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LEAGUE OF CALIFORNIA CITIES

Land Use and CEQA Litigation Update

Presented by Stephen E. Velyvis

ABOUT THE PRESENTER

Steve Velyvis is a well-respected land use and environmental law attorney with over 26 years of expertise advising and representing public agency and private clients in administrative proceedings and before state and federal trial and appellate courts.

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- Vermont Law and Graduate School, JD 1998
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After work at an environmental organization in Santa Barbara and two other small/mid-sized SF Bay Area firms, Steve joined Burke as a Partner in 2011 and has grown to be an integral member of the firm's Environmental, Land Use and Natural Resources, Real Estate and Business, Public Law, Litigation, Education and Eminent Domain practice groups.

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CEQA CASES

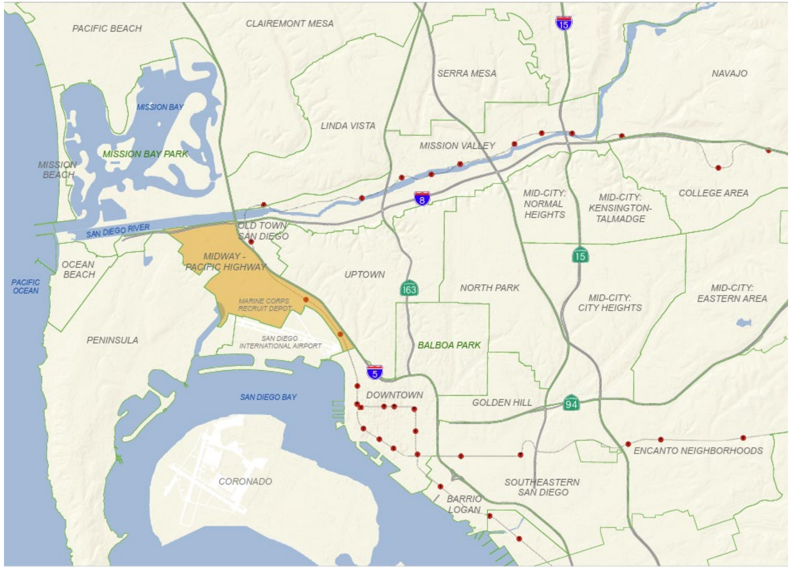
- Program EIR (2)
- Piecemealing
- Fee Awards (4)
- Unusual circumstances exception
- EIR Water Supply
- Res judicata
- GP/Zoning Consistency

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

<u>Take-away</u>: Impacts from removal of building height limit not limited to views and neighborhood character.

<u>Facts</u>:

- Voters enacted Proposition D in 1972 limiting building height to 30 feet in the City's Coastal Zone.
- MPH (Midway) Community Plan, covering area with aging arena, strip malls and light industrial, updated in 2018 based on a Program EIR. Neither the Updated Plan nor the EIR described the project as including or analyzed impacts associated with the removal of the 30-ft height limit.
- City-initiated ballot measure approved by voters in 2020 to remove 30-foot height limit in Midway Plan area but that approval was overturned for violating CEQA (*Save Our Access v. City of San Diego* (2023) 92 Cal.App.5th 819 [City erred by relying on 2018 PEIR for Midway Plan Update because removing height limit was significant change that wasn't considered in the PEIR]).
- While the appeal in *Save Our Access I* was pending the City prepared and certified a Supplemental EIR and adopted a SOC for and the voters approved a 2nd City-sponsored ballot measure to remove the 30-ft height limit in the Midway Plan area. Save Our Access filed new petition/CEQA lawsuit, trial court denied the petition and entered judgment in favor of the City. Save our Access appealed.



Save Our Access v. City of San Diego (2025) 115 Cal.App.5th 388 (cont'd)

<u>Analysis</u>:

- City's SEIR for the 2nd ballot measure only addressed potentially significant impacts from the removal of the 30-ft height limit on visual effects and neighborhood character; Initial Study determined the PEIR adequately analyzed all other potential impacts <u>since removal of the height limit would not result in change to allowable density buildout or development footprint</u>. But the SEIR made clear that without the 30-ft height limit, the Midway Plan Update would allow buildings of between 40 and 100 feet in many areas and no height limit whatsoever in others. **Court took issue with SEIR's conclusion that height didn't matter if density didn't increase**.
- Court concluded Initial Study and SEIR failed to consider potentially significant noise, air quality and GHG, biological resources and geologic hazards of substantially taller buildings in the Midway Plan area.
- Re noise, construction of the taller buildings themselves might impact sensitive receptors and taller buildings might reflect/refract sound from vehicular road traffic and aircraft; re air quality and GHG, taller buildings could influence dispersal of predicted emissions or odors and would likely require additional materials, more construction activities and equipment, longer construction schedules; re biological resources, taller buildings might reflect/refract noise toward sensitive species, create light that disturbs lunar cycles of sensitive wildlife or fragment/disrupt wildlife corridor along San Diego River; re geological conditions, taller buildings will make foundations even trickier given groundwater and liquefaction concerns associated with area's artificial fill and young alluvial deposits.
- Finally, Court held SEIR improperly deferred environmental analysis to future site-specific projects. City had sufficiently reliable data to produce renderings of and prepare reports analyzing how buildings up to 100 ft or more would impact the area. Future residential projects may be exempt from CEQA or have streamlined review.

The Elephant In the Room – the Midway Rising Project!

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The Committee for Tiburon LLC v. Town of Tiburon (2026) 118 Cal.App.5th259

Take-away: Program level EIR for Housing Element inventory sites may defer site-specific impact analysis until actual project is proposed.

Facts:

- Town proposed comprehensive GP Update including 2023-2031 Housing Element.
- To meet RHNA goal of 639 units, housing site inventory identified 17 vacant/underutilized sites for rezoning, including 9-plus acre "Site H"
- Town proposed to rezone Site H from residential planned development (max 7 units) to very high density residential (93-118 units).
- Town prepared PEIR analyzing impacts of adding 916 housing units throughout the town, including Site H, but declined site-specific analyses as premature and overly speculative absent concrete project applications.
- Many public comments raised concerns re increased density on Site H, citing access, traffic, safety, sewage and other concerns, including loss of trees and privacy.

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The Committee for Tiburon LLC v. Town of Tiburon (2026) 118 Cal.App.5th 259 (cont'd)

Facts (cont'd):

- Committee filed Petition alleging violations of CEQA and state planning and zoning laws; trial court granted the petition, finding both that the EIR failed to include site-specific impacts of developing housing on Site H and that those impacts were reasonably foreseeable and feasible to analyze in the EIR. Town appealed.

Analysis:

- Citing *Sierra Club v. Fresno* and determining question whether CEQA requires program EIR for general plan to include site specific impact analysis of housing inventory sites was a question of law, Court applied de novo/independent standard of review.
- Court painstakingly reviewed relevant statutory, regulatory, and decisional authorities pertaining to program EIRs and related tiering concepts and ultimately held that when an actual housing project has not yet been proposed, lack of project-specific details precludes informed and meaningful impact analysis, citing *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* to underscore that local agencies are not required to engage in "speculative analysis" or "foresee the unforeseeable."
- Court distinguished *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova,* relied upon heavily by Petitioner, as *Vineyard Area Citizens* entailed assessment of water supply for a concrete development project with known phases whereas a GP and its HE are planning documents that do not guarantee every or any site on the housing inventory list will be built out.

Tulare Lake Basin Water Storage District v. DWR (2025) 115 Cal.App.5th 388

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

Facts:

- DWR prepared and certified EIR for and approved Delta Tunnel project in Dec 2023, including preconstruction geotech work (soil borings, cone penetration tests, groundwater monitoring, test trenches, fault study) in Sacramento-SJ Delta and Suisin Marsh to inform project design and mitigation measures.
- Municipal, tribal and NGOs objected, filed lawsuit under CEQA and Delta Reform Act, and sought PI to enjoin geotech work until DWR certified the entire Tunnel project was consistent with the Delta Plan as required by Delta Reform Act of 2009.
- Trial court found geotech work to be an integral part of the tunnel project, which is a covered action under the Delta Reform Act, concluding DWR required to certify consistency before starting any part of project, including geotech work. Trial court issued injunction.

Tulare Lake Basin Water Storage District v. DWR (2025) 115 Cal.App.5th 388 (cont'd)

Facts (cont'd):

- DWR approved scaled-down set of preconstruction geotech work and applied to modify/stay the injunction. Trial court denied the application. DWR then prepared and submitted certification of consistency to Delta Stewardship Council for scaled-down geotech work. Several petitioners appealed that certification to the Council; Council dismissed appeals, concluding it lacked jurisdiction to rule on them because Geotech work not covered action under the Delta Reform Act.
- On appeal, Petitioners argued certification requirement incorporated CEQA's "piecemealing" and "whole-of-the-action" concepts making geotech work inseparable from Delta Tunnel project and thus precluding DWR from proceeding with geotech work until certification of consistency for Tunnel project.

Analysis:

Court of Appeal disagreed, reversed PI, and remanded for reconsideration for 3 reasons: (1) purposes of CEQA and Delta Reform Act differ; (2) no indication that the Legislature intended to import CEQA's piecemeal and whole-of-the-action concepts into the Delta Reform Act's certification requirement; and (3) Delta Stewardship Council's dismissal of petitioners' appeals was entitled to great weight. 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.

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

Take-away: No entitlement to fees where successful claims were nullified by Legislation and subsequent CA Supreme Court Decision

Facts:

- Petitioners lost CEQA litigation challenging UC Berkeley's long range development plan and a student housing project at People's Park in trial court but prevailed on appeal in 2023 based on claims that UC failed to analyze potential noise impacts from student parties and failing to consider alternative project location (88 Cal.App.5th 656). Both sides petitioned CA Supreme Court for review.
- Legislation (AB 1307) quickly enacted in response to abrogate Court of Appeal's holdings, most notably, by adding PRC § 21085 to specify that effects of noise generated by project occupants and guests on humans is not a significant effect on the environment for residential projects (see also PRC § 21085.2 re no alternatives req'd).
- Supreme Court granted review and reversed in light of AB 1307; on remand trial court entered judgment for UC Berkeley and denied Petitioners' fee motion.

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Make UC a Good Neighbor v. University of California (2025) 117 Cal.App.5th 282 (cont'd)

Claim: Petitioners argued they were "successful parties" and thus entitled to recover their fees under section1021.5, because they secured important legal precedents when the Court of Appeal ruled in its favor on two issues which remained "good law" for non-residential projects.

Analysis:

Court quickly rejected Petitioners claim. Per CA Rules of Court, Rule 8.1115, once Supreme Court issues a decision, published opinion of Court of Appeal has no binding or precedential effect if it is inconsistent with the Supreme Court's decision or is disapproved by that Court. Here, the Supreme Court's reversal unequivocally disapproved of the Court of Appeal's opinion on both issues meaning they are not citable precedent. Such unambiguous disapproval meant Petitioners were not successful parties and failed section 1021.5's foundational requirement for a fee award.

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CPUP v. City of Pacifica (2025) 117 Cal.App.5th 623

<u>Take-away</u>: New GC § 65589.5(p)(1) can protect cities from fee awards even if city loses lawsuit challenging approval of housing development project in certain circumstances.

<u>Facts</u>:

- Petitioners partially prevailed on CEQA claims challenging adequacy of MND prepared for 8-unit townhouse project.
- While Petitioners fee motion under CCP § 1021.5 was pending AB 1633 passed and became effective, amending existing and adding new provisions to the HAA (stick and carrot approach).
- Specifically, GC § 65589.5(p)(1) requires courts deciding 1021.5 fee motions in cases challenging approvals of housing projects to give *due weight* to the degree that the project approval was reasonable and furthered HAA policies as well as the suitability of the site for housing when weighing whether Petitioner satisfied 1021.5's significant benefit and private necessity prongs AND, for projects that satisfy conditions in GC § 65589.5.1(a)(1)-(3) or GC § 65589.5.2 (a)(1)-(3) and local agency acted in good faith in approving the project, "fees and costs shall rarely, if ever, be awarded"
- Trial court gave new 65589.5(p)(1) factors short shrift and awarded Petitioners $1.2 million jointly and severally against City and Real Parties. Both City and Real Parties appealed.

AB1633

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CPUP v. City of Pacifica (2025) 117 Cal.App.5th 623 (cont'd)

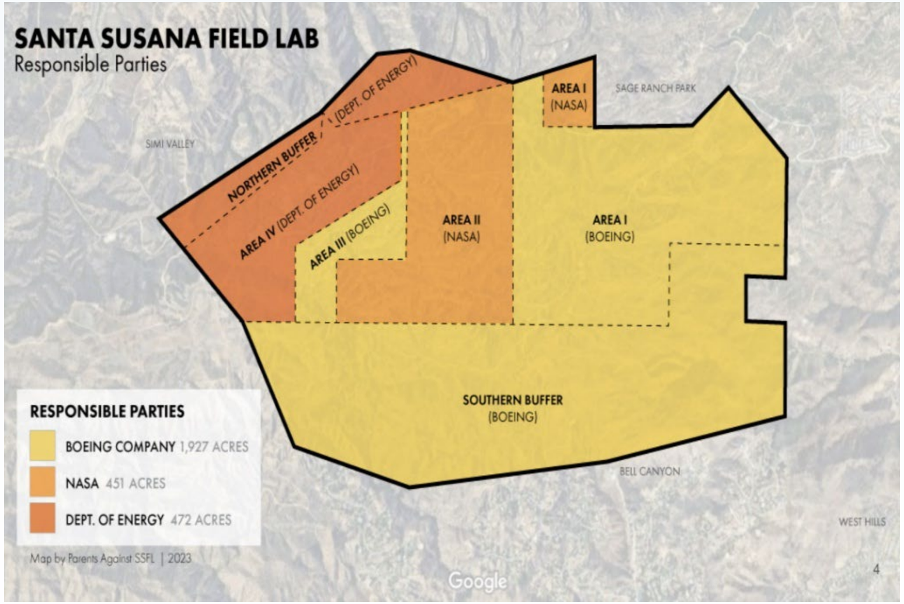
Claims: City and Real Parties asserted trial court erred in its interpretation and application of the new GC § 65589.5(p)(1) factors and sought reversal of the fee award. Specifically, parties challenged court's findings that project site wasn't suitable for housing and approval wasn't reasonable (due to same potentially significant impacts that lead court to reject the City's MND) and that the project didn't further the HAA's policies (because its 8 units were insignificant and Pacifica didn't qualify as urban infill area).

Analysis:

Court first considered but rejected Real Parties' aggressive position that courts can't consider potential environmental factors when conducting the analysis under GC § 65589.5(p)(1). Based on the plain language and legislative history of the statutory language the Court found no such express or implied limitation. HOWEVER, court cautioned against relying on claims of a mere possibility of a significant impact (which are enough to defeat an MND under the challenger friendly Fair Argument standard) to find that a site is not suitable for housing.

Court of Appeal went on to find trial court abused its discretion twice over in finding the project did not further the HAA's policies encouraging the expansion of housing supply in urban infill sites, first by employing a de minimis/drop-in-the-bucket standard to minimize the significance of the project's 8 units when compared to the state's estimated 2-million-unit shortfall and second by using a categorical approach and personal observations to find that the City of Pacifica was not an urban area. Court of appeal reversed trial court, vacated the $1.2 million fee award and remanded for further proceedings.

Physicians for Social Responsibility – LA v. DTSC (2026) 117 Cal.App.5th 1112



Take-away: Fee awards under CCP § 1021.5 are rarely if ever available for parties whose actions were adjudicated to a final *adverse* judgment.

Facts:

- Petitioners CEQA action sought to compel DTSC to undertake additional CEQA review in connection with its cleanup activities of contaminated portion of the SSFL known as Area IV. Main issue was DTSC's alleged obligation to include environmental analysis of Boeing's private activities demolishing Area IV buildings in the EIR DTSC was preparing for its soil and groundwater remediation programs in the area.
- Trial court found Boeing's activities were not subject to discretionary public agency approval and thus were not subject to CEQA; Court of Appeal affirmed and CA Supreme Court denied review.
- However, while petition for review was pending, DTSC issued Final EIR that did analyze impacts of remaining Boeing building demo to provide "conservative assessment of site cleanup impacts while noting no DTSC authorization was needed therefore.

Physicians for Social Responsibility – LA v. DTSC (2026) 117 Cal.App.5th 1112

Facts (cont'd):

- Attempting to seize on this fortuitous circumstance, Petitioner proclaimed victory as the "catalyst" for DTSC's augmented EIR analysis and moved for fees as the purported successful party. Trial court denied the fee motion, pointing out that when DTSC took the action Petitioners claimed their litigation resulted in, judgment had already been entered in DTSC's favor in both the trial and appellate courts.

Analysis:

Court laid out the three elements a moving party is required to show to prevail under the catalyst theory: (1) lawsuit was catalyst motivating defendant to substantially change its behavior to provide the primary relief sought; (2) lawsuit had merit and achieved catalytic effect by threat of victory, not by dint of nuisance or threat of expense; and (3) reasonable pre-;litigation settlement effort.

Court held trial court did not abuse its discretion in finding Petitioner could not satisfy the catalyst theory's second element – that their suit had merit and achieved its catalytic effect by threat of victory.

The Court reasoned that while the theory may provide a pathway to fees in the absence of a judicial resolution, an award of fees is unwarranted where there has been a resolution *against* the moving party. In sum, Petitioners on the losing end of a final judgment cannot be said to have successfully prosecuted a public interest case and thus fail to meet the underlying purpose of CCP § 1021.5, i.e., to award fees to encourage successful and meritorious public interest litigation.

Raptors Are The Solution v. Croplife America (2026 WL 1162838)

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Take-away: Intervenors who actively litigate to defend respondent agency's challenged decision in order to protect a direct and immediate interest are subject to joint and several fee liability under CCP § 1021.5

Facts:

- In successful CEQA action challenging DPR's decisions to renew and not reevaluate certain anticoagulant rodenticides, a group of trade associations successfully moved to intervene as of right under CCP § 389(a) on basis their members had immediate, direct and financial interest in matter.
- Petitioner sought and was awarded $857,000 in fees under CCP § 1021.5 jointly and severally against DPR, the Real Parties in interest *and the Intervenor trade associations*. Only Intervenors appealed.

Analysis

Court affirmed, finding Intervenors claims that they merely intervened to litigate narrow policy issues disingenuous in light of their contrary representations in motion to intervene. Court held such Intervenors are "opposing parties" against whom fees can be awarded; confirmed that fault on the part of an opposing party is unnecessary to make such an award; rejected Intervenors' attempts to liken themselves to amici curiae litigating ideological rather than financial interests; and confirmed trial court's determination not to apportion the fee award among the responsible parties was not an abuse of discretion.

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

<u>Take-away</u>: Focus on how project changes existing/baseline conditions, not whether existing conditions exceed an agency standard or threshold of significance.

<u>Facts</u>:

- City retained experts to take measurements in response to former mayor's noise complaints about Sky Track playground equipment in Arroyo Park.
- 1st expert's measurements showed equipment's noise level at nearest residence exceeded City's noise threshold at night, and when City's efforts to lessen nighttime noise failed (install signs and lock equipment at night) City hired 2nd expert to explore relocating the equipment but that expert's study showed equipment's noise exceeded both day and night thresholds.
- City approved relocation of equipment to area of park that study showed would meet both day and night thresholds at nearest residence and deemed the project to be exempt from CEQA under the categorical exemptions in Class 3, 4 and 11

Krovoza v. City of Davis (2025) 117 Cal.App.5th 623 (cont'd)

<u>Facts (cont'd)</u>:

- Former mayor sued, alleging evidence the playground equipment created noise exceeding City's noise standards triggered the unusual circumstances exception negating the exemptions. Trial court denied the petition and former mayor appealed.

<u>Analysis</u>:

Court summarized tests set forth by the CA Supreme Court in *Berkeley Hillside* for substantiating claim that the unusual circumstances applies (i.e., show project *may* have a significant impact due to unusual circumstances or show project *will* have a significant impact) and rejected Petitioners' arguments under both tests.

Court emphasized that a significant effect on the environment means a substantial *adverse change* in the environment and held the fact that there was evidence the playground equipment exceeded threshold in City's noise ordinance in its existing condition, standing alone, cannot constitute substantial evidence that the project will have a significant noise impact absent evidence the project will cause an adverse change. Court found that if anything, the project's relocation of the playground equipment would reduce the equipment's noise at the nearest residences. Without evidence of an adverse change, Petitioners' claims failed.

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

Take-away: Water Supply Assessment (WSA) need only provide decisionmakers with sufficient info to evaluate pros and cons of supplying a project's water needs but need not demonstrate guaranteed water through signed, enforceable contracts.

Facts:

- Developer proposed 2.4 million sf industrial warehouse complex on undeveloped land in City of American Canyon.
- American Canyon does not have access to groundwater and relies entirely on outside sources of water including from the State Water Project and from adjacent City of Vallejo pursuant to contract (the "1996 Agreement"). 1996 Agreement subject of separate breach of contract lawsuit between the cities.
- American Canyon prepared EIR for the project that included a WSA that incorporated the City's 2020 Urban Water Management Plan which relied in part on water available pursuant to the 1996 Agreement.
- Vallejo objected to adequacy of the EIR and WSA. Vallejo and 2 enviro groups filed CEQA lawsuits (groups settled)

City of Vallejo v. City of American Canyon (2026) 117 Cal.App.5th 1112 (cont'd)

Claims: Vallejo argued EIR violated the water supply disclosure requirements of CEQA and also the WSA requirements in Water Code §§ 10910 and 10911 because it failed to disclose the actual volumes of water American Canyon purchased under the 1996 Agreement (i.e., relied on paper water), failed to explain that some water available to American Canyon under 1996 Agreement (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 breach of contract litigation.

Analysis:

Court first analyzed and rejected American Canyon's assertion that Vallejo's claims were barred for failure to exhaust administrative remedies, concluding American canyon waived the defense by failing to raise it in the trial court. Court then summarized the four key principles from *Vineyard Area Citizens for Responsible Growth v. City of Rancho* Cordova concerning the sufficiency of an EIR's water supply analyses and applied those principles to conclude EIR may incorporate by reference info in UWMP and to reject all of Vallejo's claims:

- Contracted amounts under the 1996 Agreement were not paper water, American Canyon received all of its contracted water under the 1996 Agreement for all but 1 year since 1999 and purchased less than its full allotment in other years due to cost, not supply constraints;
- Applicable place of use restrictions only affected *where* water could be used, not overall volume of water available;
- EIR did mention past curtailment and fact that City's water from SWP and from Vallejo could be curtailed
- EIR need only discuss alternative water supplies if lead agency can't determine whether a particular source would be available which was not the case here

Bair v. California Dept. of Transportation (2026) 119 Cal.App.5th 579

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

Facts:

- Caltrans prepared EIR as lead agency for project to construct improvements to 1 mile stretch of US Hwy 101 through Richardson Grove State Park.
- Petitioners filed two prior CEQA lawsuits, first resulted in published Court of Appeal decision and writ (*Lotus v. Caltrans* (2014 223 Cal.App.4th 645) invalidating EIR and second resulted in trial court judgment and writ invalidating EIR Addendum Caltrans prepared to correct deficiency identified in *Lotus* decision.
- Caltrans revised and recirculated Addendum for public comments and recertified the EIR and Addendum. Caltrans filed return on the writs to demonstrate compliance and both writs were discharged. Petitioners did not appeal from those orders.
- Petitioners instead filed a *third* petition challenging Caltrans's compliance with CEQA in connection with the project. Trial court denied the petition and Petitioners appealed.

Bair v. California Dept. of Transportation (2026) 119 Cal.App.5th 579

Claims: Raising issues asserted in the prior lawsuits, Petitioners alleged the Addendum failed to adequately disclose and mitigate the project's impacts on old-growth redwood trees because the it failed to identify or use any threshold of significance to measure potential impacts on the trees and lacked substantial evidence to support ultimate less than significant impact finding

Analysis: The Court painstakingly discussed the factual and procedural history of the "15-year litigation odyssey" and concluded that the discharge of the prior writs conclusively established the EIR's and its Addendum's substantive adequacy and because those orders were not appealed the discharge of those writs was final and thus that the doctrine of res judicata barred Petitioners from re-litigating the issues. The Court determined that the petition in the third case alleges (both expressly and indirectly) that it seeks to compel Caltrans to fix the very same CEQA deficiencies that the original writs compelled it to fix and that res judicata precluded such a second bite at the apple.

Citizens Against Marketplace Apartment Development v. City of San Ramon (2026 WL 1142089)

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Take-away: Courts will remain very deferential to City interpretations and application of local policies/standards. Unless "no reasonable person" can reach the City's conclusions, consistency findings should be upheld.

Facts:

- Applicant proposed to redevelop portions of the "Marketplace Center" in San Ramon to demolish vacant retail uses, add 44 new homes, and renovate an existing coffee shop on less than 4 acres of a larger commercial center with existing library, restaurants, and Trader Joes grocery store.
- City approved the project, finding it to be consistent with applicable "mixed use" land use designations and development standards and concluding the project was exempt from CEQA under the Class 32 infill exemption.

Citizens Against Marketplace Apartment Development v. City of San Ramon (2026 WL 1142089) (cont'd)

Claims raised: CAMPAD asserted project conflicted with GP and Zoning standards, including GP policy requiring "master plan" for future development and definition of "mixed use, and that EIR required.

Analysis:

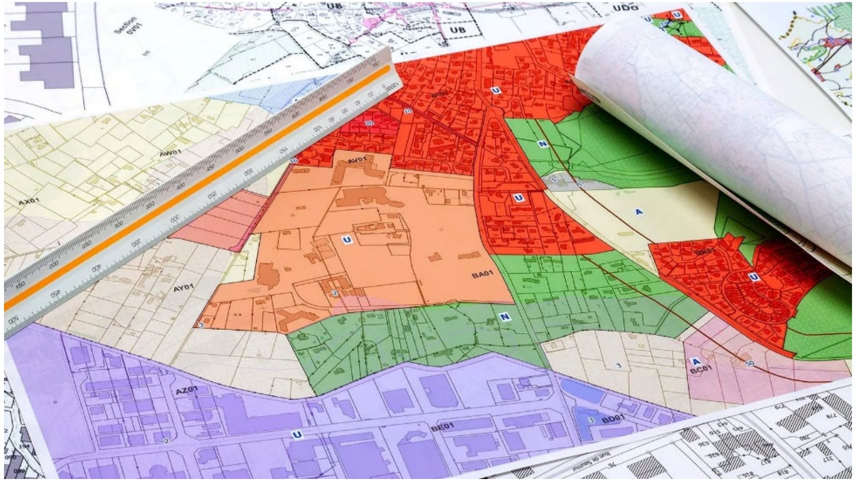
- The Court held that the general plan policies encouraged, rather than required, preparation of a master plan. Because the policy was not mandatory, the City properly used its judgement to approve the project based on the finding that the project achieved the general plan's substantive objectives, even if a formal master plan was not provided.
- The Court further held that the City reasonably interpreted its general plan and zoning definitions of horizontal mixed use to include the project as proposed.
- In an unpublished portion of the decision, the Court upheld the City's CEQA findings.

Practice Tip: When drafting general plan, cities must use "concrete, unambiguous" language for policies to be interpreted as mandatory. Undefined, aspirational, or other amorphous terms will be treated as policy considerations for local jurisdictions to weigh and balance in the context of individual projects. But remember, this cuts both ways, and standards that are not mandatory and objective likely will not be sufficient to deny a housing development project.

Sunflower Alliance v. CA Dep't of Conservation

- 1st DCA reversed trial court, upheld agency's use of Class 1 Cat Ex for project to convert oil well to water injection well *Sunflower Alliance v. CA Dep't of Conservation* (2024) 104 Cal.App.5th 1135
- CA Supreme Court granted review on 2 questions: (1) may an agency claim a cat ex under CEQA while also adopting conditions of approval relating to potential environmental effects; and (2) does the term "negligible" in the Class 1 cat ex pertain to a negligible change in use or to a change that presents a negligible risk of environmental harm.
- CA Supreme Court Case No. S287414 - Fully briefed, oral argument held April 6, 2026. Written opinion to be issued soon (by July 5th)

LAND USE CASES



- Housing Element Overlay Zone
- Surplus Land Act
- Density Bonus – Affordable Housing Agreement
- Enforcement of Short Term Rental Ordinance
- Housing Element modifications to secure HCD
- Sidewalk Vending Ordinance
- Coastal Commission Appeal Jurisdiction

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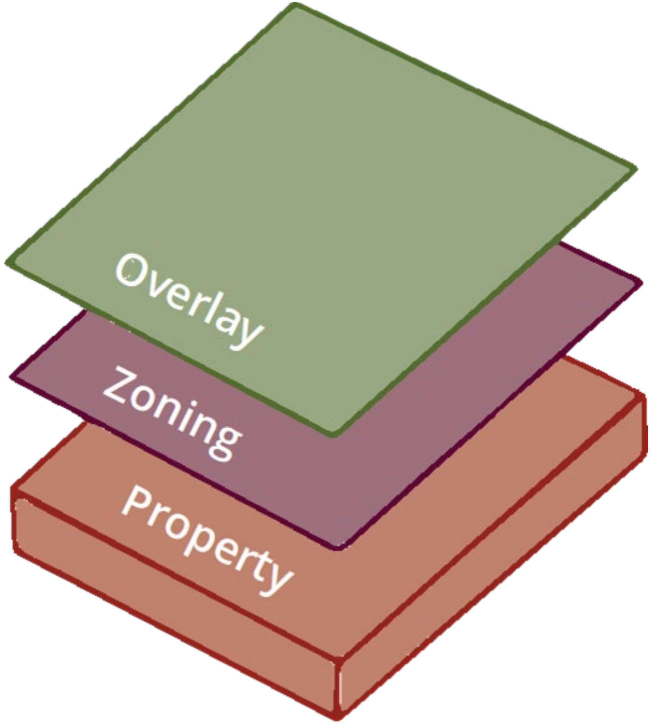
New Commune DTLA v. City of Redondo Beach (2025) 115 Cal.App.5th



<u>Take-away</u>: Cities relying on overlays should re-evaluate whether their programs guarantee minimum residential yield on the specific sites used to meet lower-income need or, if relying on mixed-use sites, satisfy the opinion’s standards for 100% residential permissibility and a substantial residential share of floor area.

<u>Facts</u>:

- State law requires that the housing element of a city's general plan include the required zoning and building sites that can realistically accommodate the city's RHNA across income levels.
- To satisfy its RHNA, City adopted HE that applied a residential overlay zone across several commercial and industrial districts, allowing up to 55 dwelling units per acre while retaining the underlying commercial and industrial base zones. This approach meant developers could still build entirely nonresidential projects on sites counted toward the City’s lower-income housing need.

Analysis: Housing developer sued to challenge the HE, Court held that the overlay failed to meet Housing Element law 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

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Airport Business Center v. City of Santa Rosa (2025) 116 Cal.App.5th 501

Take-away: Under the Surplus Lands Act, determination that City owned asset constitutes non-exempt surplus land does not require agency to find that land is of no use to public

Facts:

- Pursuant to City Housing Action Plan program to identify public land that can be used for housing, City conducted studies re use and condition of downtown parking facilities and, based on evidence that only 30% of parking spaces were utilized, City adopted resolution declaring Garage 5 to be nonexempt surplus land, subject to retention of some public parking onsite.
- Local business owner filed lawsuit, claiming City violated SLA by designating Garage 5 surplus land despite ongoing need for public parking and that essential predicate for declaring land to be surplus is that it is not necessary for agency use and if the land is serving a public use it is by definition necessary and cannot constitute surplus land.

Analysis: Court concluded that GC 54221(b)(1) does not exclude from the definition of surplus land property that is being used for a public purpose, and rejected Petitioner's position as not only changing the scope of the statutory definition of surplus land but erecting a substantial roadblock for agencies considering whether to make underutilized assets available for the development of affordable housing.

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

Take-away: Affordable housing agreement deed restricting a unit for low-income households survives foreclosure and binds successors in interest.

Facts:

- City granted 35% density bonus allowing development of 3 residential units, 1 more than otherwise would be allowed. In exchange, property owner agreed to rent 1 unit exclusively to low-income households for at least 30 years and City memorialized that commitment in a formal affordable housing agreement and recorded it against the property.
- Lender foreclosed, buyers alleged they did not know about the agreement and filed suit for quiet title asserting that the foreclosure extinguished all junior interests including the affordable housing agreement. Trial court sustained City's demurrer without leave.

Analysis: Court affirmed, concluding that density bonus-related affordable housing agreements are akin to permit conditions which survive foreclosure and thus both are enforceable against successor owners

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Diamond Sands v. Clark County (2026) 164 F.4th 759

Take-away: To ensure citations and fines comply with 8th Amendment, consider issuing notices of abatement first and ensure underlying ordinance has findings detailing the harms the law seeks to redress.

Facts:

- County ordinance prohibits short-term rentals without permit and authorizes up to $10,000 fine per violation.
- Noise complaints that apartments rented through Airbnb were hosting loud parties. County investigated, confirmed and issued notices of abatement to apartment complex owner. Follow up visits confirmed continuing violations; County issued two citations assessing fines totaling $4,000. Apartment owner paid $2,000 for one citation but filed suit to dispute the other, asserting facial and as-applied challenges under 8th Amendment's Excessive Fines Clause. District Court denied apartment owner's PI motion and owner appealed.

Analysis: Court affirmed, noting 8th Amendment standard is whether fine is grossly disproportionate to the gravity of the offence. Court concluded that notices of abatement put owner on notice, creating owner's culpability for not rectifying tenant's misuse of the property. Court also looked to Ordinance's other, more serious penalties and legislative findings detailing impact of short-term rentals' public nuisances and impact on availability of affordable housing to hold selection of fine on low end of scale was not grossly disproportionate.

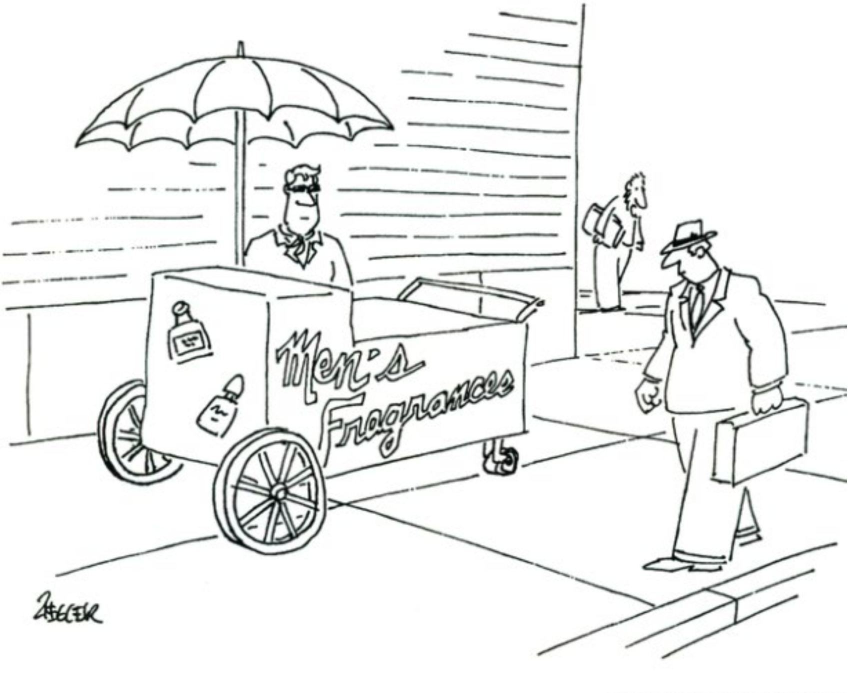
Californians for Homeownership v. City of La Habra (2025) 117 Cal.App.5th 1216

Facts:

- City adopted "sixth cycle" HE and directed the City Manager to submit it to HCD for review. The resolution also gave the CM 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."
- HCD identified revisions it said were required for the HE to substantially comply with the law, over next several months city staff and HCD met and developed minor and technical changes to the HE, which the CM approved and HCD then certified
- Nonprofit housing group sued, challenging City's failure to hold public hearings and CM's authority to adopt the revised HE.

Analysis: Court upheld City's actions, finding no additional public hearings were required because modifications were not a new and distinct "amendment" to the HE; that City Council grant of authority to CM to make further technical/clerical revisions was valid delegation under Muni Code provisions setting forth CM duties; and that regardless HE presumed valid in light of HCD's certification and that Petitioner did not show any prejudice or that a different outcome would have occurred if public hearings held.

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



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Facts:

- SB 946 (GC 51036-51039) decriminalized sidewalk vending and prohibits local bans but allows regulation through licensing and objective health and safety regulations.
- Licensed Sidewalk snack vendor who operated outside Petco Park cited, fined and had his snacks and cash impounded for violating Ordinance's sidewalk vending hours of operation and sued for injunctive and declaratory relief. Trial court denied PI and vendor appealed.

Analysis: The Court "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." State law permits fines or recission of permit, not impoundment of equipment (impoundment allowed per Health and Safety Code if food or equipment is unsanitary). Court rejected other two claims, finding no evidence of outright ban on sidewalk vending and that nothing in GC 51038 precludes imposing indemnification condition on vending permit and that such a condition is appropriate for vendors selling wares and foods on public streets.

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Shear Development Co. v. California Coastal Commission (2026 WL 1102317)

Take-away: Courts use independent judgment to interpret LCPs and when local agency and CCC offer competing interpretations and neither is more persuasive, no judicial deference is owed to either.

Facts:

- Developer acquired 8 lots in Los Osos and obtained CDP from County to build single-family homes in two phases. CCC appealed CDP and approved 4 homes in 1st phase but denied 2nd phase due to wastewater concerns.
- County approved CDP for 3 additional homes after wastewater project completed, CCC again appealed and denied the CDP, claiming project was within Sensitive Coastal Resource Area (SCRA) and development was not principle permitted use in the site's zoning district.

Analysis: Court held independent judgment standard applied to LCP interpretation and no deference due to County's or CCC's interpretations. Court also held CCC had no appellate jurisdiction over project as LCP was ambiguous regarding re scope of SCRA and concluded SCRA not intended to include urban area like the project site and that CCC only had jurisdiction if project's proposed use was not among *any* of the principal permitted uses.