026) 118 Cal.App.5th 1071

HOLDING

The Petitioner, as the non-prevailing party in a CEQA action, was not entitled to attorneys' fees under the "catalyst theory" because a judicial resolution on the merits had been reached.

Facts

The Boeing Company (Boeing) owns land, known as Area IV, which was previously leased to the U.S. Department of Energy (DOE) and contaminated due to DOE's nuclear research program in the 1980s. The DOE is responsible for supervising and implementing the cleanup of radioactive contamination. The California Department of Toxic Substances Control (DTSC) is the lead agency responsible for regulating the cleanup of chemical contamination.

Boeing sought to demolish several of its buildings within Area IV. Environmental group brought action against DTSC seeking writ of mandate to compel compliance with CEQA regarding demolition of buildings. Among other claims, the group asserted that Boeing's demolition and disposal activity was subject to CEQA but that DTSC failed to consider the environmental impact of such activity.

The Trial Court denied the group's petition for writ of mandate and then denied the group's motion for attorney fees based on the agency's intervening voluntary action in including demolition project in environmental assessment and subjecting it to mitigation identified in EIR. Group appealed.

After the Court of Appeal issued its decision, but before the Supreme Court denied review, DTSC issued a final EIR which analyzed the demolition activity for informational purposes, "in order to provide a conservative assessment of the impacts from the site cleanup."

Claims Raised

According to the Petitioner, DTSC's analysis of Boeing's demolition in the EIR means Petitioner obtained the primary objective of the litigation, i.e., "review in the Final EIR, reflecting DTSC's efforts to comply with CEQA and to mitigate the impacts of the entire Santa Susana Field Laboratory remediation, including Boeing's demolition." Petitioner contends it was a "successful party" under a catalyst theory applicable to CCP section 1021.5 and filed a motion for attorney fees to be recovered from DTSC.

Analysis

The Court of Appeal disagreed with Petitioner's CEQA claims, concluding that although the soil and groundwater remediation programs were undisputably subject to CEQA, the demolition of the Area IV buildings was a private activity entirely within Boeing's discretion and constituted activity that was not subject to discretionary approval by a public agency, and thus not subject to CEQA. Thus, Petitioner did not obtain any of the relief sought through either the judgment issued by the Superior Court or the decision by the Court of Appeal.

H. *Bair v. California Department of Transportation* (2026) ___ Cal. App. 5th ___ (2026 WL 835777, Mar. 26, 2026, Case No. A172681)

HOLDING

Because discharge of a prior writ conclusively determined that an addendum correcting deficiencies in a prior EIR complied with CEQA, petitioners' renewed challenge was barred by res judicata.

Facts

The California Department of Transportation's (Caltrans) is the lead agency for a highway construction project consisting of improvements to a stretch of U.S. Highway 101 that passes through Richardson Grove State Park in Humboldt County, home to a stand of old growth redwood trees.

Petitioners (citizens and environmental groups) had filed two prior petitions against the project. The first petition resulted in an appellate decision invalidating Caltrans' EIR for failing to properly evaluate the project's impacts on the redwood trees (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, the "*Lotus* writ"). The second (Super. Ct. Humboldt County, No. CV170543) resulted in a Trial Court judgment and writ of mandate invalidating the addendum to the EIR Caltrans prepared to correct the earlier deficiency, because Caltrans had failed to circulate the Addendum for public review and comment. After Caltrans circulated the Addendum for public comments and recertified the EIR and Addendum, both writs were discharged, and Petitioners did not appeal from those orders.

Petitioners filed a third petition for writ of mandate challenging Caltrans's compliance with CEQA in connection with the project. The Trial Court denied the petition, and Petitioners appealed.

Claims Raised

Petitioners asserted, among other causes of action, that the 2017 Addendum fails to adequately disclose, analyze and mitigate the project's impacts on old-growth redwood trees, because (1) the EIR fails to identify or use any threshold of significance to measure the project's impact on redwood trees; and (2) the 2017 Addendum's conclusion of less than significant impact is not supported by substantial evidence. Petitioners further argue that no Court has yet ruled on the substantive adequacy of the 2017 Addendum, despite the fact that the prior writs were discharged.

Analysis

The discharge of the *Lotus* writ conclusively established the Addendum's substantive adequacy and the discharge of that writ was final and therefore bars re-litigation of the issue petitioners have raised again in this case. The petition in this case alleges (both expressly and indirectly) that it seeks to compel Caltrans to fix the very same CEQA deficiencies that the *Lotus* writ compelled it to fix, and thus in substance is challenging Caltrans' compliance with the *Lotus* writ.

Practice Tips

Where, through the return-to-writ process, a Court has found that corrected approvals docs pass muster and thus discharges the writ, res judicata bars a new suit filed by the petitioners to challenge those corrected approvals.

However, this case does not address the situation where the writ commanded the agency merely to rescind the CEQA document, and the writ was discharged following rescission, and the agency later takes a new set of actions. There, a new suit may be appropriate to challenge the new action.

II. Land Use Case Summaries

A. *New Commune DTLA v. City of Redondo Beach* (2025) 115 Cal.App.5th 111

HOLDING

A zoning overlay cannot be used to satisfy the minimum density and residential use requirements set out in Government Code section 65583.2(h)(2) where the base zoning expressly permits development that does not include housing.

Facts

The City of Redondo Beach applied a residential overlay across several commercial and industrial districts, allowing up to 55 dwelling units per acre while retaining the underlying commercial and industrial entitlements. This approach meant developers could still build entirely nonresidential projects on sites counted toward the City's lower-income housing need.

Claims Raised

A housing developer challenged the City's Housing Element and the inclusion of two specific properties in the City's RHNA inventory.

Analysis

The Court held that the overlay failed to meet statutory requirements because it did not guarantee minimum residential density, as suburban sites must allow at least 20 units per acre under Government Code section 65583.2(h)(2), and it violated the residential-only mandate requiring at least 50% of lower-income sites to be designated exclusively for residential use.

Practice Tip

This decision reflects a stricter judicial enforcement of Housing Element law than California HCD's prior approvals, raising questions about the validity of other certified Housing Elements and signaling that jurisdictions may need to reassess their plans to reduce litigation risk.

B. *Airport Business Center v. City of Santa Rosa* (2026) 116 Cal.App.5th 501

HOLDINGS

The Court of Appeal held that:

(1) As matter of first impression, determination that City-owned asset constitutes surplus land under the Surplus Land Act does not require agency to find that land is of no use to public;

(2) Substantial evidence supported City's determination that land constituted surplus land within meaning of the Act; and

(3) City's resolution declaring property to be surplus land satisfied Act's requirements that land would be declared surplus land “as supported by written findings.”

Facts

In 2016, the City of Santa Rosa adopted a Housing Action Plan, which includes a program to identify public land that can potentially be used for housing development. As part of that process, the City conducted a review of City-owned downtown parking facilities, and in 2019 it commissioned a study to determine how frequently the public was using parking spaces in the downtown area. The company that prepared the study concluded from the data that there “may be an opportunity to build housing and other commercial uses on existing public parking facilities in Downtown Santa Rosa.” During this time period, the City also conducted a site survey and prepared a report on the overall condition of five City-owned public parking structures.

In April 2022, the City Council considered declaring one of those parking structures, Garage 5, as nonexempt surplus land, subject to the retention of some public parking on the site. The City had determined it did not have a public use for the property other than the continued need for some public parking, and that beneficial use of the property could be maximized if the City were to dispose of it. Some local business owners objected to the proposed resolution on the basis that removing Garage 5 would cause financial hardship. The City Council did not take formal action on the Garage 5 proposal at its April 2022 meeting.

The City conducted additional study sessions throughout 2022. Key findings included that only 30 percent of downtown public parking spaces were being utilized, and if the City were to sell parking facilities, including Garage 5, the remaining parking facilities could accommodate parking demand.

In December 2022, the City Council of the City of Santa Rosa adopted a resolution declaring that a property the City was using as a parking garage constituted surplus land under the Surplus Land Act.

A local business owner, Airport Business Center (“Petitioner”), filed a petition for writ of mandate to set aside the resolution. The trial denied the petition, and Petitioner appealed.

Claims Raised

Petitioner contended that the City violated the Surplus Land Act by designating the property as surplus land despite an ongoing need for public parking. Petitioner further argued that the requirement that an agency must take formal action to declare land as surplus is substantive, not just procedural, and the essential predicate for declaring land to be surplus is that it must be not “necessary” for the “agency’s use.” Petitioner also construed this requirement to mean that if land is serving a public use, then the land is, by definition, necessary and cannot constitute surplus land.

Analysis

A property becomes subject to the dispositional requirements of the Surplus Land Act once an agency makes a formal decision that the property is not essential for its continued work and operations, and that the property does not constitute exempt surplus land. Government Code section 54221(b)(1) does not exclude from the definition of surplus land property that is being used for a public purpose, nor does it equate a property that is necessary for the agency's use with a property that is serving the needs of the populace.

The Court reasoned that by equating the word "necessary" with something that is merely useful, the Petitioner ignored not just the plain meaning of that word itself, but also other language in the Surplus Land Act, especially the related explication of "agency's use," which suggests that the surplus land determination turns on whether a property is essential for the agency's operational needs. The Petitioner also attempted to add a restriction that would prohibit an agency from disposing of its own property, if that property is currently used for a public purpose.

The Court said that Petitioner's "proposal to impose an additional restriction on the agency's ability to designate land as surplus would not only change the scope of the statutory definition, it would also potentially undermine the purpose of the Act by erecting a substantial roadblock for agencies considering whether to make underutilized assets available for the development of affordable housing."

C. *Rodriguez v. City of Los Angeles* (2025) 116 Cal.App.5th 488

HOLDING

The Court of Appeal held that written agreement between City and predecessor in interest was equivalent to condition attached to building permit, and thus survived foreclosure.

Facts

In 2005, the City of Los Angeles ("City") granted nonparty Jose Benavidez a 35 percent density bonus for the development of residential units on his property. The density bonus allowed Benavidez to develop one more unit than otherwise would be authorized, resulting in a three-unit project. In exchange, Benavidez agreed to rent one of the three units exclusively to low-income households for at least 30 years. Benavidez and the City memorialized these terms in a written agreement, which the City recorded against the property in January 2006. In 2013, a lender foreclosed on the property.

In 2019, Petitioners Jose Luis Rodriguez and Guillermina Rodriguez ("Petitioners") purchased the property, allegedly unaware of the 2006 agreement. In 2023, the City sent a notice demanding that Petitioners comply with the agreement.

Petitioners brought action against City for quiet title and declaratory relief. The Trial Court sustained the City's demurrer to the complaint without leave to amend. Petitioners appealed.

Claims Raised

Petitioners alleged that City granted owners' predecessor in interest 35 percent density bonus for development of residential units on property and allowed predecessor in interest to develop one more unit than was otherwise authorized in exchange for predecessor in interest renting one of the units exclusively to low-income households for at least 30 years, that City and predecessor in interest memorialized terms in written agreement, which City recorded against property that predecessor in interest later defaulted on loan secured by mortgage on property and lender foreclosed on property, and that foreclosure extinguished all junior interests in property, including agreement.

Analysis

Permit conditions survive foreclosure and are enforceable against successor owners. An agreement granting a property owner a density bonus for the development of residential units on his property in exchange for an agreement to exclusively rent one unit to low-income households for a period of 30 years was equivalent to a condition attached to a permit, and the agreement therefore survived the foreclosure of the property.

D. *Diamond Sands v. Clark County Nevada* (9^{th} Cir. 2026) 164 F.4th 759

HOLDING

The District Court did not abuse its discretion in finding a property owner failed to show serious questions that county fines against it for its short-term rental activity were grossly disproportionate to the gravity of the underlying offense where the property owner had knowledge of the improper short-term rentals and failed to eliminate the violations, the fines were on the low end of the authorized range, and the ordinance prohibiting unlicensed short-term rentals was aimed at deterring harm to residents.

Facts

Diamond Sands Apartments, LLC owns and operates a 360-unit apartment complex in Las Vegas, Nevada. Clark County, Nevada, where Las Vegas is located, enacted an ordinance that prohibits short-term property rentals without County authorization and allows the imposition of up to a $10,000 fine per violation, among other penalties. Presumably in an effort to comply with that ordinance, Diamond Sands's apartment units are leased pursuant to long-term rental agreements that prohibit tenants from renting units to third parties without authorization.

Clark County, however, received numerous complaints that certain units at Diamond Sands were being used as short-term rentals, including for loud parties and the County's Code Enforcement Unit investigated and confirmed through in-person inspections and interviews with residents that several units had been rented for short-term stays through the Airbnb platform. Based on those investigations, the County issued notices of abatement to Diamond Sands for violating the short-term ordinance and, after follow-up inspections confirmed continued violations the County issued two administrative citations assessing fines totaling $4,000 on the subject apartment complex. The County identified additional violations but did not issue administrative citations or additional fines in those instances. Diamond Sands paid $2,000 to clear one of the citations but disputed the other and filed suit in the United States District Court for the District of Nevada, asserting facial and as-applied challenges to Clark County's ordinance under the Eighth Amendment's Excessive Fines Clause.

Claims Raised

Diamond Sands argued that the County's enforcement scheme unconstitutionally penalizes property owners for short-term rental activity conducted by tenants and sought declaratory and injunctive relief to enjoin the County from enforcing the ordinance. The District Court denied Diamond Sands motion for preliminary injunction and Diamond Sands appealed.

Analysis

The Ninth Circuit began by noting that the Eighth Amendment doesn't require strict proportionality between the underlying offence and the fine imposed, and that the guiding quiestion is whether the fine is grossly disproportional to the gravity of the offense. Four factors inform the analysis of gross proportionality: (1) nature and extend of the underlying offense; (2) whether the offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense. The Court then went on to explain why it rejected Diamond Sands' claims that the District Court erred in holding that the first, third and fourth factors cut in favor of the fines' proportionality.

As to the first factor, the Court rejected Diamond Sands claim that it was not the party causing the short-term rental violations and thus had no culpability by noting that property owners may bear a non-trivial degree of culpability for the misuse of their property by others. Central to the Court's ruling on this factor was the fact that the County first issued notices of abatement and only issued subsequent citations imposing fines after confirming additional violations. Thus, because Diamond Sands had knowledge of the improper short-term rentals and failed to eliminate the violations, it bore some culpability for the violations even though they were committed by Diamond Sands' tenants and not directly by Diamond Sands.

As to the third factor, the Court explored the other penalties authorized by the ordinance (e.g., misdemeanor citations, suspend or revoke short-term rental licenses, or audit a violator's financial records) and held that selecting a fine instead, and choosing to impose a fine on the low end of the authorized range was not grossly disproportionate.

Finally, as to the fourth factor, the Court rejected Diamond Sands's claim that the County was required to present evidence of the extent of the harm from the violations as Diamond Sands relied on a case addressing evidence required to substantiate an additional late payment fee for failing to timely pay a fine in the first instance. Further, the Court looked to the short-term ordinance's legislative findings to hold the fines had a rational basis given those findings explained that short-term rentals negatively impact the availability of affordable housing to County residents, increase public nuisances in the community from loud parties and interfere with the County from collecting transient lodging taxes. All told, the Court easily found that the harms caused by the offense were real and multi-faceted and that the fines were not grossly disproportionate.

Practice Tip

To ensure fines imposed together with administrative citations are not overturned as violating the Eighth Amendment, consider issuing notices of abatement first before imposing fines for subsequent violations and make sure that the ordinance includes legislative findings detailing the harms that the ordinance and the penalties it authorizes for violations seek to redress.

E. *Californians for Homeownership v. City of La Habra* (2025) 117 Cal.App.5th 1216

HOLDINGS

The Court of Appeal held that:

(1) A City Council was not required to hold additional public hearings to consider minor modifications to the City's housing element where the modifications were not a new and distinct amendment to the housing element;

(2) The City Council validly delegated its authority to the City Manager to make further technical or clerical revisions as needed to obtain a finding of substantial compliance from HCD;

(3) The housing element was presumed valid due to HCD's certification; and

(4) No prejudice resulted from any error. The Court concluded that the Trial Court correctly rejected Petitioner's arguments and affirmed.

Facts

The City of La Habra's City Council adopted the "sixth cycle" revision of its housing element via resolution at a public hearing in September 2022, and directed the City Manager to submit it to HCD for review. The resolution also gave the City Manager the power to make further "technical or clerical revisions to the Housing Element as may be necessary to obtain a finding of substantial compliance from [HCD]." The City submitted the adopted housing element to HCD the next day.

HCD notified the City that further revisions, outlined in a five-page appendix, would be required to substantially comply with state law. Over the next several months, City staff met with HCD personnel twice and made minor and technical changes to the housing element. At HCD's suggestion, the City posted the revised housing element to its website and sent a link to the webpage to interested parties.

In February 2023, the City Manager approved the "technical and clerical revisions to the adopted 2021–2029 Housing Element" under the authority delegated to him by resolution. He then forwarded the housing element to HCD for review and certification. HCD determined the housing element, with the modifications approved by the City Manager in February 2023, substantially complied with state law.

A nonprofit housing advocacy organization ("Petitioner") filed a petition for writ of mandate challenging revision of City of La Habra's housing element based on City's failure to hold formal public hearings and adoption by unelected City Manager rather than City Council. The Trial Court denied petition. Petitioner appealed.

Claims Raised

Petitioner contended that the February 2023 revision of the City of La Habra's housing element was invalid because: (1) the City Council and planning commission did not hold public hearings on that particular version; and (2) the version was adopted not by the City Council, but rather by the City Manager.

Analysis

As to the public hearing issue, because the modifications were not a new and distinct "amendment" to the housing element, there was no need for additional hearings under Government Code sections 65355 or 65353. Post-adoption "amendments" are part of a larger revision and certification process and not a new amendment subject to additional Article 6's public hearing requirements.

As to adoption by the City Manager, the City Council gave the City Manager the express authority via resolution to make further technical or clerical revisions as needed to obtain a finding of substantial compliance from HCD. The Court concluded that this is a valid delegation of authority under La Habra Municipal Code section 2.16.200, which provides that it "shall be the duty of the City Manager to perform such other duties and exercise such other powers as may be delegated to him from time to time by ordinance or resolution or other official action of the City Council."

In any event, the Court stated that even if additional public hearings or comment period were required or if the February 2023 modifications were not correctly adopted, the housing element is presumed valid in light of HCD's April 2023 certification. Finally, Petitioner did not show any prejudice, substantial harm, or that a different outcome would have occurred.

F. *Mustaqeem v. City of San Diego* (2026) 118 Cal.App.5th 22

HOLDINGS

(1) Municipal ordinance allowing City to impound a sidewalk vendor's equipment and/or goods based on violations of the City's sidewalk vending regulations facially conflicted with state statute;

(2) Municipal ordinance prohibiting sidewalk vending in City ballpark district around the time of park events was not based on any objective health, safety, or welfare requirement, and thus ordinance likely violated statutory limits on vending restrictions;

(3) Vendor failed to establish a likelihood of success on the merits on claim that City's general regulations governing sidewalk vending in ballpark district amounted to a de facto ban on sidewalk vending in the City's most viable commercial areas; and

(4) Statute did not prohibit City from conditioning sidewalk vending permits on vendors agreeing to release, indemnify, or hold harmless the City from liability.

Facts

SB 946 (Lara, 2018), codified in Government Code Section 51036 through 51039. decriminalizes sidewalk vending and prohibits local bans on public sidewalks, but allows municipalities to regulate sidewalk vendors through licensing programs and reasonable regulations based on objective health, safety, or welfare concerns.

A licensed sidewalk vendor ("Mustaqeem") regularly sold packaged snacks outside of the Petco Park ballpark in the City of San Diego ("City"). After receiving several citations and having his product and an envelope of cash impounded, Mustaqeem brought an action against the City for writ of mandate, injunctive relief, and declaratory relief, alleging violations of SB 946. Mustaqeem moved for a preliminary injunction barring the City from enforcing certain provisions of its municipal code. The Trial Court denied the request for a preliminary injunction, and Mustaqeem appealed.

Claims Raised

Mustaqeem asserted that the City of San Diego's municipal code conflicts with SB 946 because it: (1) improperly requires indemnification as a condition to obtaining a permit; (2) effectively create a ban on sidewalk vending within the City; (3) imposes a limitation on the hours of operation in the Ballpark District that is more restrictive than any limitations on hours of operation imposes on other businesses or uses on the same street; and (4) improperly punishes vendors with impoundment.

Analysis

The Court of Appeal "conclude[d] that at least two of the City's sidewalk vending regulations—namely regulations that purport to allow the impoundment of Mustaqeem's items and that restrict vending operating hours beyond those of other area businesses—are in direct conflict with the state law on their face."

Impoundment

The Court interpreted SB 946 as unambiguous; enumerated monetary fines or the recission of the vendor's permit are the only allowed penalties, and impoundment of a vendor's equipment and/or goods is not authorized for any reason. Because the City of San Diego's ordinance allows a vendor's product and/or equipment to be impounded for various reasons, it violates state law. While food and equipment suspected of being unsanitary or contaminated may be impounded pursuant to Health and Safety Code section 114393, there is nothing in the record to suggest that the City of San Diego's reason for impounding Mustaqeem's supplies had anything to do with food safety.

Restrictions on Vending Hours

The Court stated that Government Code section 51038 is clear "that the City may restrict the hours of vending in residential areas and may also restrict the hours of vending in non-residential areas so long as those restrictions are not more restrictive that the limitation on hours of operation of other businesses on the same street." However, when considering whether an hours-based restriction on sidewalk vending violates state law, the Court held that a reviewing Court "must consider the prohibition on limiting vendors' hours of operation . . . *in addition to* the general 'objective health, safety, or welfare concerns' requirement." The Court indicated that an hours-based restriction on sidewalk vending could potentially be appropriate in some factual circumstances, if the City were able to "demonstrate a *direct* relationship to *objective* health, safety, or welfare concerns to justify any restriction on sidewalk vending" and if the health, safety, or welfare concern could not be mitigated by more narrowly tailored provisions (e.g., prohibiting sales in the right of way or within 15 feet of an intersection, etc.). The Court remanded this issue to the trial court, and did not indicate what facts would justify an hours-based restriction on sidewalk vending in non-residential areas.

Effective Ban on Sidewalk Vending

The Court noted that, on the limited record before it, "Mustaqeem has not provided adequate argument or analysis to establish the City's sidewalk vending regulations as a whole effectively preclude vending in any viable area within the City." The Court did not elaborate on what may be considered an effective ban on sidewalk vending.

Indemnification as a Condition of Permitting

The Court stated that "[b]ecause sidewalk vendors sell their wares on public streets, it is appropriate for the City to require them to mitigate any potential liability associated with their commercial activities." The Court concluded that nothing in Government Code section 51038 would preclude "the City from requiring sidewalk vendors to release and indemnify it as a condition of permitting."

Practice Tip

If adopting an ordinance to regulate sidewalk vendors, carefully consider the requirements of Government Code section 51036 through 51039.

G. *The Committee for Tiburon LLC v. Town of Tiburon* (2026) 118 Cal.App.5th 259

HOLDING

If a local government updates its general plan and housing element site inventory without an actual project proposed for any site, a program-level EIR for such a general plan/ housing element need not analyze site-specific impacts of developing the site, and may defer detailed site-level review to a future project-level EIR through tiering.

Facts

In 2020, the Town of Tiburon began updating its "General Plan 2040" and housing element to meet state-mandated Regional Housing Needs Assessment (RHNA) goals, identifying 17 potential sites for its Housing Element inventory, including "Site H." The plan proposed rezoning Site H from "residential planned development" (max 7 units) to "very high density residential," allowing 93 to 118 units. The Town prepared a program EIR for the General Plan update, analyzing cumulative impacts of adding 916 housing units townwide, including Site H, but declined site-specific analysis as "premature and overly speculative" absent a concrete project.

Petitioners challenged the program EIR for failing to include site-level analysis for Site H, arguing that known density and environmental constraints made such analysis feasible. The Trial Court agreed, finding the impacts "foreseeable" and "ripe" and the omission of site-level impacts analysis for Site H from the Program EIR improper, and granted the petition. The Town appealed.

Claims Raised

The Petitioners alleged that the Town violated CEQA by: (1) failing to analyze or acknowledge significant environmental impacts on aesthetics, biological resources, hydrology, land use, and transportation specifically resulting from the changing land use designation and rezoning of Site H, and (2) asserting that these impacts were "reasonably foreseeable" and feasible to analyze at the general plan stage because the rezoning effectively mandated dense development.

Analysis

The Court applied a de novo (independent) review to the question of whether CEQA requires site-specific analysis at the program EIR stage for a general plan, when no site-level project has been proposed.

Based on the relevant statutory, regulatory, and decisional authorities, the Court emphasized that program EIRs are designed to handle broad policy alternatives and cumulative impacts early in the planning process. The CEQA Guidelines state that detailed site-specific information may be deferred until a project of a more limited geographic scale is proposed. When an actual housing project has not yet been proposed, the lack of project-specific details precludes an informed and meaningful review of environmental impacts and mitigation measures, and deferral of such a review to a site-specific, project-level EIR analysis is appropriate. The local agencies are not required to engage in "speculative analysis" or "foresee the unforeseeable." The Court distinguished this case from *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, noting that *Vineyard* involved a concrete development project with known phases, whereas a General Plan/Housing Element is a planning document that does not guarantee every site will be built out. In sum, the Court of appeal overturned the Trial Court's decision and rejected the Petitioners claims, handing the City a significant victory.

Practice Tips

- When using a program EIR for general plan updates, analyze impacts assuming maximum permitted density across sites and clearly distinguish program-wide impacts from site-specific impacts, explaining why the latter cannot be meaningfully evaluated without a proposed project.

- In response to comments alleging program level EIRs should analyze project-level impacts as well, clearly state that future development projects will undergo site-specific CEQA review and that the agency will tier from the program EIR.