



10/09/2026

The Honorable Theodore C. Zayner, Superior Court of California, County of Santa Clara, Department 19 161 North First Street, San Jose, CA 95113

Re: Support for Petition for Writ of Mandate, *Related Santa Clara, LLC v. Jennifer Osborn, Director of the California Department of Industrial Relations, et al.*, Case No. 26CV489245

Dear Judge Zayner,

The Housing Action Coalition (HAC) and Council of Infill Builders write in support of Related Santa Clara, LLC's petition asking this Court to vacate the Department of Industrial Relations' January 15, 2026 Decision on Administrative Appeal. HAC is a member-supported, statewide nonprofit that advocates for more housing at all levels of affordability. Our members include developers, architects, attorneys, and labor partners who build homes across California. The Council of Infill Builders is a statewide organization of real estate professionals committed to improving California through infill development.

HAC submitted a letter supporting the administrative appeal in February 2023. Together with the Council of Infill Builders, our concerns have only grown since. The Decision treats ordinary, lawful features of a negotiated public-private ground lease and development agreement as public subsidies. If it stands, its reasoning reaches far beyond this site and will make housing harder and more expensive to build throughout California.

First, the Decision changes the rules for how cities can lease public land for development. Labor Code section 1720 asks whether a public entity transferred value below fair market price. The Decision never answers that question. Instead, it found "no evidence" of fair market value because the City did not use competitive bidding or obtain a contemporaneous third-party appraisal, requirements that appear nowhere in the statute.

The City of Santa Clara spent more than three years negotiating this transaction with the help of Keyser Marston Associates, one of California's most experienced land economics firms. It held public study sessions, reviewed comparable land sales and ground leases, stress-tested the developer's projected returns, and made an express finding that the leases provide fair market value for a former landfill that needs roughly \$907 million in extraordinary site work before anything can be built. The Decision set that record aside without identifying any competing valuation.

Cities across California hold underused public land, including surplus parcels, transit station lots, and brownfields, that could support new homes. Exclusive negotiations are often the only practical way to bring a complex or impaired site to feasibility. If every such deal is presumed to be a subsidy unless it follows procedures the Legislature never required, fewer cities will attempt these partnerships and fewer homes will get built on public land.

Second, and of greatest concern to HAC and the Council of Infill Builders, the Decision treats a temporary fee stabilization in a development agreement as a public subsidy. Locking in fees is not a giveaway. It is one of the most common and important tools in California land use law. The Development Agreement Law exists so that public agencies and builders can rely on fixed rules over long timelines (Gov. Code, sections 65864 and 65866). Vesting tentative maps lock in the fees in effect when an application is complete (Gov. Code, section 66498.1). The Housing Crisis Act of 2019 does the same for housing projects that submit a preliminary application.



The Legislature adopted these protections because unpredictable fees kill projects. Impact fees can add tens of thousands of dollars to the cost of each new home, and a project that pencils at application can fail if fees rise before permits issue. Under the Decision's reasoning, any project that relies on these statutory protections could be argued to receive "public funds." That would put prevailing wage coverage, and the cost and financing risk that comes with an unexpected coverage determination, on a wide range of privately financed housing that the Legislature never intended to reach. It would also set two bodies of state law against each other, penalizing builders for using the certainty that housing law expressly provides.

Third, the length of this proceeding is itself a barrier to housing. Labor Code section 1773.5(c) requires the Director to decide an administrative appeal within 120 days, with one 60-day extension only on written certification. The last submission in this appeal was served on August 24, 2023. The Decision issued on January 15, 2026, more than two years past the deadline.

Housing finance depends on certainty. Lenders and investors cannot underwrite a project when a basic cost question sits unresolved for years, and interest rates, construction costs, and market conditions have all shifted dramatically during that time. The Legislature set firm deadlines so builders could plan around a clear answer. When those deadlines are ignored, the uncertainty alone can stall or end a project.

HAC and the Council of Infill Builders fully support California's prevailing wage law and its application to public works. That is not the question here. The question is whether a privately financed project becomes a public work because a city negotiated a market lease on impaired land and used the regulatory certainty state law provides. HAC and the Council of Infill Builders believe it does not, and that holding otherwise would discourage the public-private partnerships and long-term planning California needs to address its housing shortage.

We respectfully urge the Court to grant the petition and direct the Department to vacate its Decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Smith", is placed over a light grey rectangular background.

**Corey Smith**, *Executive Director*  
Housing Action Coalition (HAC)

A handwritten signature in blue ink, appearing to read "Jonathan Fearn", is placed over a light blue rectangular background.

**Jonathan Fearn**, *Board Director*  
Council of Infill Builders