ARTICLE:

IS IT ABUNDANTLY CLEAR? AN UPDATE ON CALIFORNIA'S HOUSING REFORMS

By Matthew S. Stone and Miguel Mauricio[*]

California remains in the throes of a housing crisis that shows few signs of abating in the near future despite the concerted efforts of policymakers. Currently, prices for mid-tier homes in California (home values in the 35th to 65th percentile range), for example, hover around $775,000, which is more than twice the price of typical mid-tier homes in the rest of the country,[1] while prices for bottom-tier homes in California (values in the 5th to 35th percentile range) are 30 percent more expensive than mid-tier homes outside of the state.[2]

The high costs reflect an insufficient supply of housing to match the demand for shelter, particularly in the coastal areas of the State.[3] This housing crisis is well documented; various reports have the State's housing deficit in the millions. The Legislative Analyst's Office, for example, determined in 2015 that there was a shortage of 2.7 million housing units needed to keep housing cost inflation consistent with the rest of the country.[4] The State's sixth-cycle (2021-2029) Regional Housing Needs Assessment (RHNA) figure, which is the authoritative metric used for planning purposes in the State, places this figure at 2.5 million units.[5]

This crisis did not develop overnight—it has been a half century in the making.[6] Environmental concerns, congestion, and political backlash in the 1960s and 1970s resulted in a shift away from growth-oriented policies.[7] And the consequences have become more apparent in recent years. In terms of demographics, California lost population for the first time since statehood in 2021.[8] Despite this migration out of the State and limited migration into the State, vacancy rates have not risen and cost pressures have not eased.[9]

Policy prescriptions have generally focused on increasing the supply of housing by streamlining processes, removing local regulatory barriers, strengthening state housing mandates, and bolstering enforcement mechanisms. Pro-housing advocacy groups, such as California YIMBY ("Yes In My Backyard"), have helped spearhead legislative efforts to make it easier to build housing in the

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state. After years of advocacy and legislative wins, the YIMBY movement in California has seen its cause go mainstream with the support for the "Abundance Agenda," which makes the case that problems like insufficient housing result from superfluous government regulations and bureaucracy that make construction more costly and difficult. The solution, they argue, is to remove hurdles that can slow down or stand in the way of new housing.

With those tailwinds, 2025 was widely regarded as an historic year for housing reform with the passage of AB 130 and SB 131, which included new California Environmental Quality Act (CEQA) exemptions along with other streamlining amendments designed to accelerate housing construction, and SB 79, which overrides local control over sites within a half mile of transit stations across the state to help streamline housing construction near transit stations. The State's efforts to facilitate housing were further bolstered by court decisions over the past year, which limit jurisdictions' ability to resist the new housing laws. The practical effect of these new laws remains to be seen, but as evidenced by the implementation of SB 79, which went into effect on July 1, 2026, the same policy and legal considerations that contributed to the housing crisis remain the subject of much debate. And while incremental progress has been made to address the supply of housing in the coastal areas, there are unique challenges given the regulatory framework that minimize the effectiveness of these state law tools and therefore necessitate different approaches.

This article builds on previous Newsalerts that have touched on the Abundance Agenda and examined the significant housing reforms of 2025 (AB 130 and SB 131)[10] by providing an overview of significant legal events over the past year. First, it begins with a discussion of relevant background principles concerning state housing laws and local authority. Next, the article summarizes the elements of SB 79 and how a number of jurisdictions have responded to its mandates. Finally, the article examines the unique legal issues involved with increasing housing in the California Coastal Zone, where additional considerations concerning potential impacts to coastal resources make for a complex regulatory environment.

I. Basic Principles: Local Control and State Preemption

California's housing reforms have continued the longstanding debate (and battle) over the parameters of local jurisdictions' land use authority. To understand this tension, it is important to bear in mind certain key principles.

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Land use regulations are derived from the police power reserved to the states by the Tenth Amendment of the U.S. Constitution. The California Constitution confers on cities and counties the power to "make and enforce within [their] limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."[11] As a general rule, "a municipality has broad authority, under its general police power, to regulate the development and use of real property within its jurisdiction to promote the public welfare."[12] As discussed in greater detail below, that authority is not exclusive, as local governments may exercise their police powers only to the extent they are not preempted by state or federal law.[13]

The California State Constitution also allows cities to adopt a charter that has the force and effect of state law.[14] This "home rule" provision grants charter cities supremacy over "municipal affairs."[15] The Constitution, however, does not define the term "municipal affair." The question of whether a matter is a municipal affair or a statewide concern is determined on a case-by-case basis.[16]

State housing laws typically override or preempt local ordinances, citing the housing crisis as a matter of statewide concern. Some local governments have challenged those laws by invoking the home rule protections, leading to a line of court decisions that have rejected those attempts.[17] Courts have consistently confirmed that the state can preempt local control because those actions involve issues of statewide concern like regional planning, environmental protection, and housing affordability.[18] Any individual jurisdiction's decisions impact neighboring jurisdictions, the regional housing market, and the statewide economy, and increasingly have national and international political and economic impacts.[19] Accordingly, courts have never held that land use is an exclusively local function.[20]

In 2025, that trend continued in *City of Rancho Palos Verdes v. State of California*,[21] where four general law cities—Rancho Palos Verdes, Lakewood, Paramount, and Simi Valley—filed suit challenging SB 9 as unconstitutional.[22] SB 9, enacted in 2021, requires California cities to ministerially approve both the development of two-unit housing projects and the subdivision of urban lots in single-family residential zones.[23] On a single-family lot, the combination of duplex development and a lot split can potentially result in up to four units on a parcel previously limited to one.[24] The primary argument was that the law usurped their authority over local land use and that housing regulation is a municipal affair and therefore not preempted by state law.[25] The cities also argued

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the purpose of SB 9 is not reasonably related to its goal of ensuring access to affordable housing.[26]

The court of appeal upheld SB 9, confirming that the municipal affairs doctrine applies exclusively to charter cities.[27] The court reiterated that general law cities have no such protection.[28] In addition, the court found that the cities failed to identify any specific constitutional provision that SB 9 violated.[29] The decision reinforces the State's power to override local zoning laws in pursuit of broader housing policy goals, and it clarifies the limited legal protections available to general law cities compared to charter cities. That said, even charter cities are likely to be subject to narrowly tailored laws given that affordable housing is a "matter of statewide concern."

A separate case involved charter cities, who are able to invoke the municipal affairs doctrine under the "home rule" provision. In *Kennedy Commission v. Superior Court of San Diego County*,[30] the City of Huntington Beach, a charter city, did not update its Housing Element by the state-mandated deadline and filed a federal lawsuit challenging the constitutionality of the Housing Element Law.[31] The councilmembers opposed the updated Housing Element for a number of reasons, including their belief that the City's share of the regional housing need was improperly inflated and affordable housing units would be detrimental to the environment and the City's suburban character.[32] The court ruled in favor of the State, which then sought to enforce the requirement that the City bring its Housing Element into compliance within 120 days, after the court found that the Housing Element did not substantially comply with state law.[33] Huntington Beach argued that it was exempt from the deadline as a charter city.[34]

The Fourth District rejected that argument, holding that "charter cities must adopt general plans with all of the mandatory elements required by Article 5, subject to the judicial enforcement procedures and remedies of Article 14."[35] After concluding that the law applies to charter cities, the court addressed the question of whether the law impinges on home rule authority utilizing a four-part analytical framework:

> First, the court determines whether the local law at issue regulates an activity that can be characterized as a municipal affair. [Citations.] Second, the court determines whether there is an actual conflict between state law and the local law. [Citations.] If no conflict exists, the analysis is complete and there is no need to go to the next step. [Citation.] Third, the court decides whether the state law ad-

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> dresses a matter of "statewide concern." [Citations.] Fourth and finally, the court determines whether the state law is "reasonably related to . . . resolution" of the identified statewide concern and is "narrowly tailored" to avoid unnecessary interference in local governance.[36]

The court assumed for purposes of the appeal that the first three elements were met,[37] but found that the fourth element was dispositive. The law "does not infringe on the City's home rule authority because the state law is reasonably related to the resolution of a statewide concern and narrowly tailored to avoid unnecessary interference with local governance."[38] Among other things, the 120-day deadline was a reasonable amount of time to bring the Housing Element into compliance and does not dictate how the City must do so.[39]

These decisions continue a line of cases that generally support the State's many legislative efforts to promote housing as a matter of statewide concern, such as SB 79.

II. SB 79

Building on the comprehensive reforms instituted by AB 130 and SB 131, Governor Newsom signed SB 79 (Wiener),[40] the Abundant and Affordable Homes Near Transit Act, on October 10, 2025. Following on the coattails of AB 130 and SB 131, legislation is intended to increase housing production by requiring cities and counties to permit higher-density residential development within specified distances of qualifying transit stops, while limiting the ability of local governments to impose conflicting zoning, density, and height restrictions. In doing so, SB 79 builds upon the Legislature's broader effort to address California's housing shortage by reducing local regulatory barriers, encouraging transit-oriented development, and aligning land use policy with the State's housing and climate objectives. Senator Wiener, the bill's author, made his views on the State's increasingly assertive role in curbing local land use authority clear when he said:

> In California we talk a lot about where we don't want to build homes, but rarely about where we do—until now. SB 79 unwinds decades of overly restrictive land use policies that have driven housing costs to astronomical levels, forcing millions of people to move far away from jobs and transit, to face massive commutes, or to leave California entirely. By allowing more homes to be built near public transportation, SB 79 also strengthens our transit systems, increases transit ridership, and reduces traffic congestion and carbon emissions. It's been a long road to tackle these decades-old problems, but thanks to Governor Newsom's leadership,

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today marks a new day for affordable housing and public transportation in California.[41]

Overriding local land use controls near transit to allow for increased density was supported by a number of groups.[42] An analysis estimated the law would eventually allow for approximately 1.5 million new housing units in the City of Los Angeles, with upzoning allowing for more than 448,000 units by the effective date.[43] But a considerable number of local governments, neighborhood groups, and local control advocates opposed the bill.[44]

The bill became effective as of July 1, 2026, so it will soon become clearer how effective it will be at achieving the proponents' ambitious goals. As outlined below, the efforts by many jurisdictions to delay implementation suggests the debate over how far the state can go to override local control is far from over.

A. The Basics

In general, under SB 79, housing development projects with at least five units on any site zoned for residential, mixed, or commercial within a half- or quarter-mile of a transit stop are protected from local development standards that would impose lower height, density, or floor area than those established by the statute.[45] Projects must comply with all of the following requirements to qualify:

- Density—greater of (A) a minimum density of at least 30 dwelling units per acre, and (B) a minimum density required under local zoning, if applicable.
- Average Unit Size—shall not exceed 1,750 net habitable square feet.
- Affordability—For projects with 10 units or more, dedicate either seven percent of the units to extremely low income households, or 10 percent to very low income households, or 13 percent to low income households, unless the local inclusionary requirement requires a higher percentage of affordable units or a deeper level of affordability, which would then control.[46]
- Prevailing Wage—Projects that exceed 85 feet in height must meet SB 35/SB 423's prevailing wage requirements.[47]

As explained below, the development standards differ depending on the distance from and type of qualifying transit stop.

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1. Tier 1

For projects within one-quarter mile of a Tier 1[48] transit-oriented development stop, a local government may not impose a maximum height limit of less than 75 feet, impose a maximum density of less than 120 dwelling units per acre, nor enforce any other local development standard that would physically preclude a project from achieving a residential floor area ratio of up to 3.5.[49] In addition, a development with a minimum density of 90 dwelling units per acre that is eligible for a density bonus under the State Density Bonus Law is eligible for additional concessions.[50]

For projects further than one-quarter mile but within one-half mile of a Tier 1 transit-oriented development stop, and within a city with a population of at least 35,000, a local government may not impose a height limit less than 65 feet, any maximum density standard less than 100 dwelling units per acre, nor enforce any other local development standard that would physically preclude achieving a residential floor area ratio of up to 3.[51] In addition, a development with a minimum density of 75 dwelling units per acre that is eligible for a density bonus under the State Density Bonus Law is eligible for additional concessions.[52]

2. Tier 2

For projects within one-quarter mile of a Tier 2[53] transit-oriented development stop, a local government may not impose any height limit less than 65 feet, any maximum density standard of less than 100 dwelling units per acre, nor enforce any other local development standard that would physically preclude achieving a residential floor area ratio of up to 3.[54] A development that achieves a minimum density of 75 dwelling units per acre that is eligible for a density bonus under the State Density Bonus Law is eligible for additional concessions.[55]

For projects further than one-quarter mile but within one-half mile of a Tier 2 transit-oriented development stop, and within a city with a population of at least 35,000, a local government may not impose a height limit less than 55 feet, any maximum density standard less than 80 dwelling units per acre, nor enforce any other local development standard that would physically preclude achieving a residential floor area ratio of up to 2.5.[56] In addition, a development with a minimum density of 60 dwelling units per acre that is eligible for a density bonus under the State Density Bonus Law is eligible for additional concessions.[57]

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3. Adjacency Intensifier

In addition to the baseline development standards applicable to qualifying housing development projects near transit, SB 79 includes an "adjacency intensifier" that provides additional development incentives for projects located immediately adjacent to a qualifying transit-oriented development stop.[58] By increasing allowable height, density, and floor area ratio beyond SB 79's baseline standards, this provision directs further development incentives to sites close to qualifying transit facilities.

Under the adjacency intensifier, a qualifying project immediately adjacent to a transit-oriented development stop is entitled to an increase of 20 feet above what local zoning would otherwise permit, a density increase of up to 40 units per acre, and an increase of 1.0 to the applicable residential floor area ratio.[59] Importantly, these enhanced development standards are applied before the State Density Bonus Law, allowing qualifying projects to receive any additional density bonuses, incentives, concessions, waivers, or parking reductions available under that law.[60]

In addition, SB 79 strengthens the legal protections afforded to qualifying projects by integrating them into the Housing Accountability Act (HAA). Qualifying projects are deemed consistent with applicable plans, programs, policies, ordinances, standards, requirements, and similar local land use regulations for purposes of the HAA and therefore receive the Act's protections against unsupported project denials.[61] The statute further establishes a rebuttable presumption that a local agency has violated the HAA if it disapproves a qualifying housing development project located in a high-resource area, thereby placing a heightened burden on local governments seeking to deny transit-oriented housing projects that satisfy SB 79's requirements.[62]

B. Implementation Alternatives

Local governments have the option to utilize an alternative to SB 79's default standards. One alternative allows a local government to enact an ordinance with objective development standards, conditions, and policies, that are consistent with SB 79, subject to review by the California Department of Housing and Community Development (HCD).[63] The ordinance also allows local governments to exempt certain areas from SB 79 if (1) it finds that there is no walking path of less than one mile from that location to the transit-oriented development stop, or (2) it designates the area as an industrial employment hub.[64]

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Another alternative is to enact a "transit-oriented development alternative plan."[65] This plan must be adopted through the Housing Element, a program implementing the Housing Element, the adoption of a specific plan or zoning overlay, or the enactment of an ordinance.[66] The plan must maintain the same total net zoned capacity and cannot reduce the maximum allowed density by more than 50 percent as allowed under the default rules, except under certain circumstances.[67] In addition, the maximum capacity cannot exceed 200 percent of the maximum density under the default rules in order to prevent jurisdictions from clustering density in a few locations while dramatically downzoning the others.[68]

Perhaps unsurprisingly, a number of cities pursued the alternatives in order to pause or phase in the new rules, potentially blunting the law's effectiveness.[69] The following are representative examples of what some notable jurisdictions have done to comply with SB 79. The range of responses illustrates the difficulty in crafting legislation that will satisfy diverse interests while ensuring meaningful progress is made towards resolving the housing crisis.

1. Los Angeles

Los Angeles provides one of the clearest examples of how local governments have responded to SB 79 by utilizing the statute's own implementation mechanisms to delay its effects until 2030. Rather than immediately applying SB 79's increased density, height, and floor area ratio standards to qualifying transit-oriented development areas, the City adopted the SB 79 Phased Implementation Ordinance.[70]

Los Angeles conducted an analysis of its approximately 139,450 parcels located within 145 transit-oriented development zones and determined that a significant majority of affected parcels already possessed sufficient zoned capacity to qualify for a temporary exemption.[71] Specifically, the City concluded that approximately 90 percent of SB 79-affected sites qualified for the exemption, allowing the City to defer application of SB 79 standards until one year after the conclusion of the seventh housing element cycle.[72]

The City further adopted the Low-Rise Ordinance[73] as a complementary strategy to increase housing capacity, while remaining less intensive than SB 79's default development standards. The ordinance expanded opportunities for small-scale residential development by increasing allowable density and improving the feasibility of lower-scale building typologies, such as courtyard housing,

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small apartment buildings, and other infill projects.[74] By increasing baseline development capacity through local zoning changes, Los Angeles was able to demonstrate that an even greater percentage of SB 79-affected parcels qualified for the temporary exemption. When combined with the Low-Rise Ordinance, the City determined that 100 percent of parcels subject to SB 79 could qualify for delayed implementation, thereby undermining the law altogether.[75]

2. San Francisco

San Francisco has similarly utilized the alternative implementation pathway under SB 79 to substantially modify how the statute applies within the City. San Francisco has 270 qualifying transit stops and approximately 120,000 parcels are within areas subject to SB 79.[76] The City adopted an alternative that, among other things, (1) permanently excludes certain parcels within the city's three Industrial Employment Hubs, (2) temporarily exempts approximately 19,850 parcels in low-resource areas until 2032, and (3) allows at least 50 percent of SB 79 housing density on certain parcels within one-half mile of qualifying transit stops if not already allowed under current land use controls.[77] As a result, no parcels within San Francisco are currently subject to SB 79's default standards.[78]

3. Beverly Hills

Beverly Hills has taken a different approach to implementing SB 79 by adopting an alternative plan that establishes development standards for areas affected by the statute. Because Beverly Hills has a population below 35,000 residents, SB 79 applies only to qualifying residential, commercial, and mixed-use sites located within one-quarter mile of the planned Metro D Line stations.[79] Rather than applying SB 79's default standards, the City adopted a "Transit-Oriented Development Alternative Plan"[80] intended to provide an alternative framework for accommodating additional housing capacity while reflecting local planning objectives.

The Alternative Plan establishes development standards for four separate geographic areas within the City. These standards vary by location and include increased height, density, and floor area ratio allowances designed to facilitate higher-density residential development near future transit infrastructure. For example, one area subject to the plan allows a maximum building height of 132 feet, a maximum density of 160 dwelling units per acre, and a maximum floor area ratio of 8.5.[81] These standards represent an increase in development capac-

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ity compared to traditional zoning limitations and are intended to support transit-oriented housing production in proximity to the future Metro D Line stations.[82]

The City adopted the Transit-Oriented Development Alternative Plan as an urgency ordinance, allowing it to take immediate effect for an initial 45-day period, with the ability to extend the ordinance for up to two years.[83] The ordinance is currently under review by HCD, which will evaluate whether the alternative plan satisfies the statutory requirements of SB 79.[84]

Beverly Hills' approach differs slightly from the approaches taken by San Francisco and Los Angeles; here, the City has attempted to retain local control by creating its own development framework that provides increased housing capacity while allowing the City to determine where and how additional density should occur—assuming HCD approves the plan.

4. Palo Alto

Palo Alto has taken a more cautious approach to SB 79 implementation, seeking to preserve greater local control over the location and scale of future housing growth while still complying with the statute's requirements. Prior to enactment, Palo Alto was among the jurisdictions that opposed SB 79, arguing that the legislation would override locally adopted planning decisions and impose development standards that did not account for local conditions, infrastructure capacity, or community planning objectives.[85]

Rather than allowing SB 79's default standards to apply uniformly throughout the City, Palo Alto pursued an alternative implementation strategy designed to phase in the statute's requirements and modify where increased development capacity would occur.[86]

Under Palo Alto's adopted approach, the City sought to delay the full effect of SB 79 in certain areas while allowing partial implementation of the statute's increased density requirements elsewhere.[87] Specifically, the City's strategy reduced the immediate development standards applicable to certain qualifying parcels by allowing approximately 50 percent of the SB 79 density capacity until 2032, while maintaining additional housing capacity through targeted increases in other areas.[88] The ordinance went into effect on July 16, 2026; between July 1 and July 16, the City received nine pre-applications proposing a total of 341 housing units and approximately 395,310 square feet of development.[89]

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5. San Marcos

Unlike Los Angeles, which sought to delay implementation of SB 79 across virtually all qualifying transit-oriented development areas, San Marcos adopted a more targeted approach by utilizing the statute's express exclusion provisions to tailor implementation in limited areas. Rather than allowing SB 79's increased height, density, and floor area ratio standards to immediately apply throughout all qualifying transit-oriented development areas, the City adopted a Transit-Oriented Development Ordinance that temporarily excludes qualifying sites located within Very High Fire Hazard Severity Zones and parcels lacking adequate pedestrian access to qualifying transit stops.[90]

The City determined that portions of its qualifying transit-oriented development areas surrounding the Palomar College and California State University San Marcos Sprinter stations overlap with Very High Fire Hazard Severity Zones.[91] Pursuant to SB 79's implementation framework, those qualifying areas may be temporarily excluded from the statute's default development standards until the commencement of the seventh housing element cycle.[92]

San Marcos demonstrates how local governments may utilize SB 79's express exclusion and phased implementation provisions to address legitimate planning concerns while remaining within the statutory framework. Although San Marcos' approach only partially delayed application of SB 79, it shows that cities retain meaningful discretion to shape the statute's practical effect through the implementation mechanisms expressly authorized by the law.

The range of responses to SB 79, both in the immediate aftermath of its passage and leading up to the effective date, reflects the difficulty in designing a one-size-fits-all solution. Conceptually, SB 79 (and its earlier iterations) was a historic achievement and perhaps a harbinger of future State actions. But its success depends on implementation at the local level, and the examples of notable jurisdictions that have delayed implementation or sought alternative plans means it will take many more years to determine whether such actions by the State will be successful.

III. Development In California's Coastal Zone

The approximately 1.5-million-acre area that comprises 1,100 miles of the California coast from Oregon to Mexico is subject to additional regulatory mandates and presents development constraints that further complicate hous-

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ing matters. The Coastal Act of 1976 (Coastal Act),[93] which is celebrating its 50th anniversary, has helped ensure public access by creating more than 2,500 public accessways, opened 875 miles of the California Coastal Trail to the public, and protected 12,000 acres of open space and habitat while also restoring more than 4,600 acres of habitat.[94] But implementation of the Coastal Act and the Coastal Commission's actions over the years have been the subject of much debate, litigation, and scholarship,[95] with claims that the resulting development restrictions have led to increased prices, exurban sprawl, and a car-centric transportation system that hamper broader environmental goals related to climate change.[96]

New laws to facilitate housing in the Coastal Zone have been proposed by the Legislature with mixed success. The courts, on certain occasions, have limited the Commission's authority or reversed certain specific actions; still, barriers remain. The HAA, the State Density Bonus Law, AB 130, and SB 131 contain carve-outs exempting property in the Coastal Zone or provisions expressing they do not supersede the Coastal Act.[97] The policy debates are not limited to whether the State should override local control when local governments' land use controls within the Coastal Zone are informed and dictated by state law, with a state agency providing direct oversight.

This section provides an overview of the Coastal Act and the Coastal permitting process, recent and pending legislative efforts to facilitate housing, and recent court decisions that may constrain the Commission's authority, thus addressing some of the complexities involved in developing housing in the Coastal Zone.

A. Overview of the Coastal Permitting Regime

The California Coastal Commission was created by voter initiative in 1972 and made permanent by the Coastal Act of 1976.[98] In general, the Coastal Act requires a Coastal Development Permit (CDP) for development within the Coastal Zone, which varies in width and in some cases extends up to five miles inland.[99] Development is defined broadly and effectively covers virtually any activity.[100]

Permitting authority is shared between local governments and the Coastal Commission. Local governments, with the Coastal Commission's support, prepare Local Coastal Programs (LCPs), which set forth the land use controls for the jurisdiction's Coastal Zone.[101] The Coastal Commission's job is to certify

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the LCP as consistent with and adequate to carry out the Coastal Act, at which time the local government becomes responsible for issuing most CDPs.[102]

The Coastal Commission retains jurisdiction over development on tidelands, submerged lands, and public trust lands.[103] The Commission also has appellate authority over certain types of development, including development between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tideline of the sea and any major public works project or major energy facility.[104] Any "aggrieved person"[105] or two members of the Commission can appeal.[106]

The Coastal Commission monitors implementation of LCPs and certifies amendments.[107] As of June 2024, 96 of the 126 LCP segments (or approximately 76 percent) were certified.[108] Notable jurisdictions without a certified LCP include San Francisco, portions of Monterey, Los Angeles (Venice, Pacific Palisades, Playa Vista, etc.), and Santa Monica.[109] Local governments now process 75 percent of all CDPs while the Coastal Commission hears appeals of 40-60 projects per year.[110] With respect to housing, the Coastal Commission itself has denied only two multifamily projects since 2021 and has never denied a 100 percent affordable housing project.[111]

B. Coastal Commission Deference

The Coastal Commission's decisions regarding the adequacy of LCPs and development proposals are guided by the Chapter 3 policies of the Coastal Act, which broadly address public access, recreation, marine environment, land resources, development, and industrial development.[112] Considering that the Legislature intended for the Coastal Act to be "liberally construed to accomplish its purposes and objectives," the Coastal Commission's regulatory authority has been expansive.[113]

Even with prescriptive standards in LCPs, conflicts can arise when attempting to comply with subjective policies that protect, for example, visual resources.[114] Other ostensibly objective standards, such as the determination of what constitutes an environmentally sensitive habitat that "shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas," can lead to uncertain outcomes based on disagreements among experts.[115] When deciding challenges to the Commission's decisions, courts often defer to the Commission's interpretations.

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The California Supreme Court, however, recently clarified when deference is owed and the scope of the Commission's appellate jurisdiction, checking the Commission's power to a degree and leading one to question whether courts will continue to be as deferential as they have been in the past. In *Shear Development Co. v. California Coastal Commission*,[116] the California Supreme Court was faced with a situation where a county and the Commission disagreed as to application of the Act. Shear Development Co., LLC (Shear) applied to the County of San Luis Obispo for a CDP to build single family homes in connection with the second phase of its development in Los Osos, an unincorporated town in the County.[117] The County granted the permit.[118] The Coastal Commission appealed the County's decision to itself and denied the permit.[119] The Commission asserted its appellate jurisdiction based on its interpretation that the proposed development was in a sensitive coastal resource area under the County's LCP and because there was more than one principal permitted use of the site.[120] Shear filed a petition for a writ of administrative mandate arguing that the Commission had no appellate jurisdiction.[121] The trial court denied the petition, and the Court of Appeal affirmed, finding that the Commission properly exercised its appellate jurisdiction since the project was in a sensitive coastal resource area.[122]

The Supreme Court disagreed and reversed. Applying the independent judgment standard of review,[123] the Court held that neither the County's nor the Commission's interpretation was entitled to deference.[124] Based on the *Yamaha* factors, if one agency is better situated to provide a definitive statutory interpretation, then the court may assign greater weight to that agency's interpretation.[125] If not, then the court should not defer to either agency.[126] The Court found that neither entity demonstrated a clear interpretive advantage over the other, superior indicia of being correct compared to the other, or any other reason for deference, so no deference was due.[127]

The Court went on to determine that the geographic scope of the sensitive coastal resource area designation was unclear in the LCP,[128] and concluded that the LCP's text and extrinsic evidence indicated that the area was not intended to include urban areas. Since the project site was in an urban area, it was not within a sensitive coastal resource area and therefore the Commission lacked jurisdiction.[129] The Court also found that the project qualified as one of several principal permitted uses and therefore the Commission did not have appellate jurisdiction.[130]

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While this decision may have turned on the specific facts at issue, it also could suggest a broader willingness to take a hard look at future decisions, especially when the state and local government disagree, and certainly removes one means by which the Commission could appeal to itself, which are notable results and could prove significant as the Commission and local governments grapple with coastal development issues.

C. Relationship Between the Coastal Act and Other State Laws

State housing laws do not supersede the Coastal Act. The Legislature has clearly required that the Coastal Act and state housing law be harmonized. After one court of appeal held that the Coastal Act supersedes the State Density Bonus Law,[131] the Legislature passed AB 2797 to remedy that result:

> This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.[132]

The HAA must similarly be harmonized with the Coastal Act:

> Nothing in this section shall be construed to relieve the local agency from complying with the congestion management program required by Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 or the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).[133]

But it may not always be clear how to do so, particularly in situations where increased density potentially affects coastal resources, such as public views to and along the coast. While the Commission's determination will depend on site-specific considerations, local agencies and the Commission can deny or condition a project using Coastal Act criteria without incurring liability under the HAA. In other words, there remains the possibility that subjective considerations could play a decisive role in whether a particular housing project can take full advantage of the suite of tools and protections afforded by State housing laws.

In relation to the recent CEQA reforms under AB 130 and SB 131, the Legislature provided an express carve-out for certain portions of the Coastal

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Zone, meaning streamlining is not available for projects on sites that are any of the following:

- An area of the coastal zone subject to Pub. Resources Code, § 30603, subd. (a), para. (1), (2).
- An area of the coastal zone that is not subject to a certified local coastal program or a certified land use plan.
- An area of the coastal zone that is vulnerable to five feet of sea level rise, as determined by the National Oceanic and Atmospheric Administration, the Ocean Protection Council, the United States Geological Survey, the University of California, or a local government's coastal hazards vulnerability assessment.
- In a parcel within the coastal zone that is not zoned for multifamily housing.
- In a parcel in the coastal zone and located on either of the following:
    - On, or within a 100-foot radius of, a wetland, as defined in Pub. Resources Code, § 30121.
    - On prime agricultural land, as defined in Pub. Resources Code, §§ 30113, 30241.[134]

D. Recent Legislative Efforts

Over the years, legislative efforts to limit the Commission's authority and increase production of housing in coastal areas have been met with pushback and concerns about unintended consequences. As Sarah Christie, the Commission's legislative director, explained, "Californians really treasure their coast, and they feel very strongly about protecting it, and bills that seek to weaken coastal protections are going to run into some strong headwinds."[135] "Once you start exempting classes of development from the Coastal Act, there will be no shutting that barn door."[136]

Over the past two years, however, there are signals that certain reforms are possible. In December 2025, the Commission adopted its 2026-2030 Strategic Plan, which identifies a number of actions to facilitate housing.[137] Those actions include: (1) continuing to advocate for climate-smart policies that address housing needs, particularly affordable housing needs, while also protecting coastal

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access and resources; (2) expanding early coordination efforts with state partners on priority housing, transportation, and other infrastructure projects; and (3) establishing a dedicated team to coordinate with local governments and HCD on implementing housing projects and aligning LCPs with state housing policies.[138] While the Strategic Plan is a policy document, it evidences a commitment to be more active in housing policy.

Meanwhile, the Legislature has proposed, and in some cases enacted, a number of bills to increase density, streamline the review process, or otherwise limit the Commission's authority; however, many failed to pass or failed to accomplish their initial purpose due to substantive amendments:

AB 2560 (Alvarez) would have removed the exemption of the application of the Density Bonus Law within the Coastal Zone. The bill did not pass out of the Senate Appropriations Committee due to amendments that "go beyond the scope of it by giving more authority over housing to the Coastal Commission, which has proven to not prioritize the building of housing."[139]

SB 1077 (Blakespear) was initially designed to exempt ADUs from the requirement to obtain a CDP but instead was amended to direct the Coastal Commission to work in coordination with HCD to develop guidance for local governments to facilitate LCP amendments that simplify the permitting process for ADUs.[140]

SB 1092 (Blakespear) would have established deadlines for Commission action on appeals but was amended to require that the Commission submit a report to the Legislature on the bill process before failing to proceed.[141]

AB 1740 (Zbur) would have exempted housing projects in urbanized areas of the Coastal Zone from the requirement to obtain a CDP with certain exceptions.[142] Housing projects within 300 feet of beaches, on or near wetlands, or in ESHAs would require a CDP. The bill was revised to require the City of Santa Monica to work with the Coastal Commission to certify its LCP under certain deadlines.[143]

While those bills failed to pass or were substantially amended, the Legislature did enact several bills, including SB 484 (Laird), which required the Coastal Commission to identify infill areas in at least three jurisdictions without a certified LCP where residential housing projects comprised entirely of very low-,

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low-, and moderate-income units are categorically excluded from the requirement to obtain a CDP for 10 years.[144]

The Legislature also enacted AB 462 (Lowenthal), requiring local governments to approve or deny a CDP for an ADU within 60 days of receipt of a complete application.[145] Such decisions are not appealable to the Coastal Commission. If the local government does not have a certified LCP, the Coastal Commission must approve or deny a CDP for an ADU within the same timeframe.[146]

SB 963 (Laird), which streamlines the appeals process, also passed. Under the law as it existed when the bill was proposed, if a CDP was appealed to the Coastal Commission, the Commission was required to determine whether the appeal raises a "substantial issue" with respect to compliance with the LCP or public access policies of the Coastal Act.[147] If a substantial issue was found, the local government's approval was voided and the Coastal Commission conducted a de novo review.[148] At that point, there was no deadline to act.[149] SB 963 now requires the Coastal Commission to (1) provide the applicant with a complete list of any information needed to complete a de novo review within 30 days after determining a substantial issue exists, (2) review the submitted information within 30 days and notify the applicant whether the submittal is complete, and (3) hold a de novo hearing and issue a final decision within 180 days after determining the submittal is complete.[150] The deadlines may be extended by 90 days upon mutual written agreement.

From the foregoing bill summaries, certain trends emerge. While attempts to more fully implement the State Density Bonus Law within the Coastal Zone and exempt housing projects within urbanized areas of the Coastal Zone have met resistance, there has been support for efforts to provide more certainty in the review process. The scope of these changes is more incremental than that applicable to jurisdictions outside of the Coastal Zone, again evidencing the complexities of substantial reform. There seems to be a willingness to entertain more substantial reform as the politics over housing change and given the bipartisan criticism over the Coastal Commission's authority over the past year or two. Still, it appears that realizing any substantial changes to the Coastal Act that would facilitate housing will remain an uphill battle in the near term.

IV. Conclusion

The spate of housing bills enacted by the Legislature over the last few years

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has widely been described as an historic and meaningful attempt to solve the many problems stemming from an inadequate supply of housing. Whether the bills are ultimately successful at boosting housing production will take time to determine, although the near-term results have been disappointing due to macroeconomic and other unforeseeable factors. Perhaps there will soon be some clarity over whether overriding local control is the clear answer to the State's housing problems. But one should not expect local governments to easily acquiesce to further State actions.

Increasing density in the Coastal Zone, which contains some of the most desirable properties in the world, amidst a variety of unique resources, is particularly complex. The regulatory regime was built to balance the built and natural environments, which necessarily requires consideration of other issues beyond production of new housing. How to effectively harmonize the competing interests will presumably continue to be the subject of much debate and dictate future policy options.

ENDNOTES:

[1]California Legislative Analyst's Office, California Housing Affordability Tracker (2nd Quarter 2026), https://lao.ca.gov/LAOEconTax/Article/Detail/793 (last accessed Aug. 4, 2026).

[2]In 2026, about 44 percent of California households would likely qualify for a bottom-tier home mortgage based on their income, while in 2019, about 57 percent of households would qualify, and about 22 percent would likely qualify for a mid-tier home mortgage, which is down from about 31 percent in 2019. *Id.*

[3]California Legislative Analyst's Office, California's High Housing Costs: Causes and Consequences (March 17, 2015), https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf (last accessed Aug. 4, 2026).

[4]*Id.*

[5]See California Department of Housing and Community Development, Regional Housing Needs Allocation (RHNA), https://www.hcd.ca.gov/rhna (last accessed Aug. 4, 2026).

[6]California's Housing Future 2040: The Next Regional Housing Needs Allocation, https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/rhna/cahf-2040-rhna-report-2024.pdf (last accessed Aug. 4, 2026).

[7]Samuel Trachtman, To Make California More Affordable, Government Must Foster Sustainable Growth, Berkeley Economy and Society Initiative (May 2026), https://besi.berkeley.edu/research/type/white-papers/ (last ac-

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cessed Aug. 4, 2026).

[8]Hans Johnson, Eric McGhee, Carolyn Subramaniam, and Vicki Hsieh, "What's Behind California's Recent Population Decline—and Why It Matters," Public Policy Institute of California (October 2023), available at: https://www.ppic.org/publication/whats-behind-californias-recent-population-decline-and-why-it-matters/ (last accessed Aug. 4, 2026).

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[10]See Carolyn Nelson Rowan, AB 130's Non-CEQA Housing Amendments: Bringing to Life California's Abundance Agenda, published in Miller & Starr Real Estate Newsalert, Vol. 36, Issue 2 (November 2025); Miguel Mauricio, Building for Abundance: The CEQA Reforms Behind AB 130 and SB 131, published in Miller & Starr Real Estate Newsalert, Vol. 36, Issue 1 (September 2025).

[11]Cal. Const., art. XI, § 7; see also Miller & Starr, Cal. Real Estate (4th ed. 2025) § 21:1 (Legal basis for land use regulations).

[12]*California Building Industry Assn. v. City of San Jose*, 61 Cal. 4th 435, 455, 189 Cal. Rptr. 3d 475, 351 P.3d 974 (2015).

[13]Cal. Const., art. XI, § 7; see also Miller & Starr, Cal. Real Estate (4th ed. 2025) § 21:2 (Municipal and government law principles affecting land use regulations).

[14]Cal. Const., art. XI § 3(a).

[15]Cal. Const., art. XI § 5(a).

[16]See *In re Hubbard*, 62 Cal. 2d 119, 128, 41 Cal. Rptr. 393, 396 P.2d 809 (1964) (overruled on other grounds by, *Bishop v. City of San Jose*, 1 Cal. 3d 56, 81 Cal. Rptr. 465, 460 P.2d 137 (1969)).

[17]*California Renters Legal Advocacy & Education Fund v. City of San Mateo*, 68 Cal. App. 5th 820, 848, 283 Cal. Rptr. 3d 877 (1st Dist. 2021). For a more in-depth analysis of home rule and state preemption of local land use control see Kenneth Stahl, Home Rule and State Preemption of Local Land Use Control. 50 The Urban Lawyer 179 (2021), SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3485872 (last accessed Aug. 4, 2026).

[18]Stahl, *supra* note 18.

[19]*Id.*

[20]*Id.*

[21]*City of Rancho Palos Verdes v. State of California*, 114 Cal. App. 5th 13, 336 Cal. Rptr. 3d 749 (2d Dist. 2025).

[22]*Id.* at 16-17.

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[23]*Id.* at 17-18.

[24]*Id.*

[25]*Id.* at 18-19.

[26]*Id.* at 19-20.

[27]*Id.* at 23-24.

[28]*Id.*

[29]*Id.* at 26.

[30]*The Kennedy Com. v. Superior Court*, 114 Cal. App. 5th 385, 337 Cal. Rptr. 3d 67 (4th Dist. 2025).

[31]*Id.* at 404-405.

[32]*Id.* at 405.

[33]*Id.* at 409-410.

[34]*Id.* at 411.

[35]*Id.* at 414.

[36] *Id.* at 419.

[37]*Id.* at 420.

[38]*Id.*

[39]*Id.* at 421.

[40]Gov. Code, §§ 65912.155-65912.162.

[41]Scott Wiener, Governor Newsom Signs Senator Wiener's Landmark Law To Build More Homes Near Public Transit (October 10, 2025), https://sd11.senate.ca.gov/news/governor-newsom-signs-senator-wieners-landmark-law-build-more-homes-near-public-transit (last accessed Aug. 4, 2026).

[42]Including sponsors Streets for All, California YIMBY, Greenbelt Alliance, SPUR, Abundant Housing LA, Inner City Law Center, and the Bay Area Council.

[43]Josh Vredevoogd, SB 79 just legalized 1.5 million new homes near transit in the City of LA (October 15, 2025), https://data.streetsforall.org/blog/sb79_impact/ (last accessed Aug. 4, 2026).

[44]Gov. Code, § 65912.155. Some of the most notable opposition came from the Mayor of Los Angeles, Karen Bass, and several Los Angeles City Councilmembers. In August 2025, the Los Angeles City Council passed a resolution to oppose the bill. Councilmember Traci Park said "[p]rojects that are going to drastically change the shape and culture of Los Angeles. This is something that is going to Manhattanize our city, . . . [The state is] stripping away neighborhood voices, ignoring safety and infrastructure, and handing the keys to corporate developers." Councilmember John Lee said "[t]he people of Los Angeles deserve to have a say in how their city grows." Mayor Bass said the "new law would 'erode local control, diminish community input on planning

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and zoning and disproportionately impact low-resource neighborhoods.' " Helen Jeong and Conan Nolan, Newsom approves a bill to make it easier to build more homes. Why do LA leaders oppose it? (October 10, 2025), https://www.nbclosangeles.com/news/local/sb-79-housing-bill-newsom-los-angeles-oppose-karen-bass/3789876/ (last accessed Aug. 4, 2026).

[45]Gov. Code, § 65912.157, subd. (a).

[46]Gov. Code, § 65912.157, subd. (i)(2).

[47]Gov. Code, § 65912.157, subd. (a)(i)(c).

[48]"Tier 1" means a transit-oriented development stop within an urban transit county served by heavy rail transit or very high frequency commuter rail.

[49]Gov. Code, § 65912.157, subd. (a)(3)(C).

[50]Gov. Code, § 65912.157, subd. (a)(3)(D).

[51]Gov. Code, § 65912.157, subd. (a)(4)(C).

[52]Gov. Code, § 65912.157, subd. (a)(4)(D).

[53]Tier 2 transit-oriented development stop means a transit-oriented development stop within an urban transit county, excluding a Tier 1 transit-oriented development stop, served by light rail transit, by high-frequency commuter rail, or by bus service meeting the standards of Pub. Resources Code, § 21060.2, subd. (a), para. (1).

[54]Gov. Code, § 65912.157, subd. (a)(5)(C).

[55]Gov. Code, § 65912.157, subd. (a)(5)(D).

[56]Gov. Code, § 65912.157, subd. (a)(6)(C).

[57]Gov. Code, § 65912.157, subd. (a)(6)(D).

[58]Gov. Code, § 65912.157, subd. (e).

[59]*Id.*

[60]*Id.*

[61]Gov. Code, § 65912.157, subd. (m).

[62]*Id.*

[63]Gov. Code, § 65912.157, subd. (c).

[64]This option is only available to local governments with at least 15 transit stops. An industrial employment hub must be at least 250 acres designated in the jurisdiction's general plan on or before January 1, 2025, as an employment lands area, the parcels must be primarily dedicated to industrial use, and housing is not permitted. Gov. Code, § 65912.160, subd. (e).

[65]Gov. Code, § 65912.161, subd. (a).

[66]*Id.*

[67]For example, if the site is within a very high fire hazard severity zone, vulnerable to one foot of sea level rise, or listed as a historic resource.

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[68]Gov. Code, § 65912.161, subd. (a)(4).

[69]Ben Christopher, Cities scramble to comply with or fight major state housing law (April 15, 2026), https://calmatters.org/housing/2026/04/sb-79-implementation/ (last accessed Aug. 4, 2026).

[70]See Ordinance No. 188967, https://cityclerk.lacity.org/onlinedocs/2025/25-1083-S3_ord_188967_06-30-26.pdf (last accessed Aug. 4, 2026); Ordinance No. 188968, https://cityclerk.lacity.org/onlinedocs/2025/25-1083-s4_misc_6-17-26.pdf (last accessed Aug. 4, 2026).

[71]Los Angeles Department of City Planning, Recommendation Report, Low-Rise Ordinance and SB 79 Phased Implementation Ordinance (May 14, 2026), https://lacity.primegov.com/Portal/Meeting?meetingTemplateId=150095&parentLink=newPublicPortal&returnUrl=https%3A%2F%2Fportal-lacity.primegov.com%2Farchived%3Ffromiframe%3D1 (last accessed Aug. 4, 2026).

[72]*Id.*

[73]The scope of the Low-Rise Ordinance is beyond the scope of this article. For more information, see Staff Report dated May 14, 2026 or Los Angeles Municipal Code, § 12.22.A.38.

[74]*Id.*

[75]*Id.*

[76]San Francisco Planning, SB 79 Implementation in San Francisco, https://sfplanning.org/project/senate-bill-79-implementation-san-francisco (last accessed Aug. 4, 2026).

[77]*Id.*

[78]*Id.*

[79]City of Beverly Hills, https://www.beverlyhills.org/1135/Long-Range-Planning-Policy-Efforts (last accessed Aug. 4, 2026).

[80]*Id.* HCD reviewed an earlier iteration and found it did not substantially comply with SB 79. See also, Tabor Brewster, "Beverly Hills approves transit plan for SB 79," Beverly Press & Park Labrea News (June 10, 2026), https://beverlypress.com/2026/06/beverly-hills-approves-transit-plan-for-sb-79/ (last accessed Aug. 4, 2026).

[81]*Id.*

[82]*Id.*

[83]*Id.*

[84]*Id.*

[85]City of Palo Alto, Letter to Sen. Scott Wiener re: SB 79 (May 30, 2025), https://www.paloalto.gov/files/assets/public/v/1/city-clerk/legislation/2025/2025/sb-79-wiener-city-of-palo-alto-oppose.pdf (last accessed Aug. 4, 2026).

[86]Annalise Freimarck, "Palo Alto Looks to Rezoning to Limit Impacts of

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State Bill," San José Spotlight (June 12, 2026), https://sanjosespotlight.com/palo-alto-looks-to-rezoning-to-limit-impacts-of-state-bill/ (last accessed Aug. 4, 2026).

[87]*Id.*

[88]*Id.*

[89]City of Palo Alto, "Status of the City's Temporary SB 79 Implementation Regulations," (Aug. 4, 2026), https://www.paloalto.gov/News-Articles/City-Manager/Status-of-the-Citys-Temporary-SB-79-Implementation-Regulations (last accessed Aug. 4, 2026).

[90]Leo Place, The Coast News, San Marcos ordinance delays some SB 79 housing upzoning (June 2026), https://thecoastnews.com/san-marcos-ordinance-delays-some-sb-79-housing-upzoning/ (last accessed Aug. 4, 2026).

[91]*Id.*

[92]*Id.*

[93]Pub. Resources Code, §§ 30000 et seq.

[94]California Coastal Commission, 50 Years of Coastal Protection, https://www.coastal.ca.gov/coastalact50/ (last accessed Aug. 4, 2026); See also Jesse Reiblich and Eric H. Hartge, The Forty-Year-Old Statute: Unintended Consequences of the Coastal Act and How They Might Be Redressed, Stanford Environmental Law Journal (2017), https://law.stanford.edu/wp-content/uploads/2017/11/reiblich.pdf (last accessed Aug. 4, 2026); Todd Holmes, Tides of Tension: A Historical Look At Staff-Commissioner Relations In the California Coastal Commission, https://web.stanford.edu/group/west/cgi-bin/projects/tides-of-tension/index.html (last accessed Aug. 4, 2026); Jake Dow, Priced Out of Paradise: The California Coastal Act's Role in Exacerbating California's Housing Supply Crisis, https://nyujlpp.org/wp-content/uploads/2024/12/JLPP-27-1-Dow.pdf (last accessed Aug. 4, 2026).

[95]See *id.*

[96]Christopher Pederson, Reforming California's coastal law can restore balance between housing and environment (June 24, 2024), https://calmatters.org/commentary/2024/06/reform-california-coastal-housing-environment/ (last accessed Aug. 4, 2026).

[97]Gov. Code, §§ 65915, subd. (m), 65589.5, subd. (e); Pub. Resources Code, § 21080.66, subd. (a)(6).

[98]Pub. Resources Code, §§ 30000, et seq.

[99]" 'Coastal zone' means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of Chapter 1330 of the Statutes of 1976, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five

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miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with Section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area." Pub. Resources Code, § 30103.

[100]Pub. Resources Code, § 30106.

[101]Pub. Resources Code, §§ 30500, et seq.

[102]Pub. Resources Code, § 30519.

[103]*Id.*

[104]Pub. Resources Code, § 30603.

[105]Pub. Resources Code, § 30801.

[106]Pub. Resources Code, § 30625.

[107]See Local Government and Coastal Commission Regulatory Roles After LCP Certification, https://documents.coastal.ca.gov/assets/lcp/DOCS/Local_Gov_and_CoastalCommission_roles_after_LCP_certification.pdf (last accessed Aug. 4, 2026).

[108]California Coastal Commission, Summary of LCP Program Activity in FY 23-24, https://documents.coastal.ca.gov/assets/rflg/LCPStatusSummaryChart.pdf (last accessed Aug. 4, 2026).

[109]*Id.*

[110]*Id.*

[111]California Coastal Commission, Understanding Development in California's Coastal Zone, https://documents.coastal.ca.gov/assets/press-releases/2025/jan/coastal-zone-dev-fact-sheet.pdf (last accessed Aug. 4, 2026).

[112]Pub. Resources Code, § 30200.

[113]Pub. Resources Code, § 30009.

[114]"Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas." Pub. Resources Code, § 30251.

[115]Pub. Resources Code, § 30240.

[116]*Shear Development Co., LLC v. California Coastal Com.*, 19 Cal. 5th 334, 343 Cal. Rptr. 3d 361, 587 P.3d 548 (2026).

[117]*Id.* at 347.

[118]*Id.*

[119]*Id.*

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[120]*Id*.

[121]*Id*. at 348.

[122]*Id*.

[123]*Id*. at 349-350.

[124]*Id*. at 351.

[125]*Id*. at 351-352.

[126]*Id*.

[127]*Id*. at 358.

[128]*Id*. at 359-365.

[129]*Id*.

[130]*Id*. at 365-370.

[131]*Kalnel Gardens, LLC v. City of Los Angeles*, 3 Cal. App. 5th 927, 208 Cal. Rptr. 3d 114 (2d Dist. 2016). In a footnote, the court stated that the HAA would also be subordinate to the Coastal Act. *Id.* at 944, n. 9.

[132]Gov. Code, § 65915, subd. (m).

[133]Gov. Code, § 65589.5, subd. (e).

[134]Gov. Code, § 65913.4, subd. (a)(6)(A).

[135]Ben Christopher, Push to Build More Homes on California Coast Stifled After Lawmakers Derail Housing Bills (August 19, 2024), https://www.kqed.org/news/12000709/push-to-build-more-homes-on-california-coast-stifled-after-lawmakers-derail-housing-bills (last accessed Aug. 4, 2026).

[136]Ben Christopher, Fresh Batch of YIMBY Housing Bills Clash with Coastal Protections (Again), (Mar. 20, 2024), https://calmatters.org/housing/2024/03/california-coastal-commission-protections/ (last accessed Aug. 4, 2026).

[137]California Coastal Commission, Strategic Plan 2026-2030, https://documents.coastal.ca.gov//assets/strategicplan/2026-2030-Strategic-Plan.pdf (last accessed Aug. 4, 2026).

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[139]David Alvarez, Why AB 2560 is not Moving Forward (August 15, 2024), https://alvarez.asmdc.org/press-releases/20240815-assemblymember-alvarez-issues-statement-ab-2560-affordable-housing-coastal (last accessed Aug. 4, 2026).

[140]2024 Stats., ch. 454 (SB 1077).

[141]SB 1092, https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240SB1092 (last accessed Aug. 4, 2026).

[142]AB 1740, https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1740 (last accessed Aug. 4, 2026).

[143]*Id*.

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[144]Pub. Resources Code, § 30610.05.

[145]2025 Stats., ch. 491 (AB 462).

[146]*Id.*

[147]Pub. Resources Code, § 30621.

[148]Pub. Resources Code, § 30621.

[149]*Id.*

[150]Pub. Resources Code, § 30629.

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CASE BRIEFS:

BUILDING CODES

WHERE PROPERTY OWNER DIED INTESTATE AND A RECEIVER WAS APPOINTED TO REMEDY A NUISANCE AT THE PROPERTY, SISTERS WHO RENOUNCED ANY INTEREST IN THE PROPERTY WERE IMPROPERLY NAMED AND THEREFORE PREVAILING PARTIES ENTITLED TO ATTORNEY'S FEES AND COSTS ON THE ISSUE OF THEIR LIABILITY.

County of Del Norte v. Britt, 121 Cal. App. 5th 36, 345 Cal. Rptr. 3d 489 (1st Dist. 2026)

For a summary of this case see LANDOWNERS' LIABILITY

>> *See Miller & Starr, California Real Estate 4th, Ch. 19, Landowners' Liability, §§ 19:17, 19:29, 19:30, 19:31; Ch. 25, Building Codes, §§ 25:46, 25:49, 25:50, 25:52; Ch. 34, Landlord and Tenant, § 34:90; Ch. 40, Remedies, §§ 40:64, 40:69, 40:74; Ch. 41, Receivers, §§ 41:12, 41:15, 41:23, 41:31, 41:32.*

CEQA

FOR PURPOSES OF CEQA'S CLASS 1 EXEMPTION FOR MINOR ALTERATIONS OF EXISTING FACILITIES "INVOLVING NEGLIGIBLE OR NO EXPANSION OF EXISTING OR FORMER USE," NEGLIGIBLE EXPANSION REFERS TO THE NATURE OR DEGREE OF USE, NOT A NEGLIGIBLE RISK OF ENVIRONMENTAL HARM CAUSED BY THE EXPANSION OR CHANGE IN USE.

Sunflower Alliance v. Department of Conservation, 20 Cal. 5th 22, 345 Cal. Rptr. 3d 631, 591 P.3d 829 (2026)

Reabold California, LLC (Reabold) has a leasehold in the Brentwood Oil Field known as the Ginochio Lease where it conducts oil and gas drilling activities. The lease contains two active oil wells and a third inactive well, identified as the Ginochio Well, which became inoperative in 1984 and was plugged with cement. Oil and gas extraction creates wastewater byproduct, and Reabold trucked 12,600 gallons of wastewater from its active wells off site each day, resulting in heavy trucks traveling hundreds of miles per week. An alternative to trucking is to inject the treated wastewater into an underlying aquifer using water injection wells, known as "Class II" wells. This must be approved by

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the California Department of Conservation's Geologic and Energy Management Division (CalGEM) to protect against possible contamination of the usable water supply. Although the Brentwood Oil Field contained two injection wells, neither was on the Ginochio Lease. Reabold therefore sought to reopen and convert the Ginochio Well into a water injection well. To that end, it applied for a "Project Approval Letter" from CalGEM. The supporting technical report predicted that, over a 20-year period, 459,900,000 gallons of treated wastewater would be injected into an "exempted aquifer" determined to have no "beneficial use," and which would be vertically and horizontally confined. Pub. Resources Code, § 3130.

After CalGEM and the state and regional water boards expressed concerns about migration of wastewater into clean water sources, Reabold addressed those concerns in a revised technical report. At that point, CalGEM agreed the isolation requirements were met, but the regional and state water boards remained concerned. In response, CalGEM submitted a revised draft project approval letter that imposed several conditions on the project; with those conditions, the regional board concluded its concerns had been addressed, and CalGEM approved the project subject to the conditions previously outlined. CalGEM also found the project to be categorically exempt from CEQA under the "class 1" exemption for projects proposing a minor alteration of an existing facility involving a negligible expansion of former use. CalGEM also found "no substantial evidence that there [were] any 'unusual circumstances' associated with the proposed project that create a reasonable possibility that the activity will have a significant effect on the environment or that significant 'cumulative impacts' would result." Citing Cal. Code Regs., tit. 14, § 15300.2, subds. (b), (c) (Guidelines). In addition, CalGEM noted that the project would eliminate the need to truck the water offsite.

Sunflower Alliance (Sunflower) filed a petition for writ of mandate challenging CalGEM's CEQA determination on the basis that transforming a non-operational oil well into one in which 300 barrels of wastewater per day would be disposed did not constitute "negligible or no expansion of former use." Citing Guidelines, § 15301. The trial court agreed, finding that "injecting water is a significantly different use than pumping oil and gas." CalGEM filed a return, but Reabold appealed. The court of appeal reversed, analogizing to similar types of categorical exemp-

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tions and finding "any expansion of the well's use [to be] negligible because, under the facts here, the environmental risks of injecting the water are negligible." *Sunflower Alliance v. Department of Conservation*, 105 Cal. App. 5th 771, 777, 325 Cal. Rptr. 3d 209 (1st Dist. 2024) and rev'd and remanded, 20 Cal. 5th 22, 345 Cal. Rptr. 3d 631, 591 P.3d 829 (2026). The California Supreme Court granted Sunflower's petition for review.

The Supreme Court reviewed general CEQA principles, including the overriding principle that "state and local governmental entities [] perform their duties 'so that major consideration is given to preventing environmental damage.' " *Union of Medical Marijuana Patients, Inc. v. City of San Diego*, 7 Cal. 5th 1171, 1185, 250 Cal. Rptr. 3d 818, 446 P.3d 317 (2019). The Court also reviewed the three-step process required by CEQA when a project may have significant environmental impacts. First, the lead agency must determine whether a proposed activity qualifies as a project for purposes of CEQA. If so, the agency must next decide whether a statutory or categorical exemption to CEQA applies and, if so, whether an exception to an exemption applies. Finally, if no exemption applies or there is an exception to an exemption, the lead agency must perform an environmental review, as prescribed.

Here, it was undisputed that the well conversion qualified as a project under CEQA, but the parties disagreed as to whether the proposed well conversion qualified for CEQA's class 1 exemption. Sunflower interpreted the exemption as not applying to any new use, while Reabold asserted that it applied "whenever the proposed expansion would pose only a negligible additional risk of environmental harm," consistent with the court of appeal's decision below. The Supreme Court began with the plain text of the class 1 exemption, noting that the parties agreed that it involved a "*minor alteration* of *existing* public or private structures . . . ." Quoting Guidelines, § 15301 (italics added by court). It pointed out, though, that not all minor alterations qualify for the exemption because the second part of the text expressly limits the exemption to projects "involving negligible or no expansion of existing or former use." Quoting Guidelines, § 15301. To Sunflower, this could only mean an increase in the degree of an existing or former use, without regard to environmental effect. By contrast, Reabold argued that in accordance with CEQA's goals, only the environmental impacts were relevant and, if negligible, a new use would fall

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within the exemption. The agencies (the California Natural Resources Agency and CalGEM) disagreed with both parties' interpretations, contending that Sunflower was overly rigid with respect to the word "expand," while Reabold strayed too far from the text of the exemption, which did not reference environmental harm. Instead, the agencies' interpretation was that negligible expansions of use may qualify for the exemption, while more substantial expansions did not.

The Court agreed with the agencies. Specifically, the Court found the term "expansion" in the exemption to mean change or addition, which was supported by the non-inclusive list of examples of covered projects in the class 1 exemption itself. Those examples of covered projects "seem to contemplate a change, not just in degree, but in the nature of the use, including additional uses." However, the Court found nothing in the text supporting a change of use so long as there is " 'negligible or no expansion' in the risk of environmental harm," and it declined to expand the scope of the exemption because it is the purview of the Secretary to designate classes of projects as categorically exempt. To find otherwise would mean usurping the role of the Secretary and disregarding the public process associated with the rulemaking.

Further, the Court noted that adopting Reabold's interpretation would conflate the second and third steps in the CEQA process by requiring the agency to perform an environmental review prematurely. This environmental review process occurs after notice and public participation, in line with CEQA's goal of " 'inform[ing] the public and its responsible officials of the environmental consequences of their decisions *before* they are made,' thereby protecting 'not only the environment but also informed self-government.' " Quoting *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.*, 1 Cal. 5th 937, 944, 207 Cal. Rptr. 3d 314, 378 P.3d 687 (2016). Accordingly, the Court found the phrase "negligible or no expansion of existing or former use" to mean "the change in the nature or degree of a structure or facility's use, not the risk of environmental harm caused by such a change in use."

The Court rejected Reabold's three main arguments to the contrary. First, Reabold asserted that the exemption must be interpreted in accordance with CEQA's overall purpose of not harming the environment. But the Court reiterated that the Legislature had empowered the Secretary to determine what

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activities should be categorically exempt. Second, Reabold analogized the project here to other examples of class 1 exempt projects. While the Court acknowledged that a "low risk of environmental harm may be common to all exempt projects, it does not suffice to distinguish them from nonexempt projects." The Secretary's determination is based not on projects with a "low risk" of environmental harm, but on those that "categorically do not have significant impacts on the environment." Third, Reabold argued that CEQA requires consideration of environmental impacts at the exemption determination stage when considering whether unusual circumstances may trigger an exception to the exemption. The court agreed that such consideration comes into play, but it disagreed with Reabold's analysis of the unusual circumstances process because its interpretation would require a lead agency to consider environmental impacts even where there was no unusual circumstance. Further, from a practical standpoint, this would require agencies or project proponents to submit evidence to support the exemption, thus forcing a "mini-CEQA environmental review" and the associated costs and administrative burdens that such a review entails. The Court declined to impose such a burden.

Sunflower also claimed that CalGEM impermissibly treated mitigation measures as project conditions in order to employ the exemption. However, the Court declined to address this issue due to the fact-specific, record-based analysis required when doing so may be unnecessary depending on the disposition of the case on remand. Thus, the judgment was reversed and the case was remanded.

Justice Kruger wrote separately to point out that the question remains how to determine whether a proposed expansion of use is "negligible" or not. Citing § 15301. She did not disagree with the court of appeal's quest to measure what is a "negligible" expansion of use but agreed with the majority that "negligible" cannot be determined by the extent of environmental harm a project poses. Thus, Justice Kruger emphasized the value of analogizing to the examples listed in the Guidelines. § 15301. "If a proposed project or class or projects resembles or can reasonably be analogized to one of the [listed] examples, then the exemption applies and the inquiry ends." However, she also noted that "[w]here there is no obvious resemblance, as in this case, the examples can still serve as a guide to the nature and scope of change in environmental risk that renders further formal

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study unnecessary under the class 1 exemption."

>> *See Miller & Starr, California Real Estate 4th, Ch. 9, Fixtures, § 9:28; Ch. 26, CEQA, §§ 26:1, 26:4, 26:8, 26:9, 26:18; Ch. 39, Hazardous Substances, §§ 39:22, 39:25.*

DEEDS OF TRUST

DEBTORS WHO FILED BANKRUPTCY PETITION FOUR DAYS AFTER A NONJUDICIAL FORECLOSURE SALE OF THEIR RESIDENTIAL PROPERTY WERE ENTITLED TO CLAIM HOMESTEAD EXEMPTION BECAUSE THE SALE WAS NOT FINAL UNTIL AT LEAST 15 DAYS AFTER A HIGHEST BID BY A NON-PROSPECTIVE OWNER-OCCUPANT UNDER CIV. CODE, § 2429m.

In re Tinsley, 2026 WL 1729811 (B.A.P. 9th Cir. 2026)

Angela and Donald Tinsley owned a single-family home in Woodland, which they valued at $1.2 million. Creditor Financial Pacific Leasing Company (Financial Pacific) recorded a judicial lien against the Tinsleys and Delta Oilfield Services, Inc. in the Woodland property and conducted a nonjudicial foreclosure sale on February 6, 2025. Because the winning bidder was not a prospective owner-occupant, the sale triggered a 15-day bidding period under Civ. Code, § 2924m, subd. (c)(2) to give prospective owner-occupants additional time to bid. On February 10, 2025, the Tinsleys filed for bankruptcy, claiming a $671,310 homestead exemption. The mortgage lender subsequently received two notices of intent to bid, which extended the bidding period to March 23, 2025, under Civ. Code, § 2924m, subd. (c)(4)(a). The Trustee's Deed upon Sale was recorded on April 1, 2025, showing a sale price of $820,000.

In the bankruptcy court, the Tinsleys amended their Schedules A and C to show a property value of $1,025,000 and a homestead exemption of $617,000, respectively, and included a note that the property was sold at trustee sale and "disputes exist as to validity." They also moved to avoid Financial Pacific's lien on the basis that it impaired their homestead exemption under 11 U.S.C.A. § 522(f). Financial Pacific objected, arguing that the foreclosure became final on February 6, 2025, which was pre-petition, so the Tinsleys had no interest in the property. The bankruptcy court disagreed, finding that the foreclosure sale occurred during the automatic stay, and ordered that the lien be avoided.

The court of appeal began with § 522(f)(1) of the Bankruptcy Code,

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which requires debtors to satisfy three conditions in order to avoid a lien: "(1) there was a fixing of a lien on an interest of the debtor in property; (2) the lien impairs an exemption to which the debtor would have been entitled; and (3) the lien is a judicial lien." Quoting *In re Chiu*, 304 F.3d 905, 908 (9th Cir. 2002) (quoting *Estate of Catli* (*In re Catli*), 999 F.2d 1405, 1406 (9th Cir. 1993)). Here, there was no dispute as to the first and third conditions, but the parties disagreed as to whether the Tinsleys still had an interest in the property when they filed bankruptcy and asserted a homestead exemption before the nonjudicial foreclosure sale was final. Financial Pacific argued that the sale was final on February 6, 2025, four days before the Tinsleys filed their bankruptcy petition.

The court of appeal found this to be incorrect as a matter of law. Following state law to determine the property interests of the debtors (*In re Perl*, 811 F.3d 1120, 1127 (9th Cir. 2016)), the court of appeal explained that the rules relating to when certain nonjudicial foreclosure sales are deemed final recently changed. Prior to the COVID-19 pandemic, that date was "when the last and highest bid was accepted at the public auction." Quoting *In re Garcia*, 676 B.R. 408, 418 (B.A.P. 9th Cir. 2026). However, in 2021, the Legislature adopted Civ. Code, § 2924m, which "applies to the foreclosure of real property containing one to four residential units" and states that the foreclosure sale "shall not be deemed final until the earliest of the following": 1) a prospective owner-occupant is the last and highest bidder; 2) 15 days after the sale unless an eligible bidder submits a bid in an amount equal to or greater than the full amount of the last and highest bid at the sale or a notice of intent to place such a bid; 3) "[t]he date upon which a representative of all of the eligible tenant buyers submits to the trustee a bid in an amount equal to the full amount of the last and highest bid at the trustees sale"; or 4) 45 days after the sale, unless an eligible bidder submits a bid exceeding the last and highest bid at the sale. Section 2924m also states that "[t]itle to the property shall remain with the mortgagor or trustor or successor in interest until the property sale is deemed final as provided in this section."

Here, it was undisputed that the Tinsleys owned a single-family residence and that the highest bidder was not a prospective owner-occupant. Thus, at a minimum, under § 2924m(c)(2), the sale could not be final until a 15-day bidding period had elapsed. The sale there-

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fore could not have been final four days after the public auction when the Tinsleys filed their bankruptcy petition. The court declared that the Tinsleys still owned title to the property when they filed bankruptcy. See *Applegate v. Carrington Foreclosure Services, LLC*, 112 Cal. App. 5th 356, 360-361, 334 Cal. Rptr. 3d 268 (1st Dist. 2025) (in any case other than where a prospective owner-occupant is the highest bidder, "the public auction does not signal the completion of the foreclosure sale") (quoting Civ. Code, § 2924m, subd. (c)(1)).

Next, the court addressed Civ. Code, § 2924h, subd. (c), which Financial Pacific argued extended the bidding period to 45 days after the actual sale date because the lender received two notices of intent to bid during the 15-day bidding period. The court found that Financial Pacific was confusing finality and perfection, which are two distinct concepts. It cited *In re Bebensee-Wong*, 248 B.R. 820 (B.A.P. 9th Cir. 2000) for the rule that an act of perfection cannot validate a void sale. The court explained: "[I]f the foreclosure is final before bankruptcy, the sale can be perfected by recording the trustee's deed after bankruptcy without violating the automatic stay. However, if the foreclosure is not final before bankruptcy, the foreclosure cannot be finalized after bankruptcy if the automatic stay is in place . . . ." The court also clarified that "[p]erfection of a foreclosure sale by filing a trustee's deed postpetition does not 'relate back' to change a sale that was not final before bankruptcy into a final sale—all it does is perfect the sale." Because the relevant issue here was finality, not perfection, the court found that the sale was not final prepetition, and there was nothing anyone could have done to make it final.

The court of appeal proceeded to briefly wrap up several remaining arguments, including that even if the sale was not final as to third-party bidders, it was final as to the Tinsleys. The court rejected this argument, finding it to be contrary to the statutory text. The court also rejected that the Tinsleys had no homestead rights when the foreclosure sale became final because they did not claim a homestead exemption before the foreclosure sale. This argument depended on the foreclosure sale becoming final before the bankruptcy petition was filed, which the court had already rejected. Finally, the court of appeal found that the bankruptcy court correctly avoided liens in the reverse order of their priority and correctly concluded that the amount of all liens and the exemption together exceeded the value of

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the property by more than the amount of Financial Pacific's lien. Its lien should therefore be avoided in full. Accordingly, the court affirmed the judgment.

>> *See Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust, §§ 13:189, 13:248, 13:250, 13:252; Ch. 43, Homesteads, §§ 43:48, 43:51, 43:56.*

THE CONSTITUTIONAL BASELINE FOR CALCULATING "JUST COMPENSATION" FOR REAL PROPERTY SOLD AT AUCTION TO SATISFY A PROPERTY TAX DEBT IS THE PRICE OBTAINED AT THE TAX SALE, ASSUMING IT WAS FAIRLY CONDUCTED, EVEN WHERE THE SALE PRICE IS SIGNIFICANTLY LESS THAN THE PROPERTY'S FAIR MARKET VALUE.

Pung v. Isabella County, Michigan, 609 U.S. __, 146 S. Ct. 1964 (2026)

In 1991, Scott Pung purchased residential property in Isabella County, Michigan. He lived there with his wife and children. After he died in 2004, his wife continued to live there until she died in 2008, after which her son Marc and his family continued to live there. Because Isabella County imposes higher property taxes on second homes, the Pungs applied for and received an exemption for primary residences. They paid every tax bill in full. Then, in 2010, erroneously believing that the Pungs were required to have filed an updated primary residence affidavit, the tax assessor imposed the higher tax rate for tax years 2007 to 2011. The Pungs challenged that decision and prevailed in state court, but the tax assessor nevertheless purported to impose the same additional second-home property taxes in 2012, eventually amounting to $2,241.93. When the Pungs learned of the additional tax, Michael Pung (the executor of the Pung estate) explained the property was a primary residence, but the assessor refused to remove the tax and reported the property as delinquent, even after the Pungs prevailed in the state court. In the meantime, the County moved forward with foreclosure proceedings. While the state court blocked those proceedings on the basis of insufficient notice to the Pungs, the Michigan Court of Appeals reversed and allowed the foreclosure to proceed. The property sold at auction for $76,008 even though the assessed tax value was $194,400.

After the County kept all of the proceeds, Pung sued the County for violations of the Fifth and Eighth Amendments. The district court found Pung was entitled to the surplus proceeds from the tax sale, but rejected the argument that compen-

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sation should be measured by the property's fair market value, and it did not reach the Eighth Amendment claim. The Sixth Circuit Court of Appeals affirmed, holding that "a 'plaintiff whose property is foreclosed and sold at a public auction for failure to pay taxes is [not] entitled to recoup the fair market value of the property.' " Quoting App. to Pet. for Cert. 11a (alteration in original). That court also rejected Pung's Eighth Amendment claim on the basis that the Michigan tax-foreclosure scheme "was not punitive and thus not 'within the ambit of the Eighth Amendment.' " Quoting App. to Pet. for Cert. 15a.

The Supreme Court granted certiorari on two questions:

1. Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause of the Fifth Amendment when the compensation is based on the artificially depressed auction sale price rather than the property's fair market value.

2. Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for [a] fraction of its real value constitutes an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed.

Pet. for Cert. i.

The Supreme Court first addressed "whether 'just compensation' following a tax sale is measured by the price that the property fetched at auction or its hypothetical fair market value." It reviewed early federal statutes, state law, and precedent and concluded that "[t]he baseline for measuring just compensation in the tax-sale context is therefore the sale price, not the property's hypothetical fair market value, at least when the sale is fairly conducted in light of our country's history of tax sales." It found that *Rafaeli, LLC v. Oakland County*, 505 Mich. 429, 485-522, 952 N.W.2d 434 (2020) did not support Pung's argument that fair market value should be the baseline, since the argument was based on only a concurring opinion (and expressly *not* the majority opinion). The Court also distinguished state court cases relied upon by Pung because those cases involved unnecessary sales of multiple discrete pieces of personal property, which was not the case here.

As an alternative to tax sale cases, Pung sought support in eminent domain cases, where fair market value is the default measure of just compensation. See, e.g., *Knick v.*

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Township of Scott, Pennsylvania, 588 U.S. 180, 190, 139 S. Ct. 2162, 204 L. Ed. 2d 558 (2019). The Court dismissed these as well, observing that "what is 'just' in one context may not be 'just' in another," and finding tax sales constituted a situation where fair market value is an inappropriate measure of just compensation. Recounting the ways the Pungs could have avoided foreclosure (e.g., refinancing to pay the tax bill, selling the house themselves for fair market value), the Court found the traditional rule, where the taxpayer receives only the difference between the auction sale price and unpaid taxes, to be "just."

It further explained that unlike a traditional sale, tax sales are meant to proceed "without undue delay and administrative expense," which "would impose unprecedented burdens on jurisdictions that wish to collect unpaid taxes and might well make tax sales impractical." This could result in the government being liable for the difference between fair market value and the tax-sale price, which, in turn, the Court speculated could lead to the demise of tax sales. Had the Takings Clause been understood to require compensation of fair market value in the context of tax sales, such sales would likely have "faded away." Since that did not happen, the Court held that "just compensation in the tax-sale context need not be based on a property's fair market value." Pung further argued that the procedures the County followed leading up to the sale were unfair in several respects, but the Court declined to resolve that question because it was not raised in the petition for certiorari, instead directing the court of appeals to determine whether that claim was properly preserved and, if so, to address Pung's arguments.

Finally, the Court briefly addressed Pung's Eighth Amendment claim that the County's failure to pay market value as just compensation constituted an excessive fine. Forfeiture of property can be a "fine" if it is intended to punish. Citing *Austin v. United States*, 509 U.S. 602, 610, 113 S. Ct. 2801, 125 L. Ed. 2d 488 (1993). However, the Court reiterated that nothing "in either history or precedent" supported Pung's fair-market-value theory and observed Pung "[did] not offer any additional historical evidence that a tax sale which is fairly conducted in light of our Nation's history would violate the Eighth Amendment." Further, it found that such a rule would pose the same risks as Pung's Fifth Amendment theory. Concluding that "[t]he Pung family lost its property because it failed to pay its taxes," the Court held that the Eighth

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Amendment offered "no greater protections" than the Fifth Amendment, and it remanded the case for further proceedings consistent with its opinion.

Justice Sotomayor, joined by Justices Gorsuch and Jackson, concurred, clarifying that she did not "read the Court's opinion as identifying the contours of a fair auction, or endorsing the parties' or the United States' articulations of what this standard requires," leaving that instead to the court of appeals on remand, should they find those issues to be preserved.

Justice Thomas, joined by Justice Gorsuch as to all but footnote 1, concurred in part and concurred in the judgment. After a lengthy review of the specific facts of the case and of takings law, he disagreed that the context of foreclosure should reduce fair market value, noting that "[i]t is the owner's loss, not the taker's gain, which is the measure of the value of the property taken." Quoting *U.S. v. Causby*, 328 U.S. 256, 261, 66 S. Ct. 1062, 90 L. Ed. 1206 (1946). He recognized that there are exceptions to the rule that just compensation means fair market value and agreed that historical evidence could support new exceptions, joining the Court's opinion on that basis. However, he did not find that the history of tax foreclosure sales actually supported such an exception here, noting his initial view that "any history of tax foreclosure sales reflects a greater respect for principles of just compensation than the County showed the Pungs here." Justice Thomas further observed that "the County did not try to collect anything less than the entire property" and noted that issue should be open on remand, adding that the process the County employed here "appear[ed] to have departed from historical limits in other ways as well." Finally, he concluded that "[w]hat Isabella County did to the Pungs was wrong, and on [his] initial view, likely unconstitutional."

>> *See Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust, §§ 13:172, 13:254; Ch. 23, Inverse Condemnation, §§ 23:13, 23:37.*

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DEFECTIVE CONSTRUCTION

PLAN TO REPAIR FLOOD DAMAGE AND PREVENT FUTURE WATER INTRUSION, WHICH WAS PREPARED AS PART OF AN EXPERT REPORT IN THE COURSE OF LITIGATION BETWEEN NEIGHBORS, WAS NECESSARILY CONNECTED TO A COMMUNICATIVE ACT AND THEREFORE PROTECTED BY THE LITIGATION PRIVILEGE WHEN NEIGHBOR SUED OVER PLAN'S FAILURE.

Fazel v. Pete Fowler Construction Services, Inc., 121 Cal. App. 5th 315, 345 Cal. Rptr. 3d 625 (4th Dist. 2026)

Maryam Fazel sued her neighbor, Alan Sakai, for damage caused by water intrusion from Sakai's property. Sakai retained Pete Fowler Construction Services (Fowler) to formulate a plan to repair the damage and prevent future water intrusion into Fazel's property. Accordingly, Fowler made recommendations, which it conveyed in an expert report. Sakai shared the report with Fazel, who agreed to the recommendations and hired Avex Builders (Avex) to implement the repairs. Fazel then settled the lawsuit with Sakai for $8,250 in damages, and the lawsuit was dismissed.

Unfortunately, heavy rains occurred over the next two months, and Fazel's property flooded again. Fazel then sued Fowler, Avex, and Sakai for intentional and negligent misrepresentation, negligence, violation of Bus. & Prof. Code, § 7160, breach of contract toward a third-party beneficiary, and fraudulent concealment. Fowler responded with an anti-SLAPP motion, arguing it was sued based on statements in its expert report, which was prepared during litigation and was therefore protected communication. The trial court agreed with respect to all but the negligence and breach of contract causes of action. Fowler appealed, and the court of appeal affirmed, although it specifically declined to address whether the litigation privilege barred those two causes of action. Fowler then moved for judgment on the pleadings based on the litigation privilege with respect to the remaining causes of action. The trial court granted the motion, and Fazel appealed.

On appeal, Fazel repeated her claims that the repairs and construction work were defective and argued that "the only motivating purpose" of the contract between Sakai and Fowler was to perform repairs to prevent water intrusion to her property. The litigation privilege, codified in Civ. Code, § 47, subd. (b), protects a "publication" or

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"broadcast," made in any judicial or quasi-judicial proceeding, by litigants or other authorized participants, to achieve litigation objectives, that has a logical connection to the case. Citing *Jacob B. v. County of Shasta*, 40 Cal. 4th 948, 955, 56 Cal. Rptr. 3d 477, 154 P.3d 1003 (2007). The purpose of the privilege is to free witnesses "from the fear of protracted and costly lawsuits which otherwise might cause them either to distort their testimony or refuse to testify altogether." Quoting *Silberg v. Anderson*, 50 Cal. 3d 205, 214, 266 Cal. Rptr. 638, 786 P.2d 365 (1990). "To effectuate its vital purposes, the litigation privilege is held to be absolute in nature." Quoting *Silberg v. Anderson*, 50 Cal. 3d at 215. The court of appeal noted that the privilege explicitly applies to communications, but "can also extend to noncommunicative acts that are necessarily related to a communication." See *Rusheen v. Cohen*, 37 Cal. 4th 1048, 1065, 39 Cal. Rptr. 3d 516, 128 P.3d 713 (2006).

Here, the court observed that Fowler's "formulation" of repairs, while not directly a communicative act, was necessarily related to one since the reason for formulating the repairs "was to include them in an expert report (a communication) prepared in the course of litigation." It further noted that Fazel should have challenged the repair recommendations by hiring her own expert in the earlier proceeding, not "a derivative lawsuit," which "is exactly what the litigation privilege is designed to avoid." The court distinguished *Mero v. Sadoff*, 31 Cal. App. 4th 1466, 37 Cal. Rptr. 2d 769 (2d Dist. 1995) because that case involved a patient who sued over a medical examination that exacerbated her back injury in the context of a workers' compensation claim. The "unnecessary physical contortions" did not constitute communicative acts, unlike the repairs here, which were formulated specifically for use in an expert report in the context of mediation. Per the court, the repairs could not have hurt Fazel until they were communicated to her and she agreed to them as part of the settlement.

In her final argument, Fazel conceded that the recommendations contained in Fowler's report were privileged, but she maintained that "Fowler had a duty to prevent [her] from relying on the recommendations that Fowler produced in its expert report." The court found "no authority for such an extraordinary proposition," and it rejected that a retained expert has any such duty to an opposing party, finding that proposition to be inconsistent with the policy underlying the litigation

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privilege. The court found Fazel's argument to highlight the fact that relying on an opposing party's expert report is risky due to the potential for bias. Yet that was the decision Fazel freely made despite having ample opportunity to engage her own expert. The court concluded, "[s]he cannot now seek to hold Fowler liable for her own decision making." Finding "Fowler's formulation of the repairs was an act necessarily related to a communicative act," the court found the litigation privilege to bar Fazel's claims, and it affirmed the judgment.

>> *See Miller & Starr, California Real Estate 4th, Ch. 33, Defective Construction, §§ 33:6, 33:13, 33:43, 33:44, 33:83; Ch. 40, Remedies, § 40:148.*

FIXTURES

FOR PURPOSES OF CEQA'S CLASS 1 EXEMPTION FOR MINOR ALTERATIONS OF EXISTING FACILITIES "INVOLVING NEGLIGIBLE OR NO EXPANSION OF EXISTING OR FORMER USE," NEGLIGIBLE EXPANSION REFERS TO THE NATURE OR DEGREE OF USE, NOT A NEGLIGIBLE RISK OF ENVIRONMENTAL HARM CAUSED BY THE EXPANSION OR CHANGE IN USE.

Sunflower Alliance v. Department of Conservation, 20 Cal. 5th 22, 345 Cal. Rptr. 3d 631, 591 P.3d 829 (2026)

For a summary of this case see CEQA

>> *See Miller & Starr, California Real Estate 4th, Ch. 9, Fixtures, § 9:28; Ch. 26, CEQA, §§ 26:1, 26:4, 26:8, 26:9, 26:18; Ch. 39, Hazardous Substances, §§ 39:22, 39:25.*

HAZARDOUS SUBSTANCES

FOR PURPOSES OF CEQA'S CLASS 1 EXEMPTION FOR MINOR ALTERATIONS OF EXISTING FACILITIES "INVOLVING NEGLIGIBLE OR NO EXPANSION OF EXISTING OR FORMER USE," NEGLIGIBLE EXPANSION REFERS TO THE NATURE OR DEGREE OF USE, NOT A NEGLIGIBLE RISK OF ENVIRONMENTAL HARM CAUSED BY THE EXPANSION OR CHANGE IN USE.

Sunflower Alliance v. Department of Conservation, 20 Cal. 5th 22, 345 Cal. Rptr. 3d 631, 591 P.3d 829 (2026)

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>> *See Miller & Starr, California Real Estate 4th, Ch. 9, Fixtures, § 9:28; Ch. 26, CEQA, §§ 26:1, 26:4, 26:8, 26:9, 26:18; Ch. 39,*

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Hazardous Substances, §§ 39:22, 39:25.

HOMESTEADS

DEBTORS WHO FILED BANKRUPTCY PETITION FOUR DAYS AFTER A NONJUDICIAL FORECLOSURE SALE OF THEIR RESIDENTIAL PROPERTY WERE ENTITLED TO CLAIM HOMESTEAD EXEMPTION BECAUSE THE SALE WAS NOT FINAL UNTIL AT LEAST 15 DAYS AFTER A HIGHEST BID BY A NON-PROSPECTIVE OWNER-OCCUPANT UNDER CIV. CODE, § 2429m.

In re Tinsley, 2026 WL 1729811 (B.A.P. 9th Cir. 2026)

For a summary of this case see DEEDS OF TRUST

>> *See Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust, §§ 13:189, 13:248, 13:250, 13:252; Ch. 43, Homesteads, §§ 43:48, 43:51, 43:56.*

INVERSE CONDEMNATION

THE CONSTITUTIONAL BASELINE FOR CALCULATING "JUST COMPENSATION" FOR REAL PROPERTY SOLD AT AUCTION TO SATISFY A PROPERTY TAX DEBT IS THE PRICE OBTAINED AT THE TAX SALE, ASSUMING IT WAS FAIRLY CONDUCTED, EVEN WHERE THE SALE PRICE IS SIGNIFICANTLY LESS THAN THE PROPERTY'S FAIR MARKET VALUE.

Pung v. Isabella County, Michigan, 609 U.S. __, 146 S. Ct. 1964 (2026)

For a summary of this case see DEEDS OF TRUST

>> *See Miller & Starr, California Real Estate 4th, Ch. 13, Deeds of Trust, §§ 13:172, 13:254; Ch. 23, Inverse Condemnation, §§ 23:13, 23:37.*

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LAND USE

RENT CONTROL ORDINANCE THAT REQUIRED A TENANT TO OWE MORE THAN ONE MONTH OF FAIR MARKET RENT BEFORE AN UNLAWFUL DETAINER ACTION COULD BE BROUGHT WAS A SUBSTANTIVE REGULATION DESPITE HAVING A PROCEDURAL IMPACT AND THEREFORE WAS NOT PREEMPTED BY STATE LAW.

Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, 120 Cal. App. 5th 640, 344 Cal. Rptr. 3d 488 (2d Dist. 2026)

For a summary of this case see LANDLORD AND TENANT

>> *See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, § 21:2; Ch. 34, Landlord and Tenant, §§ 34:246, 34:247, 34:249, 34:263.*

LANDLORD AND TENANT

RENT CONTROL ORDINANCE THAT REQUIRED A TENANT TO OWE MORE THAN ONE MONTH OF FAIR MARKET RENT BEFORE AN UNLAWFUL DETAINER ACTION COULD BE BROUGHT WAS A SUBSTANTIVE REGULATION DESPITE HAVING A PROCEDURAL IMPACT AND THEREFORE WAS NOT PREEMPTED BY STATE LAW.

Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles, 120 Cal. App. 5th 640, 344 Cal. Rptr. 3d 488 (2d Dist. 2026)

In February 2023, in anticipation of the sunsetting of certain COVID-19 eviction protections, the City of Los Angeles adopted two rent control ordinances: the Eviction Threshold Ordinance, which prohibited a landlord from bringing an unlawful detainer action until a tenant owed more than "one month of fair market rent," and the Relocation Assistance Ordinance, which required landlords to pay relocation assistance of three times the fair market rent for a similar size unit in the Los Angeles metropolitan area whenever a tenant relinquished its tenancy following a rent increase of certain specified amounts. In response, the Apartment Association of Greater Los Angeles (AAGLA) filed a peti-

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tion for writ of mandate alleging that both ordinances conflicted with and were preempted by state law. The trial court found the Eviction Threshold Ordinance to be a substantive regulation within the City's police power, as opposed to a procedural limitation. While it found the Relocation Assistance Ordinance to '' 'seemingly conflict[] with the Costa-Hawkins provisions permitting landlords' to set rental rates," the court found the ordinance to be "saved by the fact that the Act preserve[d] local authority to 'regulate or monitor the basis for eviction.' " Quoting Civ. Code, § 1954.52, subd. (c). The court therefore denied AAGLA's petition, and AAGLA appealed.

The published portion of the opinion, addressing the Eviction Threshold Ordinance, began with a discussion of general preemption principles. Otherwise valid local ordinances and regulations are preempted to the extent they conflict with state law. A conflict may arise where "local legislation 'duplicates, contradicts, or enters an area fully occupied by general law, either expressly or by legislative implication.' " Quoting *Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal. 5th 135, 142, 311 Cal. Rptr. 3d 68, 532 P.3d 1120 (2023). Here, AAGLA argued that both ordinances contradicted state law. For contradiction to exist, a local law must be "inimical" to state law. *Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal. 5th at 145. One example is where a local law prohibits what the state law either demands or permits. However, there is no conflict when compliance with both local and state laws is possible. Citing *City of Riverside v. Inland Empire Patients Health & Wellness Center, Inc.*, 56 Cal. 4th 729, 743, 156 Cal. Rptr. 3d 409, 300 P.3d 494 (2013). Local laws also cannot be used to frustrate a state law's purpose. *Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853, 868, 118 Cal. Rptr. 2d 746, 44 P.3d 120 (2002).

Because this was a facial challenge, the court analyzed only the text of the ordinance, not its application. See *T-Mobile West LLC v. City and County of San Francisco*, 6 Cal. 5th 1107, 1117, 245 Cal. Rptr. 3d 412, 438 P.3d 239 (2019). AAGLA had the burden of demonstrating preemption. *Chevron U.S.A. Inc. v. County of Monterey*, 15 Cal.5th at 142. AAGLA contended that "the Eviction Threshold Ordinance impose[d] an improper procedural limitation on the timeline for summary evictions under the Unlawful Detainer Act . . . ." It further argued that even if deemed a substantive limitation, the ordinance exceeded

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the City's authority. The court recited that a city "may place substantive limitations on otherwise available grounds for eviction, but not procedural ones." Quoting *Rental Housing Assn. of Northern Alameda County v. City of Oakland*, 171 Cal. App. 4th 741, 762-763, 90 Cal. Rptr. 3d 181 (1st Dist. 2009); see *California Apartment Assn. v. City of Pasadena*, 117 Cal. App. 5th 187, 241, 340 Cal. Rptr. 3d 410 (2d Dist. 2025) (finding such ordinances to be preempted). The question, then, was whether the Eviction Threshold Ordinance imposed an improper procedural limitation on Civ. Proc. Code, § 1161, subd. (2)'s three-day notice period.

The Unlawful Detainer Act balances "tenants' occupancy rights against landlords' rights to earn income," and it requires strict procedural compliance. Citing *Stancil v. Superior Court*, 11 Cal. 5th 381, 390, 278 Cal. Rptr. 3d 27, 485 P.3d 446 (2021). Section 1161 details the substantive grounds for eviction, which local governments may further regulate by creating substantive defenses to eviction. See *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 149, 130 Cal. Rptr. 465, 550 P.2d 1001 (1976). If the basis for eviction is nonpayment of rent, the landlord must serve the tenant with a three-day notice to pay rent or quit the premises prior to filing an unlawful detainer action.

In this case, the Eviction Threshold Ordinance prohibited a landlord from bringing an unlawful detainer action until the tenant owed more than one month of fair market rent. AAGLA conceded that this was framed as a substantive limit on evictions but argued that it had a procedural effect because it delayed evictions based on nonpayment. The City countered that it was merely changing when "just cause" for eviction existed, which was substantive, and that the ordinance did not impede any procedural aspect of an eviction after a substantive basis for eviction is met.

The court reviewed the preemption rubric set forth in *Birkenfeld*, which held that the unlawful detainer statutes did not preempt a provision of the city's charter amendment because "a local measure eliminating particular grounds for eviction . . . is a limitation upon the landlord's property rights under the police power, creating a *substantive* ground of defense in unlawful detainer proceedings." *Birkenfeld v. City of Berkeley*, 17 Cal. 3d at 149. By contrast, another provision requiring landlords to obtain a certificate of eviction before seeking to recover possession of rent-controlled properties was found to "raise[] pro-

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cedural barriers between the landlord and the judicial proceeding," and was therefore preempted. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d at 151.

Based on this analysis, the court here found that the Eviction Threshold Ordinance was not preempted by the Unlawful Detainer Act because it was not procedural: it did not extend the unlawful detainer timeline; did not interfere with the state statutory timeline; and did not require some affirmative act by landlords before bringing an unlawful detainer action. The court found the ordinance in this case to be similar to one upheld in *San Francisco Apartment Assn. v. City and County of San Francisco*, 20 Cal. App. 5th 510, 229 Cal. Rptr. 3d 124 (1st Dist. 2018). That case "involved an ordinance prohibiting no-fault evictions if a child or educator resided in the rental unit, and 'the effective date of the notice of termination of tenancy falls during the school year.' " Quoting *San Francisco Apartment Assn. v. City and County of San Francisco*, 20 Cal. App. 5th at 513. Because the ordinance required no affirmative act by landlords, the court in that case found it to merely have a procedural *impact* while effecting a substantive defense.

The court here distinguished the ordinance in *City of Pasadena*, which required landlords to provide tenants with a "Written Notice to Cease" and to give them a "reasonable period" to cure before undertaking an unlawful detainer action, which the court there found to be "the epitome of a 'procedural barrier[] between the landlord and the judicial proceeding . . . .' " *California Apartment Assn. v. City of Pasadena*, 117 Cal. App. 5th at 245-246. The ordinance here contained no such notice and cure requirement, instead requiring a monetary threshold be met before an unlawful detainer action could accrue. Although it "acknowledged 'the distinction between procedure and substantive law can be "shadowy and difficult to draw in practice," ' " the court found the ordinance at issue to be "a permissible regulation of the substantive basis for eviction" despite having the procedural effect of delaying some unlawful detainer actions.

Lastly, the court found the ordinance to be squarely within the City's police power. See *San Francisco Apartment Assn. v. City and County of San Francisco*, 20 Cal. App. 5th at 516. Noting that this case did not present the possibility of the City prohibiting evictions for nonpayment altogether, as hypothesized by AAGLA, the court declined to consider such a scenario.

In an unpublished portion of its decision, the court found the Relocation Assistance Ordinance to be pre-

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empted by the Costa-Hawkins Rental Housing Act. Civ. Code, §§ 1954.40 et seq. Therefore, the court affirmed the judgment as to the Eviction Threshold Ordinance and reversed as to the Relocation Assistance Ordinance.

>> See Miller & Starr, California Real Estate 4th, Ch. 21, Land Use, § 21:2; Ch. 34, Landlord and Tenant, §§ 34:246, 34:247, 34:249, 34:263.

LONG-TERM RESIDENTIAL TENANT WHO REMAINED IN POSSESSION AFTER HER HUSBAND DIED WAS AN AT-WILL TENANT PURSUANT TO AN IMPLIED TENANCY AND PROTECTED FROM RENT INCREASE BY A LOCAL RENT CONTROL ORDINANCE, WHICH WAS NOT PREEMPTED BY THE COSTA-HAWKINS RENTAL HOUSING ACT.

Colonial Manor, Inc. v. Reyes, 120 Cal. App. 5th Supp. 1, 344 Cal. Rptr. 3d 432 (Cal. App. Dep't Super. Ct. 2026)

Colonial Manor, Inc. (Colonial) leased a residential unit to Milton Reyes (Milton) for $666 per month. Vilma Reyes (Vilma) resided in the rental unit with Milton for at least one year prior to their marriage on February 26, 2022. Milton died on September 8, 2023. Vilma, who never paid rent to Milton and never entered into any written, verbal, or implied agreement to transfer the leasehold interest, continued to occupy the premises following Milton's death. On November 15, 2023, Colonial served Vilma with a Notice of Change of Tenancy, increasing the rent to $3,500 per month. On March 5, 2024, Vilma was served with a three-day notice to pay $3,500 in past due rent or vacate the property. Shortly thereafter, Colonial filed an unlawful detainer action seeking possession of the property.

At trial, Colonial made several arguments as to why the rent increase was lawful. Colonial argued that: Milton's month-to-month tenancy terminated upon his death (or 30 days after the last rent payment he made while he was alive); state law authorized any rent increase upon Vilma as a subtenant; and to the extent Vilma was protected by the Santa Monica Rent Control Charter (SMRCCA), it was preempted by Civ. Code, § 1954.53 (part of the Costa-Hawkins Rental Housing Act (Costa-Hawkins)). Vilma responded that because she resided in the unit as a lawful occupant and later as the surviving spouse of Milton, she was a tenant rather than a subtenant. Accordingly, the SMRCCA prohibited the rent increase. She also argued SMRCCA was not preempted by § 1954.53, rendering the rent increase unlawful and the notice to pay or quit defective. Relying partly on

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Fam. Code, § 914, which makes spouses liable for each other's debts for life necessities, the trial court found the plain language of § 1954.53 not to authorize an unlimited rent increase against Vilma. Colonial appealed.

On appeal, the court summarized the lessor's burden of proof in an unlawful detainer action and recounted a municipality's authority, derived from its police powers, to adopt rent control regulations. Cal. Const., art. XI, § 7. Pursuant to this authority, the City of Santa Monica adopted the SMRCCA, a rent control charter amendment establishing a rent control board to regulate rentals and set a "maximum percentage by which rental rates could increase each year." Quoting *Action Apartment Assn., Inc. v. City of Santa Monica*, 41 Cal. 4th 1232, 1237, 63 Cal. Rptr. 3d 398, 163 P.3d 89 (2007). "The SMRCCA prohibits a lessor from serving any notice or bringing an action to recover possession of a rent-controlled unit unless '[t]he tenant has failed to pay the rent to which the landlord is entitled.' " Quoting SMRCCA, art. XVIII, § 1806, subd. (a)(1). The SMRCCA further states "that if a 'tenant's spouse . . . ha[s] lived in the unit for at least one year at the time the tenant vacates the unit due to death or incapacitation, the landlord is prohibited from taking any action to obtain possession of the unit from the tenant's spouse . . . on the ground that the spouse . . . [is] not authorized to occupy the unit.' " Quoting SMRCCA, art. XVIII, § 1806, subd. (c).

The court then explained that an ordinance "is preempted when it is contrary or inimical to state law." Costa-Hawkins grants landlords the ability to "establish the initial rental rate for a dwelling or unit"; however, it "expressly preserves the authority of local governments 'to regulate or monitor the grounds for eviction.' " Quoting *Action Apartment Assn., Inc v. City of Santa Monica*, 41 Cal. 4th at 1237-1238 (citations omitted). Under § 1954.53, subdivision (b), the rent level initially set "applies to a tenant, lessee, authorized subtenant, or authorized sublessee for the entire period of [their] occupancy." Quoting *DeZerega v. Meggs*, 83 Cal. App. 4th 28, 41, 99 Cal. Rptr. 2d 366 (1st Dist. 2000). Under § 1954.53, subdivision (d)(2), an owner may increase rent once the original occupant or occupants who took possession of the dwelling pursuant to the rental agreement with the owner no longer permanently reside there.

After reviewing a line of cases that established "occupancy as the factor which triggers rent control protec-

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tion," at least where the occupant has occupied the premises with the landlord's agreement or knowledge, the court of appeal rejected Colonial's contention that Vilma was a sublessee, finding no evidence in the record that Milton transferred any portion of his leasehold interest to Vilma. Instead, the court held that she "became an implied tenant in her own right." Because Colonial was aware of Vilma's long-term occupancy and the notice identified Vilma as "the tenant who is in possession," she occupied the property as a lawful at-will tenant. The court reasoned that a person occupying the premises pursuant to the original rental agreement is treated as a continuation of the original occupancy under Costa-Hawkins, even when the named tenant has vacated. As a result, Vilma did not fall within the parameters of § 1954.53, subdivision (d)(2).

The court also considered Colonial's argument that Costa-Hawkins preempts the SMRCCA, finding no clear legislative intent to lift rent control under these circumstances. The court explained that "[h]ad the Legislature meant rent decontrol to occur when the party to the rental agreement vacates, it could easily have used the term 'party,' as it did in subdivision (d)(4) concerning sublease prohibition waivers . . . ." The court inferred the Legislature intentionally distinguished between terms, presumed that the City's legislative enactments must be upheld, and concluded Colonial failed to establish the SMRCCA was inimical to Costa-Hawkins. Therefore, the SMRCCA was the controlling statute.

Finally, Colonial argued that even if SMRCCA applied, § 1806, subdivision (c) only prohibited terminating the tenancy based on unauthorized occupancy by a surviving spouse and imposed no limitations on rent increases. The court held this argument was misplaced because it ignored the fact Vilma was an authorized "tenant in her own right."

As a result, the court found that the SMRCCA prohibited Colonial "from serving any notice to quit or bringing an action to recover possession of the unit unless [Vilma] failed to pay the rent to which [Colonial] was entitled." Because the 425 percent rent increase imposed by Colonial exceeded the allowable limit set by the SMRCCA, it overstated the rent actually due and the notice was fatally defective. Because Colonial failed to comply with the SMRCCA, Vilma had a complete defense to the action, and the judgment was affirmed.

>> *See Miller & Starr, California*

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Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:28, 34:77, 34:133, 34:147, 34:167, 34:184, 34:195, 34:199, 34:201, 34:204, 34:245, 34:246, 34:249, 34:263.

WHERE PROPERTY OWNER DIED INTESTATE AND A RECEIVER WAS APPOINTED TO REMEDY A NUISANCE AT THE PROPERTY, SISTERS WHO RENOUNCED ANY INTEREST IN THE PROPERTY WERE IMPROPERLY NAMED AND THEREFORE PREVAILING PARTIES ENTITLED TO ATTORNEY'S FEES AND COSTS ON THE ISSUE OF THEIR LIABILITY.

County of Del Norte v. Britt, 121 Cal. App. 5th 36, 345 Cal. Rptr. 3d 489 (1st Dist. 2026)

For a summary of this case see LANDOWNERS' LIABILITY

>> *See Miller & Starr, California Real Estate 4th, Ch. 19, Landowners' Liability, §§ 19:17, 19:29, 19:30, 19:31; Ch. 25, Building Codes, §§ 25:46, 25:49, 25:50, 25:52; Ch. 34, Landlord and Tenant, § 34:90; Ch. 40, Remedies, §§ 40:64, 40:69, 40:74; Ch. 41, Receivers, §§ 41:12, 41:15, 41:23, 41:31, 41:32.*

UNLAWFUL DETAINER STATUTE REQUIRES STRICT COMPLIANCE, SO THREE-DAY NOTICE MUST INCLUDE SPECIFIC INFORMATION FOR EACH METHOD OF PAYMENT AND SUBSTANTIALLY COMPLYING BY INCLUDING SUCH INFORMATION FOR ONE PAYMENT METHOD BUT NOT ANOTHER IS INSUFFICIENT.

SVF Grosvenor Del Rey Corp. v. Schwarz, 120 Cal. App. 5th Supp. 15, 345 Cal. Rptr. 3d 175 (Cal. App. Dep't Super. Ct. 2026)

SVF Grosvenor Del Rey Corporation (SVF) owned an apartment building on Grosvenor Boulevard in Los Angeles and leased a unit to Lisa Schwarz for $3,912 per month. On June 13, 2024, SVF served Schwartz with a three-day notice to pay rent or quit. The notice stated Schwartz was required to pay $23,472 in rent or give up possession of the property. It further stated that payment must be made to "SVF Grosvenor Del Rey," and listed four options for payment with boxes where checkmarks could be added, spanning two pages of the notice. The first option, which was checked and appeared at the bottom of the first page, stated notice could be made by mailing it to "**Leasing Office 5550 Grosvenor Blvd Los Angeles, CA. 90066**" (emph. in original). The second option, which was also checked but ap-

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peared on the next page, stated notice could be made "[b]y delivering in person to: Barrington Thomas or any available personnel at 5550 Grosvenor Blvd, Los Angeles, CA 90066 between the hours of 9:00AM to 6:00PM on the following days of the week Sunday to Saturday. Said employee may be reached by telephone at 310-596-8033." Two additional options for payment were not checked.

When Schwartz failed to comply, SVF filed an unlawful detainer complaint. Schwartz answered and asserted affirmative defenses, including that the three-day notice failed to include "the 'name, telephone number, and address of the person' to whom the rent should be mailed" as required by Civ. Proc. Code, § 1161, subd. (2), instead listing only an address for the payment-by-mail option. In its opposition to Schwartz's motion for judgment on the pleadings, SVF stated that it had substantially complied with § 1161, subd. (2) because that information was included in the personal payment option. Schwartz replied that if such information was not provided for each payment method, a tenant would not know who to send the rent to or who to call with questions about mailing the rent. The trial court granted Schwartz's motion, and SVF appealed.

The court of appeal began by reciting the law relating to unlawful detainer cases, including that "[a] valid three-day pay rent or quit notice is a prerequisite to an unlawful detainer action," and statutory notice requirements must be strictly complied with. Quoting *Bevill v. Zoura*, 27 Cal. App. 4th 694, 697, 32 Cal. Rptr. 2d 635 (4th Dist. 1994). Considering Schwartz's contention that the requirement to state "the name, telephone number, and address of the person to whom the rent payment shall be made" applied to both payments made in person and by mail, the court quoted § 1161, subd. (2) at length and examined case law. Although the court in *Hsieh v. Pederson*, 23 Cal. App. 5th Supp. 1, 5, 232 Cal. Rptr. 3d 701 (Cal. App. Dep't Super. Ct. 2018) found a notice that included that information without specifying whether payment could be made in person or by mail to be compliant with § 1161, subd. (2), that case did not address "why a person's name, address and telephone number must be listed when allowing payment to be made by mail." Thus, the court here undertook that analysis.

Parsing the language of § 1161, subd. (2), the court found no modifying or limiting language on the requirement that the notice provide the name, telephone number, and

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address of the person to whom rent must be made with respect to payments by mail and those made personally, while other categories of methods by which rent could be made (i.e., into an account at a financial institution or through an electronic funds transfer) were separate and disjunctive. Further, the court found no intent to require this information only when payment is to be made personally. Thus, it found the requirement to apply to the option to pay rent by mail.

The court pointed out that the statute was amended in 2001 to add "these informational requirements to avoid confusion and 'protect both landlords and tenants alike, by setting forth clear rules for payment to whom and where.' [Citation.]" Quoting *City of Alameda v. Sheehan*, 105 Cal. App. 5th 68, 75, 325 Cal. Rptr. 3d 438 (1st Dist. 2024). Analogizing to *Foster v. Williams*, 229 Cal. App. 4th Supp. 9, 177 Cal. Rptr. 3d 371 (App. Dep't Super. Ct. 2014), which held that a notice with a URL address but no physical address does not comply with § 1161, subd. (2) because it could lead to confusion, the court reasoned the same logic applied to a "notice which states payment can be made by mail and does not list the name, telephone number and address of the person to whom rent can be mailed."

Applying this statutory interpretation to SVF's notice, the court found that the notice failed to comply with § 1161, subd. (2) because it omitted the name of a person and telephone number, and "[u]nder no reading of the notice could 'Leasing Office' be considered the name of a person . . . ." These deficiencies rendered the notice defective. The court was unpersuaded that including the relevant information in the option for personal delivery was sufficient, since the explicit language of the statute required specific information for each payment option. Further, a tenant reading SVF's notice would not know to whom rent could be paid; they would have to search for other options and speculate whether the same person listed in the personal payment option is the person to pay by mail. "This would be inimical to the purposes of the statute: to ensure the tenant is provided clear information to avoid unnecessary evictions." Citing *City of Alameda v. Sheehan*, 105 Cal. App. 5th at 75.

Assuming without deciding the personal payment option complied with the statute, the court found that it could not substitute for providing the relevant information for payment by mail, as, again, that could lead to delay and confusion, which would be contrary to the purposes of the statute. Finding nothing unreason-

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able or absurd about its interpretation, the court affirmed the judgment on the pleadings.

>> See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, §§ 34:183, 34:184, 34:195, 34:204.

PERCENTAGE RENT PROVISION IN LEASE OF GOVERNMENT-OWNED COMMERCIAL REAL PROPERTY, WHICH REQUIRED THE LESSEE TO PAY A PERCENTAGE OF INCOME DERIVED FROM RESTAURANT AND BAR SALES, WAS NEITHER A TAX REQUIRING VOTER APPROVAL NOR IMPERMISSIBLE LOCAL REGULATION OF ALCOHOL, AND THEREFORE COMPLIED WITH ARTICLES XIII C AND XX, § 22 OF THE CALIFORNIA CONSTITUTION.

Ventura Harbor Restaurant Associates, Inc. v. Ventura Port District, 121 Cal. App. 5th 809, 2026 WL 1982974 (2d Dist. 2026)

The Ventura Port District (the District) owns and operates Ventura Harbor, and Ventura Harbor Restaurant Associates, Inc. (Appellant) subleased commercial property under a master lease with the District for operation of a restaurant and bar business. The master lease and sublease each called for rent in the form of a minimum monthly rent as well as a percentage of gross income. Specifically, they required the lessee or sublessee to "pay a percentage of gross income derived from all sales conducted on or from the premises." Appellant sued the District, alleging that the percentage rent clause violated article XIII C and article XX, § 22 of the California Constitution.

After the trial court granted the District's summary judgment motion, the court of appeal addressed the article XIII C claim. Added by voter-approved Proposition 218, Article XIII C "restricts the authority of local governments to impose taxes by, among other things, requiring voter approval of all taxes imposed by local governments." Section XIII C was amended in 2010 to broaden the definition of "tax" to mean "any levy, charge, or exaction of any kind imposed by a local government." Quoting *City of San Buenaventura v. United Water Conservation Dist.*, 3 Cal. 5th 1191, 1200, 226 Cal. Rptr. 3d 51, 406 P.3d 733 (2017). Appellant asserted that the percentage rent clause was a charge or exaction that constituted an invalid tax because the voters did not approve it.

The court examined the language of article XIII C and found it to be clear and unambiguous as applied here. The article expressly excepts "[a] charge imposed for . . . the purchase, rental, or lease of local

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government property" from the definition of "tax." This clearly applied to the percentage rent clause, according to the court. Citing *Citizens for Fair REU Rates v. City of Redding*, 6 Cal. 5th 1, 11, 237 Cal. Rptr. 3d 179, 424 P.3d 268 (2018) ("A charge that satisfies an exception is, by definition, not a tax").

The court rejected that the percentage rent charge must meet the "reasonableness" requirement of article XIII C, section 1, subdivision (e). While the first three exceptions to the definition of "tax" included a reasonableness requirement, the fourth—for "the purchase, rental, or lease of local government property"—contains no such requirement and the court found that absence to be dispositive. See *Howard Jarvis Taxpayers Assn. v. Bay Area Toll Authority*, 51 Cal. App. 5th 435, 459-460, 265 Cal. Rptr. 3d 235 (1st Dist. 2020) ("A construction making some words surplusage is to be avoided"). Further, the court found that including a reasonableness requirement in the fourth exception would be absurd because it "would restrict what a local government can charge for total rent to [its] 'real property leasing costs,' " which would include only minimal expenses and result in rent that was "largely uncorrelated to the size, location, or desirability of the property being leased."

Next, addressing *Zolly v. City of Oakland*, 47 Cal. App. 5th 73, 260 Cal. Rptr. 3d 541 (1st Dist. 2020) and aff'd, 13 Cal. 5th 780, 297 Cal. Rptr. 3d 1, 514 P.3d 799 (2022), a case involving a challenge to a franchise fee, the court found a franchise to be a form of property and a franchise fee to be the purchase price of that property. However, percentage rent cannot be characterized as a franchise fee or an attempt to disguise a new tax as a fee. The court quoted Miller & Starr: "A lease provision providing for a percentage rent is a valid and enforceable obligation of the tenant." 10 Miller & Starr, Cal. Real Estate (4th ed. 2025) § 34:72; see also *Bostrom v. County of San Bernardino*, 35 Cal. App. 4th 1654, 1670, 42 Cal. Rptr. 2d 669 (4th Dist. 1995) ("A provision for rent based on a percentage of the lessee's gross receipts is standard in mall and other retail leases"). The court noted that a percentage rent provision means a landlord is willing to risk lower rent when sales are down, which does not convert the percentage rent into a tax. Thus, it agreed with the trial court that the percentage rent clause fell within the fourth exception to the definition of "tax."

Finally, the court addressed the argument that the percentage rent clause violated article XX, section 22, which "gives the state Department of

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Alcohol Beverage Control exclusive jurisdiction to regulate alcohol." The trial court found that imposition of the percentage rent did not constitute regulation under article XX, section 22 because its purpose was not to regulate the manufacture, sale, purchase possession, or transportation of alcoholic beverages, but to provide the landlord with additional revenue when sales were up. See *Western Medical Enterprises, Inc. v. Albers*, 166 Cal. App. 3d 383, 389-390, 212 Cal. Rptr. 434 (1st Dist. 1985). Further, a California Supreme Court case, *Ainsworth v. Bryant*, 34 Cal. 2d 465, 211 P.2d 564 (1949), had already held that a percentage rent clause was not unconstitutional where it applied to all sales, not just sales of alcoholic beverages. Accordingly, the judgment was affirmed.

>> *See Miller & Starr, California Real Estate 4th, Ch. 34, Landlord and Tenant, § 34:72.*

LANDOWNERS' LIABILITY

WHERE PROPERTY OWNER DIED INTESTATE AND A RECEIVER WAS APPOINTED TO REMEDY A NUISANCE AT THE PROPERTY, SISTERS WHO RENOUNCED ANY INTEREST IN THE PROPERTY WERE IMPROPERLY NAMED AND THEREFORE PREVAILING PARTIES ENTITLED TO ATTORNEY'S FEES AND COSTS ON THE ISSUE OF THEIR LIABILITY.

County of Del Norte v. Britt, 121 Cal. App. 5th 36, 345 Cal. Rptr. 3d 489 (1st Dist. 2026)

Robert Kurtz died intestate in 2020, leaving empty a residential property he solely owned in Del Norte County. After neighbors complained of squatters and drug sales at the property in 2022, the County issued a notice to abate or repair the nuisance, evicted the squatters, and removed 14 tons of debris. The County also contacted Kurtz's two sisters, neither of whom had any interest in obtaining or rehabilitating the property. Nevertheless, Code Enforcement identified them as "heirs of the estate" and named them in a petition to appoint a receiver to oversee the property's rehabilitation under the State Housing Law. The petition did not allege the sisters owned an interest in the property but stated that they had "done nothing

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to correct, repair, or obey the violations and [had] stated that they have no interest in [doing so]." It also asked the court to authorize borrowing against the property to fund the receivership and super-priority liens to pay receiver fees pursuant to Health & Saf. Code, § 17980.7, subd. (c)(4)(G). The sisters did not oppose the petition, and the court appointed a receiver, signing an order that identified the sisters as owners of the property. The receiver then "rehabilitated the property, sold it, and supervised the buyer in bringing it up to Code."

In 2024, the receiver filed a final report and accounting and moved to discharge itself and exonerate its surety, requesting an order imposing joint and several liability on the estate and the sisters for outstanding receivership fees and costs, as the sale of the property had only covered the deed of trust and abatement costs under § 17980.7, subd. (c)(15). Now faced with personal liability, the sisters filed a belated answer to the petition to appoint a receiver and objected to the request for an order holding them liable for the receiver's fees and costs, stating that they did not own the property. They argued that a super-priority lien should have been imposed before the proceeds of the property sale were distributed, that they received no benefit from the receivership, that they were not owners or successors-in-interest to an owner, and that they could not be liable for receiver's costs as no estate had been administered.

The sisters then requested attorney's fees and costs. In response, the receiver asserted that a successor-in-interest to a property owner can be liable for a receiver's unpaid fees and costs, apparently equating "a sibling of a property owner who died intestate, and whose estate has not been probated" with a successor-in-interest. The trial court refused to "pierce the [e]state and go after potential heirs," finding no authority that would allow the receiver to pursue "people who may be unfortunately related by DNA . . . ." The court found the sisters were justified in hiring counsel to protect their lack of interest and were not liable for the receiver's fees and costs.

The court then considered the question of the sisters' attorney's fees, which depended on whether they were the "prevailing party." The County argued that it had already been deemed the prevailing party by the court granting its petition to appoint a receiver. It also argued that § 17984 prohibited ordering a public agency enforcing the state housing law to pay attorney's fees and costs, and that the statutory construction urged by the sisters had

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been rejected in *City and County of San Francisco v. Ballard*, 136 Cal. App. 4th 381, 39 Cal. Rptr. 3d 1 (1st Dist. 2006). The court of appeal reviewed *Ballard*, explaining it held that "a property owner could not recover fees under section 17980.7(c)(11) because the case involved 'no receivership proceedings' " (quoting *City and County of San Francisco v. Ballard*, 136 Cal. App. 4th at 401), but added in dicta that this interpretation of § 17980.7, subd. (c)(11) would avoid a conflict with § 17984. Although it noted that *Ballard* did not involve a receivership, the trial court here relied on that dicta to deny the sisters their request for attorney's fees and costs.

The court of appeal recognized that it needed to reconcile the two statutes because they appeared to conflict. Examining § 17980.7, subd. (c)(11) alone, it found the sisters to clearly be entitled to attorney's fees and costs. That section authorizes such fees and costs to be awarded to "[t]he prevailing party in an action pursuant to this section . . . ." Conversely, it also found § 17984, standing alone, to prohibit such an award, because that section protects a city or county from liability "for costs in any action or proceeding [the] . . . agency may commence pursuant to this article . . . ." Even if the term "costs" was interpreted not to include attorney's fees, a conflict between the two sections remained. The court noted that when "statutes conflict and cannot be harmonized, we must construe one 'as providing an exception to the other.' " Quoting *State Dept. of Public Health v. Superior Court*, 60 Cal. 4th 940, 956, 184 Cal. Rptr. 3d 60, 342 P.3d 1217 (2015). The two rules for resolving such conflicts are that later enactments supersede earlier ones, and specific provisions prevail over more general ones. Further, the specific provision rule trumps the later enactment rule when those conflict.

Here, there was no conflict between the two rules, and the court found that they both pointed in the same direction. After tracing the history of each provision, the court concluded that it was "readily apparent that the bilateral fees and costs provision in section 17980.7(c)(11) is both more specific and more recently enacted than section 17984." The court rejected the County's interpretation that attorney's fees are only available under § 17980.7, subd. (c)(11) when a *private* party has unsuccessfully petitioned for appointment of a receiver. While the court found this to be a "clever hypothesis," it was not supported by the legislative history. It also found no support in *Ballard*, relied upon by

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the County, because that case did not involve a receivership proceeding and the dicta was unpersuasive because it "did not address established canons for choosing between statutes that conflict and cannot be harmonized . . . ."

Having concluded that "the plain language of section 17980.7(c)(11) authorizes a fee award in favor of 'the prevailing party in an action pursuant to this section,' without regard to whether the losing party is a private or public actor," the court turned to whether the sisters, in fact, qualified as prevailing parties. It first pointed out that the trial court had directed counsel to "prepare a proposed order designating the sisters as 'a prevailing party on that portion,' " confirming that the trial court itself recognized that both parties prevailed on different aspects of the proceeding. Even though the County prevailed in getting a receiver appointed, the sisters prevailed in escaping liability. Thus, the court of appeal found both parties to be prevailing parties.

The court rejected the County's argument that there can be only one "prevailing party" per proceeding, finding "[t]he County cite[d] no authority holding that there can never be more than one prevailing party for purposes of section 17980.7(c)(11)." With respect to *City of Norco v. Mugar*, 59 Cal. App. 5th 786, 800, 274 Cal. Rptr. 3d 72 (4th Dist. 2020), cited by the County, the court found its only relevance to be a direction that courts assess who prevailed " 'on a practical level' by asking which parties achieved their litigation objective(s)." Engaging in that assessment here, it found that the sisters entirely achieved their objective by escaping liability. The court also found a case assessing liability for attorney's fees under Civ. Code, § 1717 to be instructive, pointing to textual similarities between the statutes. See *Burkhalter Kessler Clement & George LLP v. Hamilton*, 19 Cal. App. 5th 38, 44-46, 228 Cal. Rptr. 3d 154 (4th Dist. 2018) (recognizing that in cases with more than two parties, there may be more than one prevailing party entitled to attorney's fees).

The court therefore held that "the improperly named individual defendant(s) [are] entitled to recover the attorney fees they reasonably incurred to avoid being saddled with liability for wrongs attributable to an entity with which they were related (by partnership or by DNA) but for whose failures they were not legally responsible." The County was the prevailing party on the primary receivership claim, but the sisters were the prevailing parties to the extent

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the County improperly sought to extend liability to them. Accordingly, the trial court's ruling regarding attorney's fees and costs was reversed and remanded with instructions to enter an order awarding fees and costs to the sisters, but was otherwise affirmed.

>> *See Miller & Starr, California Real Estate 4th, Ch. 19, Landowners' Liability, §§ 19:17, 19:29, 19:30, 19:31; Ch. 25, Building Codes, §§ 25:46, 25:49, 25:50, 25:52; Ch. 34, Landlord and Tenant, § 34:90; Ch. 40, Remedies, §§ 40:64, 40:69, 40:74; Ch. 41, Receivers, §§ 41:12, 41:15, 41:23, 41:31, 41:32.*

RECEIVERS

WHERE PROPERTY OWNER DIED INTESTATE AND A RECEIVER WAS APPOINTED TO REMEDY A NUISANCE AT THE PROPERTY, SISTERS WHO RENOUNCED ANY INTEREST IN THE PROPERTY WERE IMPROPERLY NAMED AND THEREFORE PREVAILING PARTIES ENTITLED TO ATTORNEY'S FEES AND COSTS ON THE ISSUE OF THEIR LIABILITY.

County of Del Norte v. Britt, 121 Cal. App. 5th 36, 345 Cal. Rptr. 3d 489 (1st Dist. 2026)

For a summary of this case see LANDOWNERS' LIABILITY

>> *See Miller & Starr, California Real Estate 4th, Ch. 19, Landowners' Liability, §§ 19:17, 19:29, 19:30, 19:31; Ch. 25, Building Codes, §§ 25:46, 25:49, 25:50, 25:52; Ch. 34, Landlord and Tenant, § 34:90; Ch. 40, Remedies, §§ 40:64, 40:69, 40:74; Ch. 41, Receivers, §§ 41:12, 41:15, 41:23, 41:31, 41:32.*

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PLAN TO REPAIR FLOOD DAMAGE AND PREVENT FUTURE WATER INTRUSION, WHICH WAS PREPARED AS PART OF AN EXPERT REPORT IN THE COURSE OF LITIGATION BETWEEN NEIGHBORS, WAS NECESSARILY CONNECTED TO A COMMUNICATIVE ACT AND THEREFORE PROTECTED BY THE LITIGATION PRIVILEGE WHEN NEIGHBOR SUED OVER PLAN'S FAILURE.

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For a summary of this case see DEFECTIVE CONSTRUCTION

>> *See Miller & Starr, California Real Estate 4th, Ch. 33, Defective Construction, §§ 33:6, 33:13, 33:43, 33:44, 33:83; Ch. 40, Remedies, § 40:148.*

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WHERE PROPERTY OWNER DIED INTESTATE AND A RECEIVER WAS APPOINTED TO REMEDY A NUISANCE AT THE PROPERTY, SISTERS WHO RENOUNCED ANY INTEREST IN THE PROPERTY WERE IMPROPERLY NAMED AND THEREFORE PREVAILING PARTIES ENTITLED TO ATTORNEY'S FEES AND COSTS ON THE ISSUE OF THEIR LIABILITY.

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For purposes of CEQA's class 1 exemption for minor alterations of existing facilities "involving negligible or no expansion of existing or former use," negligible expansion refers to the nature or degree of use, not a negligible risk of environmental harm caused by the expansion or change in use. (p. 45)

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For purposes of CEQA's class 1 exemption for minor alterations of existing facilities "involving negligible or no expansion of existing or former use," negligible expansion refers to the nature or degree of use, not a negligible risk of environmental harm caused by the expansion or change in use. (p. 45)

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Debtors who filed bankruptcy petition four days after a nonjudicial foreclosure sale of their residential property were entitled to claim homestead exemption because the sale was not final until at least 15 days after a highest bid by a non-prospective owner-occupant under Civ. Code, § 2429m. (p. 46)

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The constitutional baseline for calculating "just compensation" for real property sold at auction to satisfy a property tax debt is the price obtained at the tax sale, assuming it was fairly conducted, even where the sale price is significantly less than the property's fair market value. (p. 46)

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Rent control ordinance that required a tenant to owe more than one month of fair market rent before an unlawful detainer action could be brought was a substantive regulation despite having a procedural impact and therefore was not preempted by state law. (p. 47)

LANDLORD AND TENANT

Rent control ordinance that required a tenant to owe more than one month of fair market rent before an unlawful detainer action could be brought was a substantive regulation despite having a procedural impact and therefore was not preempted by state law. (p. 47)

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Long-term residential tenant who remained in possession after her husband died was an at-will tenant pursuant to an implied tenancy and protected from rent increase by a local rent control ordinance, which was not preempted by the Costa-Hawkins Rental Housing Act. (p. 51)

Where property owner died intestate and a receiver was appointed to remedy a nuisance at the property, sisters who renounced any interest in the property were improperly named and therefore prevailing parties entitled to attorney's fees and costs on the issue of their liability. (p. 54)

Unlawful detainer statute requires strict compliance, so three-day notice must include specific information for each method of payment and substantially complying by including such information for one payment method but not another is insufficient. (p. 54)

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LANDOWNERS' LIABILITY

Where property owner died intestate and a receiver was appointed to remedy a nuisance at the property, sisters who renounced any interest in the property were improperly named and therefore prevailing parties entitled to attorney's fees and costs on the issue of their liability. (p. 59)

RECEIVERS

Where property owner died intestate and a receiver was appointed to remedy a nuisance at the property, sisters who renounced any interest in the property were improperly named and therefore prevailing parties entitled to attorney's fees and costs on the issue of their liability. (p. 63)

REMEDIES

Plan to repair flood damage and prevent future water intrusion, which was prepared as part of an expert report in the course of litigation between neighbors, was necessarily connected to a communicative act and therefore protected by the litigation privilege when neighbor sued over plan's failure. (p. 63)

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Where property owner died intestate and a receiver was appointed to remedy a nuisance at the property, sisters who renounced any interest in the property were improperly named and therefore prevailing parties entitled to attorney's fees and costs on the issue of their liability. (p. 64)

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