

CEQA Case Report

Understanding the Judicial Landscape for Development
2021 Year in Review

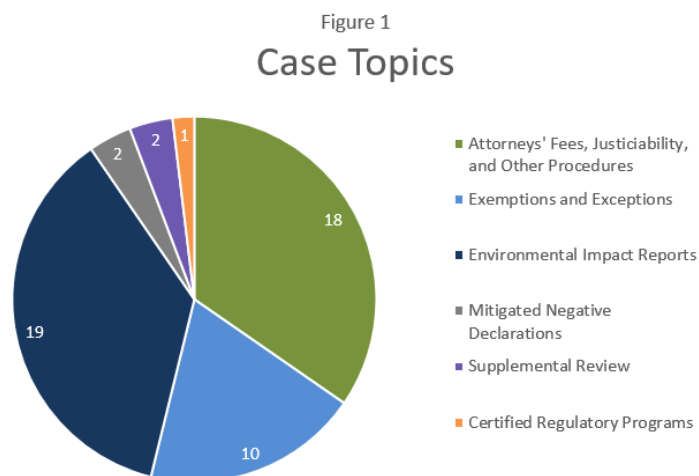
CEQA Case Report: Understanding the Judicial Landscape for Development

Public agencies prevailed in 71% of CEQA cases analyzed.

Latham & Watkins is pleased to present its fifth annual CEQA Case Report. Throughout 2021 Latham lawyers reviewed each of the 51 California Environmental Quality Act (CEQA) appellate cases, whether published or unpublished. Below is a compilation of the information distilled from that annual review and a discussion of the patterns that emerged.

In 2021, the California Courts of Appeal issued 51 opinions that substantially considered CEQA while the US District Court for the Northern District of California issued one opinion. Notably, 2021 saw an increased focus on CEQA wildfire analysis. In cases like *Sierra Watch v. County of Placer*, the Court of Appeal ruled that the County of Placer failed to adequately analyze wildfire risks by wrongly assuming first responders would provide traffic control in the event of an emergency. And in *Newtown Preservation Society v. County of El Dorado*, the Court upheld a mitigated negative declaration in the face of public concerns that a bridge reconstruction project would result in significant impacts on resident safety and emergency evacuation in case of a wildfire.

Also notable in 2021 was the rare occurrence of a Court of Appeal partially affirming the denial of an anti-SLAPP motion following a CEQA lawsuit. In *Dunning v. Johnson*, the Court found that a project developer had established a probability of demonstrating lack of probable cause for the underlying CEQA petition, as well as a probability of demonstrating that the petitioners pursued the CEQA litigation with malice.



Of the 51 appellate CEQA cases in 2021, 15 were published, six were partially published, and 30 were unpublished. Figure 1 (left) shows all 51 cases sorted by topic.

A nearly equal number of cases focused on Environmental Impact Reports (19 cases) and Attorneys' Fees, Justiciability, and Other Procedures (18 cases), which includes issues such as mootness, statutes of limitations, waiver, and *res judicata*. These two topics were the focus of 71% of all cases in 2021 — which is

consistent with 2020, when these two topics were the focus of 70% of all cases.

Also in 2021, 10 cases focused on Exemptions and Exceptions, two focused on Mitigated Negative Declarations, two focused on Supplemental Review, and one focused on Certified Regulatory Programs.

Figure 2 (right) shows the distribution of cases among California’s six appellate districts, as well as the percentage of cases in each district where the public agency prevailed.

Unlike 2018, 2019, and 2020, there was not a single district where the public agency prevailed in all cases. However, the First District had the most favorable record for public agencies, which prevailed in 89% of all cases. As was the case in 2019, in the Fifth District, public agencies did not prevail in a single case.

Figure 2
Cases and Public Agency Success by District

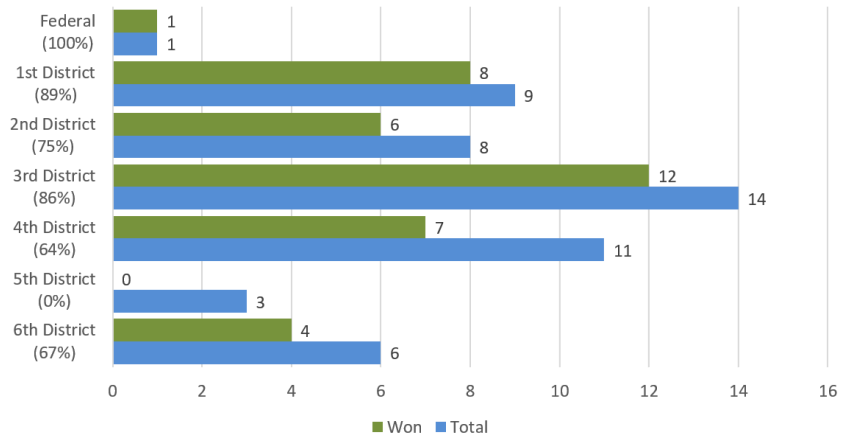
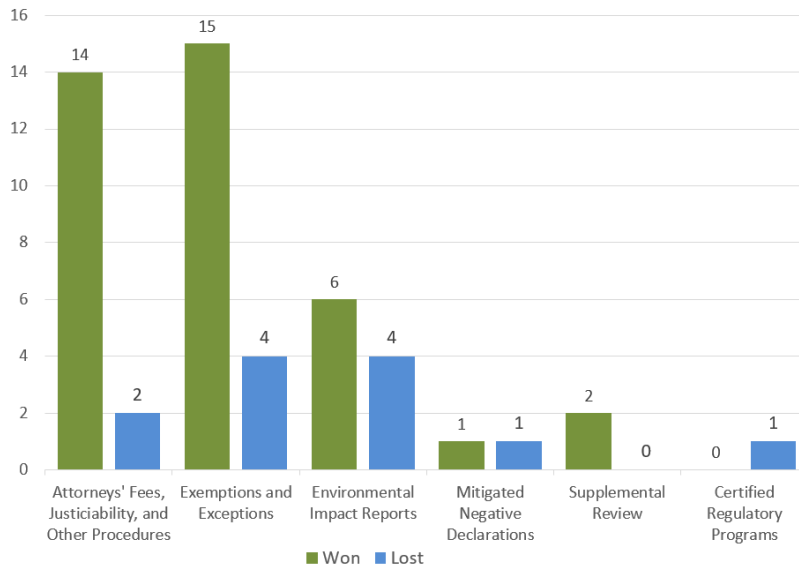


Figure 3 (below) separates cases by topic and shows whether the public agency prevailed in each type of case. For purposes of this summary, if the public agency lost on any issue, it was deemed not to have prevailed.

Figure 3
Public Agency Success by Subject Matter



Overall, public agencies prevailed in 38 of the 52 cases, or 71%, up slightly from 68% in 2020 and consistent with the 71% win rate in 2019. The public agency prevailed in 88% of Attorneys’ Fees, Justiciability, and Other Procedures cases and 79% of Environmental Impact Report cases.

For more insights and commentary on environmental issues and developments impacting business in California, visit Latham’s [Environment, Land & Resources blog](#).

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2021 CEQA CASE SUMMARIES

Attorneys' Fees, Justiciability, and Other Procedures					
	Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
1	<u>Aids Healthcare Foundation v. City of Los Angeles</u>		2 nd		1
2	<u>Bldg. a Better Redondo v. City of Redondo Beach</u>		2 nd		2
3	<u>Couey v. City of Lompoc</u>		2 nd		4
4	<u>Ctr. for Env'tl. Sci. v. Dep't of Water Res.</u>		3 rd		5
5	<u>Dunning v. Johnson</u>	N/A	4 th		6
6	<u>Friends of Gualala River v. Dep't. of Forestry & Fire Prot.</u>		1 st		8
7	<u>Friends of Gualala River v. Guala Redwood Timber, LLC</u>		N/A		9
8	<u>Friends v. County of Plumas</u>		3 rd		11
9	<u>McCann v. City of San Diego</u>		4 th		12
10	<u>N. Coast Rivers All. v. Dep't of Food & Agric.</u>		3 rd		14
11	<u>Napa Valley Model R.R. Historical Soc'y v. Cal. Ex. Rel. 25th Dist. Agric. Ass'n Napa Valley Exposition</u>		1 st		15
12	<u>North Coast Rivers Alliance v. Westlands Water District</u>		3 rd		16
13	<u>Organizacion Comunidad de Alviso v. City of San Jose</u>		6 th		17
14	<u>Pac. Merch. Shipping Ass'n v. Newsom</u>		1 st		19
15	<u>Pub. Watchdogs v. Cal. State Lands Comm'n</u>		4 th		21
16	<u>Save Berkeley's Neighborhoods v. Regents of the Univ. of California</u>	N/A	1 st		22






















Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
17 <u>Save Lafayette Trees v. East Bay Regional Park Dist.</u>		1 st		24
18 <u>Schmid v. City and County of San Francisco</u>		1 st		26






Certified Regulatory Programs

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
19 <u>Friends, Artists and Neighbors of Elkhorn Slough v. California Coastal Commission</u>		6 th		28





















Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
20 Carmel Valley Ass'n v. County of Monterey		6 th		30
21 Cent. Delta Water Agency v. Dep't of Water Res.		3 rd		31
22 Chinatown Community for Equitable Development v. City of Los Angeles		2 nd		33
23 Citizens for a Safe and Sewage-Free McKinley Park v. City of Sacramento		3 rd		34
24 Citizens for Positive Growth & Pres. V. City of Sacramento		3 rd		35
25 Elfin Forest Harmony Grove Town Council v. Cty. of San Diego		4 th		36
26 Gulli v. San Joaquin Area Flood Control Agency		3 rd		37
27 Landwatch Monterey County v. County of Monterey		6 th		38
28 Ocean Street Extension Neighborhood Association v. City of Santa Cruz		4 th		40
29 Patane v. County of Santa Clara		6 th		42
30 Protect Our Home & Hills v. Cty. Of Orange		4 th		43
31 Save Civita Because Sudberry Won't v. City of San Diego		4 th	Partially Published	44
32 Save Our Access-San Gabriel Mountains v. Watershed Conservation Auth.		2 nd		46
33 Sierra Club v. County of San Diego		4 th		48
34 Sierra Watch v. Cty. of Placer		3 rd	Partially Published	49
35 Steinbruner v. Soquel Creek Water Dist.		6 th		51



Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
36 <u>Stop Syar Expansion v. Cty. Of Napa</u>		1 st	Partially Published	52
37 <u>Taxpayers for Responsible Land Use v. City of San Diego</u>		4 th		55
38 <u>Val Verde Civic Ass'n v. County of L.A.</u>		2 nd		56




Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
39 <u>Cal. Water Impact Network v. County of San Luis Obispo</u>		2 nd		58
40 <u>Citizens' Committee to Complete the Refuge v. City of Newark</u>		1 st		59
41 <u>Concerned Citizens of Beverly Hills/Bel Air v. City of Beverly Hills</u>		2 nd		60
42 <u>Coston v. Stanislaus County</u>		5 th		61
43 <u>Friends of San Dieguito River Valley v. City of San Diego</u>		4 th		62
44 <u>Los Angeles Dep't of Water & Power v. Cty. of Inyo</u>		5 th		63
45 <u>Mission Peak Conservancy et al. v. State Water Resources Control Board</u>		1 st		65
46 <u>Old E. Davis Neighborhood Ass'n v. City of Davis</u>		3 rd		66
47 <u>Protect Tustin Ranch v. City of Tustin</u>		4 th		67
48 <u>Protecting Our Water & Env'tl. Res. v. City of Stanislaus</u>		5 th		69



Mitigated Negative Declarations

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
49 <u>Farmland Protection Alliance v. County of Yolo</u>		3 rd	Partially Published	71
50 <u>Newtown Preservation Society v. County of El Dorado</u>		3 rd	Partially Published	73

Supplemental Review

	Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status	Page Number
51	<u>Cal. Coastkeeper Alliance v. Cal. State Lands Comm'n</u>		3 rd	Partially Published	75
52	<u>Env't Council of Sacramento v. City of Elk Grove</u>		3 rd		77

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
1 <i>Aids Healthcare Foundation v. City of Los Angeles</i>		2 nd	

[*AIDS Healthcare Foundation v. City of Los Angeles*](#), California Court of Appeal, Second Appellate District, Division One, Case No. B313529 (November 11, 2021)

The Court of Appeal affirmed the trial court's denial of a petition for writ of mandate challenging the City of Los Angeles' (City) approval of a redevelopment project (Project). AIDS Healthcare Foundation (AHF) claimed that the City violated CEQA when it certified the Project's environmental impact report (EIR) because the EIR failed to include adequate mitigation measures to reduce the Project's noise impacts.

First, AHF asserted that the City should have considered staggering the construction of nearby projects to reduce the Project's cumulative noise impacts. The Court rejected this argument, finding that AHF did not raise the staggered construction argument during the administrative process and thus failed to exhaust its administrative remedies. The Court explained that although AHF contended during the administrative proceedings that the EIR failed to adequately consider "additional mitigation measures beyond those proposed," AHF's vague assertions did not satisfy the requirement that objections be "sufficiently specific so that the agency has the opportunity to evaluate and respond to them."

Second, AHF argued that the exhaustion requirement should not apply; raising the issue would have been futile since the City's Deputy Advisory Agency noted that the City had no control over the timing or extent of the construction of nearby projects. The Court disagreed, explaining that even if the City ultimately rejected the mitigation measure, raising the issue during the administrative process would have resulted in a more complete record for the City's determination.



Third, AHF argued that the Court should address the merits of its argument despite its failure to raise the issue, because doing so would further CEQA's purpose of allowing the public to participate meaningfully in decisions that will impact the environment and people's lives. The Court rejected that argument also, reasoning that AHF's position would eviscerate the exhaustion requirement under CEQA and was therefore unpersuasive.

Disposition:

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Presiding Justice Rothschild, with Justices Bendix and Crandall concurring
- Trial Court: Los Angeles County Superior Court, Case No. 21STCP00049, Judge Mitchell Beckloff

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
2 Bldg. a Better Redondo v. City of Redondo Beach		2 nd	

[Building a Better Redondo v. City of Redondo Beach](#), California Court of Appeal, Fourth Appellate District, Case No. B294328 (February 18, 2021)

The Court of Appeal affirmed the trial court's award of attorneys' fees under CCP Section 1021.5 and costs under Section 1032 to Building a Better Redondo, Inc. and James Light (Petitioners). The City of Redondo Beach (City) partnered with two developers (Developers) to redevelop the City's harbor area (Project). After the City certified the Project's final environmental impact report (EIR), Petitioners sought a writ of mandate challenging the City's approvals. The trial court found that the EIR was deficient in its analysis of certain environmental impacts, and ordered the City to prepare a new CEQA document addressing these issues. Petitioners then sought attorneys' fees and costs. The Court affirmed.

On appeal, the City and the Developers challenged the trial court's award of attorneys' fees and costs. Separately, the City argued that the trial court erred in holding it jointly and severally liable for the fees and costs with the Developers.

With regard to the award of attorneys' fees, the Court rejected the argument that Petitioners were not entitled to attorneys' fees because they were only partially successful. *First*, Petitioners were successful because the preparation of the new CEQA document could result in Project changes, and Petitioners need not prevail on every claim to be considered a successful party. *Second*, Petitioners enforced an important public right by advancing CEQA's goals of informed decision-making. *Third*, Petitioners conferred a significant public benefit because the City's revised analysis must provide additional information on the Project's human-health and safety impacts.

The Court also rejected the City's and Developers' challenge to the amount of the attorneys' fees. First, the trial court did not arbitrarily calculate fees. Petitioners' requested hourly rate for their lead attorney was not excessive because he was a leading expert in the field with over 30 years of experience. It was immaterial that the attorney worked for a small law firm and charged Petitioners a discounted rate. Second, the trial court did not abuse its discretion by reducing the lodestar by only 20% to account for Petitioners' partial success in the action. Third, a fee enhancement was warranted because (1) the case was complex and raised a novel CEQA issue, (2) counsel bore much of the risk of failure because their fees were partially contingent on success, and (3) the award would likely not fall on taxpayers because the Developers agreed to indemnify the City. Lastly, the Court disagreed that Petitioners were awarded excessive and duplicative time for particular filings; the trial court found the briefs to be exceptionally thorough and well-constructed, and the trial court had already reduced the lodestar to account for the billing that it identified as excessive or impermissible.

With regard to the award of costs, the Court rejected the argument that Petitioners were not entitled to costs because they were only partially successful, reiterating the reasons why it found Petitioners to be the prevailing party. The Court also rejected the challenge to the costs awarded for administrative record preparation. The trial court did not abuse its discretion when it denied Petitioners an attorney rate for record compilation, but allowed cost recovery for proofreading.

Finally, the Court rejected the City's argument that it should not be held jointly and severally liable with the Developers because their indemnity agreement required the Developers to indemnify the City. The Court found that joint and several liability accorded with the law and that it made practical sense:



the City was better positioned than Petitioners to compel the Developers to pay the fee award promptly under the indemnity agreement.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Presiding Justice Manella, with Justices Willhite and Collins concurring
- Trial Court: Los Angeles County Superior Court, Case No. BS166124

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
3 Couey v. City of Lompoc		2 nd	

[Couey v. City of Lompoc](#), California Court of Appeal, Second Appellate District, Division Six, Case No. B305317 (February 23, 2021)

The Court of Appeal affirmed the trial court's judgment to sustain the City of Lompoc's (City) demurrer to a resident's (Petitioner) complaint under the Brown Act. Petitioner challenged the City's readoption of an ordinance approving a five-year extension on a seven-year development agreement, along with a CEQA determination that no information warranted an environment review after the City had certified the Final Revised Environmental Impact Report for a 476-unit residential dwelling project and community park. The City had omitted the issue of the CEQA determination from the agenda for the meeting at which it initially approved the ordinance, which violated the Brown Act.



The Court declined to rescind the entire ordinance as a remedy to cure and correct this violation, finding that the City's readoption was sufficient. The Court disfavored forfeitures and found that a strict construction of the Government Code Section 54960.1(c)(2) did not compel rescission. In the alternative, the Court also found that project developers had detrimentally relied in good faith on the extension, precluding Petitioner's lawsuit for a Brown Act violation.

Disposition

The Court of Appeal affirmed the trial court's decision, sustaining the demurrer without leave to amend with regard to curing the Brown Act violation and alternative ground of detrimental reliance.

- Opinion by Justice Yegan, with Justices Tangeman and Gilbert concurring
- Trial Court: Santa Barbara County Superior Court, Case No. 19CV04541, Judge Jed Beebe

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
4 <i>Ctr. for Env'tl. Sci. v. Dep't of Water Res.</i>		3 rd	

[*Center for Environmental Science, Accuracy & Reliability v. Department of Water Resources*](#), California Court of Appeal, Third Appellate District, Case No. C080967 (February 1, 2021)

The Court of Appeal dismissed petitioner's appeal as moot, holding that any challenge under CEQA to the construction of a salinity barrier was not appropriate for judicial review since the barrier had been removed in 2015. In May 2015, the California Department of Water Resources (Department) began the construction of a salinity barrier across a 750-foot wide channel at the West False River (Project), in order to inhibit the intrusion of saltwater into a portion of the Sacramento-San Joaquin River Delta (Delta). The Project was developed in a time of record drought in California, and was authorized pursuant to Governor Edmund Gerald Brown, Jr.'s declaration of a state of emergency and issuance of Executive Order No. B-29-15 (Executive Order).

The Executive Order also suspended the applicability of CEQA to the Project, so the Department proceeded with Project construction without CEQA review. The Center for Environmental Science, Accuracy & Reliability (CESAR) filed a petition in Sacramento County Superior Court, arguing that the barrier would increase salinity of the water in unprotected areas of the Delta, thereby diminishing the amount of water available for Californians. CESAR sought injunctive and declaratory relief and a writ of mandamus to halt the Project until the Department performed CEQA review. CESAR also raised federal claims under the Endangered Species Act and 16 U.S.C. Section 1538(a), arguing the Project would degrade the habitat of protected delta smelt, as well as claims under the public trust doctrine that the Governor failed to consider the impact of the Project on public trust resources.


The trial court sustained the Departments demurrer, finding that the Executive Order had properly suspended CEQA's applicability to the Project pursuant to the declared state of emergency, so the Project did not improperly proceed without CEQA review. The trial court also concluded that CESAR's federal claims must fail because CESAR failed to comply with the citizen suit 60-day notice requirement, that the Governor was improperly named as a defendant in CESAR's public trust claim, and that declaratory relief was not appropriate to review an administrative decision of the Department. CESAR appealed, but the Court dismissed the appeal as moot since the salinity barrier had been removed in November 2015. The Court also found that no exception to the mootness doctrine applied here, noting that although the case presented an issue of broad public interest, the likelihood of the issue recurring was highly speculative at this stage. The Court noted that the Project may fall in the class of mootness exceptions for situations so inherently temporary they necessarily evade judicial review, but declined to apply this exception given CESAR's failure to brief the issue.

Disposition

The Court of Appeal dismissed the appeal as moot.

- Opinion by Justice Murray, with Acting Presiding Justice Robie and Justice Hoch concurring
- Trial Court: Sacramento County Superior Court, Case No. 34201580002085CUWMGDS, Judge Christopher Krueger

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
5 <i>Dunning v. Johnson</i>	N/A	4 th	

[*Dunning v. Johnson*](#), California Court of Appeal, Fourth Appellate District, Division One, Case No. D076570 (April 23, 2021)

In a published opinion, the Court of Appeal affirmed in part and reversed in part the trial court's order denying an anti-SLAPP (strategic lawsuit against public participation) motion filed by defendants in response to a malicious prosecution claim arising out of CEQA litigation. In sum, the Court determined:

- A petitioner may lack probable cause for purposes of malicious prosecution if they pursue CEQA claims with little or no evidentiary support.
- A petitioner's harassment and continuous opposition of a project may support a finding of malice for purposes of malicious prosecution.
- Without more concrete evidence, a client's motives cannot be imputed to the attorney for a finding of malice.

Background for Appeal

The City of San Diego (City) approved a proposed private secondary school (Project) on a property on a bluff above a state route, adjacent to an equestrian facility. The City adopted a mitigated negative declaration (MND) for the Project. The owner and operator of the equestrian facility (Petitioner) petitioned for a writ of mandate, challenging the City's decision and compliance with CEQA. Petitioner alleged that the City should have prepared an environmental impact report (EIR) for the Project instead of adopting the MND. Further, Petitioner claimed that the City violated CEQA by including significant new information in the final MND that was not circulated for public comment.

The trial court denied the petition, finding that the CEQA claims were barred because Petitioner failed to exhaust administrative remedies. Additionally, as an alternative basis for denying the petition, the trial court determined that the City appropriately adopted the MND. Petitioner appealed, and the Court affirmed the trial court's judgment in *Clews Land & Livestock, LLC v. City of San Diego* (2017) 19 Cal.App.5th 161.

Subsequently, the Project applicant filed a malicious prosecution action against Petitioner and Petitioner's counsel (Defendants), asserting that Defendants pursued the CEQA litigation without probable cause and with malice. Defendants moved to strike the malicious prosecution complaint under California's anti-SLAPP law, but the trial court denied their motion. The trial court explained that although the Project applicant's lawsuit arose from protected activity falling within the scope of the anti-SLAPP statute, the Project applicant demonstrated a probability of prevailing on its claims against Defendants. Defendants appealed the order denying the anti-SLAPP motion.

The Project Applicant Established a Probability of Prevailing on the Element of a Lack of Probable Cause Against All Defendants

As a threshold matter, the Court explained that it was undisputed that the prior CEQA litigation was initiated or maintained at the direction of the Defendants and terminated in the Project applicant's favor. However, Defendants argued the Project applicant failed to show that Defendants pursued the CEQA

litigation without probable cause. The Court disagreed, holding that the Project applicant established a prima facie showing that Defendants did not have probable cause for pursuing at least one of their CEQA theories. The record evidence Defendants relied on to support their claim of a potential noise impact concerned the Project's potential impact on the equestrian facility, not on the environment. Further, the Court explained that Defendants did not commission any noise study or analysis, whereas the Project applicant did. Defendants' attempt to identify deficiencies in the Project applicant's noise study did not give rise to a fair argument of a significant noise impact.

The Project Applicant Established a Probability of Prevailing on the Element of Malice Against Petitioner, but Not Petitioner's Counsel



Defendants also argued that the Project applicant failed to show that Defendants pursued the CEQA litigation with malice. The Court determined that sufficient evidence demonstrates that one of the Defendants — Petitioner equestrian facility — pursued the CEQA litigation with malice; Petitioner's counsel, however, did not. The Court identified several declarations suggesting that Petitioner consistently and aggressively opposed any use and development of the site and harassed prior property owners. As to Petitioner's counsel, the Project applicant failed to make the requisite malice showing because it is improper to impute a client's motives to its attorney. There was no evidence in the record from which the Court could infer that Petitioner's counsel knowingly pursued untenable claims or otherwise acted with malice.

Disposition

Accordingly, the Court of Appeal reversed the trial court's order denying the anti-SLAPP motion as to Petitioner's counsel, but affirmed the order as to Petitioner.

- Opinion by Justice McConnell, with Justices Do and Huffman concurring
- Trial Court: San Diego County Superior Court, Case No. 37-2019-00002241-CU-NP-NC, Judge Timothy Casserly

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
6 <i>Friends of Gualala River v. Dep't. of Forestry & Fire Prot.</i>		1 st	

[*Friends of Gualala River v. Department of Forestry and Fire Protection*](#), California Court of Appeal, First Appellate District, Division Five, Case No. A159903 (February 22, 2021)

The Court of Appeal affirmed the trial court's post-judgment order, holding that Friends of Gualala River (Petitioner) failed to show that timber harvesting plan (THP) revisions by respondent Gualala Redwood Timber, LLC (GRT) were not compliant with the trial court's writ of mandate.

The Department of Forestry and Fire Protection (Cal Fire) approved the third-revised THP despite Petitioner's challenge of GRT's conclusions. After the first petition was filed, the trial court ordered Cal Fire to set aside approval of the first THP. Petitioner filed a second petition after Cal Fire approved the revised second THP. The court found fault with the CEQA cumulative impact conclusions and the alternatives analysis. GRT once again made revisions and Cal Fire approved the third THP. Petitioner then filed an objection to this revision, which the trial court overruled, finding that the changes to the cumulative impact section were "sufficient and meaningful" and analyses of alternatives were "greatly expanded from before."

Regarding the cumulative impact section, the Court found the third THP added sufficient explanation as to why this THP will not add to problems caused by past timber harvesting policies. GRT explained that adhering to anadromous salmonid protection (ASP) rules, storm proofing existing roads, and using "mapped and pre-flagged" skid trails will prevent significant cumulative impacts in the area. Petitioner challenged GRT's conclusions but the Court did not consider if better alternatives were available and found adequate consideration from GRT. The Court noted that a letter to Cal Fire and from the California Department of Fish and Wildlife regarding protection of a frog species did not point out "specific deficiencies" in the THP and the revisions contain steps to mitigate impact. The Court disagreed with Petitioner's claim that Cal Fire should recirculate the revisions.


The Court also found "considerably more information about feasible alternatives and why they were rejected" with significant revisions in the section on alternative harvesting approaches. Also significant to the Court was a section regarding the challenges surrounding rezoning the land for non-timber use. Accordingly, the Court concluded that the revised THP addressed a "reasonable range of alternatives and provide[s] an adequate discussion of their feasibility."

Disposition

The Court of Appeal affirmed the trial court's decision, discharging the writ of mandate and lifting the injunction.

- Opinion by Justice Seligman, with Acting Presiding Justice Simons and Justice Needham concurring
- Trial Court: Sonoma County Superior Court, Case No. SCV262241

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
7 <i>Friends of Gualala River v. Guala Redwood Timber, LLC</i>		N/A	Reported

[*Friends of Gualala River v. Gualala Redwood Timber LLC*](#), US District Court for the Northern District of California, Case No. 20-cv-06453-JD (August 3, 2021)

In a published opinion, the US District Court for the Northern District of California denied the request of Plaintiffs Friends of Gualala River (FGR) and the Center for Biological Diversity (CBD) for a preliminary injunction to enjoin Gualala Redwood Timber, LLC (Defendant) from implementing the Dogwood timber harvesting plan (Dogwood THP), which was previously approved by the California Department of Forestry and Fire Protection (Cal Fire). The District Court held that:

- Plaintiffs cannot re-litigate in federal court the environmental impacts of a project that had been, or could have been, heard at the state level.
- State and federal causes of action grounded in CEQA and the Endangered Species Act, respectively, arise from the same primary right because both statutes were enacted to prevent injury to habitats and species.

Background for Case

In July 2016, Cal Fire approved Defendant's Dogwood THP, which would permit Defendant to harvest timber from its private forest upstream from the mouth of the Gualala River, on the border of Sonoma and Mendocino Counties. Following lengthy state litigation over five years brought by FGR under CEQA and the Forest Practice Act, Cal Fire substantially modified the Dogwood THP to reduce the scope of the project and its impact on sensitive species and habitat.

As a result of the litigation, Cal Fire was also required to address certain deficiencies in the Dogwood THP. Notably, FGR raised claims that Cal Fire failed to assess the environmental impact of the Dogwood THP on threatened wildlife species under the federal Endangered Species Act (ESA). After Cal Fire addressed the deficiencies, the Sonoma County Superior Court lifted the injunction on Defendant's logging activities under the Dogwood THP, which the California Court of Appeal then affirmed in February 2021. The Court of Appeal determined that Cal Fire had properly accounted for impacts on protected species, and that the Dogwood THP included measures ensuring it would not likely result in a take or have any adverse impact on the foothill yellow-legged frog, a species that FGR had identified as at-risk. The Dogwood THP also incorporated certain protections to reduce environmental impacts on the river's fish and ecosystem, and required Defendant to stormproof existing roads to reduce sediment transfer to waterways.

In this federal case, Plaintiffs sued again to enjoin Defendant's implementation of the Dogwood THP, alleging that the logging project would despoil the Gualala River ecosystem and result in the taking of four other protected species under the ESA. Plaintiffs requested a preliminary injunction to prevent further harm to these species and the ecosystem.

Plaintiffs Are Unable to Demonstrate a Likelihood of Success or a Serious Question on the Merits

The District Court analyzed whether Plaintiffs demonstrated a likelihood of success or a serious question on the merits of the case. Defendant argued that res judicata barred Plaintiffs' claims regarding the environmental impacts of the Dogwood THP, including its possible impacts on threatened or endangered species, because those issues were actually or could have been litigated in the state court proceedings. The District Court looked to whether the federal claims were based on the same cause of action, or the same primary right, of those previously decided in state court. The District Court clarified that cases involving the same projects, environmental review documents, or findings are generally considered to be based on the same primary right. Here, the Plaintiffs pointed to the same logging project and Dogwood THP as in the state case.

Plaintiffs attempted to differentiate their federal suit by arguing that the prior state litigation asserted a procedural right under CEQA, while this federal case asserts a substantive right under the ESA. However, the District Court held that since CEQA and the ESA were both enacted to prevent injury to habitats and species, Plaintiffs' claims were focusing on the same potential harm. Thus, Plaintiffs' ESA claims arose under the same material facts and concerned the same primary right as the state case.

In addition, the District Court emphasized that the ESA claims could have been brought in Plaintiffs' prior state proceedings because Plaintiffs knew about the concerns for threatened or endangered species then. In fact, Plaintiffs even pointed to Dogwood THP deficiencies under the ESA in the state litigation. There was no good reason preventing Plaintiffs from raising these ESA concerns. Further, even though CBD was only a party to this federal litigation, the District Court held that the parties were the same in both the state and federal litigation because Plaintiffs share the same aesthetic, recreational, and protective interests.



Lastly, the Court held that a public interest exception did not apply to prevent claim preclusion. Under this exception, courts may permit re-litigation of an issue of law regarding a public entity's ongoing statutory obligations that affect members of the public not specifically before the court in the first litigation. However, the District Court held that the exception did not apply here because Plaintiffs did not raise pure questions of law, and it was not clear who among the public were not effectively before the court in the prior state law cases. Because res judicata barred Plaintiffs' ESA claims, Plaintiffs were unable to demonstrate a likelihood of success on the merits as required for the District Court to issue the preliminary injunction.

Disposition

Accordingly, the District Court denied Plaintiffs' request for a preliminary injunction.

- Opinion by Judge James Donato
- State Court: California Court of Appeal, First Appellate District, Case No. A159903, Justice Seligman

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
8 Friends v. County of Plumas		3 rd	

[Friends v. County of Plumas](#), California Court of Appeal, Third Appellate District, Case No. C091033 (October 12, 2021)

The Court of Appeal affirmed the trial court's judgment granting summary judgment, finding that Genesee Friends (Petitioner) failed to exhaust their administrative remedies. Plumas County (County) issued a determination that Real Party in Interest Genesee Valley Ranch, LLC's use of a helicopter and heliport at its working cattle ranch is permissible on land zoned Agricultural Preserve (AP) because such use is functionally equivalent to uses already permitted on other lands zoned AP since, like a truck or tractor, a helicopter supports the main uses of the property by providing transportation and supporting agriculture and management of ranching activities. The County concluded this determination was a ministerial action exempt from CEQA under Public Resources Code Section 21080.

Petitioner filed an administrative appeal but failed to use the required appeal form as required by the County Code, and the County Board of Supervisors ultimately declined to address the merits of the appeal due to this procedural defect. Petitioner then filed a petition for writ of mandate challenging the County's determination that the helicopter use and heliport were exempt from CEQA. The trial court ultimately granted summary judgment for the County, finding that Petitioner did not allege facts sufficient to show they had exhausted their administrative remedies.



The Court of Appeal agreed with the trial court, finding that Petitioner did not comply with the County's administrative appeal procedures and the County Board of Supervisors did not render a decision on the merits of their appeal, so Petitioner did not exhaust their administrative remedies. The Court of Appeal noted that Petitioner could have, but did not, seek reconsideration of Board's dismissal or otherwise challenge that dismissal.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Justice Duarte, with Justices Raye and Robie concurring
- Trial Court: Plumas County Superior Court, Case No. CIV1700152, Judge Michele Verderosa

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
9 <u>McCann v. City of San Diego</u>		4 th	

[McCann v. City of San Diego](#), California Court of Appeal, Fourth Appellate District, Case No. D077568 (October 8, 2021)

In a published decision issued October 8, 2021, the Court of Appeal reversed in part the trial court's judgment in favor of the City of San Diego (City), directing the trial court to grant a petition for writ of mandate challenging the City's compliance with CEQA in adopting a mitigated negative declaration for the creation of utility undergrounding districts. In sum, the court determined:

- A petitioner must exhaust available administrative appeals before challenging an agency's compliance with CEQA in court.
- An agency may rely on a checklist to determine consistency with a Qualified Greenhouse Gas Reduction Plan so long as the checklist contemplates the type of development proposed.

Background for Appeal

In the 1970's, the City began undergrounding overhead utility lines. Due to limited funding, these efforts continued over the next several decades. In 2017, the City adopted the Utilities Undergrounding Program Master Plan (Master Plan) to set goals for undergrounding and to manage project selection and prioritization. In tandem with the yearly project allocations, the City Council creates an Underground Utility District, which includes the selected blocks to undergo undergrounding for the year. The City then completes a one- to two-year detailed designed process to give notice to the community, garner resident feedback, and place utility boxes and street lights.

City staff determined in July 2018 that the undergrounding projects for 11 blocks were exempt from CEQA (Exempted Projects) and issued a "Notice of Right to Appeal Environmental Determination." No appeals were filed. However, a resident of a neighborhood where one of the Underground Utility Districts was located (Petitioner) sent the City various emails regarding her concerns about the exemption determination. The City issued two notices of exemption in February 2019.

Meanwhile, in November 2018, the City published a draft mitigated negative declaration (MND) for an additional nine potential undergrounding districts (MND Projects). The City found no significant impact from aesthetic effects or the greenhouse gas (GHG) emissions of the MND Projects and later adopted the MND, which Petitioner opposed. Petitioner filed a petition for writ of mandate alleging the City violated CEQA when it made the exemption determination for the Exempted Projects and adopted the MND for the MND Projects. The trial court denied the writ petition, and Petitioner appealed.

Petitioner Failed to Exhaust Administrative Remedies in Challenging the Exempted Projects

The Court of Appeal held that Petitioner's claims were barred as to the Exempted Projects because she failed to exhaust her administrative remedies. CEQA requires that if a *nonelected* official or decision-making body determines a project is exempt, the agency must allow for an appeal of that determination to the agency's *elected* decision-making body. The San Diego Municipal Code creates a procedure for parties to file an administrative appeal of an "environmental determination" made by the City Council,

including an exemption determination. Petitioner did not avail herself of this municipal appellate process and thus was barred from challenging the Exempted Projects in court.

The City Did Not Improperly Segment the MND Projects

Petitioner argued that the City improperly segmented its review of the MND Projects. The Court disagreed. Although CEQA forbids piecemeal review of the significant environmental impacts of a project, each utility undergrounding project created here was independently functional and did not rely on any other undergrounding project to operate; nor were the projects merely first steps towards additional projects. Because the projects could be implemented independently, the Court held that the City's scope of review for the MND Projects was valid.

The City's Analysis of the MND Projects' Potential Aesthetic Impacts Complied With CEQA

Petitioner argued that the installation of transformers for the MND Projects would cause a significant aesthetic impact. Specifically, Petitioner claimed that the above-ground transformers and removal of mature trees would affect the "look and feel" of the "quaint" residential neighborhood. The Court rejected Petitioner's argument, although Petitioner's argument was supported by a lay individual's comment at a City Council hearing. The Court explained that this fell short of Petitioner's burden of showing substantial evidence supporting a fair argument of a significant aesthetic impact. Based on the record, the Court determined that substantial evidence supported the City's conclusion that the transformers would not substantially degrade the existing visual character of the neighborhood.

The City Failed to Analyze the MND Projects' Consistency With the City's Climate Action Plan

Petitioner argued that the City's determination that the MND Projects would not have a significant environmental impact due to GHG emissions was not supported by substantial evidence. The Court agreed. Under CEQA, the agency must determine whether a project's impact on GHG emissions would be cumulatively considerable. Rather than calculating the emissions from each cumulative project, the CEQA Guidelines allow agencies to streamline this consideration by analyzing a project's consistency with a Qualified GHG Reduction Plan, such as the City's Climate Action Plan (CAP).



The Court explained, however, that the City did not complete the proper analysis here. The CAP Consistency Checklist (Checklist) on which the City relied only considers a proposed project's consistency with the CAP if the project requires a certificate of occupancy. In other words, on its face, it does not apply to infrastructure projects that do not require a certificate of occupancy. Thus, the Court held that because the MND Projects did not require such a certificate, the City erroneously bypassed the CAP consistency analysis by relying on the Checklist. The Court emphasized that a checklist could be an appropriate method to determine consistency with a Qualified GHG Reduction Plan and the City could amend its Checklist to include a step to assess infrastructure projects. However, without this step, the City could not determine the MND Projects' potential GHG impacts or adopt the MND. The Court therefore remanded the case to the trial court, ordering the trial court to direct the City to perform the required CAP consistency analysis for the MND Projects.

Disposition

Accordingly, the Court of Appeal reversed the trial court's judgment in part and affirmed in part, directing the trial court to grant the petition for writ of mandate as to the MND Projects.

- Opinion by Associate Justice Haller, with Presiding Justice McConnell and Associate Justice Dato concurring
- Trial Court: San Diego County Superior Court, Case No. 37-2019- 00011813-CU-TT-CTL, Judge Timothy B. Taylor

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
10 <i>N. Coast Rivers All. v. Dep't of Food & Agric.</i>		3 rd	

[*North Coast Rivers Alliance v. Department of Food & Agriculture*](#), California Court of Appeal, Third Appellate District, Case No. C092233 (June 28, 2021)

The Court of Appeal affirmed the trial court's judgment in denying a motion for attorneys' fees. Westlands Water District (Respondent) commenced an environmental review process under CEQA to determine whether to participate in a federal dam project. North Coast Rivers Alliance and San Francisco Crab Boat Owners Association (Petitioners) sued to enjoin the CEQA review, and the Attorney General commenced a similar lawsuit against Respondent. All parties ultimately entered into a stipulated judgment halting Respondent's CEQA review. Petitioners subsequently moved for attorneys' fees, and the trial court denied the motion.



The Court affirmed, finding that the trial court did not abuse its discretion in denying Petitioners' motion for attorneys' fees. The Court found that Petitioners, as movants requesting attorneys' fees, did not meet their burden to establish that private enforcement was necessary, since Petitioners did not advance significant factual or legal theories adopted by the trial court. The Court also found that Petitioners did not produce substantial evidence significantly contributing to the court's judgment. The Court rejected a "substantial assistance" or "helpful activity" standard, reaffirming that private enforcement must be *necessary* to justify an award of attorneys' fees. Because Petitioners' contributions to the case were duplicative of the Attorney General's and were not relied upon in the trial court's judgment, the Court found that denial of attorneys' fees was not an abuse of discretion.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Justice Duarte, with Presiding Justice Raye and Justice Krause concurring
- Trial Court: Shasta County Superior Court, Case No. 192958, Judge Tamara Wood

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
11 <u>Napa Valley Model R.R. Historical Soc'y v. Cal. Ex. Rel. 25th Dist. Agric. Ass'n Napa Valley Exposition</u>		1 st	

[Napa Valley Model R.R. Historical Society v. California ex rel. 25th District Agricultural Association Napa Valley Exposition](#), California Court of Appeal, First Appellate District, Case No. A158392 (January 20, 2021)

The Napa Valley Model Railroad Historical Society (Petitioner) appealed from the trial court's denial of its petition for a writ of mandamus (petition) that alleged a CEQA violation by the 25th District Agricultural Association Napa Valley Exposition (Respondent). The Court of Appeal reversed the trial court's judgment denying the petition and directed the trial court to deny the petition as moot. Petitioner had claimed that Respondent violated CEQA by terminating Petitioner's lease for a building that housed Petitioner's model railroad exhibit. On July 25, 2017, Respondent informed Petitioner that it would not extend the lease that was set to expire on December 31, 2017. On November 28, Respondent sent a letter to Petitioner providing official notice that the lease was terminated and that Petitioner was required to vacate the premises by December 31.



In response, on December 29, Petitioner filed the petition alleging a violation of CEQA because the "termination of the [Petitioner's] tenancy [was a] discretionary action[] with potentially significant environmental impacts," such that environmental review was required by CEQA. However, Respondent later accepted rent and allowed Petitioner to remain in the building under a month-to-month tenancy. Petitioner's CEQA claim was based only on the lease termination and not on any of Respondent's following actions. Because Petitioner was no longer facing eviction under the 2017 lease termination, the Court of Appeal concluded that the petition was moot. As the controversy no longer existed at the time of disposition, the Court did not address the merits of Petitioner's CEQA claim.

Disposition

The judgment denying the petition for writ of mandate was reversed, and the matter was remanded with directions to dismiss the action as moot.

- Opinion by Justice Simons, with Justices Needham Jr. and Burns concurring
- Trial Court: Napa County Superior Court, Case No. 18CV001068

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
12 <u>North Coast Rivers Alliance v. Westlands Water District</u>		3 rd	

[North Coast Rivers Alliance v. Westlands Water District](#), California Court of Appeal, Third Appellate District, Case No. C092233 (June 28, 2021)

The Court of Appeal affirmed the trial court's judgment denying attorneys' fees to North Coast Rivers Alliance and San Francisco Crab Boat Owners Association (Petitioners). In 2018, Westlands Water District (Respondent) issued an initial study (IS)/notice of preparation (NOP) to commence CEQA review to assist in deciding whether to help fund a US Bureau of Reclamation dam raising project. In May 2019, the Attorney General filed a complaint alleging that Respondent's CEQA review of the project violated the California Wild and Scenic Rivers Act (Rivers Act). On July 5, Petitioners filed a complaint raising the same claim as the Attorney General along with two nonduplicative claims.



Ultimately, Respondent withdrew the IS/NOP and Petitioners' case was dismissed. Petitioners sought attorneys' fees under Code of Civil Procedure Section 1021.5. The Court concluded that Petitioners' participation in settlement negotiations, prior efforts to dissuade the project before filing suit, and nonduplicative claims not litigated on their merits did not rise to the level of advancing significant factual theories adopted by the court or producing substantial evidence significantly contributing to the court's judgment, thus barring an award of attorneys' fees.

Disposition

The Court of Appeal affirmed the trial court's order denying Petitioners' motion for attorneys' fees and awarded costs on appeal to respondent.

- Opinion by Justice Duarte, with Justices Raye and Krause concurring
- Trial Court: Shasta County Superior Court, Case No. 192958, Judge Tamara Wood

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
13 <i>Organizacion Comunidad de Alviso v. City of San Jose</i>		6 th	

[*Organizacion Comunidad de Alviso v. City of San Jose*](#), California Court of Appeal, Sixth Appellate District, Case No. H046458 (February 9, 2021)

In a published opinion, the Court of Appeal affirmed the trial court's judgment, dismissing petitioner's CEQA action as untimely. The Court determined:

- Under CEQA, the 30-day statute of limitations to challenge the adequacy of an EIR begins to run when a public agency files a valid notice of determination with the county clerk, even if it has previously filed invalid ones.

Background for Appeal

Mark Espinoza, a member of petitioner Organizacion Comunidad de Alviso (Petitioner), asked a City of San Jose (City) planner to place him on the public notice list for a proposed project that would rezone fallow farmland for light industrial uses (Project). Espinoza also specifically requested a copy of the notice of determination (NOD) twice, once after the City Council initially approved the Project and again after the City Council denied a motion for reconsideration and re-approved the Project. The City filed two NODs for the Project: the first listed the wrong project applicant and the second correctly listed Microsoft Corporation. Although Espinoza diligently and repeatedly requested all notices for the Project, the City failed to send Espinoza the legally operative second NOD.

Petitioner filed its initial petition for writ of mandate within 30 days of the first NOD, alleging CEQA violations. However, relying on the first NOD that the city had emailed to Espinoza that contained the wrong project applicant, Petitioner named the wrong real party in interest in its initial petition. Petitioner did not file an amended petition until after the statute of limitations had run. The trial court held that the initial petition was defective for failing to join Microsoft as a necessary and indispensable party, and it dismissed the CEQA cause of action in the amended petition as untimely because Microsoft was not sued within 30 days after the second NOD was filed. Petitioner timely appealed.

The City Violated CEQA by Not Sending Petitioner the Second NOD

Under CEQA, a public agency must send notice within five days after a project is approved to any person who has made a written request to the public agency for a copy of the notice prior to the date on which the agency approves or determines to carry out the project. Espinoza emailed the City project manager a month before the City Council approved the Project, asking to be placed on the noticing list and given dates and times of any public hearings for the Project. He also specifically asked for the NOD by email after the Project was initially approved, and again after the City Council re-approved the Project two months later. Despite Espinoza's requests, the City failed to send him the second NOD. Although the Court of Appeal held that the City violated CEQA by failing to do so, the Court explained that CEQA contains no remedy for such a violation.

Filing a Valid NOD With the County Clerk Triggers the CEQA 30-Day Statute of Limitations Regardless of the City's Failure to Send Petitioner the NOD in Violation of CEQA

Under CEQA, the statute of limitations to challenge the adequacy of an environmental impact report (EIR) begins to run when a valid NOD is filed. When an NOD is materially defective for not including all information required, CEQA's 180-day statute of limitations applies. However, if nothing is incorrect or missing from the NOD, a 30-day statute of limitations applies. Here, nothing in the second NOD was defective or missing. Therefore, the 30-day statute of limitations applies and was triggered when the City filed it with the county clerk. The filing of the NOD gives constructive notice to all potential litigants. Even though the City technically violated CEQA by not sending Petitioner the second NOD, the filing of the NOD is the limitations trigger under CEQA. As such, the Court held that because Petitioner failed to sue Microsoft within the 30-day statute of limitations, the trial court correctly dismissed the amended petition as untimely.

The Court Rejected Petitioner's Relation Back Doctrine Argument Because Petitioner Had Constructive Notice of the Second NOD

Under the California Code of Civil Procedure, when the plaintiff is ignorant of the name of the defendant, the plaintiff must state that fact in the complaint and the defendant may be designated in any pleading or proceeding by any name, and when his true identity is discovered, the pleading or proceeding must be amended accordingly. Here, the Court found that the City's filing of the second NOD with the county clerk provided Petitioner with constructive notice of Microsoft's identity, effectively precluding Petitioner's ability to claim ignorance. Therefore, the Court rejected Petitioner's argument that the trial court erred by not applying the relation back doctrine.

The Court of Appeal Rejected Petitioner's Estoppel Argument Because Petitioner Had Constructive Notice of the Second NOD



To rely on the doctrine of equitable estoppel, Petitioner needed to show: (1) the City knew about the second NOD; (2) the City intended to keep Petitioner from learning about the second NOD by sending Espinoza the first NOD and failing to send him the second NOD; (3) Petitioner did not know about the second NOD; and (4) Petitioner detrimentally relied on Espinoza not receiving the second NOD despite his written request. Furthermore, when equitable estoppel is alleged against a public agency, the plaintiff must also show that the "injustice which would result from a failure to uphold an estoppel is of sufficient dimension to justify any effect upon public interest or policy which would result from the raising of an estoppel." *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 496–497. Here, as stated above, the Court found that Petitioner had constructive notice of the second NOD. Therefore, the Court held that Petitioner failed to meet the third element of the estoppel argument because Petitioner effectively knew about the second NOD.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment of dismissal. The trial court did not err in finding Petitioner's amended petition untimely under CEQA.

- Opinion by Justice Grover, with Justices Greenwood and Danner concurring
- Trial Court: Santa Clara County Superior Court, Case No. CV321687, Judge Helen Williams

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
14 <i>Pac. Merch. Shipping Ass'n v. Newsom</i>		1 st	

[*Pacific Merchant Shipping Association v. Newsom*](#), California Court of Appeal, First Appellate District, Case No. A162001 (October 15, 2021)

In a published opinion, the Court of Appeal affirmed the trial court's judgment dismissing a lawsuit challenging Governor Gavin Newsom's decision to certify a baseball stadium and mixed-use development project for streamlined CEQA review. The Court determined:

- Assembly Bill 734, which authorizes fast-track judicial review of CEQA challenges to a new Oakland Athletics baseball stadium and associated mixed-use development, did not impose a deadline for the Governor to certify the project for streamlined environmental review.
- AB 734 is silent on whether there is a deadline for the Governor to certify fast-track environmental review, and the Legislature did not intend to import the CEQA Guidelines certification deadlines into AB 734.

Background for Appeal

In 2011, the California Legislature enacted the Jobs and Economic Improvement Through Environmental Leadership Act (AB 900) "to provide unique and unprecedented streamlining benefits" under CEQA for specified projects "for a limited period of time to put people to work as soon as possible." AB 900 established fast-track administrative and judicial review procedures for an "environmental leadership development project" that met certain conditions, including the creation of high-wage, high-skill jobs and no net additional emission of greenhouse gases. Under AB 900, the Governor was required to certify that the project met these statutory criteria to qualify for fast-track status. AB 900 was amended to require the Governor to certify a leadership project by January 1, 2020, and also certify the lead agency to approve the project by the legislation's sunset date of January 1, 2021.

The Legislature has since enacted several other special statutes to streamline CEQA review for individual projects. In particular, it enacted Assembly Bill (AB) 734 to fast-track judicial review of CEQA challenges to a new baseball stadium and mixed-use development for the Oakland Athletics (Project) in the City of Oakland. Unlike AB 900, AB 734 contains no express deadline for the Governor to certify that a proposed project qualifies for AB 734 treatment or for the lead agency to approve a project.

On November 20, 2018, the City issued a notice of preparation of a draft environmental impact report (EIR) for the Project. In January 2019, the CEQA Guidelines were amended to state that they applied to projects requesting AB 734 review to the extent the CEQA Guidelines do not conflict with the language contained in AB 734. In March 2019, the Project applicant sought certification of the Project under AB 734. In August 2020, the California Air Resources Board (CARB) determined that the Project met AB 734's greenhouse gas requirements. On February 11, 2021, the Governor certified the Project for streamlined review.

Meanwhile, on March 16, 2020, the Pacific Merchant Shipping Association (Petitioner) petitioned for writ of mandate, seeking a declaration that the Governor's authority to certify the Project under AB 734 expired on January 1, 2020. Petitioner also sought an injunction barring the Governor from certifying the

Project under AB 734. The trial court granted the Governor's and the Project applicant's motions for judgment on the pleadings and dismissed the lawsuit, finding that the AB 900 certification deadline in the CEQA Guidelines conflicted with AB 734 and thus did not apply to AB 734. Petitioner appealed.

The Legislature Did Not Intend to Import the AB 900 Deadlines Into AB 734

Petitioner argued that AB 734 incorporated the CEQA Guidelines and their deadlines because AB 734 contains no deadlines and thus the deadlines in the Guidelines do not conflict with AB 734's specific requirements. Petitioners further argued that because the Governor failed to certify the Project prior to the January 1, 2020, deadline, the certification was invalid. The Court of Appeal disagreed, finding that the Legislature did not incorporate AB 900's deadlines into AB 734. Thus, the Governor was authorized to certify the Project on February 11, 2021. The Court explained that AB 734's text does not provide a clear answer to the question, but the legislative history and legislative purpose do. The Legislature decided to enact a separate statute to fast-track the Project rather than use AB 900. It focused on the fact that the author of AB 734 stated that the Project could not meet the AB 900 deadlines and those deadlines would need to be extended if the Project would be fast-tracked under AB 900. Therefore, the Court concluded that a fair reading of this legislative history supports the Governor's position that the AB 900 deadlines were not meant to be imported into AB 734.

Legislative Purpose Supports This Construction of AB 734



The Court also found that the legislative purpose in enacting AB 734 — to assist the City in retaining the Oakland Athletics by streamlining environmental review; to generate high-wage, high-skill jobs; and to support the City's and region's goals for sustainable, transit-oriented housing — supported the conclusion that the AB 900 deadlines did not apply to AB 734. The Court found that Petitioner's reading of AB 734 to import AB 900's deadlines would undermine the general purpose of the AB 734 by making it a nullity, as the Governor could not have certified the Project by January 1, 2020. CARB's approval was required for the Governor to certify the Project, and that step alone would exceed the one-year deadline for certification. The Court also looked to another special statute, AB 987, which was passed concurrently with AB 734 to fast-track environmental review for another project. AB 987 contained express deadlines for certification and approval. As such, the Court found that the absence of any deadline from AB 734 must have been deliberate and confirms that no deadlines apply to the Project.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment granting the Governor's, City's, and Project applicant's motions for judgment on the pleadings without leave to amend.

- Opinion by Justice Sanchez, with Justices Humes and Margulies concurring
- Trial Court: Alameda County Superior Court, Case No. RG20058975, Judge Noel Wise

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
15 Pub. Watchdogs v. Cal. State Lands Comm'n		4 th	

[Public Watchdogs v. California State Lands Commission](#), California Court of Appeal, Fourth Appellate District, Case No. D077166 (April 2, 2021)

The Court of Appeal affirmed the trial court's decision to grant the motion to dismiss the writ petition after the nonprofit corporation Public Watchdogs (Petitioner) failed to timely request a final hearing on its petition. On April 22, 2019, Petitioner filed a writ petition alleging that the California State Lands Commission (Commission) violated CEQA by certifying a final environmental impact report (EIR) and approving a project related to the decommission and dismantling of the San Onofre Nuclear Generation facility. Petitioner alleged that the Commission violated CEQA by (1) failing to analyze aspects of the project by piecemealing approval of the plan, and (2) refusing to delay the vote to certify the EIR despite the fact a Nuclear Regulatory Commission report regarding safety concerns was scheduled to be made public only four days later.

On July 30, 2019, the Commission, Southern California Edison Company, San Diego Gas & Electric Company, City of Anaheim, and City of Riverside's (Respondents) moved to dismiss the petition under Public Resources Code Section 21167.42 because Petitioner did not file a request for a hearing on the petition by the deadline of July 22, 2019. The trial court granted the motion to dismiss and denied Petitioner's motion to set aside default judgment under the Code of Civil Procedure Section 473(b). On appeal, Petitioner argued that the trial court abused its discretion by denying its motion to set aside the default. Petitioner argued that the failure to schedule a hearing was an excusable mistake and that Respondents did not suffer any prejudice from the delay.


However, the Court found that the trial court did not abuse its discretion in denying the motion because the decision was not arbitrary, capricious, or entirely lacking in evidentiary support. While the law strongly favors trial and disposition on the merits, the trial court found that the mistake was not excusable because it was not an attorney error "fairly imputable to the client, i.e., mistakes anyone could have made." The Court also found that the policy considerations incorporated into CEQA supported the denial of Petitioner's Section 473(b) motion. The public policy considerations built into CEQA are designed to prevent delays because, in the CEQA context, a lawsuit and accompanying delays can be used to stall, thwart, or terminate an otherwise appropriate project. CEQA contains a number of procedural provisions demonstrating that the Legislature believed that the public interest is not served unless CEQA challenges are promptly filed and diligently prosecuted. Because the failure to schedule the hearing was not an excusable mistake and because the policy considerations of CEQA support the need for timeliness, the Court affirmed the trial court's motion to dismiss.

Disposition

The Court of Appeal affirmed the trial court's decision to grant Respondents' motion to dismiss due to Petitioner's failure to timely request a final hearing on its petition.

- Opinion by Justice O'Rourke, with Justices Huffman and Dato concurring
- Trial Court: San Diego County Superior Court, Judge Timothy M. Casserly

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
16 <u>Save Berkeley's Neighborhoods v. Regents of the Univ. of California</u>	N/A	1 st	

[Save Berkeley's Neighborhoods v. Regents of the University of California](#), California Court of Appeal, First Appellate District, Division One, Case Nos. A160560, A160561 (October 21, 2021)

In a published opinion, the Court of Appeal upheld the trial court's order dismissing the project applicants from the lawsuit due to petitioner's failure to name and serve them within the applicable statutes of limitation. In sum, the Court determined:

- In a multiparty action, a judgment disposing of all issues as to one party is appealable even if the dismissed parties' interests are similar to the remaining parties' interests.
- Assembly Bill 320 did not replace Code of Civil Procedure Section 389(b)'s balancing test as to whether a real party in interest is indispensable.
- CEQA does not require lead agencies to disclose and explain non-material aspects of a project or environmental impact report in a notice of determination.

Background for Appeal

The Regents of the University of California (Regents) approved a proposed project to develop new academic space and campus housing on University of California, Berkeley's campus (Project). On May 17, 2019, the Regents filed a notice of determination (NOD) for the Project, which identified the Project applicants as the American Campus Communities and the Collegiate Housing Foundation (CHF).

On June 13, 2019, a neighborhood group (Petitioner) filed a petition for writ of mandate seeking to vacate the Regents' Project approval and certification of the final supplemental environmental impact report (SEIR) on CEQA grounds. On September 18, 2019, Petitioner filed a first amended petition that was substantively identical to the original petition, except it added American Campus Communities and CHF as real parties in interest (Real Parties). Petitioner subsequently filed another amended petition, seeking to add American Campus Communities Services, Inc. and American Campus Communities Operating Partnership LPs additional Real Parties.

Real Parties demurred to the amended petition, arguing that (i) Petitioner failed to name them as parties within the applicable statute of limitations, (ii) Public Resources Code Section 21167.6.5(a) requires their joinder, and (iii) they are necessary and indispensable parties to the litigation. The trial court determined that Petitioner failed to properly name and serve Real Parties within CEQA's limitations periods and thus dismissed Real Parties from the suit. However, the trial court declined to dismiss the entire action still pending against Regents because it concluded that Real Parties were not indispensable. Real Parties timely appealed, and Petitioner cross-appealed.

The Multiparty Exception to the Final Judgment Rule Applies if the Dismissed Parties' Interests Are Similar to the Remaining Parties' Interests

As a threshold issue, Petitioner argued that the Court of Appeal was required to dismiss the appeal because it arose from an interlocutory order that fell outside the multiparty exception to the final judgment rule. The Court disagreed, holding that Real Parties could appeal the trial court's order. The multiparty

exception provides that a judgment disposing of all issues as to one party is appealable even if identical issues remain as to other parties. The Court explained that although Real Parties and Regents had similar interests in the Project and litigation, the trial court's order sustaining Real Parties' demurrers was nonetheless appealable because it disposed of all issues between them and Petitioner.

An Action May Proceed Against the Agency Despite Petitioner's Failure to Join Necessary Real Parties Because the Agency's and Real Parties' Interests Are Strongly United

The parties did not dispute that Real Parties were necessary to the lawsuit pursuant to Public Resources Code Section 21167.6.5(a). The issue on appeal was whether Real Parties were indispensable such that the trial court should have dismissed the entire action for Petitioner's failure to name and serve them within the application limitations period. The Court explained that Assembly Bill (AB) 320 clarified who must be named and served as a real party in interest in a CEQA action, but did not alter the Code of Civil Procedure (CCP) Section 389(b) balancing test as to whether a real party in interest is indispensable. Under the pre-amendment statutory scheme, courts engaged in a two-part analysis to determine whether a party was indispensable. First, courts had to determine who constituted a real party in interest, i.e., who was a "recipient of an approval." If courts concluded the entities were real parties in interest and thus deemed necessary parties, they then addressed the second question: whether those real parties were indispensable, applying CCP Section 389(b).

Upon reviewing AB 320's legislative history, the Court concluded that the Legislature intended to retain the existing two-step approach, but replaced the phrase "recipient of an approval" in CEQA with the phrase "the person or persons identified by the public agency in its notice" to clarify who constituted a real party in interest under the first step. The Court also found that the legislative history indicated the Legislature's intent to preserve CCP Section 389(b)'s equitable balancing test. Therefore, the Court held that to determine whether Real Parties were indispensable, it had to apply the factors set forth in Section 389(b). Here, the Court held that Real Parties were not indispensable because their interests in having the Project proceed in a timely manner were strongly united with the Regents' interests, and Petitioner would not have an adequate remedy if the action was dismissed for nonjoinder as the limitations period had run.

CEQA Does Not Require the Notice of Determination to Describe the Project Baseline or the EIR's Analyses



Petitioner asserted that the Project's SEIR analyzed the environmental impacts caused by the Project's student enrollment increases, and that the NOD was substantively defective because its Project description failed to mention the enrollment analysis. The Court rejected this argument. First, the Court determined that the NOD's omission was not a substantial defect because nothing in CEQA requires a lead agency to describe a Project's baseline or EIR analyses in an NOD. Second, the Court reasoned that even if the alleged error were a substantial defect, Petitioner's failure to name and serve Real Parties was unrelated to any error in the NOD because the error did not prevent Petitioner from filing its initial petition within the 30-day limitations period. Moreover, that petition specifically challenged the adequacy of the SEIR's evaluation of student enrollment increases. Petitioner simply failed to name Real Parties within 20 days of filing its petition as required under CEQA.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's order dismissing Real Parties without leave to amend.

- Opinion by Acting Presiding Justice Margulies, with Justices Banke and Sanchez concurring
- Trial Court: Alameda County Superior Court, Case No. RG19022887, Judge Brad Seligman

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
17 <i>Save Lafayette Trees v. East Bay Regional Park Dist.</i>		1 st	

[*Save Lafayette Trees v. East Bay Regional Park District*](#), California Court of Appeal, First Appellate District, Case No. A156150 (June 30, 2021)

In a published opinion issued June 30, 2021, the Court of Appeal affirmed the trial court's order sustaining a demurrer without leave to amend. In sum, the court concluded that:

- An agreement to toll the applicable statute of limitations for a CEQA claim cannot bind a Real Party in Interest that is not a party to the agreement.
- The statute of limitations for a CEQA claim accrues as soon as a public agency commits to a definite course of action, which is sufficient to place the public on constructive notice of any potential CEQA claims.

Background for Appeal

In March 2017, the East Bay Regional Park District (District) held a public hearing in which it committed to accepting money from Pacific Gas and Electric (PG&E) for environmental restoration and maintenance at Briones Regional Park and Lafayette-Moraga Regional Trail (Project). PG&E inspected the area and determined that 245 trees near gas pipelines needed to be removed to provide emergency response services with better access to the pipelines in the event of an emergency. PG&E also committed to paying the District US \$1,000 per tree removed, to replace all 31 of the trees owned by the District, to contribute US \$10,000 and gas standby personnel for maintenance and pipeline safety at the park, and to coordinate on appropriate community outreach in advance of the planned safety work.

Following the public hearing, the District's Board of Directors issued a resolution authorizing the acceptance of funding from PG&E. The District and PG&E signed a Memorandum of Understanding (MOU) to that effect. The District filed a notice of exemption under CEQA, stating that the MOU itself was not subject to CEQA regulations, and any Project work under the MOU would be categorically exempt from CEQA. On July 31, 2017, Save Lafayette Trees (Petitioner) signed an agreement with the District to toll all statutes of limitations for 60 days. PG&E was not party to the tolling agreement.

On September 29, 2017, Petitioner filed a complaint against the District for failing to undertake a CEQA analysis of the potential environmental impact of the Project before approving the MOU. Petitioners also raised three non-CEQA claims regarding violation of a municipal ordinance, a District ordinance, and the due process clause of the California Constitution. The trial court sustained PG&E's demurrer to the CEQA cause of action, finding that it was time-barred under both the 35-day and 180-day limitations periods. The trial court also sustained the District's demurrer to the non-CEQA causes of action, finding they did not state causes of action for which relief could be granted. Petitioners appealed.

The CEQA Claim Was Time-Barred Because a Necessary and Indispensable Party Had Not Consented to the Tolling Agreement

The Court of Appeal determined that the CEQA cause of action was time-barred, explaining that the applicable limitations period began on March 12, 2017, when the District held a public hearing and

committed to accepting funding from PG&E. Because the statutory 180-day period expired on September 18, 2017, and Petitioner's complaint was filed 11 days later on September 29, Petitioner's suit was barred. The Court further held that the 60-day tolling agreement was irrelevant here because PG&E, a necessary and indispensable party to the lawsuit, did not consent to the agreement. PG&E was a necessary party to any tolling agreement, and tolling agreements have no effect on parties not in privity. Therefore, PG&E was entitled to assert or waive the statute-of-limitations defense.

Petitioner also argued that even if the 180-day limitation period did apply, the period did not begin on March 12, 2017, because the public hearing did not put Petitioner on notice that trees would be removed. The Court rejected this argument, holding that all that is required for the limitations period to start running is for a public agency to commit to a definite course of action — which the District did on March 12. The Court found that the project contemplated at the March 12 hearing did not differ substantially from the Project that was ultimately approved, and thus the public was necessary given constructive notice of potential CEQA claims at that time.

The Court also determined that its decision that Petitioner's CEQA claims were time-barred by the 180-day limitations period rendered any claims regarding the 35-day limitations period moot.

Non-CEQA Claims Were Properly Dismissed, Because They Could Not Be Amended to Allege Claims for Which Relief Could Be Granted



The Court also affirmed the trial court's dismissal of Petitioner's non-CEQA claims under (1) a municipal tree protection ordinance, (2) a District ordinance, and (3) the Due Process Clause of the California Constitution. The Court held that the municipal tree protection ordinance was preempted by state law, the District's ordinance did not apply to the District's Board of Directors, and the due process clause did not apply because the action taken was quasi-legislative rather than quasi-judicial.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's order sustaining PG&E's and the District's demurrer without leave to amend.

- Opinion by Acting Presiding Justice Petrou, with Retired Justice Jackson and Retired Justice Wiseman concurring
- Trial Court: Contra Costa County Superior Court, Case No. MSC1701909, Judge Steven Austin

Attorneys' Fees, Justiciability, and Other Procedures

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
18 Schmid v. City and County of San Francisco		1 st	

[Schmid v. City & County of San Francisco](#), California Court of Appeal, First Appellate District, Case No. A158861 (February 1, 2021)

In a published opinion issued February 1, 2021, the Court affirmed the trial court's judgment sustaining the City and County of San Francisco's demurrer without leave to amend. The court determined, in relevant part:

- A petitioner is not wholly excused from exhausting its administrative remedies on a claim that an agency body defectively noticed its intent to rely on a categorical exemption from CEQA to approve a project. Although a petitioner may be excused from exhausting the issue before that body, a petitioner must pursue all available administrative remedies, including any appeal to the agency's decision-making body.

Background for Appeal

Two taxpayers (Petitioners) brought an action against the City and County of San Francisco, seeking to overturn San Francisco's authorization of the removal of a bronze sculpture known as "Early Days," which was originally part of a Civic Center monument to the pioneer period of California (the "Early Days" monument). In 2018, at the request of the San Francisco Arts Commission (Arts Commission), the San Francisco Historic Preservation Commission (HPC) granted a Certificate of Appropriateness (Certificate) to take down "Early Days" and place it in storage. Acting upon evidence of "significant adverse public reaction over an extended period of time," the HPC authorized the removal of "Early Days" pursuant to the Certificate, and the Board of Appeals ultimately affirmed that decision.

Petitioners sued San Francisco, seeking a writ of mandate for, among other things, violation of CEQA. Petitioners alleged that San Francisco, through the Board of Appeals, failed to adhere to CEQA's protection for historic resources by refusing to require an environmental impact report given the size of the sculpture. Petitioners also argued that San Francisco failed to provide CEQA-compliant notice before the HPC adopted the categorical exemption. The trial court found that it had no jurisdiction over Petitioners' CEQA claim because they had failed to exhaust administrative remedies. Petitioners timely appealed.

Defective Hearing Notice Does Not Relieve Petitioners From Exhausting Administrative Remedies

Petitioners alleged that the HPC hearing notice was defective because the notice did not mention CEQA or the HPC's intent to rely on a categorical exemption. As a result, Petitioners argue they were not required to exhaust their administrative remedies. The Court explained that although Petitioners were correct in that the HPC hearing notice did not mention CEQA, the defective hearing notice only relieved Petitioners from CEQA's requirement that any objection to the categorical exemption be presented to that body — the HPC. The defective notice did not relieve Petitioners from exhausting additional administrative review remedies available, such as an appeal to the County Board of Supervisors. Here, Petitioners ignored that requirement and presented their CEQA objections only to the Board of Appeals, which had no jurisdiction over their CEQA appeal.



Further, the Court rejected Petitioners' argument that an appeal to the Board of Supervisors would have been futile because the Board had approved the Certificate for the removal of the statue. The court explained that the fact the Board of Supervisors agreed as a policy matter with the issuance of the Certificate says nothing definitive about its views of the appropriateness of a categorical exemption under CEQA.

Disposition

Accordingly, the Court affirmed the trial court's decision to sustain San Francisco's demurrer, holding that Petitioners failed to exhaust administrative remedies as CEQA requires.

- Opinion by Justice Streeter
- Trial Court: San Francisco County Superior Court – Main, San Francisco, Case No. No. CGC-18-571283, Judge Cynthia Ming-Mei Lee

Certified Regulatory Program

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
19 <i>Friends, Artists and Neighbors of Elkhorn Slough v. California Coastal Commission</i>		6 th	

[*Friends, Artists and Neighbors of Elkhorn Slough v. California Coastal Commission*](#), California Court of Appeal, Sixth Appellate District, Case Nos. H048088, H048409 (November 15, 2021)

In a published decision, the Court of Appeal reversed the trial court's judgment, holding that the California Coastal Commission's environmental review was incomplete at the time it approved a coastal development permit application and therefore the Coastal Commission violated CEQA. In sum, the Court determined that:

- An agency must complete an environmental analysis regarding mitigation measures and alternatives before it votes to approve a project.
- When an agency takes action that is substantially different than the action recommended by agency staff, the agency must state the basis for its action in significant detail at that hearing.

Background for Appeal

In December 2008, the Monterey County Board of Supervisors (County) approved a combined development permit for a residential subdivision (Project). A community group (Petitioner) appealed the County's approval to the Coastal Commission. In October 2017, Coastal Commission staff issued a report (2017 Staff Report) that recommended denial of the coastal development permit, primarily on the basis that the Project was inconsistent with the County's local coastal program's (LCP) water supply policies. The 2017 Staff Report indicated that the Project would have significant adverse effects on the environment and that additional information or documentation, such as Project modification and design alternatives, would be necessary. Because staff recommended that the Coastal Commission independently deny the Project based on a lack of adequate water supply, the 2017 Staff Report indicated that additional analysis, modification, or alternatives were not warranted at that time.

At a public hearing on November 8, 2017, the Coastal Commission voted on and approved the coastal development permit. Subsequently, Coastal Commission staff issued another staff report (2018 Staff Report) containing revised findings to support the Coastal Commission's action, and those revised findings were later adopted by the Coastal Commission on September 13, 2018. The 2018 Staff Report provided new analysis on various project components, mitigation measures, and/or conditions that were determined necessary to avoid potential adverse impacts to coastal resources that related to sensitive habitats, water quality, visual resources, and traffic. In contrast to the 2017 Staff Report, the 2018 Staff Report concluded that the Project as proposed appropriately addressed any potential adverse impacts to coastal resources and would avoid significant adverse effects on the environment within the meaning of CEQA.

Petitioner filed a petition for writ of mandate challenging the Coastal Commission's approval, contending that: (1) the Coastal Commission violated CEQA by failing to conduct the requisite environmental review and make the requisite findings before approving the Project, and (2) the Coastal Commission's post-approval findings failed to state a valid basis for approving the Project and constituted improper post hoc rationalizations. The trial court disagreed, finding that the 2017 Staff Report demonstrated that the

Coastal Commission engaged in environmental review before approving the Project. Petitioner timely appealed.

The Coastal Commission Failed to Complete Its Analysis of Mitigation Measures and Alternatives Prior to Approving the Project as Required Under CEQA

The Court of Appeal held that the Coastal Commission failed to comply with the requirements of CEQA and the Coastal Commission's own certified regulatory program. The Court explained that CEQA requires a state agency operating a certified regulatory program prepare a functional equivalent of an environmental impact report *before* it approves a Project. Here, the Coastal Commission failed to comply with these requirements because the 2017 Staff Report determined that the Project would have significant adverse effects on the environment, and that Project modifications and design alternatives would be required. However, neither the 2017 Staff Report nor the Coastal Commission's statements at the November 2017 hearing analyzed mitigation measures or alternatives needed to address these issues. The Court found that the 2018 Staff Report's new environmental analysis did not satisfy CEQA's requirements because it was prepared *after* the Coastal Commission approved the Project at the November 2017 hearing.

Although the Court agreed that the Coastal Commission may take an action substantially different than that recommended by staff, the Court explained that in order to do so properly, the Commissioners were required to state the basis for their action in sufficient detail at hearing. None of the Commissioners at the 2017 hearing expressed a view regarding mitigation measures or alternatives, or regarding any conditions that might be necessary to approve the Project. The Court also noted that the Commissioners' statements at the 2018 hearing further supported its conclusion that the Coastal Commission failed to follow the proper procedures. For example, one Commissioner stated that the 2018 Staff Report's revised findings "broaden and add to the findings that were made by the majority at the hearing." Another Commissioner stated that the revised findings "adequately reflect what my thought process was and why I voted the way I did." These statements demonstrated that the 2018 Staff Report went beyond the Commissioners' limited statements at the 2017 hearing. Therefore, the Court concluded that the Coastal Commission did not complete the requisite environmental review and did not sufficiently state the basis of its decision until the 2018 Staff Report was prepared and adopted, violating CEQA's procedural requirements.

Petitioner Exhausted Its Administrative Remedies



The Court rejected the contention that Petitioner failed to exhaust its administrative remedies as to its claim that the Coastal Commission did not analyze the Project's impacts on visual resources, agricultural resources, and transportation impacts. The Court determined that Petitioner appropriately preserved the issue on appeal when it submitted a September 2018 comment letter to the Coastal Commission and again in its opening brief in support of the petition of writ of mandate filed in the trial court. Therefore, the Court held that Petitioner exhausted its administrative remedies and could therefore raise these issues on appeal.

Disposition

The Court of Appeal reversed the trial court's judgment.

- Opinion by Justice Bamattre-Manoukian, with Acting Presiding Justice Elia and Justice Danner concurring
- Trial Court: Monterey County Superior Court, Case No. 18CV001000, Judge Lydia Villarreal

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
20 Carmel Valley Ass'n v. County of Monterey		6 th	

[Carmel Valley Association v. County of Monterey](#), California Court of Appeal, Sixth Appellate District, Case No. H046187 (May 19, 2021)

The Court of Appeal reversed the trial court's judgment, holding that the project description and consideration of alternatives in the environmental impact report (EIR) satisfied the requirements of CEQA. A developer received approval from the County of Monterey (County) to construct a residential subdivision (Project) in the Carmel Valley area. The Project initially proposed construction of 281 residential units, but after reviewing the Project's EIR, the County instead approved a 130-unit alternative. A homeowners association (Association) challenged the County's approval of the Project, alleging (1) that the EIR's project description was inaccurate, and (2) that the alternatives analysis in the EIR did not satisfy CEQA. The trial court granted a writ of mandamus in the Association's favor, directing the County to set aside approval of the Project.



The Court of Appeal reversed, finding that the County's review and approval of the Project did not violate CEQA. The Court found that although the Project initially described in the EIR contained 281 residential units, the basic characteristics of the project (size, location, and purpose) remained the same despite the modification to 130 units. Therefore, the initial project description in the EIR was adequate. Additionally, the Court held that the alternatives analysis in the EIR did not violate CEQA, rejecting the Association's argument that the EIR's six listed alternatives were only compared to the original 281-unit plan. The Court also rejected the Association's argument that the EIR failed to consider a reasonable range of feasible alternatives. While only two of the six listed alternatives conformed to the subdivision limits permitted by local policy, the Court noted that the policy could be amended, and that the practical infeasibility of an alternative does not preclude its consideration under a CEQA alternatives analysis.

Disposition

The Court of Appeal reversed the trial court's judgment.

- Opinion by Acting Presiding Justice Elia, with Justices Bamattre-Manoukian and Grover concurring
- Trial Court: Monterey County Superior Court, Case No. 17CV000131, Judge Lydia Villarreal

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
21 <i>Cent. Delta Water Agency v. Dep't of Water Res.</i>		3 rd	

[*Central Delta Water Agency v. Department of Water Resources*](#), California Court of Appeal, Third Appellate District

In a published decision issued September 22, 2021, the Court of Appeal affirmed the trial court's judgments in consolidated cases that discharged a writ of mandate, issued a limited writ for further environmental review, and denied a petition for writ of mandate. In sum, the Court determined:

- A trial court has discretion to fashion a limited writ of mandate, leaving approved contract terms and settlements in place while directing further environmental review.
- An agency is not required to analyze every conceivable alternative, including multiple iterations of a no project alternative.
- A shift from one type of agricultural crop to another does not, by itself, represent a substantial change in the environment.

Background for Appeal

The State Water Project (SWP) consists of dams, reservoirs, storage tanks, pumping plans, aqueducts, pipelines, and canals. The Department of Water Resources (DWR) is charged with operating and managing the SWP, and entered into long-term contracts with local and regional water contractors (SWP contractors) beginning in the 1960s. Each contract specified the maximum amount of water provided to each SWP contractors from available water during the year. Further exacerbated by drought in the early 1990s, DWR was unable to deliver the amounts promised to the SWP contractors, which led to disputes and a mediation agreement in 1994 (Monterey Agreement). The Monterey Agreement also provided for the transfer of 20,000 acres of farmland in Kern County for development of a water bank (Kern Water Bank) from DWR to local Kern County agencies. DWR certified an environmental impact report (EIR) for the Monterey Agreement (Monterey Agreement EIR) in 1995.

In 2000, the Court found that the Monterey Agreement EIR violated CEQA because two SWP contractors prepared the EIR — not DWR who should have been the lead agency. The parties entered into another settlement agreement (Monterey Plus Agreement), which allowed SWP to continue operating and left the Kern Water Bank land transfer in place. An EIR for the Monterey Plus Agreement (Monterey Plus EIR) was certified in 2018, and three lawsuits challenged its adequacy, brought by the Central Delta Water Agency, the Center for Food Safety, and the Center for Biological Diversity (collectively, Petitioners). Following a 2014 writ of mandate, revisions, and a recertification to the Monterey Plus EIR, the lawsuits continued. The trial court discharged the 2014 writ, entered a limited writ with respect to the approval of the Kern Water Bank, and rejected Petitioners' new petition, finding that the Monterey Plus EIR was adequate under CEQA. Petitioners appealed, and the three appeals were consolidated.

The Trial Court Had Discretion to Leave Approved Contract Modifications and Settlements in Place When Directing DWR to Conduct Further Environmental Review

Petitioners argued that because the Monterey Plus EIR treated the proposed project as a continuation of SWP operations under the settlements and the Monterey Agreement, it was an improper retrospective assessment of an ongoing project's environmental impacts. Petitioners argued that these SWP contracts should have been considered invalid until DWR completed CEQA review. The Court agreed with the trial court that the unusual circumstances, namely that the Monterey Plus EIR was the result of a settlement agreement that had already been implemented and reviewed under CEQA, was less than ideal, but nevertheless found that the contracts could be left in place pending review. Similarly, Petitioners also argued that the trial court inappropriately issued a limited writ directing further environmental review with respect to the Kern Water Bank while leaving the contract modifications in place. The Court once again cited the unusual circumstances of the case and settlement decision, highlighting that invalidating approvals would throw the entire SWP into "complete disarray," especially during one of the most severe droughts on record. Therefore, the Court determined that the trial court did not abuse its discretion in deciding to leave project approvals in place pending a return to the writ.

DWR Was Not Required to Analyze a "No Project" Alternative in Which Amendments to the Monterey Agreement Would Not Be in Effect

Petitioners argued that the Monterey Plus EIR erroneously failed to analyze a "no project alternative" under which the Monterey Agreement and its subsequent amendments were not operative. The Court found that the nature of the SWP as a negotiated compromise between DWR and SWP contractors limits the objectives of the project and the reasonable alternatives that can meet such objectives. Here, the overall objective of the Monterey Plus EIR was to resolve the underlying issues that led to the Monterey Agreement and its amendment, which made this type of "no project" alternative untenable. In addition, DWR analyzed four other "no project" alternatives in the Monterey Plus EIR, providing sufficient information regarding scenarios in which various contract provisions were eliminated, and one which implemented the full suite of contractual amendments without any amendment to the Monterey Agreement. As such, DWR was not required to consider Petitioners' proposed "no project" alternative. Further, any omission by DWR of such a "no project" alternative was not prejudicial because DWR did analyze this specific scenario prior to certifying the EIR, but decided not to include the analysis in the certified EIR.

DWR Adequately Analyzed the Impact of the Kern Water Bank on Crop Conversion



Petitioners claimed that the Monterey Plus EIR failed to adequately address how the transfer of the Kern Water Bank impacted the conversion of planting annual crops to more permanent ones, and the impact of this crop conversion on water supply and reliability. DWR explained that the Monterey Plus EIR adequately addressed the causes of crop conversion and its potential environmental impacts. The Court agreed with DWR, ruling that substantial evidence supported DWR's finding that the environmental impact of the Kern Water Bank on crop conversion was less than significant. The Court determined that a shift from one agricultural crop to another does not, by itself, represent a substantial change in the environment. Further, the Kern Water Bank's operations were not the primary cause of crop conversion; the phenomenon would occur with or without the project.

Disposition

Accordingly, the Court of Appeal affirmed the consolidated trial court judgments discharging the previous 2014 writ of mandate, directing a limited writ for further environmental review with respect to the Kern Water Bank, and denying the petition for writ of mandate challenging the Monterey Plus EIR. The California Supreme Court also denied rehearing on October 21, 2021.

- Opinion by Presiding Justice Raye, with Associate Justices Blease and Hoch concurring
- Trial Court: Sacramento County Superior Court, Case. Nos 34-2010-80000561-CU-WM-GDS and 34-2016-80002469-CU-WM-GDS, Judge Timothy M. Frawley

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
22 <i>Chinatown Community for Equitable Development v. City of Los Angeles</i>		2 nd	

[*Chinatown Community for Equitable Development v. City of Los Angeles*](#), California Court of Appeal, Second Appellate District, Case No. B307157 (December 2, 2021)

The Court of Appeal affirmed the trial court judgment, holding that conclusions in the environmental impact report (EIR) were supported by substantial evidence, and that recirculation of the final EIR was not required. Respondents City of Los Angeles, Los Angeles City Council, and Los Angeles Department of City Planning (collectively, City) approved a 725-unit, mixed-use development (Project) proposed by real party in interest and respondent Atlas Capital Group, LLC (Atlas). Chinatown Community for Equitable Development (CCED) challenged the City's approval of the Project, claiming that (1) the Project did not comply with a local affordable housing ordinance; (2) there was a lack of substantial evidence for the EIR's conclusion that soil contamination on site would not result in significant environmental impacts, and (3) changes made to the final EIR from the draft EIR required recirculation of the final EIR for further comment. The trial court ruled against CCED, denying its petition for writ of mandate and complaint for declaratory relief.



The Court of Appeal affirmed. First, the court held that the local ordinance was inapplicable and that the City's environmental review process did not violate CEQA. CCED also argued that the EIR could not rely on a 2003 "No Further Action" determination letter from the Los Angeles Regional Water Quality Control Board (RWQCB) to conclude that pre-existing groundwater and soil contamination exacerbated by construction would not have a significant environmental impact, because the current Project was not contemplated in the 2003 No Further Action letter. However, the court found the EIR's conclusion of no significant impact to be supported by substantial evidence, since the changes to the Project scope were minor and were cleared with the RWQCB. CCED also argued that recirculation of the final EIR was required due to the inclusion of significant new information: namely, the addition to the final EIR of a methane mitigation plan, and the removal from the final EIR of the Project's designation as one required to comply with a provision of the Central City North Community Plan. The Court found that the methane mitigation plan merely "clarified" or "amplified" the adequate information contained in the draft EIR, and that CEQA generally does not require an analysis of how existing environmental conditions like methane will impact a project's future users or residents. The Court also agreed with the City's position that the community plan provision was never formally adopted, and that removing a reference to an inapplicable legal requirement is not significant new information requiring recirculation of an EIR.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Justice Chavez
- Trial Court: Los Angeles County Superior Court, Case No. 19STCP01710, Judge Mitchell Beckloff

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
23 <i>Citizens for a Safe and Sewage-Free McKinley Park v. City of Sacramento</i>		3 rd	

[*Citizens for a Safe & Sewage-Free McKinley Park v. City of Sacramento*](#), California Court of Appeal, Third Appellate District, Case No. C090760 (November 24, 2021)

The Court of Appeal affirmed the trial court's judgment, holding that a city's approval of a wastewater storage facility and environmental impact report (EIR) certification did not violate CEQA. The City of Sacramento (the City) sought to alleviate stress on its combined sewer and stormwater system by constructing additional storage underneath a baseball field at McKinley Park (the Project). Citizens For a Safe and Sewage-Free McKinley Park (Citizens) filed a petition for writ of mandate challenging the City's approval and EIR certification, claiming that the City violated CEQA on each of the following grounds: (i) the EIR failed to adequately analyze various environmental impacts of the Project; (ii) the EIR failed to analyze a reasonable range of project alternatives; and (iii) the City failed to recirculate the EIR after significant new information was added following the public review period. The trial court denied the petition and the Court of Appeal affirmed.

First, the Court rejected Citizens' contention that the EIR failed to adequately address the following impacts: damage to trees at the Project site, alterations to McKinley Park's significance as a historical resource, air quality impacts to sensitive receptors, traffic impacts from additional vehicle trips and partial road closures, noise and vibration impacts to children and nearby residences, soil liquefaction or landslides, and risk of exposure to hazardous materials including from a leak or overflow after a large storm event and from construction vehicle emissions. The Court found that the EIR disclosed these issues and provided substantial evidence to support its conclusion that the Project's impacts were less than significant.

Second, the Court rejected Citizens' claim that the EIR violated CEQA by failing to identify and consider a reasonable range of project alternatives. Although the EIR failed to include an environmentally superior alternative that could accomplish most of the Project's objectives, the Court determined that the three Project alternatives and no Project alternative discussed in the EIR amounted to a reasonable range of alternatives because Citizens failed to show that a particular superior alternative was potentially feasible or that the EIR's choice of alternatives was "manifestly unreasonable."



Third, the Court concluded that the City was not required to recirculate the final EIR despite certain changes to the draft EIR's analysis of the Project's access points and the possibility that McKinley Park would be included in the National Register of Historic Places. The Court found that contrary to Citizens' contention, the final EIR did not include significant new information on these issues and the public was not deprived of a meaningful opportunity to comment on them.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment.

- Opinion by Justice Duarte, with Justices Raye and Krause concurring
- Trial Court: Sacramento County Superior Court, Case No. 34201880003015CUWMGDS, Judge Richard Sueyoshi

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
24 <u>Citizens for Positive Growth & Pres. v. City of Sacramento</u>		3 rd	

[Citizens for Positive Growth & Preservation v. City of Sacramento](#), California Court of Appeal, Third Appellate District, Case No. C090205 (February 26, 2021)

The Court of Appeal affirmed the trial court's judgment, holding that Citizens for Positive Growth & Preservation (Petitioner) had failed to show a violation of CEQA in the approval of a 4.25-square-mile compact infill development plan (Project). The Court rejected Petitioner's claims that (1) the City of Lompoc's (City) environmental impact report (EIR) had inadequately analyzed the environmental impacts of the Project, and (2) the City was required to revise and recirculate the EIR, even though three blocks were removed from the Project after the EIR was drafted. The draft EIR assumed a three-block area was included. However, the City was compelled to rescind ordinances that effectively caused the City to change the boundaries of the Project, removing three blocks from the Project. But Petitioners failed to show how this change rendered the EIR deficient or misleading. While the change altered the special planning designation, it did not alter any potential impacts or existing physical conditions.



Indeed, the EIR analyzed the Project's impact on existing physical conditions in the affected areas, assuming that the development would be constructed to the new maximum allowable height for buildings in each zoning designation. The Court reiterated that CEQA is "concerned with the effects a project will have on the *physical environment*, not the effects it will have on existing *land use plans*." (Emphasis added.) The final EIR expressly disclosed the effects of the rescission of the ordinances and explained how the revisions did not alter the draft EIR's significance conclusions. Finally, the City was not required to recirculate the EIR because this added information to the final EIR had no effect on the existing physical conditions or maximum heights allowed on the Project and thus had no impact to the environmental impact analysis.

Disposition

The Court of Appeal affirmed the trial court's judgment to deny the mandate petition and complaint with regard to both the adequacy of the EIR and its conclusions regarding the need for recirculation.

- Opinion by Justice Krause, with Justices Hoch and Robie concurring
- Trial Court: Los Angeles County Superior Court, Case No. 34-2018-80002897

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
25 <u>Elfin Forest Harmony Grove Town Council v. Cty. of San Diego</u>		4 th	

[Elfin Forest Harmony Grove Town Council v. County of San Diego](#), California Court of Appeal, Fourth Appellate District, Division One, Case Nos. D077611, D078101 (October 14, 2021)

The Court of Appeal affirmed in part and reversed in part the trial court's granting of a petition for writ of mandate challenging the County of San Diego's (County) approval of the Harmony Grove Village South project (the Project) and certification of a final environmental impact report (EIR).

First, the Court affirmed the trial court's judgment that the Project's greenhouse gas mitigation measures violated CEQA because they lacked objective performance criteria to ensure the effective and actual mitigation of greenhouse gas emissions. The Court also found that the mitigation measures improperly deferred mitigation.

Second, the Court reversed the trial court's judgment that the EIR failed to adequately address fire safety risks and evacuation. The Court relied on the EIR's incorporation of a 100-page fire plan that examined the wildland fire risks in the site's vicinity and the Project's introduction of potential ignition sources, discussed in detail the Project's features that would reduce fire risks to insignificant levels, and included a fire evacuation plan that accounted for new and existing residents in the Project area.

Third, the Court reversed the trial court's judgment that the EIR failed to adequately address the Project's inconsistency with the County's Regional Air Quality Strategy (RAQS). The Court reached this determination because the EIR disclosed the inconsistency and further explained that the Air Pollution Control District would resolve the inconsistency pursuant to its duty to update the RAQS.



Fourth, the Court reversed the trial court's judgment that the EIR failed to show the Project was consistent with a San Diego Association of Governments (SANDAG) regional plan. The Court concluded that the administrative record, including the County's responses to comments, contained sufficient evidence to support the EIR's finding that the Project was compatible with and did not frustrate the plan's goals and objectives, even though the Project site was not identified for development in the plan.

Disposition

The Court of Appeal affirmed in part and reversed in part the trial court's judgment, and directed the trial court to amend its minute order, issue a new writ of mandate and judgment, and conduct further proceedings consistent with the opinion of the Court of Appeal.

- Opinion by Acting Presiding Justice O'Rourke, with Justices Aaron and Irion concurring
- Trial Court: San Diego County Superior Court, Case No. 37-2018-00042927-CU-TT-CTL, Judge Katherine Bacal

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
26 Gulli v. San Joaquin Area Flood Control Agency		3 rd	

[Gulli v. San Joaquin Area Flood Control Agency](#), California Court of Appeal, Third Appellate District, Case No. C088010 (December 3, 2021)

The Court of Appeal affirmed the trial court's judgment, holding that (1) the administrative record conformed to the requirements of Public Resources Code Section 21167.6(e), which enumerates 11 items that must be included in the administrative record of proceedings; and (2) the project selected in lieu of Petitioner Dominick Gulli's project was needed for flood protection, and the environmental impact report (EIR) adequately informed the public of the environmental consequences associated with that selected project.

Petitioner's company was one of two companies to submit proposals to build a flood gate to address potential flooding in Stockton. Petitioner's proposal, which in fact claimed a flood gate was not a viable solution to the flood control issue, suggested an upgraded pumping station as an alternative to the flood gate. This proposal was not selected by Respondent San Joaquin Area Flood Control Agency. After a final EIR for the project was certified, Petitioner sought writ of mandate to vacate the EIR, suspend all activity in furtherance of constructing the flood gate, and require Respondent to contract with him, claiming that the selected gate proposal would damage the environment more than other possible solutions. The trial court rejected his various arguments and denied the writ petition.



The Court found no error in the trial court's determination that the administrative record conformed with Section 21167.6(e) and agreed with the trial court that Petitioner's claims to the contrary were conclusory and lacked evidence to establish error. Next, the Court addressed Petitioner's various arguments that the selected project was not needed for flood protection, finding both that Petitioner incorrectly cited to evidence outside of the administrative record and that his arguments amounted to a disagreement among experts, which does not make an EIR inadequate.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment and ordered Petitioner to pay Respondent's costs on appeal.

- Opinion by Justice Murray, with Justices Ray and Blease concurring
- Trial Court: San Joaquin County Superior Court, Case No. STKCVUWM20150011880, Judge Elizabeth Humphreys

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
27 <u>Landwatch Monterey County v. County of Monterey</u>		6 th	

[Landwatch Monterey County v. County of Monterey](#), California Court of Appeal, Sixth Appellate District (March 29, 2021)

The Harper Canyon project was proposed in 2001 to be a residential subdivision of 344 acres. In response to the project approval, two groups, Landwatch Monterey County and Meyer Community Group, separately filed for a writ of mandate under CEQA. The trial court directed Monterey County (County) to vacate the final environmental impact review (EIR), finding that it failed to recirculate the final EIR before approval and that the final EIR discussion of the groundwater and wildlife corridor was legally inadequate. The Court of Appeal affirmed in part and reversed in part the trial court's decisions, agreeing with the lower court that the final EIR did not comply with CEQA in its treatment of wildlife corridors. However, the Court held that CEQA did not require recirculation of the final EIR with regard to the topic of ground water resources and that discussion of those resources was legally adequate.

First, the Court rejected the petitioners' allegation that the final EIR inadequately discussed groundwater. The Court noted that the final EIR discusses the current overdraft status, while acknowledging that continued contributions by the proposed development to the Salinas Water Project could be sustained with a less-than-significant impact on groundwater resources. Furthermore, the final EIR did not ignore or omit critical information because it still addressed the overdraft issues with the Salinas Basin.

The Court further held that the evidence supported the finding that the project's effect would not be cumulatively considerable, since the final EIR addressed hydrological connectivity as well as the reduction of its impact as a result of the Salinas Water Project. In addition, the final EIR correctly analyzed the overall additional impact (including the improving hydrological balance as a result of the Salinas Water Project) rather than incorrectly focusing on the relative incremental impact of the project.

Second, the Court addressed the County's decision not to recirculate the final EIR and found that it was legally sound. Because the EIR did not change in a way that deprived the public of a meaningful opportunity to comment upon the substantial adverse environmental effect of the project, there was no need to recirculate the EIR prior to approval. Neither the draft or final EIR found a substantial adverse environmental effect of the project. The Court held that, because the EIR did not anticipate a substantial adverse environmental effect, the additions to the final EIR did not constitute significant new information necessitating recirculation.



Third, the Court held that the final EIR's discussion of the wildlife corridor was lacking. While the record discusses the importance of wildlife corridors, the final EIR failed to provide basic information about the dimensions of the corridor or definitively establish whether the corridor overlaps with the project site. The conclusory comments of the County's department staff likewise were not sufficient to establish that there was no substantial effect on the corridor. Without supporting evidence, the County could not conclude that the corridor was unaffected by the project.

Disposition

The Court of Appeal reversed and remanded the judgment of the trial court.

- Opinion by Justice Danner, with Presiding Justice Greenwood and Justice Bamattre-Manoukian concurring
- Trial Court: Monterey County Superior Court, Case Nos. M131893 and M131913

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
28 <u>Ocean Street Extension Neighborhood Association v. City of Santa Cruz</u>		4 th	

[Ocean Street Extension Neighborhood Association v. City of Santa Cruz](#), California Court of Appeal, Fourth Appellate District, Division One, Case No. D079064 (December 16, 2021)

The Court of Appeal affirmed the trial court's holding that the City of Santa Cruz (City) complied with CEQA in its approval of a residential development project, but reversed the holding that the City violated the Santa Cruz municipal code. In 2010, four individuals applied to the City for design and planned development permits (PDP) to construct a 40-unit residential development. The City council ultimately adopted a resolution to certify the project's environmental impact report (EIR) and to accept a 32-unit housing project.

The Ocean Street Extension Neighborhood Association (OSENSA) filed a petition for writ of mandamus, alleging that the City violated CEQA and the Santa Cruz municipal code. The trial court concluded that although the City complied with CEQA, it erroneously granted a slope modification variance through the PDP process without requiring the applicant to also comply with the municipal code's slope modification regulations. The trial court issued a limited writ prohibiting the City from proceeding with the project until the court was satisfied with the City's compliance with the municipal code's slope modification procedures. OSENSA appealed, maintaining that the City violated CEQA, and the City cross-appealed, arguing that it complied with the municipal code.

Partially affirming the trial court's judgment, the Court of Appeal held that the City complied with CEQA because the EIR sufficiently considered biological impacts, the project objectives were valid, and the EIR adequately analyzed the project's cumulative impacts on water use and traffic. OSENSA claimed that the City's " cursory" reference in the EIR to the Initial Study's discussion of biological impacts was insufficient.

However, the Court considered that the Initial Study found the biological impacts of the project would be less than significant with mitigation. In addition, CEQA and its guidelines do not explicitly express how to characterize in the EIR an impact that the lead agency determines to be less than significant with mitigation after its Initial Study. Because of this lack of guidance, the Court held that nothing prohibits the lead agency from referencing the Initial Study's discussion of biological impacts instead of providing a more detailed analysis as long as the EIR complies with its purpose as an informational document. The Court refused to elevate form over function here and found that the EIR sufficiently facilitated informed agency decision-making.



Regarding the municipal code, the Court reversed the trial court's holding and held that that the City validly granted a slope modification variance *as part of* the PDP without requiring the applicant to apply *separately* for a slope modification as required by the municipal code. The Court reasoned that because the PDP identifies 10 areas eligible for variance from zoning requirements, including slope modification procedures under the municipal code, applicants are not required to follow such municipal code procedures. The Court explained that requiring a separate application under the municipal code would create a redundancy, and if the City intended for compliance with the municipal code here, it would have omitted "slope modifications" as an area of variation available through the PDP process.

Disposition

Accordingly, the Court of Appeal affirmed in part and reversed in part, remanding the matter to the trial court with instructions to vacate the portion of the judgment commanding the city to set aside approval of the PDP.

- Opinion by Presiding Justice Huffman, with Associate Justices O'Rourke and Irion concurring
- Trial Court: Santa Cruz County Superior Court, Case No. 18CV03212, Judge Paul P. Burdick

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
29 Patane v. County of Santa Clara		6 th	

[Patane v. County of Santa Clara](#), California Court of Appeal, Sixth Appellate District, Case No. H048133 (June 30, 2021)

The Court of Appeal affirmed the trial court's judgment holding that a county's review of an environmental impact report (EIR) did not violate CEQA. Shamrock Seeds Company (Respondent) received approval from the County of Santa Clara (County) to construct new greenhouses that would be internally illuminated for a portion of the night (Project). Neighboring property owner Carmen Patane (Petitioner) objected to the County's approval of the Project, arguing that the County's review of Shamrock's EIR did not satisfy CEQA requirements.



On appeal, Petitioner contended that (1) the conclusions in the EIR were not supported by substantial evidence, (2) the mitigation measures considered in the EIR were inadequate, and (3) the County's response to Petitioner's public comments on the EIR were inadequate. Though Petitioner presented expert reports that contradicted those contained in the EIR, the Court found that a mere disagreement among experts is insufficient to prove that an EIR's conclusions are not based on substantial evidence. Moreover, the Court found that the mitigation measures discussed in the EIR were sufficient, since all effects of the project were either less than significant, or could be reduced to less-than-significant levels with the mitigation measures (vertical light barriers) outlined in the EIR. The Court also rejected Petitioner's contention that the County's response to her public comments were inadequate, finding that the County responded to her comments in detail.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Acting Presiding Justice Elia, with Justices Bamattre-Manoukian and Danner concurring
- Trial Court: Santa Clara County Superior Court, Case No. CV347111, Judge Brian Walsh

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
30 Protect Our Home & Hills v. Cty. Of Orange		4 th	

[Protect Our Homes & Hills v. County of Orange](#), California Court of Appeal, Fourth Appellate District, Division Three, Case No. G058339 (January 27, 2021)

The Court of Appeal affirmed the trial court's judgment, rejecting Protect Our Homes and Hills' (Petitioner) contentions that the County of Orange (County) failed to comply with CEQA or the Subdivision Map Act (SMA) regarding a residential development project (Project) next to a state park in the City of Yorba Linda (City).

The County approved the Project despite Petitioner's objections that a westerly access route (Option 2 Modified) should have been compared "head to head" as an alternative to the chosen southerly route (Option 1A). Petitioner asserted that the revised final environmental impact report (EIR) was legally inadequate because it did not treat Option 2 Modified as an "alternative" and did not consider it as a previously adopted "mitigation measure" that could not be rejected without additional explanation or analysis. The trial court disagreed, questioning the need for discussion of Option 2 Modified given that Option 1A met the safety requirements of the Orange County Fire Authority, would not disrupt the habitats of two endangered species, and would require less grading than Option 2 Modified. The Court ultimately determined that even if Option 2 Modified failed as an "alternative," it was a "facet" of the Project since its existence depended on the Project. The Court also found Option 2 Modified to be practically infeasible, and the County was not required to address infeasible alternatives in an EIR.


The Court also rejected Petitioner's claim that the Project's vesting tentative tract map was deficient because the Project's developer lacked control over the land for Option 1A. The Court found that the developer did, in fact, have such control.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Justice Thompson, with Justices O'Leary and Ikola concurring
- Trial Court: Orange County Superior Court, Case No. 30-2018-01027875, Judge William D. Cluster

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
31 <i>Save Civita Because Sudberry Won't v. City of San Diego</i>		4 th	Partially Published

[*Save Civita Because Sudberry Won't v. City of San Diego*](#), California Court of Appeal, Fourth Appellate District, Division One, 2021 WL 5937417 (December 16, 2021)

In a partially published decision, the Court of Appeal affirmed the trial court's judgment denying a petition for writ of mandate challenging the City of San Diego's (City) adoption of a programmatic environmental impact report (EIR) for amendments to a community plan and the City's General Plan. In sum, the Court determined:

- When an agency recirculates an EIR intended to replace the previously circulated EIR in its entirety, the agency is not required to summarize each of the revisions made so long as the agency identifies the overall nature of the changes.
- An agency hearing certifying a final EIR is not subject to the procedural due process protections applicable to quasi-adjudicatory hearings if the underlying actions evaluated in the EIR are quasi-legislative.

Background for Appeal

In 2005, developers sought approvals from the City for a 225-acre mixed-use development in Mission Valley. In October 2008, the City Council approved the development project and adopted a resolution directing staff to analyze an amendment to the Serra Mesa Community Plan (SMCP) and the City's General Plan to include a street connection that would link the development to an existing subdivision in the Serra Mesa community (Project). A separate land use plan, the Mission Valley Community Plan, already contemplated such a connection.

In April 2016, the City issued a draft programmatic EIR (PEIR), indicating that the Project was limited to the adoption of an amendment to the SMCP to include the street connection. The draft PEIR did not evaluate the impacts that would result from constructing the road. In response to public comment and one community planning group voting unanimously to recommend denial of the Project, the City issued a recirculated draft PEIR in March 2017. The recirculated PEIR expressly stated that it was analyzing the SMCP amendment *and* impacts at a Project level to ensure all potential significant effects were disclosed. In August 2017, the City issued and later certified the final PEIR.

A neighborhood group (Petitioner) petitioned for writ of mandate challenging the City's certification of the final PEIR and approval of the Project. In particular, Petitioner claimed that the City failed to adequately identify and analyze the Project's significant environmental impacts and a reasonable range of alternatives. The trial court denied the petition and entered judgment in favor of the City. Petitioner appealed.

The City Complied With CEQA When Recirculating the PEIR

On recirculation, Petitioner argued that the City failed to summarize each of the revisions made to the PEIR, which forced readers to leaf through thousands of pages to find the changes and which led to the mistaken belief that the two versions of the PEIR addressed the same Project. The Court disagreed.

The Court interpreted CEQA Guideline Section 15088.5 subdivisions (g) and (f), which provide that the public must be informed when an EIR is substantially revised and the entire document is recirculated. If (1) a recirculated EIR states that it is replacing a prior EIR, (2) the agency makes clear the overall nature of the changes, and (3) the agency also notifies the public that comments to the prior EIRs will not receive responses, the agency complies with CEQA's requirement to summarize the revisions made to the previously circulated draft EIR. Here, the Court held that the City took such steps by clarifying that the detailed, project-level recirculated PEIR, which considered the environmental impact of building the road, replaced the originally circulated PEIR. Further, any failure by the City to summarize the changes was not prejudicial error because it did not deprive the public of a meaningful opportunity to discuss and critique the Project.

The City Council's Hearing on the Project Was Not Subject to the Procedural Due Process Requirements Applicable to Quasi-Adjudicatory Proceedings

Petitioner also argued that, because a City Council member's staff solicited support for the Project, the City violated the public's right to a fair hearing. The Court rejected Petitioner's argument, explaining that a neutral and unbiased decisionmaking body is required only when the City Council is acting in a quasi-adjudicatory capacity similar to judges. Quasi-legislative actions are not subject to the same procedural and due process protections. The Court explained that the City's two underlying actions analyzed in the final PEIR — approving road construction and amending the general and specific plan documents — are quasi-legislative in nature. As such, the City's act in certifying the final PEIR for these two underlying actions was also quasi-legislative, and thus, procedural due process requirements did not apply.

The PEIR Analyzed a Reasonable Range of Alternatives



In the unpublished portion of the opinion, Petitioner claimed that the City should have analyzed an alternative that would have amended the Mission Valley Community Plan to remove a proposed road connection. The final PEIR explained that this alternative was not selected for detailed study for various reasons, including because it would not improve local mobility in the planning areas and would not help alleviate traffic congestion or improve emergency access. The Court found the City appropriately determined not to evaluate Petitioner's proffered alternative.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment in favor of the City.

- Opinion by Presiding Justice Aaron, with Associate Justices Dato and Guerrero concurring
- Trial Court: San Diego County Superior Court, Case. No. 37-2017-00045044-CU-TT-CTL, Judge Joel R. Wohlfeil

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
32 <u>Save Our Access-San Gabriel Mountains v. Watershed Conservation Auth.</u>		2 nd	

[Save Our Access–San Gabriel Mountains v. Watershed Conservation Authority](#), California Court of Appeal, Second Appellate District, Division Eight, Case No. B303494 (August 19, 2021)

In a published opinion, the Court of Appeal reversed the trial court’s judgment granting a petition for writ of mandate challenging the Watershed Conservation Authority’s (WCA) approval of a park restoration project as to the project’s potential parking impacts and affirmed the trial court’s denial of other claims brought under CEQA. In sum, the court determined:

- A petitioner must prove that parking reductions have an adverse physical impact on the environment for the reduction to be considered a significant environmental effect. A social inconvenience will not suffice.
- An EIR is not required to analyze every conceivable alternative or those proposed by a member of the public.

Background for Appeal

In October 2018, the WCA certified an environmental impact report (EIR) for the San Gabriel River Confluence with Cattle Canyon Improvements Project (Project), located in the Angeles National Forest and along a 2.5-mile stretch of the East Fork of the San Gabriel River. This site is among the most popular recreation areas for weekend use. The Project set out to better manage recreational use, balance long-term resource protection, and prevent site degradation. Plans included developing new picnic areas and trails, upgrading facilities, improving roadways, and designating parking spaces. Because of the limited number of designated parking spaces at the site, visitors would often park in undesignated areas, further degrading habitat and causing parking congestion. The Project proposed formalizing parking spaces and blocking off undesignated areas, decreasing overall parking spaces and potentially displacing visitors. The EIR determined that the Project’s impact on recreation would be less than significant.

Save Our Access–San Gabriel Mountains (Petitioner) filed a petition for writ of mandate to set aside the WCA’s approval of the Project and certification of the EIR. Petitioner alleged that (i) the EIR failed to adequately analyze the Project’s proposed reduction in parking and resulting environmental impacts, (ii) the WCA should have considered additional project alternatives, and (iii) the Project was inconsistent with the Angeles National Forest Land Management Plan (Angeles Forest LMP) and a proclamation issued by President Obama regarding national monuments (together, Land Use Plans). The trial court granted the petition and issued an order requiring the WCA to reassess the Project’s parking reduction impacts and to articulate an adequate parking baseline. The court rejected Petitioner’s other claims. Both Petitioner and the WCA appealed.

The EIR Adequately Discussed Potential Impacts Resulting From Reduced Parking

Disagreeing with the trial court, the Court of Appeal held that the EIR sufficiently disclosed the reduction in parking, and that the WCA properly found the Project would have less than significant impacts on recreation. The Project would better manage heavy recreational use and prevent further erosion and damage to the environment caused by vehicles parking in undesignated spaces. Further,

the Court explained that the social inconvenience of hunting for scarce parking is not an environmental impact. The key inquiry is the impact of reduced parking *on the environment*, rather than the project's impact *on parking*. In addition, the Court found that a discrepancy between the reduction of parking spaces in the EIR was immaterial because Petitioner failed to show how the reduced parking would have any negative impact on the environment.

The EIR Analyzed a Reasonable Range of Alternatives

The Court agreed with the trial court that Petitioner's claim that the EIR needed to analyze additional alternatives other than a "project" and "no project" alternative was without merit. The EIR need only set forth the alternatives necessary for the agency to make a reasoned choice, and each case must be evaluated on its facts. Here, the WCA considered a third alternative but decided not to analyze it further in the EIR. The Project's goal was to provide recreational improvements and habitat restoration, and the Court held that it was not manifestly unreasonable to analyze the "project" and "no project" alternatives based on this intent. Further, Petitioner failed to explain how another alternative would avoid or lessen one or more of the Project's significant impacts. Overall, the WCA's alternative considerations were reasonable given the Project's purpose and mitigation strategies.

The Project Is Consistent With the Land Use Plans



Lastly, the Court found that the Project was not inconsistent with the Land Use Plans. President Obama's proclamation required a management plan providing for protection and interpretation of scientific and historic objects, and for continued public access to those projects, consistent with their protection. The Court determined that the Project achieved those goals and is consistent with the proclamation because it would develop new picnic areas, trails, upgraded facilities, and improved roadways, as well as restore river vegetation communities. Likewise, the Court determined that the Project is consistent with the Angeles Forest LMP because the Project features are designed to protect and restore the existing multi-use areas for public enjoyment, furthering the LMP's public access policy. Petitioner's claim that the reduction in parking created inconsistencies with these public access-oriented Land Use Plans lacked merit.

Disposition

Accordingly, the Court of Appeal reversed the trial court's judgment granting the petition for writ of mandate as to the Project's potential parking impacts and affirmed the trial court's judgment denying the petition as to Petitioner's other claims.

- Opinion by Presiding Justice Grimes, with Associate Justices Stratton and Wiley concurring
- Trial Court: Los Angeles County Superior Court, Case No. 18STCP02984, Judge Daniel Murphy

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
33 Sierra Club v. County of San Diego		4 th	

[Sierra Club v. County of San Diego](#), California Court of Appeal, Fourth Appellate District, Case No. D077972 (December 21, 2021)

The Court of Appeal affirmed the trial court's judgment, holding that the county erred in approving the housing development projects because the greenhouse gas (GHG) mitigation measures in those projects' environmental impact reports (EIRs) failed to satisfy CEQA. The County of San Diego (County) approved two housing development projects proposed for underdeveloped portions of the County: Harmony Grove and Valiano (Projects). Sierra Club (Petitioner) challenged these approvals, claiming that the Projects' GHG emission mitigation was insufficient under CEQA. The trial court agreed with Petitioner that the GHG emission mitigation in the Projects' EIRs was inconsistent with the County's General Plan and failed to comply with CEQA's standards for ensuring that mitigation measures are fully enforceable, and granted Petitioner a writ of mandate directing the County to set aside approval of the Projects. After trial, the Court of Appeal decided *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467 (*Golden Door II*), which held that the substantively identical GHG emission mitigation measures in the County's Climate Action Plan violated CEQA on similar grounds.


The Court of Appeal affirmed the trial court's judgment, and found the Projects' GHG emission mitigation measures insufficient under CEQA following the holding in *Golden Door II*. On appeal, the Harmony Grove developers attempted to distinguish its GHG mitigation measures from those invalidated under *Golden Door II*, but the Court disagreed, finding them substantively identical. The Valiano developers conceded its EIR violated CEQA under *Golden Door II*, but argued the trial court abused its discretion by not remanding with instructions to modify the EIR to bring the Project into compliance. The Court found both Projects violated CEQA because the mitigation measures permitted the purchase of offsite carbon credits without imposing any protocols on the registries from which these credits would be purchased, and thus no objective performance standards were in place to measure or verify the extent of GHG mitigation. Moreover, the mitigation measures also impermissibly delegated mitigation by deferring to the County Director of Planning and Development Services the determination of whether offsets purchased by Project developers were satisfactory. The Court also disagreed with the Valiano developers that the trial court abused its discretion, finding that the invalid mitigation provisions were not severable, and thus invalidation of the entire EIR was proper.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Presiding Justice McConnell
- Trial Court: San Diego County Superior Court, Case No. 37-2018-00043084-CU-TT-CTL, Judge Katherine Bacal

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
34 <i>Sierra Watch v. Cty. of Placer</i>		3 rd	Partially Published

[*Sierra Watch v. County of Placer*](#), California Court of Appeal, Third Appellate District, Case No. C088130 (August 24, 2021)

In a partially published opinion, the Court of Appeal reversed in part the trial court's denial of a petition for writ of mandate challenging Placer County's certification of an environmental impact report (EIR) and approval of a resort project.

- An EIR must put meaningful emphasis on a "unique" natural resource in its discussion of environmental setting and include a robust discussion of how a project will affect that resource.
- An EIR may underestimate evacuation times if it assumes that emergency services would provide traffic control at key intersections during a crisis.
- An agency cannot defer consideration of mitigation particulars until after project approval if the agency does not commit to any concrete course of action.

Background for Appeal

In 2011, a developer proposed to develop a resort on 94 acres of Olympic Valley (Project). The Project would contain up to 850 lodging units, almost 300,000 square feet of commercial space, more than 3,000 parking spaces, and a parcel to house employees. Construction would take place over 25 years. Placer County (County) began CEQA review in 2012, releasing a draft EIR in 2015 and a final EIR in 2016.

An environmental group (Petitioner) petitioned for writ of mandate, claiming that the County's CEQA review was inadequate. Petitioner contended that the County failed to sufficiently consider Lake Tahoe in its discussion of the environmental setting for the Project, and failed to adequately discuss and mitigate the Project's impacts on fire evacuation plans, noise levels, climate change, and traffic. The trial court denied the petition, and Petitioner appealed.

The County Placed Insufficient Emphasis on Lake Tahoe in Describing the Project's Environmental Setting

Petitioner challenged the EIR's description of the environmental setting as it related to water quality, air quality, and traffic. The Court partly agreed, finding the EIR's discussion of environmental setting as to water quality and traffic inadequate. First, the Court stressed that environmental resources that are rare or unique to the region — such as Lake Tahoe — and which would be affected by the Project should be given special emphasis in a discussion of environmental setting. The Court determined that the EIR's discussion of water quality contained only a very cursory mention of Lake Tahoe, its current condition, and the potential impact of the Project on water quality. Thus, the EIR's discussion of the environmental setting regarding water quality was insufficient. Similarly, the Court found that the EIR's consideration of traffic impacts on the Lake Tahoe Basin was insufficient. The EIR considered different regional standards for addressing the significance of the Project's impact, but ultimately concluded that none of the standards would apply to the Project given its location. Because the County found that none of the standards discussed would apply and failed to identify what alternative standard should apply, the EIR's

discussion of traffic impacts was insufficient under CEQA. Finally, the Court upheld the EIR's analysis of the environmental setting as to air quality because the EIR contained a substantial discussion of federal and state air quality standards, how vehicles contribute to air pollution, and historical air quality rates in the Lake Tahoe Basin.

The County Failed to Adequately Analyze Wildfire Risks

Petitioner raised eight arguments as to why the EIR failed to adequately address the Project's potential fire risks. In an unpublished section of the opinion, the Court rejected all but one of Petitioner's wildfire risk arguments. Petitioner prevailed on its argument that the EIR underestimated evacuation times because it wrongly assumed emergency services would provide traffic control at key intersections in the event of a crisis. In agreeing with Petitioner, the Court determined that first responders would be preoccupied with much higher-priority tasks in an emergency.

The EIR Inadequately Addressed the Project's Noise Impacts

Petitioner also argued that the EIR inadequately addressed the Project's noise impacts. The Court agreed, holding that the EIR did not analyze the full range of noise impacts. The EIR measured only based on receptors located 50 feet from expected construction noise, and did not analyze noise impacts beyond this 50-foot radius. The Court further determined that the County's noise mitigation measures requiring operations and techniques to be replaced by "quieter procedures ... where feasible" were too vague to satisfy CEQA.

The County's Consideration of Climate Change Impacts Complied With CEQA

In another unpublished section of the opinion, the Court rejected Petitioner's argument that the EIR's discussion of the Project's impact on climate change was insufficient. The final EIR revised the standard it used to assess climate change impacts based on *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204. The Court concluded that the County did not need to recirculate the final EIR for additional public comment despite this revised standard, because the County effectively applied the same standard in both the draft and final EIRs for the most likely climate change scenarios. The Court also rejected Petitioner's argument that the final EIR improperly failed to reconsider climate change mitigation measures, in light of the new analysis contained in the final EIR. The Court held that the County explicitly revised its mitigation measures in the final EIR to reflect the updated analysis.

The County Did Not Overlook Feasible Mitigation for the Project's Traffic Impacts, but Improperly Deferred Developing Concrete Traffic Mitigation Strategies



Petitioner raised two arguments regarding the EIR's analysis of the Project's impact on traffic: (1) the County overlooked feasible mitigation strategies for the Project's significant traffic impacts, and (2) the EIR improperly deferred mitigation to address transit impacts. In an unpublished portion of the opinion, the Court rejected Petitioner's first argument but agreed with the second. The Court determined that the final EIR properly addressed Petitioner's proposed mitigation strategies to encourage use of public transit and explained why these strategies were ineffective or unnecessary. However, the Court held that the EIR improperly deferred the details of certain traffic mitigation strategies. The EIR concluded that the Project would increase demand on public transit and examined some funding-related ideas for mitigation, but did not commit to any concrete mitigation measures. Because the County may not defer the particulars of mitigation until after approving the Project, the County violated CEQA.

Disposition

Accordingly, the Court of Appeal reversed in part the trial court's ruling, directing the trial court to grant Petitioner's petition for writ of mandate.

- Opinion by Justice Blease
- Trial Court: Placer County Superior Court, Case No. SCV0038777, Judge Michael Jones

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
35 Steinbruner v. Soquel Creek Water Dist.		6 th	

[Steinbruner v. Soquel Creek Water District](#), California Court of Appeal, Sixth Appellate District, Case No. H047733 (July 12, 2021)

The Court of Appeal affirmed the trial court's judgment holding that a district's approval of a ground-water purification facility did not violate CEQA. The case arose out of the Soquel Creek Water District's (District) approval of the Pure Water Soquel: Groundwater Replenishment and Seawater Intrusion Prevention Project (Project). A concerned citizen (Steinbruner) challenged the District's approval alleging CEQA violations on the following grounds: (1) the EIR's analysis of growth-inducing impacts was inadequate; (2) the EIR's analysis of impacts on groundwater quality was inadequate; and (3) the EIR's analysis of project alternatives was inadequate.


The Court rejected Steinbruner's arguments and upheld the District's approval of the Project. First, the Court held that the EIR's analysis of growth-inducing impacts was adequate because the EIR contained an extensive discussion of the Project's potential for growth, including a discussion of how the Project's improvements to the District's water supply could support planned growth within the service area. Second, the Court held that Steinbruner's groundwater argument was meritless because she failed to provide any authority supporting her contention that a groundwater analysis must include a final anti-degradation evaluation. Third, the Court held that the EIR's analysis of three alternatives, including a no project alternative, was adequate under CEQA guidelines, which provide that an agency is only required to set forth those alternatives necessary to permit a reasoned choice.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Justice Elia, with Administrative Presiding Justice Greenwood and Justice Danner concurring
- Trial Court: Santa Cruz County Superior Court, Case Nos. 19AP00030, 19AP00031, 19CV00181, Judge Timothy Volkmann

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
36 <i>Stop Syar Expansion v. Cty. of Napa</i>		1 st	Partially Published

[*Stop Syar Expansion v. County of Napa*](#), California Court of Appeal, First Appellate District, Division One, 63 Cal.App.5th 444 (2021)

In a partially published opinion issued March 25, 2021, the Court of Appeal affirmed the trial court's judgment and upheld Napa County's (County) approval expanding an aggregate operation. In sum, the Court determined that:

- CEQA petitioners must exhaust all administrative remedies before raising an issue in a trial court.
- CEQA does not apply to the issue of whether a proposed project is consistent with the governing general plan.
- CEQA only requires that an EIR discuss inconsistencies (not consistencies) between a project and the general plan.

Background for Appeal

In 2008, Syar Industries (Syar) applied to the County to expand its aggregate operation in the Napa Valley area. After seven years of environmental review, the Napa County Planning Commission certified a final environmental impact report (EIR) and permitted an expansion half the size of what was originally proposed, subject to more than 100 pages of conditions and mitigation measures (Project). In certifying the EIR, the Planning Commission determined that the Project was consistent with the County's general plan. Petitioner appealed to the County Board of Supervisions (Board), raising deficiencies in the Planning Commission's environmental review process. Following an additional year of environmental review, the Board rejected Petitioner's appeal and affirmed the Planning Commission's approval of the Project and certification of the EIR.

Petitioner sought a writ of mandate under CEQA, challenging the County's certification of the EIR based on 16 alleged deficiencies. The trial court ruled against Petitioner on all counts, reaching the merits on some claims and finding that Petitioner had not exhausted its administrative remedies on others. Petitioner timely appealed as to five deficiencies in the EIR.

Petitioners Must Exhaust All Administrative Remedies Prior to Raising Issue in Trial Court

CEQA requires petitioners to exhaust all administrative remedies prior to raising the same issues before a trial court. This requirement is jurisdictional, designed to ensure that public agencies are afforded opportunities to receive and respond before petitioners seek judicial review. The "exact issue" must be presented to the administrative agency. In addition, for an issue to be properly exhausted before an administrative agency whose procedures allow for an internal appeal, the issue must be raised in both the initial hearing and the internal appeal to be considered exhausted.

In the unpublished portion of the opinion, the Court denied several of Petitioner's claims, finding that Petitioner did not exhaust its remedies because it failed to raise the issues in its appeal to the Board.

Petitioner's generalized objections in its internal appeal to the Board were insufficient because they did not apprise the Board of the specific topics at issue.

CEQA Writs of Mandate Do Not Apply to Consistency Allegations

Relying substantially on *The Highway 68 Coalition v. County of Monterey*, 14 Cal.App.5th 883 (2017), the Court determined that writs of mandate issued under Public Resources Code Section 21168.9 do not apply to the issue of whether a project is consistent with the governing general plan. CEQA only requires EIRs to identify and discuss *inconsistencies* between a project and the general plan. Thus, the question of consistency is “not a CEQA issue” and is out of the scope of the mandate procedures for CEQA violations. Rather, “an agency’s determinations regarding project consistency with a general plan are reviewed by ordinary mandamus.” Further, the Court held that, under ordinary mandamus review, agency decisions regarding whether a project is consistent with a general plan are afforded great deference, and courts are wary of “micromanaging such decisions.” Therefore, the Court denied Petitioner’s challenge and upheld the County’s determination that the EIR was consistent with the County’s general plan.

EIRs Only Need to Discuss Inconsistencies to Satisfy CEQA



The Court also determined that EIRs need only identify and discuss inconsistencies between a project and the general plan to satisfy CEQA. The plain language of the CEQA Guidelines speak solely of inconsistencies, not consistencies. As such, there is no requirement under CEQA to discuss, or even identify, consistencies between a project and the general plan. Thus, the Court upheld the County’s EIR and corresponding consistency determination.

Disposition

Accordingly, the Court of Appeal affirmed the trial court’s judgment in favor of the County, holding that the County properly certified the EIR.

- Opinion by Justice Banke, with Presiding Justice Humes and Justice Margulies concurring
- Trial Court: Napa County Superior Court, Case No. 16CV001070, Judge Victoria Wood

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
37 <u>Taxpayers for Responsible Land Use v. City of San Diego</u>		4 th	

[Taxpayers for Responsible Land Use v. City of San Diego](#), California Court of Appeal, Fourth Appellate District (March 30, 2021)

The Court of Appeal affirmed the trial court's judgment denying a petition by Taxpayers for Responsible Land Use (Petitioner) for a writ of mandate challenging the City of San Diego's approval of a proposed development for a Jewish student center in a residential community (Project). Based on historical programming, the Project anticipated about 10 to 50 people visiting the center each week, with infrequent larger events attended by a maximum of 250 people. To accommodate these activities, the Project proposed a total of 27 parking spaces and provided a transportation plan for its larger events. The City Planning Commission approved the Project, granted the site development permit, approved the right-of-way vacation, and certified that it was CEQA compliant. Petitioner filed a petition for a writ of mandate challenging these approvals, claiming that (1) the environmental impact report (EIR) failed to adequately support the decision to provide only 27 parking spaces, (2) the EIR did not comply with CEQA because it failed to analyze an inconsistency between the Project and the current zoning requirements created by an amendment that was adopted five years after the Notice of Preparation (NOP) was published, and (3) the trial judge was biased against Petitioner.



The trial court dismissed the first two claims and the Court of Appeal affirmed, while rejecting the claim of bias. First, the Court held that as the reviewing court, it must resolve reasonable doubts in favor of the administrative findings, which found that the evidence supporting the parking space allocation was sufficient. Further, the interpretation of the Municipal Code was reasonable in that no applicable parking minimum or maximum requirement was established for this type of facility. Second, the Court held that no authority requires an EIR to include a project's baseline *legal* conditions in addition to its baseline physical conditions. Even if this were required, the analysis would examine the existing condition at the time the NOP was published, so any references to a later-amended zoning requirement were irrelevant to the EIR and therefore not inconsistent. Finally, the Court held that the judge was not biased because (1) while the judge did express his opinion on factual and legal issues, the Code of Civil Procedure specifically holds that expressing such views are not disqualifying, (2) potential legal error is not the same thing as bias, and (3) insinuating counsel's judgment was prejudiced without confirming her meaning, while perhaps unwise, was not evidence of bias.

Disposition

The Court of Appeal affirmed the judgment of the trial court.

- Opinion by Justice Dato, with Acting Presiding Justice Huffman and Justice Haller concurring
- Trial Court: San Diego County Superior Court, Case No. 37-2017-00042558-CU-TT-CTL

Environmental Impact Reports

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
38 Val Verde Civic Ass'n v. County of L.A.		2 nd	

[Val Verde Civic Association v. County of Los Angeles](#), California Court of Appeal, Second Appellate District, Case No. B302885 (February 10, 2021)

The Court of Appeal affirmed the trial court's judgment in favor of the County of Los Angeles (County), upholding the County's environmental impact report (EIR), CEQA findings, and approval of the master plan revision that continued and expanded operations at the Chiquita Canyon Landfill (Project). Chiquita Canyon, LLC (Chiquita Canyon) operates the Landfill, which is about 500 feet from the closest residences. Several environmental and neighborhood groups (Petitioners) petitioned for a writ of mandate, seeking to set aside the County's Project approval. The trial court denied the petition, and the Court affirmed.

On appeal, Petitioners challenged the County's approval of the Project on several grounds.

First, Petitioners contended that the EIR failed to quantify and document existing landfill emissions. The Court determined that Petitioners forfeited this argument because they did not allege these deficiencies in the trial court proceedings.

Second, Petitioners contended that the ambient air quality analysis improperly relied on criteria air pollutant data from offsite regional air monitoring stations instead of local air quality data the County could have collected in the Project's vicinity. The Court disagreed, holding that the South Coast Air Quality Management District (SCAQMD) monitoring station data was adequate. Further, the County was not required to perform all recommended testing and research to evaluate the Project's potential impacts, and in fact used local air quality data in some instances.

Third, Petitioners contended that the odor impact analysis relied on an unreasonable threshold of significance based on a methodology used by the Bay Area Air Quality Management District. The Court concluded that substantial evidence supported the County's methodology for assessing odor impacts. Moreover, the EIR included an extensive study by experts who concluded that very few odors were detectable outside the landfill boundaries. The Court emphasized that it cannot reweigh conflicting evidence but rather must resolve all reasonable doubts in favor of the County.

Fourth, Petitioners contended that the EIR improperly deferred the formulation of odor mitigation measures and failed to set forth the necessary details of the odor impact minimization plan. The Court held that the specific details of a mitigation measure may be developed after project approval so long as the County commits itself to mitigation, adopts specific performance standards, and identifies actions for achieving the performance standards. The Court concluded that substantial evidence showed the County sufficiently committed itself to odor mitigation plans such that deferral of the plan was permissible.



Lastly, Petitioners contended that the EIR failed to adequately estimate the landfill's capture of methane and other greenhouse gases. The County relied on the EPA's Landfill Gas Emissions Model (LANDGEM), which is considered the industry standard method. The Court concluded that Petitioners failed to show that the County's methodology was legally inadequate.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Acting Presiding Justice Chavez, with Presiding Justice Lui and Justice Hoffstadt concurring
- Trial Court: Los Angeles County Superior Court, Case No. BS170715

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
39 <i>Cal. Water Impact Network v. County of San Luis Obispo</i>		2 nd	

[*California Water Impact Network v. County of San Luis Obispo*](#), California Court of Appeal, Division Six, Case No. B283846 (May 3, 2021)

The Court of Appeal reversed and remanded the trial court's judgment, granting Clean Water Impact Network (Petitioner) leave to amend its petition for writ of mandate challenging San Luis Obispo County's (County) issuance of four well construction permits. The trial court previously held (and the Court of Appeal affirmed) that the County's issuance of well construction permits was ministerial and therefore exempt from CEQA review.



However, in *Protecting Our Water & Environmental Resources v. County of Stanislaus* (2020), highlighted in last year's CEQA Year in Review, the California Supreme Court held that the trial court's blanket classification of the well permit issuances as ministerial was incorrect and that at least one standard for considering these permits confers the County discretionary authority to address environmental concerns. As such, the Court of Appeal was asked to reconsider its prior ruling denying Petitioner's leave to amend. Despite the County's and permit holders' (Respondents) claim that the County exercised no such discretion when granting the permits at issue here, the Court of Appeal held that the mere potential for such discretion, clarified by *Protecting Our Waters*, made leave to amend proper.

Disposition

The Court of Appeal reversed and remanded the trial court's judgment.

- Opinion by Associate Justice Perren, with Presiding Justice Gilbert and Associate Justice Tangeman concurring
- Trial Court: San Luis Obispo County Superior Court, Case No. 16CVP-0195, Judge Barry T. LaBarbera

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
40 <i>Citizens' Committee to Complete the Refuge v. City of Newark</i>		1 st	

[*Citizens' Committee to Complete the Refuge v. City of Newark*](#), California Court of Appeal, First Appellate District, Case No. A162045 (December 29, 2021)

The Court of Appeal affirmed the trial court's judgment holding that a City of Newark housing development project was exempt from further CEQA review under Government Code Section 65457. The Court found that the project (1) implemented and was consistent with a Specific Plan already reviewed under CEQA, and substantial evidence supported the City's conclusion that no project changes, changed circumstances, or new information required additional analysis; and (2) the City's deferral of analysis of potential flood control projects to address sea level rise was proper.

In 2010, the City of Newark (Respondent) certified an environmental impact report (EIR) on a Specific Plan for City Areas 3 and 4 near the San Francisco Bay. Citizens' Committee to Complete the Refuge (Petitioner) challenged that EIR as inadequate, and Respondent prepared a recirculated EIR (REIR). The REIR based the environmental impacts on maximum development permitted by the Specific Plan, found that the Specific Plan could have significant impacts on the habitat of an endangered harvest mouse species, and discussed impacts of climate change and sea level rise. In 2016 and 2019, the City approved two subdivision maps for development of housing in Areas 3 and 4, finding through preparation of a checklist and various supporting documents that the subdivision map was exempt from CEQA under Government Code Section 65457, and the Public Resources Code Section 21166 exception to the exemption did not apply. The trial court rejected Petitioner's writ petition, concluding the administrative record contained substantial evidence to support the City's determination that further environmental review after the REIR was unnecessary.



The Court agreed with the trial court, finding that substantial evidence supported the conclusion that none of the changes to the project shown in the approved subdivision maps, as compared with the Specific Plan, would significantly increase the impacts to the endangered species' habitat beyond what the REIR addressed. The Court further found that any new changes to the project as compared with the Specific Plan were not substantial enough to require major revisions of the REIR, so Public Resources Code Section 21166 did not apply. The Court also found the REIR adequately addressed the uncertain and potential future effects of sea level rise such that new data on sea level rise did not make the impacts on wetlands in the project area substantially more severe to trigger the Section 21166 exception.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's ruling.

- Opinion by Justice Brown, with Justices Streeter and Ross concurring
- Trial Court: Alameda County Superior Court, Case No. RG19046938, Judge Frank Roesch

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
41 <u>Concerned Citizens of Beverly Hills/Bel Air v. City of Beverly Hills</u>		2 nd	

[Concerned Citizens of Beverly Hills/Belair v. City of Beverly Hills](#), California Court of Appeal, Second Appellate District, Case No. B297931 (January 14, 2021)

The Court of Appeal affirmed the trial court's holding that the City of Beverley Hills (Respondent) properly applied a categorical Class 3 exemption for small construction projects to the construction of two single-family homes (Project) and that none of the exceptions to the exemption applied. Concerned Citizens of Beverly Hills/Bel Air (Petitioner) appealed the trial court's decision, arguing that the "unusual circumstances" and "location" exceptions to the proffered categorical exemption applied to the project. Petitioner alleged that the unusual circumstances exception applied because wildlife was currently using the Project site, the Project would disrupt a "habitat linkage system," and that the Project site included unstable slopes and unusual geology. Petitioner argued the location exception applied because the Project would affect a wildlife corridor and was located in a Fire Hazard Severity Zone.



The Court rejected Petitioner's claims and restated the appropriate standard of review in *Berkeley Hillside*, which applied to both the unusual circumstances and location exceptions. Because substantial evidence supported the City's finding that there were no unusual circumstances involving the Project and the Project was not located within "a designated, precisely mapped" environmental resource, the Court did not progress to the second prong under *Berkeley Hillside* (i.e., whether a reasonable possibility of a significant effect existed due to that unusual circumstance/location). First, the Court held the unusual circumstances exception did not apply because the land was previously developed and did not contain viable habitat. Second, the location exception did not apply because the property was not located within a designated protected habitat zone; it was only located near a protected habitat zone. In addition, the Court rejected Petitioner's argument that being in a high fire severity zone automatically meant that the Project met the requirements for the location exception.

Disposition

The Court affirmed the trial court's judgment.

- Opinion by Justice Sinanian, with Justices Rothschild and Bendix concurring
- Trial Court: Los Angeles County Superior Court, Judge Richard L. Fruin

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
42 Coston v. Stanislaus County		5 th	

[Coston v. Stanislaus County](#), California Court of Appeal, Fifth Appellate District, Case No. F074209 (May 19, 2021)

The Court of Appeal reversed the trial court's judgment granting Stanislaus County's (County) motion for judgment on the pleadings in a suit challenging the County's approval of a well permit for failing to perform environmental review under CEQA and for violating due process. The County had adopted CEQA regulations classifying all well construction permits as ministerial projects unless the County health officer has granted a variance. After the County approved Permit No. 2014-539 (Permit 539) providing for construction of a well without undergoing a CEQA review, seven nearby property owners (Petitioners) sought a writ of mandate invalidating Permit 539. In addition, Petitioners alleged that the County violated their procedural due process rights for failure to provide notice and an opportunity to be heard.

In a separate but related parallel suit, *Protecting Our Water and Environmental Resources v. Stanislaus County (POWER)*, individuals challenged the County's general policy of treating standard well construction permits as discretionary. In 2020, in *POWER*, the California Supreme Court affirmed the Court of Appeal's opinion that the County's blanket ministerial categorization of well construction permits was unlawful. After deciding *POWER*, the Supreme Court transferred the current case back to the Court of Appeal for reconsideration in light of that opinion.



On appeal, the Court of Appeal explained that the Supreme Court's decision in *POWER* undermined the basis for the trial court's ruling in favor of the County. Here, Petitioners alleged that the County issued Permit 539 without performing CEQA environmental review. Accepting the allegation as true in light of *POWER*, the Court of Appeal concluded that Petitioners properly stated a cause of action. The Court held that the County's evidence does not support a ruling in its favor at this initial stage, although it could at a later point in litigation.

Disposition

Accordingly, the Court of Appeal reversed the trial court's judgment.

- Opinion by Acting Presiding Justice Poochigian, with Justices Franson and Peña concurring
- Trial Court: Stanislaus County Superior Court, Case No. 2016561, Judge Roger M. Beauchesne

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
43 <i>Friends of San Dieguito River Valley v. City of San Diego</i>		4 th	

[*Friends of the San Dieguito River Valley v. City of San Diego*](#), California Court of Appeal, Fourth Appellate District, Case No. D075654 (January 29, 2021)

The Court of Appeal affirmed the trial court's judgment in favor of the City of San Diego (City), finding that substantial evidence supported the City's determination that its lease of land to a private entity was categorically exempt under CEQA and that no exception to the categorical exemptions applied. The City owns a parcel of land that has been used for public recreation since 1983. In 2016, the City approved a long-term lease (Lease) for the land with Surf Cup Sports, LLC (Surf Cup), which intended to use the land primarily for recreational sports-related activities. Although the City determined that approval of the Lease was a project within the meaning of CEQA, it found that the project was categorically exempt and that no exceptions applied. Friends of San Dieguito River Valley (Friends) petitioned for a writ of mandate challenging the City's determination.

The trial court rejected Friends' arguments, and the Court affirmed. First, the Court explained that project impacts must be compared to the environmental conditions that existed at the time of the CEQA analysis. Although land use increased significantly from 1986 to 2016, the project must be compared to the uses and conditions at the time of the environmental review in 2016, even though the current conditions were never reviewed under CEQA and violated the deed's restrictions. Second, the Court found that substantial evidence supported the City's determination that the Lease was categorically exempt under CEQA. The sports activities anticipated under the Lease were consistent with the historic uses of the property, satisfying exemptions for Normal Operations of Facilities for Public Gatherings, Existing Facilities, Minor Alterations to Land, and Accessory Structures.



Finally, the Court rejected Friends' argument that the "unusual circumstances" exception precluded the City from relying on categorical exemptions. Zoning regulations permitted recreational uses of the property, and Friends could not compel the City to require conditional use permits. Friends failed to support its argument that proximity to residences was an unusual circumstance. And although environmentally sensitive habitat existed on the property (but outside the developed areas), Friends failed to show that proximity to the habitat was likely to result in a significant adverse environmental impact. Under the Lease, Surf Cup proposed uses that have occurred on the property for many years, and thus, the environmentally sensitive habitat would be no more impacted by the continuation of historical uses under the Lease.

Disposition

The Court of Appeal affirmed the trial court's judgment.

- Opinion by Acting Presiding Justice Benke, with Justices Huffman and Guerrero concurring
- Trial Court: San Diego County Superior Court, Case No. 37-2016-00030312-CU-TT-CTL

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
44 <i>Los Angeles Dep't of Water & Power v. Cty. of Inyo.</i>		5 th	

[*Los Angeles Department of Water and Power v. County of Inyo*](#), California Court of Appeal, Fifth Appellate District, 67 Cal.App.5th 1019 (2021).

In a partially published decision issued August 17, 2021, the Court of Appeal affirmed the trial court's judgment in favor of the Los Angeles Department of Water and Power (LADWP), vacating the County of Inyo's (County) approval of condemnation proceedings for three landfills without conducting environmental review under CEQA. In sum, the Court held:

- CEQA's issue exhaustion requirement does not bar a petitioner's claim if the agency failed to provide adequate notice that it would consider a CEQA exemption at a public hearing.
- The categorical CEQA exemption for existing facilities does not include unlined landfills.

Background for Appeal

In the 1950's, LADWP began leasing land to the County for waste management purposes, including the Bishop-Sunland Landfill, the Independence Landfill, and the Lone Pine Landfill, which are all unlined. Each landfill requires an Operating Permit from the state, and revised permits require at least one public hearing and an agency determination of whether CEQA review is necessary. Beginning in 2012, the County sought to amend the permits in order to increase the maximum daily disposal tonnage, increase average daily tons, and change the estimated closure dates.

In 2017, the County sent LADWP notice of its intention to adopt a resolution of necessity for acquisition by eminent domain of the landfill sites. LADWP objected and argued that the County must comply with CEQA before taking action on the proposed condemnation. The County Board of Supervisors held a hearing regarding the condemnation and just before its close, a staff member stated they believed the proposed action was exempt from CEQA on at least two grounds. The board made no mention of CEQA in its adoption of three resolutions.

LADWP petitioned for writ of mandate, alleging that the County failed to properly identify the true nature and scope of the project, and that the County improperly determined that its approvals of the three resolutions were exempt from CEQA under the existing facilities and commonsense exemptions. The trial court entered judgment in favor of LADWP and issued a peremptory writ of mandate, directing the County to set aside the resolutions. The trial court found that the County's description of the activity constituting its project was too narrow, and the project was not exempt from CEQA. The County appealed.

CEQA's Issue Exhaustion Requirement Does Not Bar LADWP's Suit Because the County Failed to Provide Adequate Notice That It Would Consider a CEQA Exemption at the Public Hearing

The County argued that LADWP failed to exhaust its available administrative remedies before filing a lawsuit, because LADWP did not specifically raise some alleged CEQA claims during the County's administrative proceedings. The Court determined that CEQA's exhaustion of administrative remedies requirement did not apply because the public had no notice that the hearing would involve consideration of CEQA issues. The hearing notice and agenda for the Board of Supervisors meeting did not mention

CEQA or any exemption, and the first relevant disclosure occurred just before the close of the hearing when a County staff member stated that the County believed it was exempt under the existing facilities exemption and the commonsense exemption. The Court concluded that such a disclosure does not constitute adequate notice to the public that an agency was considering a CEQA exemption, and therefore the issue exhaustion requirement did not preclude LADWP's challenges to the County's reliance on CEQA exemptions.

The Categorical Exemption for Existing Facilities Does Not Include Unlined Landfills

The County also argued that the CEQA categorical exemption for existing facilities covers unlined landfills. The Court disagreed. First, the Court considered whether the term "facilities" is ambiguous with respect to its application to a landfill, concluding that because an unlined landfill is excavated rather than built, it is more akin to an alteration in the land rather than a facility. After finding such ambiguity, the Court interpreted the categorical exception narrowly in order to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. The Court looked to *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997), which analyzed a legislative finding that some landfills pose a threat to groundwater, air quality and public health. Given this precedent, the Court determined that unlined landfills do not constitute a suitable class for a categorical exemption. As a result, the County abused its discretion in finding that its condemnation proceedings were categorically exempt from CEQA.

The County Improperly Described the Project, Causing the County to Erroneously Conclude That the Commonsense Exemption to CEQA Applied



In the unpublished portion of the opinion, the Court considered whether the County's acquisition of the landfills would itself result in any environmental changes. LADWP claimed that the County omitted integral components and foreseeable consequences from the project description. The Court agreed, finding that the County failed to include securing a water source for the Bishop-Sunland Landfill in its project description, as well as the expansion of landfill operations to accept solid waste from sources outside the County. As a result of the overly narrow project description, the Court concluded that the Board of Supervisors was not able to decide pertinent issues of fact required to invoke the commonsense exception. Therefore, the County abused its discretion under CEQA.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment, vacating the County's approval of condemnation proceedings for the three landfills.

- Opinion by Associate Justice Franson, with Presiding Justice Hill and Associate Justice Smith concurring
- Trial Court: Kern County Superior Court, Case. No. BCV-18-101513-KCT, Judge Kenneth Twisselman

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
45 <i>Mission Peak Conservancy et al. v. State Water Resources Control Board</i>		1 st	

[*Mission Peak Conservancy v. State Water Resources Control Board*](#), California Court of Appeal, First Appellate District, Division Five, Case No. A162564 (December 15, 2021)

In a published decision, the Court of Appeal affirmed the trial court's judgment, holding that property owners' small domestic water use registration is exempt from CEQA. In sum, the Court determined:

- The registration process for a request to divert up to 10 acre-feet of water per year under the Water Rights Permitting Reform Act is exempt from CEQA.

Background for Appeal

Property owners sought a domestic water use registration from the State Water Resources Control Board (Board), which would give them the right to divert a limited amount of stream water into their pond. In accordance with the Water Rights Permitting Reform Act of 1988, which provides a streamlined process for acquiring a right to appropriate relatively small amounts of water for domestic or other specified use, the property owners submitted certain paperwork and fees to the Board for its approval. The Board granted the registration without conducting environmental review.

Petitioners sued the Board under CEQA, alleging that the Board's decision was discretionary, rather than ministerial, and therefore the Board was required to carry out environmental review prior to approving the property owners' registration. The trial court sustained the Board's demurrer without leave to amend, holding the registration exempt from CEQA. Petitioners appealed.

The Approval of a Domestic Water Use Registration Is Ministerial and, Thus, Exempt From CEQA



The Court held that the registration process is ministerial because the registrant obtains the right to take and use a specified amount of water when the Board receives a substantially compliant registration form along with the registration fee. To determine whether a registration is compliant, the Board must apply "a checklist of fixed criteria." The Court noted that while the Board is authorized to set general terms and conditions applicable to all registrations, it lacks discretion over individual permits. The Court rejected Petitioners' argument that the registration process is discretionary because the Water Code grants the Department of Fish and Wildlife (DFW) the discretion to impose conditions that could ameliorate the project's environmental impacts. The Court reasoned that the DFW performs its review before the Board's registration process and the Board has no authority to modify or shape those conditions. Petitioners also claimed that the registration violated CEQA because the Board misapplied the fixed criteria to the facts and made an erroneous ministerial decision. The Court held that the Petitioner's claim was meritless because CEQA does not regulate ministerial decisions.

Disposition

The Court of Appeal affirmed the trial court's judgment sustaining the Board's demurrer without leave to amend.

- Opinion by Justice Burns, with Acting Presiding Justice Simons and Justice Needham concurring

- Trial Court: Alameda County Superior Court, Case No. RG19037369, Judge Frank Roesch

Exemptions and Exceptions			
Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
46 <u>Old E. Davis Neighborhood Ass'n v. City of Davis</u>		3 rd	

[Old East Davis Neighborhood Association v. City of Davis](#), California Court of Appeal, Third Appellate District, Case No. C090117 (December 20, 2021)

The City of Davis (City) approved the construction of a four-story mixed-use building project (Project) in an area between the City's Downtown Core and the Old East Davis neighborhood. After the Project was approved, the Old East Davis Neighborhood Association (Association) filed a petition for writ of mandate challenging the City's approval of the Project based on alleged CEQA violations and on other grounds. The trial court granted the Association's petition on non-CEQA grounds, but ruled in favor of the City with respect to one of the Association's CEQA claims. The trial court expressly declined to reach the other CEQA issues that were raised and the Association made no objection. The City appealed the trial court's decision regarding the non-CEQA issues, and the Association filed a cross-appeal, contending that the City's approval violated CEQA because (i) the Sustainable Communities Environmental Assessment (SCEA) failed to adequately address several of the Project's environmental impacts; and (ii) the Project did not qualify for SCEA review.

The Court of Appeal rejected the Association's first argument, finding that the Association had forfeited the claim on appeal by failing to object to the trial court's decision not to reach those issues and having instead urged the trial court to adopt its tentative decision that expressly declined to rule on them. The Court further noted that even if the Association had preserved those challenges, they would have no merit because the SCEA addressed the issues raised or the challenges amounted to a disagreement among experts.



The Court also rejected the Association's claim that the Project was not eligible for SCEA review. The Association argued that the Project failed to meet the requirements for a SCEA assessment because it failed to satisfy Resource Code Section 21155.1's requirement that the Project not have a significant effect on historical resources pursuant to Section 21084.1. The Court explained that Section 21155.1's requirements pertain to the exemption of a project from the environmental review process altogether — not merely allowing the project to use the streamlined SCEA process — and therefore the Project's alleged failure to satisfy Section 21155.1 was irrelevant to whether the Project was entitled to a SCEA assessment. The Association also sought a determination as to whether substantial evidence supported the use of a SCEA under Section 21155.2. The Court agreed that Section 21155.2 pertains to the use of the streamlined process, but it declined to address the argument because the Association did not tell the Court how the Project failed to satisfy the provision or how the trial court's finding was erroneous or why there was good reason not to present the argument before.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment with respect to the CEQA claims.

- Opinion by Acting Presiding Justice Hull, with Justices Mauro and Hoch concurring
- Trial Court: Yolo County Superior Court, Case No. CVPT172111, Judge Samuel McAdam

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
47 Protect Tustin Ranch v. City of Tustin		4 th	

[Protect Tustin Ranch v. City of Tustin](#), California Court of Appeal, Fourth Appellate District, Division Three, Case No. G059709 (September 28, 2021)

In a published opinion, the Court of Appeal affirmed the trial court's judgment in favor of the City of Tustin (City), holding that substantial evidence supported the City's determination that an in-fill development project was exempt from CEQA. In sum, the Court determined:

- Unsupported concerns or conjectures do not satisfy a petitioner's burden to demonstrate that unusual circumstances warrant environmental review of a project otherwise exempt from CEQA.

Background for Appeal

Costco Wholesale Corporation sought to build a 16-pump gas station next to an existing Costco warehouse and demolish an existing building on the site to install parking (Project). The City of Tustin Planning Commission determined the Project was categorically exempt from CEQA pursuant to CEQA Guidelines Section 15332 for In-Fill Development Projects. The City Council agreed and approved the Project. A neighborhood group (Petitioner) petitioned for writ of mandate, claiming the City could not rely on the CEQA exemption because the Project's size exceeded five acres and unusual circumstances surrounded its development. The trial court rejected Petitioner's arguments and denied the writ petition. Petitioner timely appealed.

Substantial Evidence in the Record Demonstrated That the Project Site Was Less Than Five Acres

Petitioner argued that the Project site exceeded five acres, rendering inapplicable CEQA's exemption for in-fill development projects. The Court of Appeal disagreed, finding that substantial evidence in the record indicated that the project size was less than five acres. Although the total size of the existing shopping center was 12 acres, only 2.38 acres would be altered by the Project itself. Further, no new development or construction activity would occur on the other portions of the existing shopping center.

The Unusual Circumstances Exception Did Not Apply

Next, Petitioner argued that the City improperly relied on the exemption because the unusual circumstances exception applied. Specifically, Petitioner argued that the former operations of a tire service center, the large configuration of the proposed gas station, and planned use of retractable bollards and need for additional Costco employees constituted unusual circumstances. The Court disagreed, finding that Petitioner failed to provide substantial evidence explaining how these Project features distinguished the Project from others that would qualify for the in-fill exemption. Because the in-fill exemption is expressly limited to projects under a certain size, the Court found it questionable whether the size of a project could ever make an otherwise exempt project unusual.

In addition, the Court noted that Petitioner's true concerns appeared to be whether the site contained pre-existing contamination from its prior operations. However, the court held that Petitioner's unsupported concerns or conjectures are not enough to force the City to conduct CEQA review if an exemption applies. Petitioner failed to make its required evidentiary showing that the unusual circumstances exception applies.

Disposition

The Court of Appeal affirmed the trial court's judgment denying the petition for writ of mandate.

- Opinion by Justice Marks, with Acting Presiding Justice Bedsworth and Justice Fybel concurring
- Trial Court: Orange County Superior Court, Case No. 30-2019-01113056, Judge Randall Sherman

Exemptions and Exceptions

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
48 <i>Protecting Our Water & Env'tl. Res. v. City of Stanislaus</i>	✘	5 th	✘

[*Protecting Our Water and Environmental Resources v. County of Stanislaus*](#), California Court of Appeal, Fifth Appellate District (2021)

This case involved a remand to the Court of Appeal after the Supreme Court's decision in *Protecting Our Water & Environmental Resources v. County of Stanislaus* (2020) 10 Cal.5th 479, 490. In the prior case, the County of Stanislaus (County) had adopted CEQA regulations in 1983 that classified the issuance of non-variance well construction permits as presumptively ministerial, thereby avoiding CEQA review required for all well permits that are designated as discretionary projects. In 2014, plaintiffs alleged that this practice of approving permits without environmental review violated CEQA guidelines. In the prior case, the Court of Appeal had held that Section 8.A inherently required subjective judgment, and therefore all well permit issuances were discretionary under CEQA.

The Supreme Court held that, while the County's blanket ministerial categorization was unlawful, Standard 8.A only applies when there is a contamination source near a proposed well, and that in the absence of such source, permits may be ministerial. The Supreme Court remanded this case to the Court of Appeal to answer the following questions: (1) whether any other standards in Bulletin 74, a document published by the Department of Water Resources that establishes water well standards, are incorporated into County Code Chapter 9.36, and (2) whether the inclusion of those standards makes permit issuances discretionary.

On remand, plaintiffs contended that County Code 9.36 incorporated parts of Bulletin 74, thereby rendering the County's decisions on well permits discretionary. The Court rejected this argument, first by finding that the provisions in Bulletin 74 were not incorporated into the County Code because, while the Code discusses standards, mere discussion of standards does not itself prescribe any methods or materials for well construction. Furthermore, the Court held that, even if the provisions had been incorporated, the County Code provides that the county health officer may authorize exceptions to those standards if they are unnecessary. Lastly, the result of noncompliance with the Water Code — failing to incorporate Bulletin 74 into county codes — is the adoption of a model ordinance prepared by the State Water Board, and the plaintiffs did not show that this model ordinance contains the provisions from Bulletin 74.


The Court then held that, contrary to the County's argument, Standards 8.B and 8.C had not already been addressed by the Court and therefore could be revisited. The Court reasoned that, because the previous discussion of these standards was dicta, and because the Supreme Court permitted the Court to "affirm, reverse, or modify any judgment or order appealed from," it was not inappropriate for the Court to address those sections now. The Court went on to evaluate Standards 8.B and 8.C and found, in line with the Supreme Court's holding, that if a standard gives the County discretionary authority in at least some circumstances, the program cannot be categorically classified as ministerial. For example, Standard 8.B allows consideration of influences, present at a proposed well site, that could reverse a gradient. Similarly, Standard 8.C provides for considerations of practicality that might require alternate means of protecting wells from flooding. Thus, as a result of these opportunities for discretionary considerations, the well permitting program cannot be categorically classified as ministerial.

Disposition

The Court of Appeal reversed and remanded the judgment of the trial court.

- Opinion by Acting Presiding Judge Poochigian, with Justices Franson and Peña concurring
- Trial Court: Stanislaus County Superior Court, Case No. 2006153

Mitigated Negative Declarations

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
49 Farmland Protection Alliance v. County of Yolo		3 rd	Partially Published

[Farmland Protection Alliance v. County of Yolo](#), California Court of Appeal, Third Appellate District, Case No. C087688 (November 3, 2021)

In a partially published decision, the Court of Appeal reversed the trial court's order requiring the County of Yolo to prepare an environmental impact report (EIR) limited to the environmental impacts on three specific animal species. In sum, the Court determined:

- A trial court may not authorize splitting environmental review across two types of environmental review documents.

Background for Appeal

In 2016, Real Parties in Interest applied for a use permit to operate a bed-and-breakfast on an agriculturally-zoned property, previously used as a farm (Project). The Project had three components: lodging for nine guest rooms, a large indoor/outdoor event center, and the conversion of portions of the property to accommodate crops. The County of Yolo (County) prepared (and subsequently revised) a mitigated negative declaration (MND) for the Project that identified potentially significant impacts to some agricultural and biological resources. The County Board of Supervisors ultimately approved the use permit with conditions, and adopted the MND and a mitigation monitoring and reporting plan.

Farmland Protection Alliance and Tuleyome (Petitioners) then filed a petition for writ of mandate and complaint for declaratory and injunctive relief against the County, asserting the County's approval of the project violated CEQA, the County Code, and other state law, and was inconsistent with the Yolo County General Plan. The trial court granted the petition in-part. Although it denied the majority of Petitioners' CEQA claims, it found that evidence supported a fair argument the Project may have a significant impact on the tricolored blackbird, the valley elderberry longhorn beetle, and the golden eagle. Accordingly, the trial court ordered the County to prepare an EIR limited to addressing only the Project's impacts on these three species. The trial court further ordered that, pending the completion of the EIR, the Project approval and related mitigation measures would remain in effect and the Project could continue to operate. Petitioners appealed.

The Trial Court Erred in Ordering the County to Prepare a Limited Environmental Impact Report

In the published portion of its opinion, the Court of Appeal held that CEQA does not authorize a trial court to split a project's environmental review across two types of environmental review documents (i.e., an MND and an EIR). Petitioners argued that once evidence is presented that a project might have a substantial impact on the environment — in any area — the lead agency must proceed to prepare an EIR for the *entire* project. The Court agreed with Petitioners.

The Court began its analysis by explaining the three-tiered CEQA process: (1) determining whether CEQA applies, (2) preparing an initial study to determine what type of analysis (i.e., MND or EIR) is appropriate, and (3) preparing an EIR when there is substantial evidence that *any aspect of the project*, either individually or cumulatively, may cause a significant effect on the environment. The Court found that nothing in the CEQA text or common law suggests a project's impact analysis may be divided across the second and third tiers of environmental review, such that some impacts are analyzed in an


MND and others are analyzed in an EIR. Because the trial court found that evidence supported a fair argument the Project may have a significant impact on three different species, the Court explained that the *only* available remedy was to set aside the County's decision to adopt the MND and require a full EIR covering the entire Project. Accordingly, the Court concluded that Public Resources Code Section 21168.9, which provides trial courts with flexibility in fashioning remedies to ensure compliance with CEQA, does not authorize trial courts to split a project's impact analysis across two types of environmental review documents.

Disposition

The Court of Appeal reversed the trial court's judgment requiring the preparation of a limited EIR and remanded with directions to issue a peremptory writ of mandate directing the County to set aside its decision to adopt the Project's revised MND and to prepare a full EIR for the Project.

- Opinion by Justice Robie, with Presiding Justice Raye and Justice Renner concurring
- Trial Court: Yolo County Superior Court, Case No. PT161896, Judge Kathleen White

Mitigated Negative Declarations

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
50 <i>Newtown Preservation Society v. County of El Dorado</i>		3 rd	Partially Published

[*Newtown Preservation Society v. County of El Dorado*](#), California Court of Appeal, Third Appellate District, Case No. C092069 (June 16, 2021)

In a partially published opinion, the Court of Appeal affirmed the trial court's judgment in favor of the County of El Dorado (County) and upheld a mitigated negative declaration (MND) for a bridge replacement project. In summary, the Court determined that:

- A CEQA wildfire analysis must focus on whether the project may cause a significant impact on the environment, not the reverse.
- Certain public comments, if unsubstantiated, do not constitute substantial evidence of an increased evacuation hazard during a wildfire.

Background for Appeal

The County proposed to replace an existing bridge (Project), which required the bridge's closure during Project construction, so the County identified a detour evacuation route that was 0.6 miles longer than the original route. The County also committed to preparing plans for a separate temporary evacuation route downstream of the Project site, based on coordination with the Sheriff's Office and the County Fire Protection District. However, the County would construct this temporary evacuation route only if those agencies determined that a specific need for the temporary route exists at the time of Project construction. The County prepared and adopted an MND for the Project.

Newtown Preservation Society (Petitioner) challenged the County's reliance on an MND, claiming the County should have prepared an environmental impact report (EIR). The trial court denied the petition for writ of mandate, and Petitioner appealed, arguing that the trial court erred in upholding the MND because: (1) substantial evidence supported a fair argument of potentially significant Project impacts to resident safety and emergency evacuation; (2) the County impermissibly deferred analysis of temporary emergency evacuation impacts; (3) the County impermissibly deferred mitigation of such impacts; and (4) the County deferred analysis of impacts pertaining to the construction of a temporary evacuation route.

Reverse CEQA Argument Rejected

Petitioner claimed that substantial evidence supported the fair argument that the Project would have potentially significant impacts on resident safety and emergency evacuation. The Court disagreed and clarified that the appropriate question was whether substantial evidence supports a fair argument that a proposed project may have a significant effect *on the environment*. Relying on *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, the Court reiterated that CEQA generally does not require an agency to analyze how existing hazards or conditions might impact a project's users or residents," unless the project might exacerbate existing environmental hazards. Thus, the Court rejected Petitioner's framing of the fair argument test.

Unsubstantiated Claims From Residents Did Not Constitute Substantial Evidence Regarding Evacuation Risks

Petitioner relied on comment letters from local residents and a retired aerial firefighter to argue that the Project would significantly impact the environment because the County failed to provide adequate evacuation routes for Project area residents during a wildfire or other emergency during Project construction. The Court concluded that these letters, which were composed of personal experiences and unsubstantiated claims, did not constitute substantial evidence that the Project would have a significant impact on the environment or would exacerbate existing environmental hazards. Specifically, local residents' statements regarding past experiences with wildfires in the area did not address the Project's effects on the area, and the comments otherwise lacked foundation. Likewise, in the case of the retired aerial firefighter, the Court determined that his concerns about the lack of an emergency evacuation route during Project construction lacked foundation and amounted to a lay person's opinion based on technical information that required expertise and therefore did not qualify as substantial evidence.

County Did Not Defer Evacuation Mitigation

Petitioner argued that the County failed to establish specific performance criteria for mitigation because the County refused to commit itself to any course of action and did not provide a definitive time table or a specific trigger for construction of the temporary emergency evacuation route. In the unpublished portion of the case, the Court rejected Petitioners' argument because the County adequately explained it would coordinate with the Sheriff's Office and County Fire Protection District prior to Project construction to ensure adequate evacuation options were in place in the event of an emergency. The MND further provided that the decision whether to construct the temporary emergency evacuation route would be made prior to the Project's construction, and the criteria for that decision would include the timing of the Project construction in relation to the fire season. Therefore, the mitigation was not based on loose or open-ended performance criteria.


The Court did not consider Petitioner's argument that the County deferred analysis of the temporary emergency evacuation impacts. The Court found that Petitioner's failure to identify substantial evidence establishing a fair argument of a significant impact to evacuation routes during Project construction doomed their deferral argument. Additionally, the Court did not consider Petitioner's argument that the County deferred analysis of impacts related to the construction of the temporary evacuation route because Petitioner improperly raised it for the first time on appeal.

Disposition

Accordingly, the Court of Appeal affirmed the trial court's judgment denying the petition for writ of mandate and upholding the County's MND.

- Opinion by Acting Presiding Justice Robie, with Justices Hoch and Renner concurring
- Trial Court: El Dorado County Superior Court, Case No. PC20190037, Judge Dylan Sullivan

Supplemental Review

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
51 <i>Cal. Coastkeeper Alliance v. Cal. State Lands Comm'n</i>		3 rd	Partially Published

[*California Coastkeeper Alliance v. State Lands Commission*](#), California Court of Appeal, Third Appellate District, Case No. C088922 (April 8, 2021)

In a partially published opinion, the Court of Appeal affirmed the trial court's judgment, denying a petition for writ of mandate challenging the State Lands Commission's (SLC) decision to prepare a supplemental environmental impact report (EIR) under CEQA for a proposed desalination plant (Project). The Court determined:

- Agencies have discretion under CEQA Guidelines Section 15163 to decide between preparing a supplemental EIR and a subsequent EIR when there are substantial changes to a project requiring revisions to an existing EIR.
- A responsible agency is not required to assume the lead agency role if a subsequent EIR is not required.
- An agency does not improperly piecemeal environmental review when it prepares a supplemental EIR that analyzes only the impacts resulting from project changes.

Background for Appeal

A developer proposed a desalination plant on an 11.78-acre site that includes tidal and submerged lands in the Pacific Ocean offshore of Huntington Beach. The Project would provide Orange County with a "long-term, reliable, high-quality, and local source of potable water." The City of Huntington Beach (City), as the lead agency, prepared and certified an EIR in 2005. In 2010, the City prepared and certified a subsequent EIR for the Project to reflect changed circumstances and new information since 2005.

In 2015, the State Water Resources Control Board amended its Water Quality Control Plan for the Ocean Waters of California, including implementation provisions for desalination facilities (Desalination Amendment). As a result, the developer proposed modifications to the Project to comply with the Desalination Amendment. In 2017, the SLC, as a responsible agency, determined that the Project as modified required a supplemental EIR. In October 2017, the SLC certified the supplemental EIR, which incorporated by reference the City's 2010 subsequent EIR.

Environmental groups petitioned for writ of mandate, alleging that the SLC did not comply with CEQA in certifying the supplemental EIR and approving the Project. Petitioners asserted that the SLC: (1) should have prepared a subsequent rather than a supplemental EIR, (2) improperly failed to assume the role of lead agency in undertaking additional CEQA review, and (3) unlawfully segmented its review of the Project. The trial court denied the writ petition, and the Court affirmed.

The SLC Appropriately Prepared a Supplemental EIR

Petitioners argued that the SLC should have prepared a subsequent EIR rather than a supplemental EIR because of substantial changes proposed for the Project, substantial changes to the surrounding circumstances, and new information of substantial importance. The Court disagreed. Applying the deferential substantial evidence standard articulated in *Friends of College of San Mateo Gardens v. San*

Mateo Community College District (2016) 1 Cal.5th 937, the Court explained a supplemental EIR is proper when only minor additions or changes to a previous EIR would be sufficient to address the substantial changes to the project. The agency conducting the subsequent environmental review has discretion under CEQA Guidelines Section 15163 to decide between preparing a supplemental and a subsequent EIR.

The Court determined that substantial evidence supported the SLC's decision because the City's 2010 subsequent EIR largely retained its informational value in light of the proposed modifications to the Project. The proposed modifications included the installation of stainless steel wedge wire screens and diffusers, and a reduction in the seawater intake volume. Otherwise, the Project as analyzed in 2010 remained unchanged. The SLC therefore appropriately determined that only minor additions or changes to the 2010 subsequent EIR would be required, supporting the preparation of a supplemental EIR.

The SLC Was Not Required to Assume the Role of CEQA Lead Agency

Petitioners asserted CEQA required the SLC to assume the role of lead agency when conducting further environmental review, as the next public agency taking a discretionary action. The Court rejected Petitioners' argument. The Court explained that CEQA Guidelines Section 15052, subdivision (a)(2) requires a responsible agency to assume the role of lead agency if the lead agency prepared environmental documents for the project, but a subsequent EIR is required. The Court concluded that although the SLC had the discretion to decide to prepare a subsequent EIR, it was not required to do so in this instance. Thus, CEQA did not require the SLC to assume the lead agency role. The Court further noted that CEQA Guidelines Sections 21166 and 15163 demonstrate that CEQA expressly permits a responsible agency to prepare a supplemental EIR.

Petitioners also contended that the SLC's actions support a finding that the SLC should have assumed the lead agency role. For instance, the SLC circulated a Notice of Preparation, held a CEQA scoping meeting, responded to public comments, and issued a final EIR, among other things. The Court rejected this argument, stating that the SLC acted as any responsible agency preparing a supplemental EIR would to fulfill CEQA's requirements that a supplemental EIR be "given the same kind of notice and public review as an initial draft EIR." (*City of Irvine v. County of Orange* (2015) 238 Cal.App.4th 526, 539.)

Additional Claims Addressed in Unpublished Portion of Opinion



In the unpublished portion of the opinion, the Court held that the SLC did not improperly (1) conduct piecemeal review of the Project, (2) defer review of important issues to the Regional Water Quality Control Board, and (3) defer consideration of speculative changes related to the Orange County Water District's water distribution option.

Disposition

Accordingly, the Court of appeal affirmed the trial court's judgment.

- Opinion by Justice Murray, with Acting Presiding Justice Raye and Justice Hull concurring
- Trial Court: Sacramento County Superior Court, Case No. 34201780002736, Judge Richard Sueyoshi

Supplemental Review

Case Name	Did the Public Agency Prevail?	Court (Appellate District or Supreme Court)	Publication Status
52 <i>Env't Council of Sacramento v. City of Elk Grove</i>		3 rd	

[*Environmental Council of Sacramento v. City of Elk Grove*](#), California Court of Appeal, Third Appellate District, Case No. C089384 (August 30, 2021)

The Court of Appeal affirmed the trial court's judgment denying the Environmental Council of Sacramento's petition for writ of mandate, finding that the City of Elk Grove's (City) decision to proceed with an addendum to an EIR was supported by substantial evidence. In 2014, the City certified an EIR for the Southeast Policy Area Strategic Plan to allow for the future development of 1,200 acres of agricultural and undeveloped lands. One mitigation measure required developers to acquire suitable foraging habitat, as determined by the California Department of Fish and Wildlife (DFW), for the threatened Swainson's hawk. However, in 2017, a developer asked the City to amend the EIR to allow developers to instead acquire mitigation lands on the Van Vleck Ranch, even if DFW found them unsuitable. The City reasoned that an addendum, rather than a supplemental or subsequent EIR, was appropriate here because the modification would not cause an increase in the severity of environmental impacts. The Environmental Council of Sacramento, Sierra Club, and Friend of Swainson's Hawk (collectively Environmental Council) argued that the City's decision was not supported by substantial evidence.

The Court agreed with the trial court, holding that the mere disagreement between experts that the Environmental Council pointed to was not enough reason to render the City's findings inadequate. Environmental Council first highlighted that the Van Vleck Ranch was located 18 miles outside of the development site, while the City's own website previously stated that mitigation lands would be ideally located within 10 miles of the project. The Court looked to a Swainson's hawk expert, Estep, who stated that there was not any "real good science" behind the 10-mile number and that the hawks had foraged out to 20 miles.

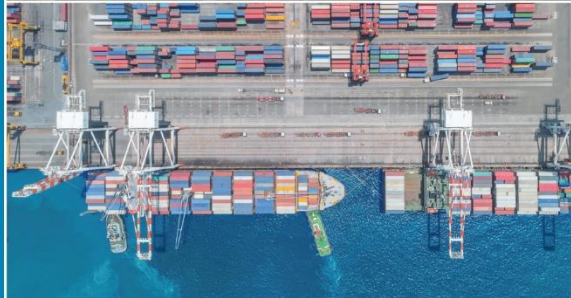
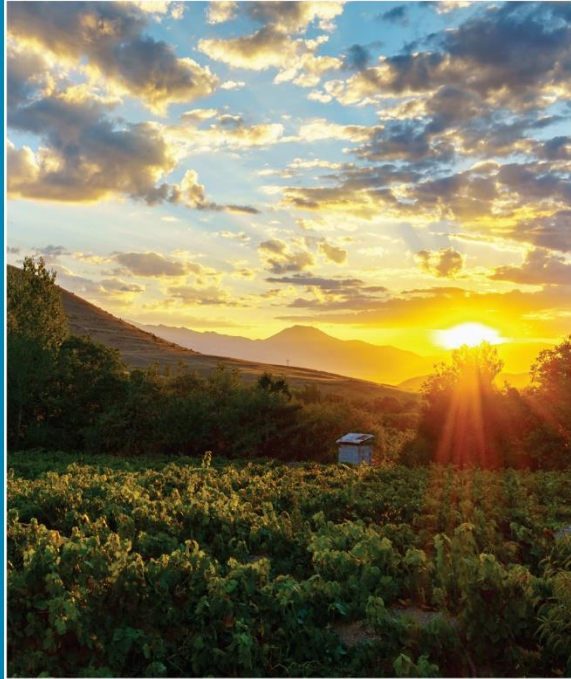
Second, Environmental Council argued that the Van Vleck Ranch provides inferior foraging habitat compared to the original development site. Estep acknowledged that although the habitat around the development site could possibly support higher breeding densities, this benefit was potentially temporary because of crop conversion over time. He concluded that the Van Vleck Ranch was a "good trade off," and a former DFW director also found that the Van Vleck Ranch was the better way to go for long-term sustainability. Because Environmental Council merely pointed to conflicting expert opinions, it failed to show a lack of substantial evidence for the City's decision to proceed by addendum for the modification.

Disposition

The Court of Appeal affirmed the trial court's judgment denying Environmental Council's petition and entitled the City to recover costs on appeal.

- Opinion by Associate Justice Cole Blease, with Presiding Justice Vance Raye and Associate Justice Louis Mauro concurring
- Trial Court: Sacramento County Superior Court, Case No. 34201880002937CUWMGDS, Judge Steven Gevercer

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