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LAND USE MATTERS

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Land Use Matters provides information and insights into legal and regulatory developments, primarily at the Los Angeles City and County levels, affecting land use matters and new CEQA appellate decisions.

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California Environmental Quality Act (CEQA) and Land Use Opinions

Bair v. California Department of Transportation (1st App. Dist., March 2026).

This case involved a challenge to the California Department of Transportation's (Caltrans) compliance with CEQA during a highway construction project consisting of improvements to a stretch of U.S. Highway 101 that passes through Richardson Grove State Park in Humboldt County, home to a stand of old-growth redwood trees.

In prior litigation spanning 15 years, the petitioners obtained two writs of mandate: One invalidated Caltrans's EIR under CEQA for failing to evaluate the project's impact on redwood trees, and another invalidated Caltrans's addendum to the EIR, prepared to correct these deficiencies, because the addendum was not circulated for public review and comment. Both writs were discharged by the trial court after Caltrans cured the deficiencies with the addendum. Rather than filing an appeal, the petitioners filed a new lawsuit challenging the sufficiency of the addendum under CEQA. The court of appeal affirmed the trial court's decision that res judicata barred the petitioners from relitigating that question anew and dismissed the case.

Res judicata, which is intended to promote finality, prevents relitigation of the "same cause of action" in a later lawsuit between the same parties or their privies. Here, although the trial court did not state the substantive grounds for discharging the writs, the discharge nonetheless conclusively established the addendum's substantive adequacy. Because the petitioners did not appeal the trial court's discharge of the writs, the discharge was final, and it barred relitigation of the issue in a new case. The court of appeal explained that the petitioners could have appealed the trial court's order discharging the writs but chose not to.

Raptors Are the Solution v. CropLife America (1st App. Dist., April 2026).

This litigation arose from an environmental organization's challenge to the California Department of Pesticide Regulation's renewal of certain anticoagulant rodenticides without reevaluation under CEQA and the department's own regulations. The petitioner argued that continued use of the rodenticides posed significant risks and cumulative impacts to wildlife.

In a prior appeal, the court reversed the trial court's denial of the petitioner's lawsuit and directed the department to reconsider its decision not to place one rodenticide, diphacinone, into reevaluation. The legislature also placed a moratorium on diphacinone use pending completion of the reevaluation process by enacting Assembly Bill 1322.

The present appeal concerned the trial court's award of attorneys' fees to the petitioner under Code of Civil Procedure Section 1021.5, California's private attorney general statute. The court of appeal affirmed the approximately $857,000 fee-and-cost award imposed jointly and severally against the department, real parties in interest, and trade-association intervenors CropLife America/RISE and Western Plant Health Association. The court rejected the intervenors' argument that they could not be liable because they did not make or enforce the department's decisions. The court emphasized that the intervenors had asserted direct economic and representational interests when seeking intervention and had actively participated in the litigation. This decision underscores that industry groups intervening in CEQA or environmental litigation to protect member interests may face private-attorney-general fee exposure when the plaintiff achieves a significant public-interest result.

Citizens Against Marketplace Apartment/Condo Development v. City of San Ramon (1st App. Dist., April 2026 [modified May 2026]).

The petitioner challenged a city's approval of a housing development and retail renovation project involving an existing shopping center zoned for mixed use. The court of appeal affirmed the trial court's judgment in favor of the city.

The court rejected the petitioner's argument that the city abused its discretion by approving the project without preparing a master plan. The general plan's policy objective "[e]ncourage[d] the joint redevelopment" of the site "via the applicant's preparation of a master plan … where made feasible." The court disagreed that a master plan was mandatory, finding that the language in the policy objective was equivocal, discretionary, and aspirational. The policy did not define "master plan" or "feasible," and it acknowledged that joint redevelopment may not occur.

The court emphasized that reviewing courts must defer to planning agencies' general plan interpretations unless no reasonable person could have reached the same conclusion as the agency. The petitioner failed to show the city's consistency finding was unreasonable since the project proposal addressed all the general plan's substantive objectives even without a formal master plan.

The court also rejected the petitioner's argument that the project could not be deemed "horizontal mixed use"—which includes a residential component behind a street-fronting nonresidential component—under the general plan. In holding that a reasonable person could find the project consistent with the general plan and zoning ordinance under the city's interpretation, the court noted that the nonresidential portion of the project and other retail establishments on the site are street-fronting from certain vantage points.

Dummer v. City and County of San Francisco (1st App. Dist., May 2026).

In this case, a California fisherman sought a writ of mandate compelling a city to apply for an amended water supply permit and open the Calaveras Reservoir to public fishing. The court of appeal concluded that the city was not required to do so before it made determinations related to its crafting of a CEQA-compliant public fishing program.

This appeal was not the petitioner's first time litigating these issues. A prior proceeding resulted in a writ of mandate directing the city to consider whether fishing in the Calaveras Reservoir could be accomplished "without affecting the purity of the water." The city then concluded that fishing could occur subject to an analysis by the State Water Resources Control Board (SWRCB). The city stated it would develop a fishing program and comply with the associated administrative requirements, including obtaining CEQA review and requesting an amendment to its water-supply permit.

While the city began planning the program, the petitioner argued that it had a ministerial duty to immediately apply for an amended water-supply permit and to open the reservoir to fishing. On this question, the court of appeal agreed with the trial court, concluding that the petitioner was not entitled to relief.

The court concluded that none of the applicable sources of law, including the California Constitution, the Health and Safety Code, the Fish and Game Code, and CEQA, imposed a ministerial duty on the city. First, the record only reflected the city's conclusion that fishing could occur in the reservoir subject to a CEQA review and analysis by the SWRCB. Additionally, the court concluded that the Health and Safety Code recognized the city's discretion to set the terms and conditions of fishing access at the reservoir. These terms and conditions would then be subject to the SWRCB's approval.

The trial court determined that the city appeared to be "moving forward and taking appropriate steps" on the terms and conditions that would be part of its permit application. The court of appeal held that those findings were supported by substantial evidence.

The Protect Our Communities Foundation v. City of San Diego (4th App. Dist., May 2026).

In this case, a nonprofit petitioner challenged a city's award of gas and electric franchises to the San Diego Gas & Electric Company (SDG&E). The court of appeal affirmed the trial court on every ground, including its conclusion that the city's new franchise agreements with SDG&E did not trigger environmental review under CEQA.

In 2020, SDG&E's gas and electric franchise agreements with the city expired. In response, the city issued invitations to bid on gas and electric franchises, and SDG&E was the only bidder. In 2021, the city council adopted new franchise agreements with SDG&E in the form of city ordinances. The petitioner asserted multiple claims based on this process, including alleged CEQA violations. The court of appeal concluded that for CEQA purposes, the new franchise agreements did not constitute a "project," specifically noting that government funding mechanisms without a specific commitment to undertakings that have potential for environmental impact are not projects under CEQA. The court found that the city ordinances did not induce or compel construction and thus lacked the necessary connection to a physical impact to trigger CEQA. The court noted that separate regulatory approval, including CEQA review, would be required for any construction or future work. However, because the ordinances at issue were not projects under CEQA, no review was necessary at the time of the ruling.

Baker v. Bay Area Toll Authority (1st App. Dist., June 2026).

In this case, the court of appeal considered whether issue preclusion barred the petitioner from relitigating the timeliness of his CEQA challenge to an agency's approval of an LED art project on the San Francsico Bay Bridge.

The petitioner filed an initial lawsuit challenging the CEQA notice of exemption issued for the project, which was dismissed as time-barred. The petitioner did not appeal.

The petitioner then filed a second lawsuit challenging the issuance of an encroachment permit related to the installation and safety testing of LED lights for the project. The trial court sustained the agency's demurrer without leave to amend, finding that neither the encroachment permit nor the safety study restarted the statute of limitations. The trial court also found that its prior determinations of when the project was approved for CEQA purposes and the statute of limitations precluded a new suit.

The court of appeal affirmed. The same parties had already litigated the same statute of limitations issue in the first action, and the issue was actually litigated, necessarily decided, and embodied in a final judgment. Additionally, the court recognized uncertainty in the case law over whether issue preclusion requires a determination on the merits, holding that even if such a requirement applied, it was met here. The court emphasized that finding otherwise would undermine the public policy reasons underlying the issue preclusion doctrine and CEQA's short statute of limitations.

Sunflower Alliance v. Department of Conservation (Supreme Court, June 2026).

The California Supreme Court addressed the meaning of the class 1 categorical exemption under CEQA, specifically whether the phrase "negligible or no expansion of existing or former use" in Section 15301 pertains to the scope of a change in use or to the risk of environmental harm caused by that change. The Supreme Court reversed the court of appeal, holding that the class 1 exemption can apply to new uses of an existing facility that involve negligible or no expansion of an existing or former use, as determined by evaluating the nature and scope of the expansion rather than its potential environmental effects.

The case involved the proposed conversion of a dormant oil and gas well into a water injection well that would inject approximately 300 barrels of treated wastewater per day into an underlying aquifer. The California Department of Conservation's Geologic and Energy Management Division (CalGEM) determined the project was exempt under the class 1 exemption, finding the conversion constituted a "minor alteration of an existing previously permitted well involving a negligible expansion of former use" and imposing project conditions to address concerns about potential migration of injected wastewater into underground sources of drinking water.

The trial court granted a petition for writ of mandate challenging CalGEM's exemption determination, finding that converting an oil and gas well into a water injection well was not a "negligible or no expansion of use." The court of appeal reversed, holding that the expansion of use was negligible because, under the facts presented, the environmental risks of injecting the water were negligible.

The Supreme Court reversed the court of appeal, reasoning that the plain text of the class 1 exemption does not refer to environmental harm, and that interpreting it otherwise would conflate CEQA's second step (exemption determination) with its third step (environmental review), thus bypassing public participation and procedural safeguards. The court also noted that such an interpretation would render the unusual circumstances exception superfluous and usurp the secretary of the Natural Resources Agency's role in defining exempt categories of projects.

The matter was remanded to the court of appeal to reconsider the applicability of the class 1 exemption under the correct analytical framework. The court declined to answer the additional question of whether an agency may impose project conditions for environmental effects while simultaneously claiming a categorical exemption.

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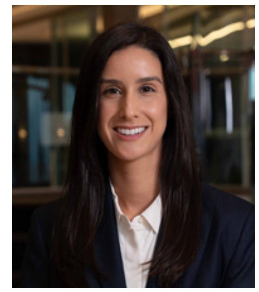

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