Land Use and CEQA Litigation Update

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Bill Ihrke, City Attorney, La Quinta, Partner, Rutan & Tucker LLP

LAND USE AND CEQA LITIGATION UPDATE
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RUTAN & TUCKER, LLP
Bill Ihrke, Partner, Costa Mesa Office

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LAND USE CASES

Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School District
(Apr. 26, 2019) 34 Cal.App.5th 775

The issue in this case is whether a school district must analyze different development "sub-types" when performing a nexus study and imposing a school impact fee that is applicable to residential development generally. The court held a school district does not need to separately analyze development sub-types or individual projects when analyzing and imposing a generally applicable school impact fee.

The background and procedural history of the case are as follows: Tanimura & Antle Fresh Foods ("Tanimura") developed a 100-unit agricultural employee housing complex ("Project") located within the boundaries of the Salinas Union High School District ("District") to accommodate some of the company's seasonal farmworkers. The Project was designed for "agricultural employees only, without dependents." When the District adopted a school impact fee applicable to "new residential construction in its service area," Tanimura paid its fee in protest. They argued that the fee was not reasonably related to the need for school facilities, citing the Project's lack of school-aged children. Tanimura filed a petition for writ of mandate seeking the return of the fee paid, which was granted. The District appealed.

Under applicable law, Education Code section 17620, a school district is authorized to levy fees against new residential construction within the boundaries of the district to fund the construction or reconstruction of school facilities. The fees must be limited to the school facilities identified in a needs analysis as being attributable to projected enrollment growth from the construction of new residential units. (Gov. Code, § 65995.5(f).) The Mitigation Fee Act (Gov. Code § 66000 *et seq*., "MFA") requires a local agency implementing a fee to establish a reasonable relationship between the fee's use, the need for the public facility, and "the type of development project on which the fee is imposed." (Gov. Code, § 66001(a).)

Here, the District argued that the Project's designation as being only for employees without children does not qualify it as a separate type of development. The court of appeal agreed, reasoning that the MFA's definitions of development project and residential construction are extremely broad and do not contain exceptions for this type of use. As such, the court was not convinced that the Project's intended use qualified it as a separate type of construction, stating "the adult-only restriction on the employee housing complex does not alter or expand the range of housing defined as 'residential.'"

The District also argued that statutory language does not require project-specific reasonable relationship findings for the imposition of a districtwide school impact fee. Again, the court of appeal agreed. The court explained that in quasi-legislative actions, as was the case here, the relationship between the fee's use and need, and the "type" of development project clearly applies to decisions to impose fees on a class of development projects rather than particular ones. It found that the statutory language defeats Tanimura's argument that some nexus must be found between the fee and its specific project. Therefore, the court held that the District was not

required to anticipate and analyze agricultural employee-only housing as a distinct subtype of residential housing when assessing the fee.

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Boatworks, LLC. v. County of Alameda
(May 15, 2019) 35 Cal.App.5th 290

This case decided that, when imposing Development Impact Fees ("DIFs"), local agencies must ensure that nexus studies do not rely solely on infrastructure which already exists; rather, the study must show the DIFs to be directly imposed to offset the burden imposed by the future development. Specifically, when imposing DIFs for the purpose of park facilities, the local agency must ensure that the imposed fees are calculated to offset the *actual costs* of offsetting the burdens caused by the new development. Moreover, where a petitioner prevails in challenging a fee ordinance on its face, as was the case here, the petitioner could be entitled to attorney's fees.

In 2014, the City of Alameda ("City") adopted an ordinance establishing fees that would be imposed as a condition for approving future development. Petitioner presented a facial challenge to the ordinance under Code of Civil Procedure section 1085, alleging that the "park facility" fees lacked a reasonable relationship to the burden of future development and hence violated the Mitigation Fee Act (Gov. Code § 66000 *et seq*., "MFA"). The trial court agreed and ordered the City to specifically excise and vacate the portions of the ordinance authorizing the fees. The City and Petitioner cross-appealed. The court of appeal affirmed in part and reversed in part.

First, the court of appeal found that the City could not impose a fee for the need to purchase 19.82 acres of new parkland where the City already owned the vast majority of the 19.82 acres of parkland at issue. In its nexus study, the City included those 19.82 acres of parkland at a cost of $28.5 million of the overall cost of $39 million as a basis on which to impose its fee. The court found this was inappropriate, as the City acknowledged that it would never have to pay that acquisition cost, because the City already owned the land. The court decided, "A calculation that is based on the cost of buying new land – untethered from whether the City actually plans to do so – is not reasonably related to the burden posed by anticipated new development."

Second, the petitioner challenged the inclusion of portions of open space that were not open to the public in their inventory of current parks, which would increase the calculated DIF amount. Relying on the nexus study, the court of appeal found that the open space could not be "current parks" for the purposes of justifying a fee that would be used to actually build those parks.

Third, relying on evidence in the record that demonstrated certain portions of "Open Space" as designated in the City's General Plan were in fact developed, the court of appeal concluded the City did not err in considering those portions of land as "parks" for the nexus study.

Fourth, in rejecting one of petitioner's arguments, the court of appeal interpreted Government Code section 66001 in the MFA as not precluding any fee in this case, including fees that may result in some rehabilitation, provided that the fee imposed is based on a "reasonable relationship" to the "burden of new development." The court rejected any categorical argument that no fees can be applied to address existing problems with local agencies' park facilities.

When addressing the remedy, the court of appeal ruled that the trial court lacked the authority to compel the City to perform a legislative act to vacate and excise portions of the ordinance in a traditional mandamus action, noting that such relief would violate the concept of separation of powers. Thus, the trial court was directed to issue a judgment declaring the parks and recreations fee as imposed invalid and unenforceable, but the City was allowed to impose any fees that would be otherwise lawful.

As a cautionary note for local agencies, the trial court in this case awarded the petitioner over $500,000.00 in attorney's fees under the State's private attorney general statue (Code Civ. Proc. § 1021.5). Recognizing that its decision only reversed a minor substantive issue on which the fees were based, the court of appeal found that the fees award was reasonable.

In summary, when imposing fees under the MFA, local agencies must be careful to ensure that they are relying on what the City *actually* intends to do in response to the burdens imposed by new development. Local agencies should not attempt to use these fees to recoup costs that it (a) has already paid, or (b) when it has no intention to actually develop the infrastructure referenced in the supporting nexus study.

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County of Sonoma v. Gustely
(May 31, 2019) 36 Cal.App.5th 704

Where the trial court has issued a default judgment against respondent, finding various violations of county codes on respondent's property and ordering respondent to pay abatement costs and civil penalties, the trial court does not have the ability to unilaterally decrease the penalties that were lawfully assessed by the county.

Beginning in January 2017, inspection officers from the Permit and Resource Management Department ("PRMD") of the County of Sonoma ("County") conducted inspections of the respondent's property, and found multiple violations of the County's code, such as unpermitted retaining walls, and unpermitted grading and terracing that contributed to bank failure and deposit of material into a nearby watercourse, which eventually lead to a mudslide blocking a local roadway. The County issued four separate notices, and an additional notice of violation, ordering the respondent to abate the violations.

Respondent requested an administrative hearing to challenge the violation determinations, at which point the hearing officer found that the respondent violated the Sonoma County Code ("County's Code"), and imposed civil penalties of $45 per day of violation, for a total of $2,880, and $8,476 in abatement costs, and noted that the penalty would continue to accrue until the violations were remedied. Respondent did not seek judicial review of this administrative order, but the County ultimately filed a complaint in superior court against respondent, seeking to enforce the County's Code and abate the nuisance allegedly caused by respondent.

Respondent did not file a response to the County's complaint, and the clerk of the superior court entered default. The County filed a motion for default judgment, and sought to recover its accrued abatement costs, civil penalties pursuant to the County's Code, the unchallenged administrative order, and the County's attorney's fees. The trial court granted the majority of the

County's motion, but, as relevant here, reduced the penalty amount from $45 to $20 per day, without any substantive analysis or justification for the reduction in the penalty amount.

In reversing the trial court, the court of appeal noted that respondent had no avenue to challenge the administrative order because respondent did not challenge the order under either Code of Civil Procedure section 1094.5 or Government Code section 53069.4. The court of appeal found that the trial court could not unilaterally reduce a penalty lawfully imposed by the County (pursuant to its regulations) without making a finding that the County somehow abused its discretion.

The PRMD hearing officer based its daily penalty rate on its consideration of factors enumerated in the County's Code (*i.e.*, the "seriousness of the code violation" and the "culpability and sophistication of the violator"). Because the calculation was made after affording respondent a full administrative hearing in which the respondent fully participated, the court of appeal rejected the trial court's attempt to impose a penalty rate that "better reflected" the trial court's sense of seriousness of the violations without any justification. The County's Code controlled who was supposed to determine the penalties in the first instance. Because the County's enforcement and hearing officers properly implemented the code, the trial court could not unilaterally reduce the penalty rate unless it could point to some sort of flaw in the process by which the penalty was imposed.

* * *

California Charter Schools Association v. City of Huntington Park, et al.
(April 25, 2019) 35 Cal.App.5th 362

The legal question in this case is whether reference to "numerous inquiries and requests for the establishment and operation of charter schools" established a "current and immediate threat to the public health, safety or welfare" justifying an urgency ordinance and imposing moratorium on processing of new charter school applications. The court of appeal reversed judgment from the trial court denying a petition for writ of mandate. The court of appeal concluded that the urgency ordinance's reference to "numerous inquiries and requests for the establishment and operation of charter schools" did not establish a "current and immediate threat to the public health, safety or welfare" as would be required for the City of Huntington Park ("City") to enact the interim urgency ordinance pursuant to Government Code section 65858 ("Section 65858").

In September 2016, the city council held a series of public hearings to consider whether to enact an urgency interim zoning ordinance, under the authority of Section 65858, to impose a temporary moratorium on the establishment, construction, and development of new charter schools within its borders. At the hearings, the city council noted that the City has more schools than any other community in the southeast portion of Los Angeles County and more than twice the amount of educational facilities than that needed to serve City's school-age population. The city council further noted that many of those attending the schools are not City residents and that the population density and high number of schools attracting students from outside the City contributes to traffic, parking, and noise problems in the neighborhoods.

The Huntington Park Municipal Code ("HPMC") requires charter schools to obtain a conditional use permit ("CUP"), which could be either approved or disapproved at the discretion of City. The HPMC, however, contained no development standards for charter schools.

Due to what it described as "a proliferation of inquiries and requests for the establishment and operation of charter schools," the Huntington Park Community Development Department requested the urgency ordinance to give staff time to assess whether the HPMC was adequate to ensure that future charter schools, and expansion or relocation of existing charter schools, could be done in a manner that protected the public and satisfied the goals and objectives of the City's General Plan.

The city council enacted a forty-five-day urgency ordinance (later extended by an additional ten months and fifteen days) that imposed a temporary moratorium on the establishment and operation of new charter schools. The ordinance contained findings that a "current and immediate threat" to public health existed because, among other reasons, City had received "numerous inquiries and requests for the establishment and operation of charter schools," "the HPMC did not have development standards specifically for charter schools," and "certain locations in Huntington Park had already experienced adverse impacts from charter schools."

When analyzing Section 65858, the court of appeal noted that the general purpose of the statute is to allow a city to adopt an urgency ordinance that prohibits any uses that may conflict with a contemplated land use regulation the city is considering, studying, or intends to study within a reasonable time. Section 65858, subdivision (c), limits that power by providing, "The legislative body shall not adopt or extend any interim ordinance pursuant to this section unless the ordinance contains legislative findings that there is a current and immediate threat to the public health, safety, or welfare."

The court of appeal held that the facts as presented did not meet the urgency standard under Section 65858. In particular, the court emphasized that no actual CUP applications or pending charter school permits were in the record, citing the City planner's testimony that the City had received "at least five inquiries and . . . had several serious sit down discussions" with charter school representatives within the preceding year. On this point, the court found the holding in *Building Industry Legal Defense Foundation v. Superior Court* (1999) 72 Cal.App.4th 1410—"[l]imiting the reach of an interim ordinance to those situations where actual approval of an entitlement for use is imminent"—persuasive. In that case, the Fourth District Court of Appeal rejected an urgency ordinance adopted by a city after a developer sought approval of a residential subdivision, reasoning that processing a development application did not constitute a current and immediate threat because the submission of an application "merely starts the wheels rolling" and does not guarantee the landowner any right to an approval.

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Sacramentans for Fair Planning v. City of Sacramento
(July 3, 2019) 37 Cal.App.5th 698

This case involved whether a charter city's approval of a project under a general plan policy allowing projects more intense than permitted by the general plan and zoning ordinance violated

constitutional protections of due process and equal protection or an implied-in-law zoning contract requiring uniformity in zoning. The court decided in the negative. There is no constitutional uniformity requirement, and the general plan policy was rationally related to providing high-quality infill development, "significant community benefit" is not an unconstitutionally vague standard, and there is no social contract requiring uniformity.

Here, a developer applied to the City of Sacramento ("City") for permits to build a mixed-use 15-story building that would contain 177,032 square feet of space, with one floor of commercial space, three levels of parking, 134 residential condominiums on 10 floors, and one floor with resident amenities ("Project"). The Project would have a Floor Area Ratio ("FAR") of 9.22 on a .44 acre site in downtown. The Project complied with the City's general plan designation and zoning ordinance, except for the building intensity, which permitted mixed-use projects to have a FAR of 0.3-3.0. However, Land Use provision "LU 1.1.10" in the City's General Plan permitted the City to allow a development to exceed the maximum FAR if the City determined that the project provides a significant community benefit.

Staff determined the Project would not have a significant effect on the environment and qualified for review using the streamlined Sustainable Communities Environmental Assessment ("SCEA") instead of a traditional negative declaration or environmental impact report under the California Environmental Quality Act ("CEQA"). The planning commission approved the Project and the SCEA. Plaintiff appealed the decision to the city council, which unanimously denied the appeal, adopted the SCEA, and approved the Project's entitlements. In doing so, the City made the findings that the Project would: (i) help achieve the City's housing goal of 10,000 new residential units; (ii) reduce dependency on personal vehicles and cut carbon emissions; (iii) advance City and regional goals of developing at higher densities than traditionally seen, and (iv) "[S]et a precedent for environmentally responsible development through the choice of materials and green design."

Plaintiff filed a petition for writ of mandate, which was denied by the trial court. The court of appeal affirmed, ruling that the City's approval of the Project did not violate the Fourteenth Amendment or a nonexistent zoning contract, and that the use of the SCEA did not violate CEQA.

Government Code section 65852 requires zoning ordinances in general law cities to be "uniform for each class or kind of building or use of land throughout each zone." However, the City is a charter city, and Section 65852 does not apply to charter cities. (Gov. Code, § 65803.) The Plaintiff thus turned to constitutional claims.

Plaintiff argued that the approval and LU 1.1.10 were illegal "spot zoning" because equal protection requires that restrictions on one parcel in a zone apply to all parcels in the zone, and that each parcel in the zone have the same opportunity to develop as any other parcel in the zone. The court of appeal disagreed, deferring to the City's findings of fact as adequately demonstrating the approval and LU 1.1.10 are rationally related to the legitimate public interest of providing "high quality infill development" that the City's General Plan and Zoning Code may not have otherwise allowed. Additionally, the court of appeal concluding this is not a spot zoning case because the property had not been given lesser development rights than its neighboring properties. Even if the City's approval were somehow seen as spot zoning, it would

be subject to the same rational basis test that applies in equal protection analyses, where spot zoning may be invalidated when a limitation on property use is "unreasonable, oppressive and unwarranted." The court of appeal concluded, "This is not that case."

Plaintiff also argued that LU 1.1.10's standard of "significant community benefit" was too vague in violation of the U.S. Constitution's Fourteenth Amendment Due Process Clause. Again the court of appeal disagreed, reasoning that "significant community benefit" is no more vague that "general welfare," which has previously been found to not be unconstitutionally vague.

Plaintiff additionally argued that the approval violated an implied social contract of zoning uniformity. The court of appeal once again disagreed, finding no such constitutional or common law doctrine exists and that, by simply enacting a zoning ordinance, a charter city does not agree to be held to a higher standard than the constitutionally required rational basis. The court of appeal reasoned that uniformity may be a fundamental rule in zoning, but it is not a constitutional limitation.

As far as the environmental challenges, Plaintiff contended the approval of the Project violated CEQA in two respects: (1) the City could not rely on a regional transportation and emissions reduction plan to justify reviewing the project in an SCEA because the plan was inadequate for that purpose; and (2) the SCEA improperly tiered to prior environmental impact reports to avoid analyzing the project's cumulative impacts. The court of appeal disagreed on both counts.

The State Legislature identified certain types of development, such as the transit priority project in this case, as eligible for SCEA streamlined review, which limits certain impact analyses and allows for deferring to regional environmental impact reviews ("EIRs") on cumulative impact analysis, if such review exists. Applying the "substantial evidence" standard of review for CEQA cases, the court of appeal held the City did not abuse its discretion by relying on the regional council of government's (here, "SACOG's") Sustainable Communities Strategy because it was developed, in part, in reliance on the member cities' and counties' General Plans and accompanying environmental review for those planning documents. Moreover, the City did not abuse its discretion under cumulative impact analysis by relying on prior General Plan and strategy environmental review and mitigation measures for the specific Project. Therefore, the court of appeal affirmed the trial court's decision of no CEQA violation.

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City of Hesperia v. Lake Arrowhead Community Services District, et al.
(July 19, 2019) 37 Cal.App.5th 734

In this case, the court of appeal held there was no error in setting aside a resolution adopted by the Lake Arrowhead Community Services District ("District") to exempt its proposed solar energy project from the City of Hesperia's ("City") zoning requirements. The court reasoned that, because the District's project includes the transmission of electrical energy, the exemption contained in Government Code section 53091(e) ("Section 53091(e)") does not apply to the project. Further, because the administrative record did not contain substantial evidence to support the District's Board of Directors' ("Board") finding that there was no feasible alternative to the proposed location of the project, the District prejudicially abused its discretion when

determining that the exemption contained in Government Code section 53096(a) ("Section 53096(a)") applied to the project.

The District is a community services district within the City attempting to develop a solar energy project on property it owns and that the City has zoned as "Rural Residential." The City objected to the project as a violation of Hesperia Municipal Code section 16.16.063(B), which prohibits solar farms in residential zones or within 660 feet of agriculturally designated property. The District then entered into an agreement with Southern California Edison Company ("Edison"), where the District's solar project would produce electricity for use by Edison through its electrical grid distribution system in exchange for bill credits to the District. The Board adopted a resolution declaring the City's zoning ordinances inapplicable to the District's solar project because it is exempt under Sections 53091(e) and 53096(a).

Section 53091(a) creates a statutory requirement that a local agency must comply with the zoning ordinances of the city and county in which its proposed solar energy project is located. Section 53091(e) provides an absolute exemption for "the location or construction of facilities . . . for the production or generation of electrical energy," but also creates an exception to the exemption if the facilities are "for the storage or transmission of electrical energy." Section 53096(a) provides a qualified exemption if the agency can show that the proposed facilities are "related to storage or transmission of water or electrical energy," and four-fifths of the agency's members adopt a resolution that "there is no feasible alternative to [the agency's] proposal."

After the District adopted its resolution, the City filed a petition for a writ of mandate and declaratory and injunctive relief, arguing that the solar project is beyond the scope of the District's authority and that the siting, development, and construction of the solar farm are subject to the City's zoning ordinances. The trial court ruled that the solar project was not exempt from the City's zoning ordinances.

Applying *de novo* review, the court of appeal concluded that the plain and common sense meaning of section 53091(e) would allow an exemption from the City's zoning ordinances for the solar project, but that the exception to the exemption applies because the solar project includes the "transmission of electrical energy." The court focused on the language of the agreement between the District and Edison, which provided that the District "will *export electrical energy* to the grid" and make "all necessary arrangements (including scheduling) for *delivery of electricity*." (Italics added by court.) Applying the dictionary definitions of "export" and "delivery," the court found that both words are synonymous with "transmit," and thus the exception to the exemption applies because the project involves the transmission of electrical energy.

Regarding section 53096(a), even though there is a presumption that an agency's findings are supported by substantial evidence, the court found that the City succeeded in establishing that the administrative record did not contain substantial evidence to support the Board's finding that there was no feasible alternative to the project site. "[B]ecause the administrative record does not contain any evidence of an alternative location for the project, the record necessarily does not contain any evidence of economic, environmental, social, or technological factors associated with an alternative location." Therefore, the court concluded that the District's resolution to

render the City's zoning ordinances inapplicable to the solar project was a prejudicial abuse of discretion.

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Weiss v. City of Del Mar
(Aug. 7, 2019) -- Cal.App.5th --; 2019 WL 4170912; 2019 Cal. App. LEXIS 834

The issue in this case is whether the 90-day filing and service requirements for actions challenging certain land use and planning decisions apply to a city's ordinance-based determinations even if the ordinance is not codified in the "zoning" title of the city's municipal code. Under the facts of this case, the court of appeal held that the 90-day requirements under Government Code section 65009(c)(1)(E) do apply.

In 2014, Weiss purchased a condominium in the City of Del Mar ("City") due, in part, to its white water ocean views. In August 2016, Weiss applied for a determination pursuant to the City's "Trees, Scenic Views, and Sunlight Ordinance" ("Ordinance") whether a neighboring property owner, Torrey Pacific Corporation ("Torrey Pacific"), had unreasonably obstructed Weiss's white water ocean views.

The Ordinance was adopted to preserve and maintain the "benefits derived from trees, scenic views, and plentiful sunlight" and to provide individuals with "the right to seek restoration and preservation of scenic views or sunlight that existed at the time they purchased or occupied property or in the last ten years, whichever is shorter, when such scenic views from the primary living area . . . have subsequently been unreasonably obstructed by the growth of trees or vegetation located within . . . 300 feet of the Applicant's property boundary." (Del Mar Mun. Code, § 23.51.030.) In her August 2016 determination application, Weiss claimed that Torrey Pacific's trees and other vegetation were so overgrown that her view was unreasonably obstructed.

In April 2017, the City's planning commission held a public hearing, at which Weiss acknowledged that Torrey Pacific trimmed the trees and restored Weiss's original view but wanted Torrey Pacific to adhere to a "preservation plan of periodic trimming of the vegetation." The planning commission denied Weiss's application. Weiss appealed the planning commission's decision to the city council, which reviewed the matter de novo and had a split on whether the view had been unreasonably obstructed. Under the City's local rules, the decision reinstated the planning commission's decision to deny Weiss's application, thereby denying the administrative appeal on July 17, 2017.

On September 19, 2017, Weiss filed a petition for a writ of administrative mandate against the City (Respondent) and Torrey Pacific (Real Party in Interest). The City and Torrey Pacific jointly moved to dismiss under Government Code section 65009(c)(1)(E), which imposes 90-day filing and service requirements for actions challenging certain land use and planning decisions. Evidence was presented that the City was not served with the petition and summons until December 13, 2017, more than 90 days after the city council denied her appeal on July 17, 2017.

The trial court granted the motion. Weiss appealed, arguing that Section 65009(c)(1)(E)'s 90-day filing and service requirements do not pertain to her because: (1) the City's ruling on her

application is not controlled by the statute; and (2) the statute governs zoning determinations, and this Ordinance is not found within the "Zoning" Title of the City's Municipal Code.

The court of appeal affirmed, holding the location of the Ordinance's codification within the City's Municipal Code is not controlling. Rather, the court of appeal noted Government Code section 65009(c)(1)(E) provides the 90-day requirements apply to actions that "attack, review, set aside, void, or annul any decision on the matters listed in Section 65901." Government Code section 65901 identifies a zoning board's decisions on "'conditional uses or other permits' or 'variances,' or the board's 'exercise [of] any other powers granted by local ordinance.'"

The court of appeal interpreted this to mean that Government Code section 65009 specifically incorporates Section 65901 for the limited subject matter of zoning and similar land use determinations made by a governmental entity under the authority of a local ordinance. Given the substance and purpose of the Ordinance, the court of appeal determined it was "essentially identical" to the stated purpose of the City's "Zoning" title because both seek to regulate the use of property as it relates to views and landscaping for the promotion of a better quality of life for residents and landowners.

Additionally, the "any other powers" language in Government Code section 65901 broadly encompasses a public agency's determinations on a range of issues other than the designation of property use in specific geographic zones and exceptions to those designations through conditional permits and variances. As such, the court of appeal held that the 90-day limitation applies to the agency's exercise of powers granted by local ordinance which concern zoning and similar land use determinations made by the agency under the authority of local ordinance.

Lastly, the court of appeal rejected Weiss's argument that the 90-day rule was inapplicable because it conflicts with Code of Civil Procedure section 1094.6. The court of appeal noted that Section 1094.6 addresses only a filing timeline and says nothing about when a filed petition must be served. Thus, there was no inconsistency between that statute and the 90-day service requirement in Government Code section 65009.

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Cleveland National Forest Foundation v. County of San Diego
(Aug. 21, 2019) 37 Cal.App.5th 1021

In this case, the court of appeal held that a residential use on land subject to a Williamson Act contract cannot be subordinate (or minor) to the land's primary agricultural use, but it must be used with, or functionally necessary to, the primary use so as to be concomitant with, or facilitate, that primary use.

By way of brief background, the Legislature enacted the Williamson Act (Gov. Code, § 51220 *et seq.*, also known as the "California Land Conservation Act of 1965") to protect the public interest in agricultural land and discourage premature and unnecessary conversion of agricultural land to urban uses. The provisions of the Williamson Act should be interpreted to "prevent frustration of the land preservation goals of the Williamson Act" and effectuate its intent and spirit. (*Sierra Club v. City of Hayward* (1981) 28 Cal.3d 840, 860.) In relevant part, the Subdivision Map Act (Gov. Code, § 66410 *et seq.*, "Map Act") requires a legislative body to

deny approval of a tentative map if it finds that the subdivision will result in residential development not incidental to the commercial agricultural use of the land, and the land is subject to a Williamson Act contract. (*Id.*, § 66474.4.)

Here, an application was submitted to the County of San Diego ("County") to subdivide 1,416.5 acres of land designated as an agricultural preserve. Approximately 1,291.5 acres of the property was subject to a Williamson Act contract (the "Contract") requiring that the premises "shall not be used for any purposes other than agricultural uses or compatible uses[.]" The Contract also prohibited subdivision unless it met specified requirements that included 40-acre minimum lot sizes on all but 161 acres, and 160-acre minimum lot sizes on the remaining 161 acres.

A project description proposed a 24-lot subdivision with minimum 40-acre lot sizes, with each lot including "active agriculture"—*i.e.*, managed cattle grazing and breeding—and a residence. The project prohibited construction of the dwellings during the Contract term but allowed for the construction of improvements such as building pads, leach fields, driveways, and roads. The Environmental Impact Report ("EIR") for the project contained an agricultural study, which determined that, while "[t]he project has been designed to encourage agricultural operations on each parcel, thereby preserving the entire site in potential agriculture[,]" the site was "not an important agriculture resource." In approving the project, the County found that it "support[ed] existing and continued agricultural operations onsite" and did not conflict with the Contract because the project met the 40-acre minimum parcel size and required agricultural use of each parcel *vis-a-vis* the continued cattle grazing. The County also found that the residential development in the project was incidental because, of the 1,416.5 acres, 1,204.1 acres remained agricultural. The Cleveland National Forest Foundation ("Cleveland") filed a petition for writ of mandate alleging, among other things, the residential uses were not "incidental" to the agricultural use of the land. The trial court denied the petition, and Cleveland appealed.

Cleveland argued that the project was not incidental to the agricultural uses as required by the Map Act. Since incidental is not defined in Government Code section 66474.4 and is susceptible to more than one reasonable interpretation, the court of appeal looked to the statute's legislative history to determine its meaning. In doing so, the court found that the legislative policy underlying this section was to prohibit subdivision of Williamson Act land for "residential purposes." Thus, the court held that "incidental" must be associated with or dependent on the primary commercial agricultural use so as to be concomitant with and functionally necessary to the agricultural use. In doing so, the court reasoned that this interpretation was in line with the legal definition of the word and best effectuated the Williamson Act.

While the County interpreted "incidental" to mean that residential development had to be "subordinate" or "minor" in relation to the agricultural use, the court of appeal disagreed, reasoning that the County's interpretation would permit residential development and infrastructure unrelated to any agricultural operation as long as the agricultural uses predominated a project.

Turning to the project, the court of appeal determined that the infrastructure improvements were not necessary for the managed grazing and breeding of cattle. The court reasoned that the ranchers who manage the agricultural operations lived elsewhere, so the residential infrastructure was unrelated as well. Finally, the court found that the limited number of cattle proposed to be

onsite did not amount to a commercial operation. The court found that the residential development and associated infrastructure were not incidental to the agricultural uses. Therefore, the court of appeal held that the County abused its discretion in approving the project.

* * *

CEQA / NEPA / ENVIRONMENTAL QUALITY CASES

Union of Medical Marijuana Patients, Inc. v. City of San Diego
(Aug. 19, 2019) 7 Cal.5th 1171

In this landmark case, the California Supreme Court resolved a conflict among the courts of appeal regarding the proper definition of the word "project" and the interplay of Public Resources Code sections 21065 and 21080 of the California Environmental Quality Act ("CEQA"). Specifically, the State Supreme Court concluded that the examples of actions found in Section 21080 are not always "projects" for the purposes of CEQA, holding that even those actions must meet the requirements of Section 21065 in order to constitute a "project" requiring CEQA review.

In 2014, the City of San Diego ("City") adopted a zoning ordinance that allowed the development of medicinal cannabis dispensaries throughout the City ("Ordinance"). The Ordinance itself imposed many restrictions on the quantity, location, and operations of these dispensaries. In adopting the Ordinance, however, the City found that CEQA was inapplicable because its adoption was not a "project" and specifically noted that the "[a]doption of the ordinance did not have the potential for resulting in either a direct physical change in the environment, or reasonably for[e]seeable indirect physical change in the environment."

The petitioner, a civil rights group "devoted to defending and asserting the rights of medical cannabis patients as well as promoting safe access to medical marijuana," challenged the adoption of the Ordinance, arguing that the City was required to conduct environmental review under CEQA. After the City adopted the Ordinance, petitioner sought mandamus relief, arguing the adoption of the Ordinance constituted a project under CEQA and, therefore, the City erred in not conducting the requisite environmental review.

The trial court rejected the petitioner's argument and found in favor of the City. On appeal, the petitioner raised an additional argument, arguing that Public Resources Code section 21080, which states that CEQA "shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances**,**" classifies zoning amendments and their adoptions as "projects" as a matter of law regardless of their potential to impact the environment. The court of appeal rejected this argument, expressly disagreeing with the holding in *Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.

The California Supreme Court accepted review to settle the conflict among the courts of appeal and affirmed this part of the court of appeal's holding; however, the State Supreme Court ultimately found that the adoption of the Ordinance here qualified as a "project" due to its potential to cause indirect effects.

With regard to the first argument, the State Supreme Court interpreted Public Resources Code section 21080's list of public agency activities "merely to offer generic examples" of the type of discretionary activities proposed to be carried out or approved by public agencies to which CEQA could apply. As such, the State's high court overruled those prior opinions that reached the contrary result.

With regard to the second issue, despite having found that Public Resources Code section 21080 does not automatically convert all of the listed activities into "projects," the California Supreme Court still found that the Ordinance here did qualify as a "project" under Section 21065. Recognizing that adoption of the Ordinance is an "activity directly undertaken by any public agency[]" (§ 21065(a)), the State Supreme Court found that the "City erred in determining that the adoption of the Ordinance was not a project." As explained in the opinion, prior to the Ordinance, no medical marijuana dispensaries were permitted to operate in the City. The Ordinance, therefore, amended the City's zoning regulations to permit the establishment of a sizable number of new retail businesses to accommodate these new businesses. Therefore, the theoretical effects mentioned were sufficiently plausible to raise the possibility that the Ordinance may cause a reasonably foreseeable indirect physical change in the environment, warranting the Ordinance's adoption and consideration as a "project."

* * *

Center for Biological Diversity v. Ilano
(9th Cir., June 24, 2019) 928 F.3d 774

The question in this case is whether the U.S. Forest Service's designation of land as facing heightened risk of harms from pine-beetle infestation and a corresponding project to combat the infestation require environmental review under the National Environmental Policy Act ("NEPA"). Answering this question with a "no," the Ninth Circuit Court of Appeals found that the designation of land as facing a heightened risk does not change the status quo; it merely designates land for projects that may happen, and the court of appeals will defer to a federal agency's reliable study concluding there are no extraordinary circumstances, even when there are contradicting studies.

In 2014, the U.S. Congress amended the Healthy Forests Restoration Act ("HFRA") to address "[t]he outbreak of the pine bark beetle afflicting states across the nation," which was "creating potentially hazardous fuel loads in several western states." The amendments were intended "to give forest managers greater opportunity to identify and manage risk in the forest." To accomplish this objective, the amendments created a two-step process to combat insect infestations and diseased forests. Under the first step, large areas of forest land that face a heightened risk of harms from infestation and disease are designated as "landscape-scale areas." Under the second step, treatment projects, which may be categorically exempt from NEPA, are created and implemented to combat issues faced in the landscape-scale areas. In 2015, California designated 5.3 million acres of land as landscape-scale areas and initiated the Sunny South Project ("Project") across 2,700 of those areas. The Forest Service issued two memos: one stating that the designation of landscape-scale areas did not require NEPA analysis because it does not affect the environment, and the other stating that the Project was categorically excluded from NEPA and that there were no extraordinary circumstances. The Center for Biological

Diversity filed suit alleging that both matters required NEPA analysis. The district court granted summary judgement in favor of the Forest Service. Plaintiff appealed.

Under NEPA, federal agencies must prepare an EIS for major federal actions that "have a significant environmental impact" unless it is categorically excluded. (*Northcoast Envtl. Ctr. v. Glickman* (9th Cir. 1998) 136 F.3d 660, 668; *See, e.g.*, 16 U.S.C. § 6591b(a).) An EIS is not necessary where a proposed federal action would not change the status quo. (*Ibid.*)

The court of appeals ruled that the amendments did not "change the status quo" because designating landscape-scale areas does not mark the commencement of any particular projects; it only identifies land where certain priority projects *may* be implemented.

Furthermore, the court of appeals reasoned that, unlike a statute permitting the Department of Energy to designate certain areas as national interest electric transmission corridors for fast track approval in *California Wilderness Coalition v. United States Department of Energy* (9th Cir., 2011) 631 F.3d 1072, the amendments lacked a provision requiring compliance with environmental laws. As such, the court held that the amendments did not require environmental review because to do so would require the Forest Service to "consider the environmental effects that speculative or hypothetical projects might have," which "NEPA does not require."

Plaintiff argued that the Sunny South Project could not be categorically excluded from NEPA because it involved extraordinary circumstances requiring further analysis pursuant to 40 C.F.R. § 1508.4. Plaintiff cited a study, which contradicted a Forrest Service study, stating that the Project would negatively impact the protected spotted owl in the Project area. The Forest Service's study found that, while individual owls may be negatively impacted in the short-term, the species would benefit from the project in the long-run. The court of appeals disagreed with the Plaintiff's position that agencies must have the discretion to rely on its own qualified experts, and the court must defer to agency decisions so long as those conclusions are supported by studies "that the agency deems reliable." Instead, the court of appeals held that neither the HFRA amendments nor the Project required environmental review under NEPA.

* * *

Center for Biological Diversity v. Department of Conservation, etc.
(May 16, 2019) 36 Cal.App.5th 210

The issue in this case is whether a legislatively mandated Environmental Impact Report ("EIR") prepared by the Department of Conservation ("Department") to provide the public with detailed information regarding any potential environmental impacts of well stimulation in the State complied with requirements of the legislative mandate as well as the California Environmental Quality Act ("CEQA"). Answering in the affirmative, the court of appeal affirmed a judgment denying a petition for writ of mandate challenging a legislatively mandated EIR prepared by the Department and held: (i) the Department, in regulating well stimulation activities, was not carrying out a program or project of well stimulation treatments, supporting the trial court's finding that Center for Biological Diversity's ("Center") CEQA action was not ripe; (ii) the EIR's disclosure of the existence of another legislatively mandated independent study and statement as to the absence of any identified "substantive conflicts" between the documents was

adequate, absent evidence of legislative intent to link the preparation of the two studies; (iii) the Legislative mandate limited the scope of the EIR to well stimulation treatments only, rather than requiring inclusion of indirect impacts, and (iv) consistent with interpretation allowing a program EIR to defer discussion of site-specific impacts and mitigation measures to later project EIRs, where appropriate, the Department sufficiently committed itself to specific performance criteria, as would support deferral of formulation of mitigation measures to future site and/or project specific EIRs.

The facts and procedural history are as follows: The Center petitioned for writ of mandate challenging an EIR prepared by the Department's Division of Oil, Gas, and Geothermal Resources pursuant to a law known as Senate Bill No. 4 (stats. 2013, ch. 313, § 2, "SB 4"), which added sections 3150 through 3161 to the Public Resources Code to address the need for additional information about the environmental effects of well stimulation treatments such as hydraulic fracturing and acid well stimulation. As relevant here, SB 4 required the Department to prepare an EIR "pursuant to CEQA to provide the public with detailed information regarding any potential environmental impacts of well stimulation in the state." (Pub. Res. Code § 3161(b)(3)(A).)

Well stimulation treatments, such as hydraulic fracturing, are techniques used to enhance oil and gas production by increasing the permeability of the underground geological formation. In passing SB 4, the Legislature changed the regulatory environment for hydraulic fracturing and other well stimulation treatments by: (i) defining relevant industry terms, including defining "well stimulation treatment" to include "treatment of a well designed to enhance oil and gas production or recovery by increasing the permeability of the formation" such as hydraulic fracturing treatments and acid well stimulation treatments; (ii) requiring the Natural Resources Agency ("NRA") to complete a scientific study on well stimulation treatments, including, but not limited to, hydraulic fracturing and acid well stimulation treatments; (iii) directing the Department to adopt permanent regulations specific to well stimulation treatments to include rules and regulations governing construction of wells; (iv) establishing new permit requirements for conducting well stimulation treatments on oil and gas wells, and (v) requiring compliance with CEQA, where applicable.

The Department prepared and certified an expansive EIR containing a programmatic analysis of the environmental impacts of well stimulation treatment. The certification statement explains:

> The EIR mandated by Senate Bill 4 is not an ordinary EIR, but rather is a rare, and possibly unique, CEQA document in that it was mandated by statute without any accompanying 'proposed project' requiring action by [the Department] or any other public agency. The subject of the EIR, 'well stimulation in the state,' is not a pending 'project' in any ordinary sense. Rather, the subject of the EIR is a set of ongoing activities likely to continue to be carried out throughout some parts of a huge and very diverse [s]tate. Such activities were legally occurring at the time SB 4 was passed, and in fact had been occurring for decades.

The Center challenged the EIR, arguing that the Department violated SB 4 and CEQA by: (a) failing to incorporate the complete NRA study into the EIR; (b) failing to consider the first volume of the study (which was available at the time the EIR was certified); (c) failing to supplement the EIR or issue a subsequent EIR after the second and third volumes were issued; (d) failing to analyze indirect or secondary impacts of well stimulation treatments; (e) failing to adequately analyze the use of well stimulation treatments at three specific oil fields; (f) failing to adopt enforceable mitigation measures, and (g) failing to make findings and adopt a mitigation monitoring and reporting plan.

The Department demurred to the first amended petition on ripeness grounds, arguing the EIR was an informational document only, unconnected to any proposed project requiring discretionary approval by the Department (or any other agency). The trial court sustained the demurrer in part as to the Center's cause of action for violations of CEQA and subsequently denied Center's petition on the merits of it remaining claims.

On appeal, the court initially found that the Department was not carrying out a program or project of well stimulation treatments, supporting the trial court's finding that Center's CEQA action was not ripe. The court of appeal rejected the Center's contention that, though the Department may not have approved a project in reliance on the EIR, the Department nonetheless was "carrying out" a program of regulating, overseeing and permitting well stimulation in reliance on the EIR, and that program was itself a "project" within the meaning of CEQA, distinguishing the Department's role in regulating well stimulation activities from "directly undertak[ing]" such activities.

The court of appeal next turned to the Center's claims for deficiencies concerning the EIR's treatment of an NRA study and determined that SB 4's requirement that the NRA study be completed by a certain date, in conjunction with the requirement directing the Department to prepare an EIR regarding any potential environmental impacts of well stimulation and to certify such EIR on or before a date six months later, did not necessarily require the Department to incorporate the NRA study into the EIR or to consider the NRA study in preparing the EIR, absent evidence of legislative intent to link the preparation of the NRA study to the preparation of the EIR. Rather, the court found that the EIR's disclosure of the existence of the NRA study and statement of the absence of any identified "substantive conflicts" between the documents was adequate.

In dealing with the Center's claim that the EIR failed to address indirect impacts of well stimulation treatments, the court of appeal found SB 4's requirement that the Department prepare an EIR to provide the public with "detailed information regarding any potential environmental impacts of well stimulation in the state" limited the scope of the EIR to well stimulation treatments only, rather than requiring inclusion of indirect impacts of additional oil and gas production made possible by well stimulation treatments.

Finally, recognizing that a program EIR may appropriately defer discussion of site specific impacts and mitigation measures to later project EIRs where such "'impacts or mitigation measures are not determined by the first-tier approval decision but are specific to the later phases[,]'" the court of appeal concluded that the Department sufficiently committed itself to

specific performance criteria as would support deferral of formulation of mitigation measures to subsequent site and/or project specific EIRs.

* * *

San Diego Gas & Electric v. San Diego Regional Water Quality Control Board
(June 18, 2019) 36 Cal.App.5th 427

For decades, San Diego Gas & Electric ("SDG&E") operated a power plant on the San Diego Bay ("Bay"), which discharged waste into the Bay as a part of its operations. The discharge included various metals and toxic chemical compounds that settled into the Bay's sediment and accumulated, along with similar waste discharged by unrelated shipyard companies. The discharge negatively impacted the beneficial uses of water and threatened aquatic life, aquatic-dependent wildlife, and human health.

After years of investigation culminating in a report of over 2,000 pages, a link was established between some of the toxic chemicals and SDG&E's cooling tunnels, switchyard, and wastewater ponds that drained or flowed into the Bay. Based on these findings, the San Diego Regional Water Quality Control Board ("Regional Board") issued a cleanup and abatement order ("CAO") to SDG&E and other entities, finding that "SDG&E caused or permitted waste to be discharged into the Bay and thereby created, or threatened to create, pollution and nuisance conditions" pursuant to the Porter-Cologne Water Quality Control Act ("Porter-Cologne Act" or "Act," Water Code section 13300 *et seq.*).

SDG&E argued that it was not a responsible "person" under Water Code section 13304(a) and that its actions were not a substantial factor in creating, or threatening to create, a condition of pollution or nuisance. SDG&E filed a petition for writ of mandate seeking vacation of the CAO, arguing that the shipyard companies comparatively discharged greater amounts of pollutants and that the court must apply the "substantial factor" test to determine whether SDG&E created or threatened to create a condition of pollution or nuisance.

The court of appeal rejected SDG&E's arguments, and affirmed the trial court's order, holding that the "disputed nuisance creation element of section 13304—'creates, or threatens to create, a condition of pollution or nuisance'—does not require application of the common law substantial factor test for causation." The court of appeal noted that the Legislature's goal when enacting the Porter-Cologne Act was "to attain the highest water quality which is reasonable," considering all demands being made on those waters and the total of all values involved, beneficial and detrimental, economic and social, tangible and intangible.

The court further noted that the Act allows a regional board to require a party to clean up pollutants if the board finds "Any person who . . . has *caused or permitted, causes or permits, or threatens to cause or permit* any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the State and creates, or threatens to create, a condition of pollution or nuisance." The act does not mention "substantial factor causation" and neither does the legislative history nor relevant case law require the application of such a test before a regional board issues a CAO.

Because it was undisputed on appeal that SDG&E directly discharged, and thus "caused or permitted" waste to enter the Bay, and because SDG&E did not challenge the sufficiency of evidence in support of the Regional Board's nuisance creation finding, the court of appeal ruled that the Regional Board demonstrated SDG&E had created, or threatened to create, a condition of pollution or nuisance warranting a CAO.

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Hollywoodians Encouraging Rental Opportunities v. City of Los Angeles
(June 28, 2019) 37 Cal.App.5th 768

In this case, the court of appeal held that, where a property has been lawfully vacated, the appropriate baseline for a project under the California Environmental Quality Act ("CEQA") assumes that the project would have no housing-related impacts from the destruction of a pre-existing building that previously housed tenants.

The subject real property was a vacant 18-unit apartment building, which had previously been subject to a rent stabilization ordinance of the City of Los Angeles ("City"). In 2013, the owner filed a notice of intent to withdraw all 18 units from the rental market pursuant to the Ellis Act (Government Code section 7060 *et seq*.). Later that year, the rental units were vacated. In 2015, the owner submitted a new application for a hotel project to convert the property into a boutique hotel with 24 guest rooms.

The City prepared an initial study and noted that the project could have some impacts, but otherwise the City found that impacts to population and housing would cause either a less than significant impact or no impact. Petitioners challenged the City's approval of the hotel project, specifically challenging the City's findings of no impact or less than significant impacts to the "supply of rent-stabilized housing and the dislocation of tenants from such housing." The trial court denied the petition for writ of mandate concluding, in part, that the City applied the appropriate baseline as no housing was available at the project site at the time it processed the application.

In affirming the trial court's decision, the court of appeal held that the City applied the correct baseline. Although petitioner (again) argued the City was required to "prepare an EIR for the Project because substantial evidence in the record supports a fair argument that the cumulative environmental effect of this Project and similar related projects will be the elimination of rent-stabilized housing units in Hollywood" and displacement of a substantial number of renters who rely on rent-stabilized housing, the court of appeal rejected this argument, finding petitioners' "CEQA claim fails because the relevant baseline in 2015 was a vacant building that already had been withdrawn from the residential rental market." Therefore, according to the court of appeal, the record did not support a fair argument that the project would have a substantial adverse impact on Hollywood's stock of rent-stabilized housing or on displacement of residents.

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Hubbard v. Cal. Coastal Commission
(July 31, 2019) 38 Cal.App.5th 119

The issue in this case: If a permit is granted based on an application containing intentionally false and misleading information, is the California Coastal Commission ("Commission") required to revoke the permit under section 131059, subdivision (a) of title 14 of the California Code of Regulations? The answer is no. Even if the application contains misleading information, the Commission does not need to revoke the permit when: (1) the misleading information is immaterial to the granting of the permit, and (2) the Commission still would have granted the permit and would not have imposed additional conditions to the permit even if all the accurate information had been provided.

Under the California Coastal Act of 1976 ("Act"), any proposed developments in designated protected zones must receive a Coastal Development Permit ("CDP") from the Commission, or if a Local Coastal Program ("LCP") has been certified by the Commission, from the local governmental agency.

Here, Malibu Valley Farms ("MVF"), an equestrian facility in the Santa Monica Mountains, was damaged in a fire in 1996. MVF sought to rebuild the facility but needed a CDP because the facility and proposed development were in an environmentally sensitive habitat area ("ESHA"). At the time MVF submitted its application for its permit, the Commission had not certified Malibu's LCP, so the Commission had the authority to issue the CDP to MVF. In 2006, MVF sought after-the-fact approval from the Commission by submitting its CDP application for a six-acre equestrian facility after MVF had already begun construction.

One of the criteria the Commission uses when reviewing CDP applications is whether it is complete, which includes preliminary approvals from other local governmental agencies for the development. Here, MVF submitted approvals from the Environmental Review Board ("ERB"), Department of Fish and Wildlife ("Fish and Wildlife"), and the Water Resources Control Board ("Water Board") along with its CDP application. None of these submitted approvals, however, were based on the merits of the development. In addition to the submissions, MVF's application included a "Comprehensive Management Plan" to minimize the environment impact on the ESHA.

On March 21, 2007, the Commission deemed MVF's application complete. On July 9, 2007, the Commission held a public hearing on the CDP application and approved the project with conditions, such as the implementation of MVF's Comprehensive Management Plan. On December 8, 2008, appellants filed a request for revocation of MVF's CDP. In July 2009, in response to a writ of mandate from a separate group not part of this case, the Commission issued a staff report explaining its approval of the CDP. On October 5, 2009, appellants filed an amended request relating to the July 2009 staff report, challenging MVF's representations.

The Commission agreed that there were several intentional misrepresentations relating to the approvals submitted from the ERB, Fish and Wildlife, and Water Board in MVF's CDP application, but the Commission nonetheless decided that incomplete and inaccurate permit applications do not necessarily require revocation of a permit. Indeed, the Commission concluded that, even if accurate information about the approvals had been provided, that

different, accurate information would not have caused the Commission to deny the permit or require additional conditions.

On August 15, 2011, appellants filed a petition for administrative mandate in the superior court, seeking an order setting aside the Commission's denial of their revocation request. The trial court denied the petition on the grounds that the outcome of the permit would have been the same because accurate and complete information would not have caused the Commission to deny the permit or require additional conditions. The court of appeal affirmed.

Grounds for revocation under Public Resources Code section 13105(a) state that a "permit may be revoked for '[i]ntentional inclusion of inaccurate, erroneous or incomplete information in connection with a coastal development permit application, where the commission finds that accurate and complete information would have caused the commission to require additional or different conditions on a permit or deny an application.'" The court of appeal found this to mean that only material omissions or misrepresentations in a CDP application warrant revocation, and if accurate and complete information would not have caused the Commission to act differently, then the CDP stands.

The court of appeal further explained that the Commission's conclusion—that grounds for revocation only exist if the Commission's decision would have been different if the correct information had been provided—is a proper conclusion that balances the Commission's need for accurate information in a CDP application against the need for an applicant to rely on a CDP that is issued. Additionally, the court of appeal determined that, even if a CDP application contains inaccuracies regarding the approvals it received from other local agencies, but still meets the policies of Chapter 3 of the Act, then the issuance of a CDP need not be revoked. Finally, the court of appeal also considered MVF's Comprehensive Management plan, which set out measures to protect the ESHA and supported the Commission's decision to grant the CDP.

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Additional Contributors:
Matthew Francois, Partner, San Francisco Office
Travis Van Ligten, Associate, Costa Mesa Office
Thai Viet Phan, Associate, Costa Mesa Office
Jeffery Farano, Associate, Costa Mesa Office