Appellate Decision Finds Tribal Developer is Indispensable Party to CEQA Litigation and Dismisses Lawsuit that Failed to Timely Name the Tribe

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In *Citizens for a Better Eureka v. City of Eureka*, the First Appellate District of the California Court of Appeal affirmed a Humboldt County Superior Court decision dismissing Petitioner's lawsuit. (Cal. Ct. App., May 15, 2025, No. A170214.) The Court concluded that Petitioner Citizens for a Better Eureka (CBE) was required to join the Wiyot Tribe (the Tribe) as a real party in interest in its California Environmental Quality Act (CEQA) action against the City of Eureka (the City) and held that because CBE did not timely do so, and because the Tribe was a necessary and indispensable party, CBE could not maintain the lawsuit and that it had to be dismissed.

The Court's ruling is important because it serves as a reminder that petitioners must name and serve all real parties in interest. Failure to name a real party in interest in a CEQA petition is grounds for dismissal of the action if the unjoined party is deemed to be a necessary and indispensable party. The ruling also clarifies that: (1) a "project" under CEQA is not limited to the approval itself, but includes all reasonably foreseeable consequences of the proposed activity; and (2) once the statute of limitations expires, if any necessary and indispensable real parties in interest are not named in the petition, the petition will be dismissed.

Legal Background

Under Public Resources Code Section 21167.6.5, a petitioner must name and serve "as a real party in interest, the person or persons identified by the public agency in its notice [of determination or notice of exemption]." Alternatively, if the public agency did not file a notice of determination or a notice of exemption, a petitioner must name and serve all real parties in interest as reflected in the agency's record of proceedings for the project at issue. The petitioner "shall serve the petition [] on that real party in interest. . . not later than 20 business days following service of the petition [] on the public agency." The goal of this rule is to ensure all necessary parties are properly joined so that a petitioner's case may be fully adjudicated in one proceeding.

Public Resources Code Section 21167 contains a statute of limitations for instances where an agency has determined a project is exempt from CEQA and files a Notice of Exemption (NOE). Any lawsuit challenging the exemption determination must be filed within 35 days of the NOE. If a petitioner fails to name a real party in interest, but the statute of limitations has not yet expired, the real party in interest may be added without any problem.

However, if the statute of limitations has lapsed and a real party in interest has not been joined, there might be grounds for dismissal if the trial court determines the unjoined real party in interest to be necessary and indispensable. To determine whether a real party in interest is indispensable the following factors must be analyzed: (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; and (4) whether the plaintiff or cross-complainant will have an adequate remedy if the action is dismissed for nonjoinder. No one factor is determinative, but potential prejudice to the unjoined party is critically important.

Real party in interest developers are often necessary, but whether they are also indispensable is determined on a case-by-case basis. If the unjoined real party in interest is found indispensable and the statute of limitations period has expired, the case is required to be dismissed.

Factual Background

In 2023, the City of Eureka City Council (City Council) held a public hearing on its plan to develop affordable housing on a City-owned public parking lot. After the hearing, the City Council adopted a resolution authorizing "the reduction or removal of public parking at [the parking lot], to facilitate development of Affordable Housing Projects." In conjunction with its Surplus Lands Act determination, the City Council found that "[t]he reduction or removal of parking to allow the sale or lease of the property is exempt from CEQA pursuant to the CEQA Guidelines." The same day, the City Council authorized the release of a request for proposals for affordable housing projects on the parking lot.

One month after, CBE filed a petition for writ of mandate challenging the adoption of the resolution on the basis that it violated CEQA. The petition joined the City, the City Council, and Does 1 to 10 as respondents. In the petition, CBE alleged the project authorized by the resolution, i.e. the reduction/removal of public parking from the lot, was not exempt from CEQA pursuant to the exemption for "sales of

surplus government property" because it focused on the sale of the parking lot without considering the future use of the land. The petition asserted that the whole of the action had a potential for resulting in direct or reasonably foreseeable indirect physical change to the environment.

Two months later, the City Council adopted a resolution selecting the Tribe as the affordable housing developer for the land. The resolution stated the new development was a "project" subject to CEQA, but was exempt because the project: (1) met the eligibility criteria for the affordable housing exemption; and (2) did not trigger the land use and environmental thresholds and exceptions for affordable housing and residential infill projects. The next day, the City filed a NOE identifying the Tribe as the real party in interest developer for the project. CBE did not file a timely new lawsuit to challenge this resolution nor did it timely amend its existing lawsuit to name the Tribe as a real party in interest.

Five months later, the City and the Tribe executed a Memorandum of Understanding regarding the affordable housing development. The same day, CBE filed a motion for preliminary injunction seeking to enjoin respondents from issuing any approvals necessary for the construction of the project.

Two months later the Tribe specially appeared and moved to dismiss CBE's petition because, among other things, the Tribe was a necessary and indispensable party to the action. In support of its motion, the Tribe provided a declaration stating it had invested significant time and resources toward the planning and development of the project including executing contracts to acquire funding.

CBE opposed the motion to dismiss on the grounds that the Tribe is not an indispensable party because the petition challenged the decision to remove parking from the lot, not the award of rights to the Tribe to develop affordable housing at the site. Further, CBE stated that the petition predated the Tribe's agreements with the City for development of affordable housing and any prejudice due to a judgement was speculative.

In reply, the Tribe argued it could not be joined to the action because the limitations period to challenge the decision identifying the Tribe as the developer had lapsed. The trial court granted the Tribe's motion and dismissed CBE's action without prejudice.

Appellate Court Ruling

On appeal to the First Appellate District, CBE contended its petition did not implicate the Tribe because it solely challenged the reduction of parking resolution which was before the Tribe was awarded development rights and identified in the NOE.

As to this contention, the Court held that CBE's narrow interpretation of "project" under CEQA was incorrect and the definition of "project" included "the whole of an action" which, under CEQA, necessarily also includes all reasonably foreseeable consequences of the proposed action.

The Court found that the Tribe was a real party in interest under Public Resources Code Section 21167.6.5 because the Tribe was awarded the development rights to build the affordable housing project and was identified in the NOE. The Court concluded that CBE had a duty to add the Tribe as a real party in interest when the NOE and award of development rights occurred. This is aligned with the statute's goal of joining all necessary parties before proceeding with the merits of the action.

Further, the Court found that the statute of limitations barred joinder of the Tribe in this action. A petition to challenge a CEQA exemption determination must be filed within 35 days of the NOE and the respondent agency and all real parties in interest named on the respondent agency's NOE must be named in the petition. In addition, petitioners must serve the respondent agency within 10 business days of filing the CEQA lawsuit and must also serve all real parties in interest identified by the public agency in its NOE no later than 20 business days following service of the petition on the public agency. CBE had timely filed and served its petition against the City, but never attempted to join the Tribe or serve the Tribe with the lawsuit despite being aware of the NOE.

Due to the Court's findings that the Tribe was both a necessary and indispensable party and that it was too late to join them, the Court granted the Tribe's motion to dismiss the lawsuit.

Under the first factor of indispensability, the Court found that the Tribe would be prejudiced if CBE's petition was successful because the Tribe would be prevented from moving forward with plans to redevelop the property and work already completed would be jeopardized.

Under the second factor, the Court found that prejudice to the Tribe could not be avoided or lessened through the shaping of relief. The Court found that because removal of the parking lot was a prerequisite to the development of affordable housing, any judgment for or against CBE without the presence of the Tribe would prejudice the Tribe.

Under the third factor, the Court found that the Tribe's interests were not sufficiently aligned with any existing parties' interests because the Tribe's role in developing, building, managing, and operating the project creates a distinct economic interest from respondent's interest in adding affordable housing.

Under the fourth and final factor, the Court found that whether CBE

would have an adequate remedy if the action were dismissed was neutral. However, given that the other three factors weighed in favor of dismissal, the Court dismissed CBE's petition.

* * *

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Lillian Rupp, a Burke Summer Associate for 2025 (UC Law San Francisco '26) who is based in the firm's San Francisco office, served as the lead author of this *Public Law Insight,* along with Burke Partner **Stephen E. Velyvis**.

Lillian Rupp

CA Governor Signs Bills Enacting Major CEQA Reforms to Accelerate Development and Boost Affordability

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On June 30, 2025, Governor Gavin Newsom signed trailer bills Assembly Bill 130 ("AB 130") and Senate Bill 131 ("SB 131") as part of the state's budget package. These bills establish significant reforms to the California Environmental Quality Act ("CEQA") by exempting ten new categories of projects from CEQA review. The exempted project

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types include specific infill housing, childcare centers, health clinics, food banks, farmworker housing, broadband infrastructure, wildfire prevention initiatives, water infrastructure, public parks and trails, and advanced manufacturing facilities located in industrial zones. As trailer bills, these bill provisions became effective immediately upon enactment.

AB 130

AB 130 expands the existing CEQA infill housing exemption to include a broader array of infill housing projects on sites of up to 20 acres (with Builder's Remedy project sites capped at 5 acres) located in urbanized areas. Eligible infill sites must either have been previously developed for qualified urban uses or be surrounded by such uses. For the purposes of this exemption, "urban use" is defined to include "any current or previous residential or commercial development, public institution, or public park that is surrounded by other urban uses, parking lot or structure, transit or transportation passenger facility, or retail use, or any combination of those uses."

To qualify for CEQA exemption under AB 130, a project must meet the following additional requirements:

- Consistency with the applicable general plan, zoning code, and local coastal program standards, including the local density and objective planning standards, subject to deviations permitted under the Density Bonus Law.
- Develop at a minimum density that is at least 50% of the jurisdiction's "Mullin" density standards under SB 375, which range from 10 to 30 units per acre.
- Project location must meet all of the SB 35 siting criteria and not be located on environmentally sensitive lands such as hazardous waste sites, prime farmland, earthquake fault zones, or floodways, or very high fire hazard severity zone.
- No demolition of a historic structure listed on a historic register prior to submission of a preliminary application.
- For applications submitted after January 1, 2025, no portion of the project may be used as a hotel, motel, or bed and breakfast.
- Projects located within 500 feet of a freeway must implement additional air quality mitigation measures, such as enhanced filtration systems and balconies oriented away from the freeway.
- Post-approval completion of a Phase I environmental site assessment with mitigation of any recognized environmental conditions prior to receipt of a certificate of occupancy.

AB 130 imposes prevailing-wage and skilled-and-trained workforce requirements for qualifying exempt projects over 85 feet in height,

100% affordable projects, and projects with more than 50 units in San Francisco, provided a prime contractor receives at least three bids meeting workforce standards. Additionally, AB 130 introduces tribal consultation procedures for projects using this new infill housing exemption.

Lead and responsible agencies must review and either approve or deny the project using this new infill housing exemption within 30 days after the conclusion of the tribal consultation process outlined in this bill.

AB 130 also establishes an alternative, fee-based mechanism to mitigate Vehicle Miles Traveled ("VMT") impacts under CEQA. It authorizes developers to pay into a state-level Transit-Oriented Development Implementation Fund, administered by the Department of Housing and Community Development ("HCD"). The bill assigns the Governor's Office of Land Use and Climate Innovation the task of developing the methodology and details to implement this Transit-Oriented Development Implementation Fund, including mapping of "eligible urban infill sites" by July 1, 2027.

Beyond CEQA, AB 130 contains several important housing provisions:

- It permanently extends the Housing Crisis Act of 2019, which was previously set to sunset in 2034.
- It creates a "shot clock" to approve or deny a ministerial application for a qualifying housing development project within 60 days after the application is complete, which parallels existing requirements mandating local governments to approve or deny a housing development project application within 60 days after making its CEQA determination. If no action is taken within the deadline, a project may be deemed approved.
- The California Coastal Commission, which had previously been exempt from certain time limits to review projects, is now required to comply with the same decision-making timelines applicable to other responsible agencies.
- It prohibits appeals of specified residential projects to the Coastal Commission.
- The bill prohibits amending, adding, or repealing the residential building code standards, including green building requirements, applicable to residential units between October 1, 2025 to June 1, 2031, unless the changes to the codes meet certain exceptions and the express findings specified in the bill. The exceptions to code changes include changes related to public health and safety, emergency, fire safety, or conservation-related updates.

SB 131

SB 131 makes a number of technical amendments to CEQA and introduces new CEQA exemptions. Notably, it creates a CEQA exemption for most rezonings consistent with a jurisdiction's certified housing element (except for the projects located in "natural and protected lands" such as state parks, hazardous waste sites, prime farmland, earthquake fault zones, or floodways; or projects including "distribution centers" or "oil and gas infrastructure). Additionally, it establishes nine new categorical CEQA exemptions, including:

- New agricultural employee housing projects and repair or maintenance of existing farmworker housing.
- Daycare centers, rural health clinics, and nonprofit food banks/pantries, except when located on natural and protected lands.
- Most "advanced manufacturing facilities", including semiconductor and nanotechnology plants, located on land already zoned for industrial use.
- Water system improvements serving disadvantaged communities that do not impact wetlands or sensitive habitats (through January 1, 2028) and sewer infrastructure for disadvantaged communities currently served by inadequate wastewater systems (through January 1, 2032).
- Wildfire risk reduction projects such as prescribed burns, fuel breaks, and defensible space (through January 1, 2030).
- Broadband infrastructure in local street and road rights-of-way.
- Public parks and non-motorized trails.
- Certain high-speed rail's support facilities, including maintenance yards and modifications to passenger stations.

"For housing projects that nearly qualify for a statutory or categorical CEQA exemption but fall short due to a single unmet condition — such as the new infill housing exemption under AB 130 — SB 131 provides a streamlined review process. These "near-miss" projects are subject only to review of the specific environmental effect that disqualifies them, not the full CEQA checklist. For example, for an infill project to qualify under the Class 32 CEQA exemption, analysis is needed to demonstrate that the project would not result in significant impacts on biological resources, traffic, noise, air quality, and water quality. If the analysis for such a project demonstrates that it meets all the other Class 32 exemption criteria, except for significant traffic impacts, then the future environmental impact reports/ mitigated negative declaration for the project would be limited to analyzing solely the traffic impacts. Furthermore, environmental impact reports for such projects are not required to include alternative analyses or discussions of growth-inducing impacts.

However, this streamlined process is not available to:

- Housing projects located on “natural and protected lands”;
- Housing projects that include “distribution centers” or “oil and gas infrastructure”;
- Housing projects that are not “similar in kind” to those typically eligible for the exemption;
- Housing projects disqualified from the CEQA exemption qualification due to more than one unmet condition.

Finally, SB 131 limits the scope of the CEQA administrative record. For most projects — excluding those involving “distribution centers” or “oil and gas infrastructure” — lead agencies are not required to include internal electronic communications (e.g., emails) in the administrative record unless those communications were presented to the decision-making body, or were reviewed by the agency’s executive leadership or supervisory officials involved in project review.

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Appellate Decision Provides Guidance on Permit Streamlining Act Submittal Checklists

In *Old Golden Oaks v. County of Amador*, the Third Appellate District of the California Court of Appeal affirmed in part and reversed in part an Amador County Superior Court decision. (Cal. Ct. App., May 30, 2025, No. C099948.) The Court concluded that the County of Amador (“County”) violated the Permit Streamlining Act by requiring information for application completeness that was not specified on the County’s permit submittal checklist, but that the County could condition application completeness on additional information required by or needed to assess and analyze the project under the California Environmental Quality Act (“CEQA”).

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The Court's ruling is important because it serves as a reminder that local agencies should: (1) "specify in detail" the information needed for project applications to be considered complete; and (2) identify which applications are subject to CEQA. The ruling also clarifies that a local agency can maintain several submittal checklists, and that a local agency is not required to keep all information required for a permit on a single checklist or to keep all lists in one location.

Legal Background

Under the Permit Streamlining Act, public agencies must maintain "one or more lists that shall specify in detail the information that will be required from any applicant for a development project." This list of information must "indicate the criteria which the agency will apply in order to determine the completeness of any application submitted to it for a development project."

An agency may not require proof of full CEQA compliance as a prerequisite to a permit application being deemed complete, but it may require sufficient information to permit the agency to determine what level of CEQA review may be required.

After an agency receives an application for a development project, it must determine whether the application is complete and notify the applicant of its determination within 30 days. If the agency determines an application is incomplete, it must provide the applicant with an exhaustive list of items that were not complete, and that list must be limited to items actually required by the submittal checklist.

After accepting an application as complete and determining that the project is subject to CEQA, the agency can begin the formal environmental evaluation of the project. In doing so, the agency may require the applicant to submit additional information needed to understand the project and complete the assessment of the project's potential for environmental impacts.

Factual Background

In 2023, Old Golden Oaks applied for a grading permit and an encroachment permit from the County to develop a residential subdivision that had been previously created and approved in 1973.

For the grading permit, the County's submittal checklist required, among other things, a completed application, an erosion control plan, and a copy of right-of-way agreements. The application required a notice of intent, a storm water pollution prevention plan, and engineered plans. The County's municipal code stated that grading over 5,000 cubic yards was subject to CEQA and would require an indemnification agreement.

For the encroachment permit, the submittal checklist included a catch-all provision for "[o]ther information as may be required by the director [of transportation and public works]."

Old Golden Oaks stated in its grading permit application that it planned to grade 58,740 cubic yards and acknowledged it must also submit a notice of intent, a storm water pollution prevention plan, and engineered plans. The application also asked whether CEQA compliance was required, but Old Golden Oaks did not answer the question.

One week after Old Golden Oaks submitted its applications, the County informed Old Golden Oaks that its applications were incomplete and requested additional items. These items were: (1) an on-site soil evaluation and conceptual wastewater treatment design for each parcel one acre or smaller; (2) a plan signed by the Amador Water Agency that shows the proposed locations of all water facilities, as well as the location and size of all water transmission and distribution facilities; (3) a conditional "will serve" letter from Amador Water Agency that must include input from Jackson Valley Fire Protection District; (4) a contractor's declaration and representative authorization form and related information; and (5) a signed indemnity form. The County also sought items particular to the grading permit: (1) evidence of the submission of a notice of intent and a stormwater pollution prevention plan; (2) engineering estimate for the proposed excavation; (3) an erosion control plan; and (4) a proposed right-of-way agreement.

Old Golden Oaks filed a lawsuit challenging the additional information sought by the County.

Appellate Court Ruling

On appeal to the Third Appellate District, Old Golden Oaks contended that the catch-all provision in the encroachment permit submittal checklist was inconsistent with the Permit Streamlining Act.

As to the encroachment permit, the Court held that the catch-all provision violated the Permit Streamlining Act's mandate to "specify in detail" the requisite information for a permit, because nothing in the record showed what such "other information" in the catch-all provision could be.

The Court rejected the County's contention that it could request information for CEQA compliance as part of the encroachment permit application even though such information was not included in the submittal checklist. Unlike the grading permit, the encroachment permit application and submittal checklist made no mention of information needed for CEQA compliance. The Court acknowledged that the County could still seek environmental information from Old

Golden Oaks both before and after the completion of the application, but because such information was not part of the submittal checklist, it could not be a condition for deeming the application complete.

As to the grading permit, the Court held that the County could properly request Old Golden Oaks to provide a completed application, a proposed erosion control plan, a copy of right-of-way agreements, a notice of intent, a storm water pollution prevention plan, engineered plans, and an indemnification agreement, because these items were required by the County's submittal checklist, application, and municipal code.

The Court also held that the County could request additional environmental information in connection with the grading permit because the application asked Old Golden Oaks whether the grading must comply with CEQA, and the County's municipal code expressly stated that CEQA compliance was required. According to the Court, this was sufficient to comply with the Permit Streamlining Act's mandate to "specify in detail" the information required for a permit application. Because the submittal checklist for the grading permit informed Old Golden Oaks that its project is subject to CEQA, the County could condition the completeness of the grading permit application on the additional environmental information. The County did not need to list the exact environmental information needed in its criteria for issuance of grading permits because it would be impossible to foresee the unique environmental issues presented in each development project and to include them in a standard checklist.

Finally, the Court held that the County could maintain several checklists in its municipal code and local ordinance, and the County was not required to keep all information required for a permit on a single checklist or to keep all lists in one location.

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Public Law Update – CA Court of Appeal Clarifies the Unavailability of Class Actions Under the California Public Records Act

The California Public Records Act ("CPRA") governs access to public records and requires that public agencies make certain non-exempt public records available upon request. On March 28, 2025, the California Court of Appeal issued an opinion in *Desolina Di Lauro v. City of Burbank* that sheds new light on the availability of class action claims under the CPRA. Notably, the Court's opinion suggests that class claims are essentially unavailable under the CPRA.

Background of the Case

The City of Burbank ("City") has a website and an email address that members of the public can submit CPRA requests to. The City's Department of Water and Power ("DWP"), on the other hand, did not provide a specific webpage or information about how to submit CPRA requests. The plaintiff received a water bill from DWP that she believed to be erroneous and submitted multiple CPRA requests for her past bills via the Contract page on the DWP's website.

Plaintiff then filed the complaint, alleging a cause of action for violation of the CPRA and California Constitution based on the City's alleged failure to respond to the CPRA request with the statutory timeframe and the absence of any means to make a records request through the DWP website. The plaintiff asserted these claims on behalf of herself and two classes: (1) the "Timeliness Class," defined as all persons who requested records from the City but the City did not meet the relevant CPRA deadline; and (2) the "Burbank Class," defined as all residents of the City who had been prohibited or deterred from submitting a CPRA request because the DWP and other specific departments within the City do not offer a means to submit a CPRA request. The trial court sustained the City's demurrer, holding that plaintiff did not have either a class claim or individual claim, and plaintiff appealed.

The Court of Appeal Denies the Class Action Claim under the CPRA

The Court of Appeal affirmed the trial court's ruling that the CPRA's enforcement provisions preclude a plaintiff from pursuing class relief for a CPRA violation. Although California law encourages courts to liberally permit parties to pursue class actions, the Court pointed out that where a statute such as the CPRA precludes a party from bringing a claim on behalf of another person, this general policy is insufficient

to permit the class action. Any person may enforce the CPRA; however, the statutory language expressly states that the right being enforced belongs solely to the person who made the request. Thus, the Court pointed out that the CPRA does not contemplate class action relief.

The Court also stated that existing caselaw emphasizes that the purpose of the judicial enforcement provisions of the CPRA is "limited to ensuring expeditious resolution of any dispute over a requesting party's right to access." The Court stated that a class action under the CPRA would not further this right of access to records, absent some indication that a public agency "is consistently and erroneously claiming that some category of records is exempt from disclosure."

The Court of Appeal went on to state that even if class claims are technically permissible under the CPRA, the plaintiff's allegations were insufficient to meet the requirements for class certification. Specifically, the plaintiff made no allegations about what other members of the class have experienced, including what public records they might be seeking. Without those allegations, it would be impossible to determine who might be included in the alleged subclass. Further, the Court suggested that class actions are logistically incompatible with CPRA claims because a trial court would still need to consider the details of each records request made by members of the class, including the response by the agency and the records sought.

The Court of Appeal Permits the Individual Claim

The Court of Appeal, while rejecting the class claim, held that the plaintiff did adequately allege an individual claim under the CPRA. The plaintiff had alleged that she made a request for records to the City and that the City did not send her a response within the statutory timeframe. While the City and DWP submitted evidence that plaintiff had not actually submitted records requests to the DWP, the Court stated that this evidence only created a factual dispute that did not affect the adequacy of plaintiff's complaint. Thus, the Court held that the demurrer as to the individual claim was improperly granted and the claim should be decided on the merits.

While the trial court had reasoned that the statutory duty under the CPRA does not clearly require entities to post information about how to submit CPRA requests online, the Court of Appeal looked solely at the complaint to determine that plaintiff had still alleged sufficient facts to state a claim because she alleged that the City failed to timely respond to her records request.

Di Lauro's Implications for Public Entities and the CPRA

The *Di Lauro* case reiterates and builds upon existing caselaw to

clarify that class action claims under the CPRA are difficult, if not impossible, to make under the statutory scheme. While this case makes clear that risk of class action claims under the CPRA is low, public agencies should be mindful of the Court's suggestion that a public agency's consistent practice of designating certain categories of records as exempt may give rise to a class claim if the agency's practice is erroneous. Thus, public agencies should always review the available exemptions under the CPRA to make record determinations and avoid brightline policies for applying exemptions if the policy could be subject to challenge.

Additionally, *Di Lauro* reiterates that public agencies must be mindful of adhering to the statutory deadlines for responding to public records requests. Missing the response deadline can easily result in litigation by the requester, even if the public agency would have otherwise produced the records. While *Di Lauro* did not create any new requirement about posting CPRA information online, public agencies should consider having a portion of their websites dedicated to explaining how to make records requests. This can help avoid confusion among the public and streamline records requests by funneling them through a standard link, online form, or email address. As always, public agencies should be attentive to public records requests and routinely review requests to ensure that the agency complies with the statutory deadlines.

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to the Public Records Act.

Public Law Update – AB 1785 Revises the California Public Records Act to Further Protect Officials' Personal Information

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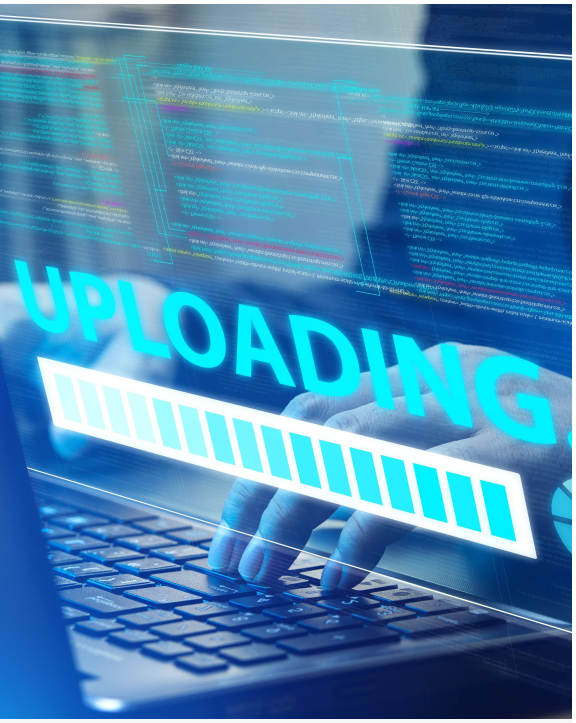
Assembly Bill 1785 (AB 1785) amended Government Code Section 7928.205, relating to public records. The California Public Records Act is codified as Sections 7920.000 to 7931.000 of the Government Code.

AB 1785 became effective on January 1, 2025 and amends section



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7928.205 which prohibited posting of an elected or appointed official's home address and phone number. The bill amended this section to specify that "no state or local agency shall publicly post the home address, telephone number, or both the name and assessor parcel number associated with the home address of any elected or appointed official on the internet without first obtaining the written permission of that individual." AB 1785 specifies that "publicly post" means "to intentionally communicate or otherwise make available the information described in subdivision (a) on the internet in an unrestricted and publicly available manner." The exemption does not apply to legally required notices.

AB 1785 also added findings to clarify the intent of the exemption, "to protect the personal safety and privacy of public officials and their families by limiting access to assessor's parcel numbers in connection with the home address of those individuals." The Legislature further clarified that the intent of the revised Section 7928.205 is not to limit access to "recorded documents, indices, and assessor data through electronic means by business entities," and does not require databases that provide public access to such documents to be taken down, but ensures that a public official's home address cannot be obtained through accessing publicly recorded documents.

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to the Public Records Act.

Public Law Update – SB 1123 Makes Revisions to the Starter Home Revitalization Act (SB 684)

Senate Bill 1123 (SB 1123) builds on California's Starter Home Revitalization Act (Senate Bill 684) by expanding the types of parcels eligible for streamlined, ministerial review of small-scale subdivisions

and associated, ten units or less housing developments.

Previously, only multifamily-zoned lots of up to five acres could bypass discretionary hearings for projects of ten or fewer units. Under SB 1123, effective July 1, 2025, vacant, single-family-zoned lots of up to 1.5 acres, qualify for streamlined, ministerial approval, as long as the lot is surrounded by substantially urban uses, and the newly created parcels are no smaller than 1,200 square feet. Vacant is defined as a lot that does not have a permanent habitable structure, is not subject to affordability covenants, rent or price controls, or occupied within the last five years.

SB 1123 also clarifies that while a local agency is not required to permit an accessory dwelling unit (ADU) or junior accessory dwelling unit (JADU) on parcels created through the SB 1123 process, if a local agency chooses to permit ADUs and JADUs, those units would not count towards the 10-unit cap.

Additionally, SB 1123 eases density requirements. If a site is not identified in a jurisdiction's housing element, SB 1123 only requires the subdivision to achieve 66 percent of the maximum allowable density, or 66 percent of the density in Government Code section 65583.2(c)(3)(B) (Housing Element law (Government Code §§ 65580–65589.8)), whichever is greater. Cities may continue to enforce only objective standards, but cannot impose additional frontage, lot width depth, or homeowner's association requirements beyond those SB 1123 specifies.

Once an applicant submits a complete application, the local agency has 60 days to approve or deny, and if no action is taken, the application is deemed approved. Denials are limited to specific, unmitigable public health or safety impacts.

Although the new single-family lot provisions don't take effect until July 1, 2025, agencies should audit their zoning maps and update application checklist to identify qualifying parcels.

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to housing developments and land use matters.

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Public Law Update – Appellate Decision Provides Guidance on CEQA/AB 52 Tribal Consultation Process

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In Koi Nation of Northern California v. City of Clearlake, the First Appellate District of the California Court of Appeal overturned a Lake County Superior Court decision and concluded that the City of Clearlake ("City") abused its discretion by failing to comply with the tribal consultation requirements of the California Environmental Quality Act ("CEQA"). (Cal. Ct. App., Mar. 14, 2025, No. A169438.)

The Court's ruling is important because it is the first published appellate opinion to address the
Assembly Bill 52 ("AB 52") tribal consultation process, and provides several important and instructive points for lead agencies. This case demonstrates the need for public agencies to: (1) strictly follow the tribal consultation requirements of AB 52; and (2) ensure that any adopted Negative Declaration, MND or EIR records the tribal consultation process in sufficient detail, including the agency's consideration of and analysis of issues raised during consultation.

At a minimum, the CEQA document and the administrative record should: (1) include information about the consultation, beyond just the date it took place; (2) inform decisionmakers and the public if mitigation measures were requested, what those mitigation measures were and whether the agency decided to implement them; and (3) the agency's basis for determining that a consultation had concluded and when the agency made that determination. To the extent that a Tribe has not consented to the disclosure of such information to the public, it should be published in a confidential appendix to the CEQA document.

Factual Background

In early 2022, the City notified the Koi Nation of Northern California ("Koi Nation") under AB 52 of a proposed private development in the City comprising a new four-story hotel and one-story meeting hall on a 2.8 acre parcel, plus a road extension to serve the project. The Koi Nation raised preliminary concerns with the project and identified a representative for consultation, who requested formal consultation in response to the City's invitation to consult under AB 52.

According to the appellate opinion, only one meeting was held

between the City and the Koi Nation on March 9, 2022, and the Koi Nation's representative followed up in writing, requesting certain mitigation measures be applied to the project, comprising:
1. A cultural monitor during development and all ground disturbing activities pursuant to a monitoring agreement;
2. Incorporation of Habematolel Pomo of Upper Lake's Treatment Protocol as a mitigation measure; and
3. Cultural sensitivity training for pre-project personnel on the first day of construction.

The City held no further meetings with the Koi Nation (and documented no further consultation efforts), instead relying on its consultant's report that no tribal cultural resources had been discovered at the project site. The draft Mitigated Negative Declaration reflected this conclusion but did identify mitigation measures to reduce impacts to "unknown tribal cultural resources" that "could result in a substantial adverse change in the significance of a tribal cultural resource." The proposed mitigation measures partially reflected the cultural monitoring measure requested by the Koi Nation — cultural monitoring – but only if subsurface remains were uncovered. The other two mitigation measures requested by the Koi Nation were not included. The City Planning Commission then adopted a Mitigated Negative Declaration ("MND") under CEQA and approved the project.

The Koi Nation appealed the Planning Commission's decision to the City Council, raising concerns that the MND did not adequately address impacts to tribal cultural resources. Prior to the appeal hearings, the Koi Nation submitted a number of documents to the City Council that it deemed confidential. During the appeal hearing, the Koi Nation's representative explained that a confidential map that had been provided to the City Council showed that tribal cultural resources were "close in proximity" to the project site, the closest being a little more than 100 feet from the project boundary. The Koi Nation again requested mitigation measures, this time specifying the need for a tribal cultural resources monitor in addition to the cultural monitor during development and ground disturbance, incorporation of Habematolel Pomo of Upper Lake's Treatment Protocol, and cultural sensitivity training. The Koi Nation also noted that no agreement with the City on the presence or treatment of tribal cultural recourses had been reached. The City Council agreed to modify the cultural monitor mitigation measure to "use a qualified cultural resources consultant and coordinate with a tribal resources expert from Koi Nationto identify and investigate" discovered remains, but otherwise denied the appeal.

Legal Background

At its highest level, CEQA requires a lead agency (typically a project's

approving body) to analyze whether its discretionary actions would have a significant effect on the environment. Assembly Bill 52 (Gatto, 2014) amended CEQA to define Tribal Cultural Resources and require lead agencies to consider impacts to Tribal Cultural Resources when preparing Environmental Impact Reports ("EIRs") Negative Declarations, and Mitigated Negative Declarations.

Recognizing that California Native American Tribes have expertise with respect to their tribal cultural resources, AB 52 established a mandatory notice and consultation process to facilitate lead agencies' consideration of tribal cultural resources. Consultation must be "meaningful" and must cover a range of issues including the identification of tribal cultural resources, potential project impacts, and, if needed, the adoption of binding mitigation measures to reduce any impacts to a less than significant level.

Until the Koi Nation decision, no appellate court had weighed in on the adequacy of a lead agency's consultation with a California Native American Tribe regarding a project's potential impact on tribal cultural resources.

Superior Court Decision

After having its administrative appeal of the project denied by the City, the Koi Nation filed a petition with the Lake County Superior Court alleging that the City failed to proceed in the manner required by law with respect to AB 52 tribal consultation. The Superior Court ruled in favor of the City, finding that the Koi Nation did not fulfill its duty to request consultation when it directed communications through its representative.

Appellate Court Ruling

On appeal to the First Appellate District, the Koi Nation raised three CEQA issues: (1) that the City failed to comply with AB 52's tribal consultation procedures; (2) that the City failed to prepare an environmental impact report for the project; and (3) that the Mitigated Negative Declaration ("MND") lacked the information required by CEQA. Amicus briefs in support of the Koi Nation were filed by the Attorney General, and amicus briefs in support of the City were filed by the League of California Cities and California State Association of Counties.

The Court of Appeal ruled in favor of the Koi Nation on the first issue, concluding that the City failed to comply with CEQA's tribal consultation requirements, and did not address the Koi Nation's other arguments.

In its decision, the Court reasoned that the Koi Nation's communications through its representative were sufficient to satisfy

AB 52's request for consultation requirement. It also noted that the March 9, 2022 consultation meeting did not meet the requirements of CEQA/AB 52, as the City was unable to provide evidence that it had made any effort to reach mutual agreement on the presence of tribal cultural resources and their treatment.

The Court emphasized that "'meaningful discussion' is the hallmark of CEQA's tribal consultation requirement," and that "the consultation here was perfunctory at best." The Court further reasoned that the City had failed to consider the value and significance of the tribal cultural resources to the Koi Nation in its adoption of the MND and approval of the Project, and choosing to rely solely on the conclusion of its own City archeologist failed to meet the requirements of CEQA.

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Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to land use and development projects, including CEQA and tribal consultation.

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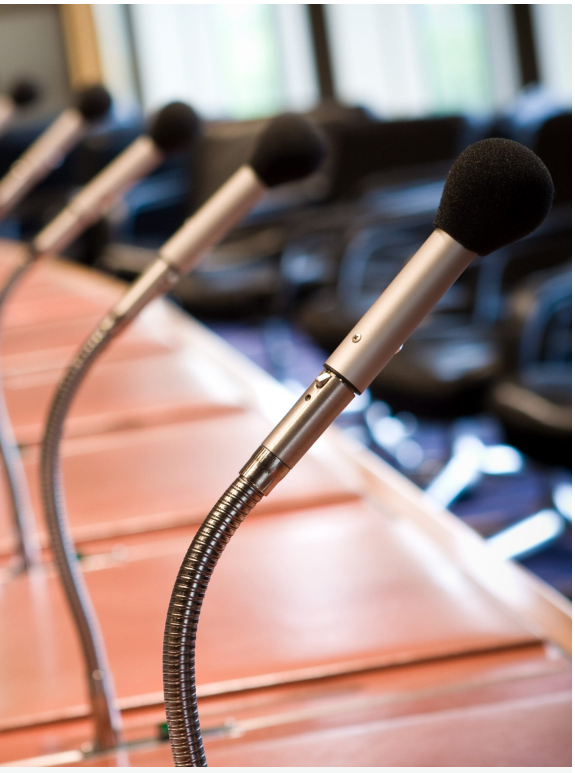

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Increased Public Notice Requirements for Certain Planning Commission Meetings (AB 2904)

Local agencies are now required to give at least 20 days' notice before a planning commission holds a public hearing on an ordinance affecting the permitted uses of real property.

Under existing law, local agencies were required to provide at least ten days' notice before a proposed zoning ordinance or amendment to a zoning ordinance is presented to the local planning commission. However, Assembly Bill 2904 (2024) ("AB 2904") changed the notice period to not less than 20 days before the scheduled planning commission meeting when the proposed ordinance affects the permitted uses of property. AB 2904 became effective January 1, 2025.

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AB 2904 reinforces the importance of transparency and public participation in zoning decisions, ensuring that residents and property owners have enough time to be involved in the planning process.

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Construction Law Update – AB 2192 Updates Bidding Thresholds for Municipalities Opted into CUPCCAA

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Assembly Bill No. 2192, effective January 1, 2025, increased bidding thresholds for those municipalities that have opted into CUPCCAA (California Uniform Public Construction Cost Accounting Act) (Pub. Contract Code § 22000 *et seq*.). CUPCCAA authorizes different procedures for public project contract bidding depending on the estimated cost of the project as follows:

• $75,000 or less to be performed by force account, negotiated contract, or purchase order;
• $75,000 to $220,000 to be let by informal bidding; and
• $220,000 or more to be let by formal bidding.

But a local public agency cannot simply rely on these new thresholds.

An agency must first confirm it adopted an ordinance opting into CUPCCAA and provided a copy of that ordinance with the State. If your agency is not on the Controller's list, it is not eligible to use CUPCCAA. You can double check whether your agency has opted into CUPCCAA here: https://www.sco.ca.gov/Files-ARD-Local/participating_agencies_-_general.pdf.

Second, an agency must confirm its ordinance provides for automatic adjustment of bidding thresholds when the statute changes. Often, agencies that opt into CUPCCAA adopt fixed thresholds. If an

ordinance does not authorize automatic adjustment as CUPCCAA limits are periodically adjusted by the state legislature, an agency must amend its ordinance or purchasing policy either to adopt CUPCCAA's new bidding thresholds or to automatically adjust as that statute is amended. The agency must then file its updated ordinance with the State Controller.

For those of you who are less familiar with CUPCCAA, CUPCCAA provides great flexibility in procuring public works contracts to local governments. If your agency has not yet opted into it, you may wish to consider it. If you have, it is important to be sure your ordinance is current and that it has been filed with the State Controller.

If any municipality would like assistance in preparing an updated ordinance, filing it with the State Controller, or preparing a Resolution opting into CUPCCAA, please do not hesitate to contact us for assistance.

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Public Law Update – SB 1243 and SB 1181 Create New Rules Regarding Campaign Contributions

On September 27, 2024, and September 30, 2024, the Governor approved Senate Bills 1181 and 1243, respectively, which alter provisions of the Political Reform Act of 1974 regarding the ability of public entity officers to participate in certain decisions or proceedings when the officer has received a campaign contribution from a party or participant in the decision or proceeding.

Currently, the Political Reform Act prohibits certain contributions of more than $250 to an officer by any party, participant (or an agent for the party or participant) when a proceeding involving a license,

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permit, or other entitlement is pending and for 12 months following the date of a final decision. Under the Act, a "participant" is any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision. The Act requires disclosure on the record and disqualifies an officer from participating in a decision if the officer has willfully or knowingly received a contribution of more than $250. The Act also allows an officer to cure certain violations of these provisions by returning a contribution, or the portion of the contribution of in excess of $250, within 14 days of accepting, soliciting, or receiving the contribution, whichever comes latest.

The new legislation, which takes effect on January 1, 2025, raises the threshold for contributions regulated by these provisions from $250 to $500. However, under the new legislation, an agent to a party or participant shall not make a contribution in any amount to an officer while the proceeding is pending or in the 12 months following the final decision. Under the legislation, a proceeding is pending if it has been placed on a public meeting agenda, or if the officer knows the proceeding is within the agency's jurisdiction and is reasonably foreseeable that the decision will come before the officer in the officer's decision making capacity. The bills also extend the period during which an officer may cure a violation from 14 days to within 30 days of accepting, soliciting, or directing the contribution, whichever is latest.

Further, the bills clarify that a person is not a "participant" for the purposes of these provisions if their financial interest in a decision results solely from an increase or decrease in membership dues. Unfortunately, SB 1243 does not provide any clarification or examples of when a financial interest in a decision would result solely from an increase or decrease in "membership dues." The bills also exempt from these provisions contracts valued under $50,000, contracts between two or more government agencies, contracts where no party receives financial compensation, and the periodic review or renewal of development agreements.

Lastly, the bills exempt a city attorney or county counsel providing legal advice to the agency who does not have the authority to make a final decision in the proceeding from the definition of "officer" for purposes of these provisions.

To ensure compliance with these new provisions, it is imperative that public entity officers always be aware of who they receive contributions from and whether that person or entity has any business before the agency.