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LAND USE NEWS

DOWNTOWN LOS ANGELES COMMUNITY PLAN AND ZONING CODE FINALIZED

A comprehensive update to the City of Los Angeles' Zoning Code was adopted and finalized on December 4, 2024. As a result, downtown Los Angeles will be building an additional 70,000 housing units and estimates an additional 55,000 jobs and 125,000 people by 2040.

Background and Process

Downtown Los Angeles has long experienced significant challenges, including a housing demand, housing affordability, and economic shifts. The Department of Planning for the City of Los Angeles (Department) sought to address these challenges by improving access to jobs, open spaces, local services, cultural resources, and the crucial need for housing for all income levels.

Beginning in 2014, plans for a revitalization of downtown Los Angeles began to develop, and has been known as the DTLA 2040 Plan (DTLA 2040). Early on, the Department conducted research, field visit, land use surveys, and collected public input before drafting the initial plan vision. In the subsequent stages of the process, the Department consulted with experts to further develop the plan policy, select new zones, and draft the environmental impact report. Over five years, the Department participated in multiple outreach events. In addition, the Department held open houses and public hearings to collect input from the public and provide an opportunity for the public to submit formal comments.

One of the public comments came from an advocacy organization named Central City United (CCU), which serves community members from low-income and underserved neighborhoods within Skid Row, Chinatown and Little Tokyo. In addition, a director at Little Tokyo Service Center publicly advocated for policies to address and mitigate the housing crisis and to increase the quality of life for the individuals that live in downtown Los Angeles.

Further, as part of the adoption process, appointed and elected officials of Los Angeles reviewed DTLA 2040 and made the final decisions relating to proposed policies and zoning recommendations. In the spring of 2023, DTLA 2040, as well as a new zoning code, were approved with amendments. On December 4, 2024, advocates of DTLA 2040 celebrated the approval following its form and legality review.

Zoning Updates

The new zoning system that has been adopted in connection with DTLA 2040 combines building designs and their usages into a single-structure using multiple components: (1) form, (2) frontage, (3) standards, (4) use and (5) density. Each component will dictate new regulations for (1) size, (2) appearance, (3) design, (4) authorized activities and (5) the permitted number of housing units, respectively.

For residents and neighborhood councils, there may be implications as to the permitted land uses as it relates to the future development of the surrounding neighborhoods. As for businesses, the new land use measures will support local business and encourage success, as DTLA 2040's new policies aim to enhance commercial and industrial development. The approval of DTLA 2040 should motivate developers and property owners to review all maps, policies, and design guidelines to best understand where and what type of developments can be built.

Further, DTLA 2040 aims to help public agencies and public officials contemplate future actions within Los Angeles, including improvements to the transportation infrastructure, parks, and schools. As DTLA 2040's policies are interrelated, the plan should be comprehensively examined by any individual or agency before any decision-making.

Conclusion and Implications

DTLA 2040's purpose is to create accommodations for the anticipated growth of downtown Los Angeles, while simultaneously ensuring a proper community for workers, residents, and visitors. DTLA 2040 will be the first community plan out of 35 neighborhoods in Los Angeles to apply the comprehensive update to the new zoning code. Eventually, the new zoning system will be applied to the entire city of Los Angeles. (Mona Goodarzi)

LAND USE PLAN IN SOUTH CENTRAL FRESNO SHUT DOWN WITHOUT COMPROMISE BY CITY COUNCIL

The Fresno City Council has unanimously rejected a new proposed land-use policy known as the South Central Specific Plan (Plan), which had been in the works for five years. The Plan aimed to reduce the heavily industrialized south Fresno area, which would have in turn reduced industrial land use in the area by 17 percent. The south Fresno area has been largely zoned for industrial purposes since the 1950s and the Plan created a road map for reducing such use. While 42 percent of the area is currently zoned for heavy industrial purposes and 7 percent for light industrial purposes, the rest of the land is mainly agricultural or vacant.

Reasons for the Plan's Rejection

Before the Plan was officially rejected, public comments were accepted to give residents and businesses the opportunity to voice their opinions. Over a dozen individuals representing Fresno's business and manufacturing communities gave their comments, stating that the Plan would cause Fresno to be less competitive in attracting economic investment in the future, which would put Fresno at a large disadvantage.

Numerous City council members also worried that people would leave Fresno for areas like Bakersfield and Madera, where industrial jobs remain available. In the council session, Fresno Mayor Dyer stated:

> . . .the last five years have brought significant shifts in our community's needs, economic landscape, and priorities. What might have worked when this plan was drafted is no longer adequate for where we are today.

In addition, Councilmember Tyler Maxwell stated that the Plan:

> . . .is going in the wrong direction for our city. I think we need to protect that industry, and I think we need to make it easier to do business for a lot of these folks.

In addition, multiple environmental advocates also expressed their opinions about the Plan, voicing concerns that the Plan didn't go far enough to address and minimize industrial development in a specific area where studies have shown that truck routes increase the risk of infant mortality and preterm births. In addition, environmental advocates and residents stated that they wanted stricter buffers for certain sensitive areas within the Plan sites, including a local elementary school and roughly 400 residences. Co-executive director of Leadership Counsel for Justice & Accountability, Phoebe Seaton, asserted "this is not just about money. This is about health and well-being."

Potential implications of the rejection of the Plan will largely relate to environmental concerns. For over five years, the Plan was being developed in part to relieve residents burdened by the heavy-polluting industrial activities. In fact, it has been found that residents of south Fresno have a life expectancy of 20 years less than residents of north Fresno.

In addition, the Fresno City Council spent five years and roughly $1 million to develop the Plan. Revising the Plan or coming up with new zoning policies will require more spending— estimated between $200,000 and $500,000—as well as 12 to 18 more months of time being invested in the project.

Conclusion and Implications

Multiple Councilmembers have stated that they hope that the staff will return with a more business-friendly version of the Plan. In the meantime, the Fresno City Council intends to create an ad-hoc subcommittee, which will work with staff and stakeholders to revise the Plan and eventually present the new version in a meeting.

Ideally, a compromise would provide for a positive environmental impact on the surrounding communities, all the while maintaining the ability to create jobs in the area to foster economic development in south Fresno.

(Mona Goodarzi)

REGULATORY DEVELOPMENTS

STATE WATER RESOURCES CONTROL BOARD PROPOSED RULEMAKING REGARDING UNDERGROUND STORAGE TANK

The State Water Resources Control Board (State Water Board) is proposing amendments to California's Underground Storage Tank (UST) Regulations to update them with current technology and reflect recent changes in the Health and Safety Code. The amendments aim to improve UST safety, streamline the regulatory structure governing USTs, and enhance environmental protections by addressing issues such as tank classification and closure deadlines, especially for single-walled tanks. The amendments are set to take effect on January 1, 2026.

Background

The State Water Board is proposing amendments to California's Underground Storage Tank (UST) Regulations to update them in line with current technologies and operational practices, and to implement recent changes in the Health and Safety Code.

The proposed changes include removing outdated deadlines and provisions related to single-walled USTs, which must be closed by December 31, 2025, under Health and Safety Code section 25292.05. These USTs will no longer be allowed to operate, except for specific tanks meeting the "new underground storage tank" criteria. The regulations will replace the current "existing" and "new" UST classifications with a system of Type 1, Type 2, and Type 3 classifications based on the installation date of the tanks, aligning with requirements in the Health and Safety Code.

The proposed amendments will reorganize the regulations for better structure and clarity, grouping related topics together and eliminating redundant sections. For example, the term "local agency" will be replaced with more specific terms, such as "Unified Program Agency" and "Cleanup Oversight Agency," to reflect the roles defined in the Health and Safety Code. Additionally, terminology like "leak" will be replaced with the more precise terms "release" or "unauthorized release," consistent with state law, while the term "line leak detector" will remain in use for industry consistency.

The State Water Board also proposes technical amendments that do not change regulatory requirements but improve the clarity, syntax, grammar, and cross-referencing of the regulations. These are primarily non-substantive edits that aim to improve readability and consistency across the regulations.

The purpose of these amendments is to enhance the safety and integrity of USTs by raising construction, monitoring, and testing standards, improving tracking and notification procedures, clarifying agency responsibilities, and updating abatement and corrective action protocols. This will help reduce the risk of hazardous substance releases and soil and groundwater contamination, ultimately benefiting public health, worker safety, and the environment. The changes are expected to decrease cleanup costs and improve the overall safety of UST systems. The proposed regulatory changes aim to enhance California's UST Regulations by setting higher standards for UST construction, monitoring, and testing, as well as improving tracking, notification procedures, and clarifying agency responsibilities. These amendments also update abatement and corrective action procedures to reduce the risk of hazardous substance releases and prevent soil and groundwater contamination. As a result, the proposed changes are expected to improve public health, worker safety, and environmental protection, while lowering cleanup costs for businesses and the UST Cleanup Fund. Additionally, the updates will help reduce confusion in the regulated community and align with the state's policy of ensuring safe, clean, and accessible water for all.

A Closer Look

The proposed regulatory changes aim to enhance California's UST Regulations by setting higher standards for UST construction, monitoring, and testing, as well as improving tracking, notification procedures, and clarifying agency responsibilities. These amendments also update abatement and corrective action procedures to reduce the risk of hazardous substance releases and prevent soil and groundwater contamina-

tion. As a result, the proposed changes are expected to improve public health, worker safety, and environmental protection, while lowering cleanup costs for businesses and the UST Cleanup Fund. Additionally, the updates will help reduce confusion in the regulated community and align with the State's policy of ensuring safe, clean, and accessible water for all.

Classification and Closure Deadlines

With respect to UST classification and closure deadlines: The proposed amendments update the UST classification system by replacing the existing "new" and "existing" categories with three new classifications: Type 1, Type 2, and Type 3. These new classifications are based on the installation date of the USTs, aligning with requirements from the Health and Safety Code. Additionally, provisions related to the closure of single-walled USTs, which must be permanently closed by December 31, 2025, under Health and Safety Code section 25292.05, will be deleted from the regulations. Owners of USTs should determine the date on which their USTs were installed to determine which classification their classification.

Terminology Changes

With respect to terminology changes: The proposed rulemaking seeks to replace vague or ambiguous terms with more specific, legally defined terms for better clarity and consistency. For example, the term "local agency" will be replaced by either "Unified Program Agency" or "Cleanup Oversight Agency" to distinguish between the two types of local agencies with different roles under the Health and Safety Code. Moreover, the term "leak" will be replaced with the more precise terms "release" or "unauthorized release," which are defined terms under the Health and Safety Code. However, "line leak detector" will remain in use to describe devices that monitor buried pressurized piping for catastrophic releases, as it is an industry standard term.

Regulatory Consistency

With respect to regulatory consistency and alignment with state law: The proposed amendments ensure the UST regulations align with recent updates to the Health and Safety Code, including changes enacted in 2012, 2014, 2018, and 2023. This alignment eliminates any potential inconsistencies between the regulations and statutory requirements. The State Water Board has reviewed related regulations and determined that no conflicts with federal law or other state regulations exist. The amendments are designed to improve the effectiveness of the UST regulations while remaining consistent with broader environmental and public health policies in California.

Benefits and Public Health

With respect to anticipated benefits and public health protections: The primary objective of the amendments is to enhance public health, environmental protections, and worker safety. By updating UST construction, monitoring, testing, and oversight requirements, the regulations will reduce the risk of hazardous substance releases and contamination of soil and groundwater. The changes are expected to lead to improved tracking and notification procedures, clearer agency responsibilities, and more efficient corrective actions in the event of a release. In the long run, these amendments aim to help reduce cleanup costs and safeguard California's water resources, benefiting both the public and the environment.

Conclusion and Implication

The regulations will go into effect on January 1, 2026. The State Water Board has consulted with UST industry representatives, including testers and installers, and conducted an Economic and Fiscal Impact Statement and an Economic Impact Analysis to support these amendments. These changes are not expected to conflict with federal regulations or other state laws. The written comment period for this proposed rule ended on January 17, 2025.

The proposed rule represents an effort by the State Water Board to update regulations based on current industry practices regarding USTs which have been determined to be effective in preventing unauthorized releases of hazardous substances from entering soil or groundwater. With the written comment period now closed, it is unclear what recommendations and concerns the State Water Board will adopt and address in implementing in the new rule. The Proposed Rulemaking is available online at: https://waterboards.ca.gov/water_issues/programs/ust/leak_prevention/chapter16/rewrite.html

(Steven Moctezuma, Miles Krieger, Steve Anderson)

LAWSUITS FILED OR PENDING

STEELHEAD PRESERVATION EFFORTS CONTINUE ON LOCAL RIVERS, AND SO TOO DOES LITIGATION

Steelhead fish, or sometimes referred to as steelhead trout, is the anadromous form of coastal rainbow trout that is native to cold-water tributaries of the Pacific coast (among other places). Steelhead spawn in freshwater, migrate to the ocean to forage for years, and then return to their original streams to spawn. As populations and related water supply demands increased, construction of reservoirs and dams increased, thus creating challenges in some areas for steelhead to migrate from the ocean to spawn on local streams.

Various public and private sector groups have worked hard to combat those challenges. This article highlights two approaches to illustrate how the steelhead challenges are approached, one by voluntary efforts and the other through litigation, the latter of which sometimes "spawns" voluntary efforts. To be clear, the examples below are unrelated so that the entities from one example should not be construed as against or otherwise implicated with the entities from the other example.

Background

The Yuba River is a major tributary of the Feather River, which is part of the Sacramento River system. It has three branches: North Yuba, Middle Yuba, and South Yuba. Historical activities like gold mining reduced salmon and steelhead populations. The river has several large dams and reservoirs, including New Bullards Bar and Englebright. The main challenges include preserving or enhancing spawning and rearing habitats, managing water temperatures for successful spawning and rearing conditions, and mitigating predation by other fishery and riparian species.

Several short-term and long-term actions have been utilized for decades to help recover steelhead (and salmon) populations, such as improving habitat conditions, establishing monitoring stations, and planning for a conservation hatchery. In what is widely referred to as The Yuba Accord, this landmark, multi-agency agreements seeks to balance the interests of environmental groups, agriculture, water agencies, and hydroelectric operators. Controversy started in the 1960s, followed by litigation in the 1980s, and eventually the Accord was reached and took effect in 2008.

Incidental Take Litigation against DWR and CDFW

Filed toward the end of 2024 in Sacramento County, captioned as *California Sportfishing Protection Alliance, et al. v. California Department of Water Resources, et al.* (Superior Court Case No. 24WM000181), the petitioners commenced this action under the California Environmental Quality Act (CEQA) against two state agencies (California Department of Water Resources (DWR) and California Department of Fish and Wildlife (CDFW)). The petitioners include the California Sportfishing Protection Alliance, North Coast Rivers Alliance, San Francisco Crab Boat Owners Association, and the Winnemem Wintu Tribe.

The gist of this lawsuit is to set aside the approval of a plan for the long-term operation of the State Water Project (SWP) by DWR and CDFW, and relatedly the "Incidental Take Permit" (ITP) for the State Water Project. The petitioners argue that the approval violates CEQA, the Delta Reform Act, the California Endangered Species Act (CESA), and the Public Trust Doctrine. They seek a writ of mandate to vacate the project approvals, decertify the Final Environmental Impact Report, and ensure compliance with the relevant environmental laws.

The complaint documents the collapse of Central Valley salmon and Delta fish populations, with several species already extinct or close to extinction. The lawsuit reports imminent ecological collapse of the Delta, driven by excessive freshwater diversions and agricultural runoff. The lawsuit seeks to suspend related project activities by DWR and CDFW, by seeking, amongst other relief, a peremptory writ of mandate directing the state agencies to suspend all activities implementing the project, its Environmental Impact Report, and its ITP that could result in

any change or alteration in the physical environment until the respondents have taken all actions necessary to bring their approval into compliance with the California Environmental Quality Act, the Delta Reform Act, CESA, the Public Trust Doctrine, and the Code of Civil Procedure.

Conclusion and Implications

Naturally at this early stage of the litigation, the outcome is unknown and frankly unpredictable. What is somewhat predictable, based on common sense coupled with historical examples in these complex environmental matters, is that the judicial process will either create the final resolution or the process will go far enough through the trial and/or appellate court proceedings such that the parties work toward a long-term, durable solution on terms and conditions that are mutually satisfactory. All the while, the various water demands from water users (the environment and habitat uses) and humans (agriculture and municipal/domestic uses) must be balanced with ever-changing hydrologic *and* regulatory conditions.
(Wes Miliband)

RECENT CALIFORNIA DECISIONS

SECOND DISTRICT COURT DISMISSES CITY'S APPEAL AS MOOT AS CITY ALREADY COMPLIED WITH WRIT ORDERING IT TO COMPLETE REZONING

Californians for Homeownership, Inc. v. City of La Canada Flintridge, *Unpub.*, Case No. B333151 (2nd Dist. Dec. 27, 2024).

In an *unpublished* opinion filed on December 27, 2024, the Second District Court of Appeal dismissed the appeal made by the City of La Cañada Flintridge (City) from a judgment in favor of Californians for Homeownership, Inc., a California nonprofit public benefit corporation (CFH), directing the issuance of a writ of mandate compelling the City to complete rezoning required by the state's Housing Element Law (HEL) because the City complied with the writ, making the appeal moot.

Factual and Procedural Background

Writ Petition and Motion for Judgment

CFH filed a writ of mandate petition alleging two causes of action. In the first cause of action, CFH alleged that the City's housing element of its general plan did not substantially comply with the Housing Element Law. In the second cause of action, CFH alleged that the City had not complied with the rezoning requirements of the HEL. CFH sought a writ of mandate compelling the City to adopt a revised housing element and to complete the required rezoning. Pursuant to the trial court's direction, each side filed a motion for judgment per the Code of Civil Procedure section 1094.

On July 11, 2023, the court held a hearing on the cross-motions for judgment. The court denied the motions as to the first cause of action regarding the general plan because a factual issue remained that could not be resolved without trial. With respect to the second cause of action on rezoning, the court explained that the City failed to adopt and submit its housing element to the Department of Housing and Community Development (HCD) on a timely basis and, pursuant to section 65588, subdivision (e)(4)(C)(iii), the City's housing element would not be in substantial compliance with the HEL until the required rezoning was complete.

On September 5, 2023, the trial court entered its judgment directing that a writ of mandate issued requiring the City to complete the rezoning required by the Housing Element Law within 60 days and file a return to the writ within 90 days.

On October 10, 2023, the City filed a notice of appeal, but on October 31, the City filed a return to the writ stating that the City had adopted certain resolutions and ordinances, which, according to CFH, completed the rezoning required under the writ of mandate.

The Court of Appeal's Decision

473(b) Relief Available to Respondents as Interim Procedure

The Second District Court of Appeal concluded the appeal to be moot as the City had already complied with the writ. The court noted that there was a judgment directing the issuance of a writ compelling the City to complete the rezoning required by the HEL and that there was no question that the City had completed the required rezoning and complied with the writ. Further, the court stated that the City could not offer any explanation as to how a favorable appellate decision would provide any effective relief to them because a reversal of the judgment would not reverse the City's rezoning.

The City still argued that the court should exercise its discretion to consider the appeal because it raises an issue of broad public interest that is likely to recur. Specifically, the City wanted the court to assess whether the application of section 65588, subdivision (e)(4)(C)(iii), conflicts with section 65860, subdivision (c), creating a "'Catch 22' trapping munici-

palities in an inescapable dilemma." However, the court rejected to review this issue because the City's argument was too generalized and insufficient for the court to exercise its discretion to consider the merits of an appeal that is undisputedly moot.

The City also raised an interpretation issue regarding section 65583.4, subdivision (a), which created a narrow exception to the deadline for some local governments to adopt housing elements that substantially comply with the HEL. Similar to the above argument, the court found that the City again failed to explain how this issue had broad public interest sufficient to justify its resolution in this case and withheld its decision to dismiss the appeal.

Conclusion and Implications

This case reminds readers of the simple principle that a court will only take on matters if it can grant relief. It is possible that the City of La Cañada Flintridge wanted to avoid any risk of failing to comply with the writ while still aiming to argue the legal issues surrounding the relevant deadline, but perhaps the fact that the City could and did comply with the writ indicates that that issue would have also been a challenging battle for the City. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B333151.PDF (David Song)

FIRST DISTRICT COURT FINDS "EXISTING STRUCTURES" UNDER THE COASTAL ACT ONLY INCLUDE THOSE THAT WERE CONSTRUCTED BEFORE THE ACT WAS ENACTED

Casa Mira Homeowners Association v. California Coastal Commission, 107 Cal.App.5th 370 (1st Dist. 2024).

In an opinion published on December 12, 2024, and later modified on December 30, 2024, the First District Court of Appeal in *Casa Mira Homeowners Association v. California Coastal Commission* held that under the California Coastal Act, "existing structures" that may seek coastal armoring or shoreline protective devices include only those that were constructed before the Coastal Act went into effect in 1977. The court also found that substantial evidence did not support the Commission's finding that rerouting the California Coastal Trail was a feasible alternative to constructing a seawall.

Background

In 2018, Casa Mira Homeowners Association applied to the Coastal Commission for a Coastal Development Permit (CDP) to construct a 257-foot seawall along an eroding coastal bluff in Half Moon Bay. The proposed seawall would amor the bluff to protect several structures from erosion, including an apartment building constructed in 1972, a condominium complex and sewer line built in 1984, and a segment of the California Coastal Trail. The seawall would include a beach access stairway and replace 4,000 tons of emergency riprap that the Commission previously authorized after 20 feet of the bluff eroded and collapsed during heavy rains a few years prior.

Under section 30235 of the Coastal Act, shoreline armoring devices (such as seawalls) may be permitted to protect "existing structures"—*i.e.*, those that existed before the Coastal Act went into effect in 1977—and coastal-dependent uses threatened by erosion. Based on this, Commission staff initially recommended approving Casa Mira's proposed 257-foot seawall because the apartment building constructed in 1972 qualified as an "existing structure" while the Coastal Trail constituted a "coastal-dependent use" due to its adjacency to the ocean. The condominium complex and sewer line, however, did not qualify for armoring because they were constructed after the Coastal Act went into effect. Staff further concluded that there were no feasible alternatives to armoring the shoreline and that a 257-foot seawall would prevent the loss of the apartments and Coastal Trail while minimizing impacts to coastal resources.

The Coastal Commission agreed with staff's interpretation of section 30235 but only approved a 50-foot seawall to protect the apartments, not the Trail. Instead, the Commission argued that the Trail could be relocated to loop inland of the condominiums, which would be a feasible and less environmentally damaging alternative to the seawall.

At the Trial Court

Casa Mira petitioned for a writ of mandate to vacate the Commission's decision, which the trial court ultimately granted. The court rejected the Commission's interpretation of Coastal Act section 30235, concluding that its plain language mandates a seawall CDP if a structure presently exists and is in danger of erosion. Because the condominiums and sewer line already existed, the Commission erred in finding they were not entitled to any protection or armoring. The trial court further held that the Commission's recommendation to reloop the Coastal Trail was unsupported by substantial evidence. The Commission timely appealed.

The Court of Appeal's Decision

The First District Court of Appeal partially upheld and overturned the trial court's decision. The appellate court disagreed with the trial court and instead sided with the Commission's interpretation of Coastal Act section 30235, concluding that "existing structures" only encompassed those developed before the Act went into effect. However, the appellate court upheld the trial court's determination that the Commission's Coastal Trail alternative was unsupported by substantial evidence.

"Existing Structures" Under Coastal Act Section 30235

The court first considered whether the trial court erred in finding the term "existing structures" under Coastal Act section 30235 refers to those that presently exist at the time an applicant seeks a CDP, as opposed to only those that existed before the Act became effective in 1977. Given the Coastal Act's inconsistent use of the term "existing," but based on the Act as a whole, the court determined the Commission's interpretation was correct. The court observed that, based on the Coastal Act's other shoreline armoring provisions, it was apparent that "existing structures" referred to those that were constructed before the Act's effective date.

The court reviewed Coastal Act section 30235 alongside section 30253, which requires "new development" to minimize adverse impacts in the coastal zone, including the alteration of bluffs from "protective devices" such as seawalls. Together, these sections created a "shoreline protection management framework"—section 30235 aims to protect structures that existed before the Act's effective date, while section 30253 imposes siting and structural requirements to minimize impacts from developments constructed after the act's enactment. Both provisions logically distinguish between structures that are entitled to the privilege of shoreline armoring when in danger (i.e., those built before 1977) and those that cannot require shoreline armoring but instead must adhere to section 30253's siting requirements for structural integrity and stability (*i.e.*, those built after 1977).

Casa Mira argued that this interpretation would render section 30235 internally inconsistent. For example, applying this rationale to the section's provision regarding "existing marine structures causing water stagnation contribution to pollution…" would prevent authorities from upgrading or phasing out those structures unless they were constructed prior to 1977. The court countered that this was an overly narrow reading of the Coastal Act that ignored other relevant provisions governing marine resources and water pollution. Notably, these marine structures must comply with their own set of mandates and are distinguishable from the kinds of "existing structures" located in coastal bluff areas, such as those at issue here.

Casa Mira further claimed section 30253 merely clarifies that a new development must not depend on a seawall when constructed. Casa Mira attempted to harmonize sections 30235 and 30253 by arguing they authorize shoreline protection due to threats of erosion that arise decades after a new development has been constructed. The court disagreed, finding two flaws with this analysis.

First, while the court agreed that section 30253 prohibits constructing new development that depends on the simultaneous construction of a seawall, nothing in that section limits this prohibition to the initial construction. Instead, and as evidenced by the Act's legislative history, the section states that new development shall not "in any way" require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs, which necessarily includes a current and prospective need for armoring for the life of the structure, not merely short-term construction-related impacts of new developments.

Second, the court reasoned that interpreting "existing structures" to mean those that existed "at the

time of the seawall application" would circumvent section 30235's restrictions on constructing shoreline devices. For example, coastal landowners could build a structure and then file a separate CDP application for a seawall, thus transforming the former "new development" into an "existing structure." In turn, a newly constructed building would be guaranteed shoreline armoring immediately after it's constructed if it is in danger of erosion, regardless of when it was built. This interpretation of section 30235 would improperly render the term "existing" surplusage and contravene the Coastal Act's goal of preserving the fragile coastal ecology from "overzealous encroachment."

The court thus reiterated that Coastal Act section 30235's use of the phrase "existing structures" refers to those that existed before the act's effective date of January 1, 1977. Accordingly, Casa Mira's condominiums and sewer line, which were constructed in 1984, were not "existing structures" and therefore not entitled to shoreline armoring.

Feasibility of Alternative Rerouting the Coastal Trail

The court also considered whether the Commission's decision to adopt an alternative that required rerouting the Coastal Trail further inland was supported by substantial evidence. The Coastal Act requires permitting seawall construction when "required to serve coastal-dependent uses" and "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." According to the Commission, the use of the word "required" indicates armoring is only permitted if it is the only feasible alternative capable of protecting the structure.

The court acknowledged there was "no dispute" the Coastal Trail constituted a "coastal-dependent use" that required "a site on, or adjacent to, the sea to be able to function at all." Commission staff had recommended realigning the Trail *slightly* inward and roughly parallel to the shoreline, and approving a 257-foot seawall, which would occupy significantly less public beach space and minimize impacts to coastal resources than the emergency riprap currently installed. Though shoreline protective structures can have a variety of other negative impacts to coastal resources, Commission staff concluded there was no viable location for the Trail to be rerouted while maintaining its aesthetic and recreational value adjacent to the ocean and beach. Staff explained that rerouting the Trail would require looping it inland of existing residential structures, including Casa Mira's condominiums, which would in turn narrow the pedestrian pathway and sacrifice coastal views. Staff thus concluded that relocation was not feasible and instead recommended measures to mitigate the proposed seawall's adverse effects.

The Commission rejected staff's recommendation—a revised staff report thereafter determined the Trail could be relocated by connecting it from the south and extending it inland of the condominiums on property owned by the Department of Parks and Recreation (DPR). The Commission claimed this would provide pedestrians with a contiguous path in "close enough proximity to the coast" while avoiding environmental impacts associated with the seawall.

While the court conceded that the Commission could disagree with its staff's recommendation, it concluded that the revised staff report failed to include an ample factual basis or explanation to justify the Commission's decision. The staff report baldly stated that relocating the Trail would avoid impacts to coastal resources and provide a path "close enough" to the coast, even though the original staff report found rerouting problematic due to additional costs and permitting. Evidence in the record also showed that the Commission's proposal would require DPR to seek a separate CDP to realign the Trail, along with new easements on the coastal bluff property—thus further contributing to cost and permitting uncertainties. Moreover, the record demonstrated that the absence of a seawall could immediately threaten the Coastal Trail's infrastructure with increased erosion during future storms. As such, it was not reasonable for the Commission to conclude that relocating the Trail could be accomplished in a successful manner within a reasonable period of time considering these economic and environmental factors. For these reasons, Casa Mira had overcome the presumption that the Commission's determination was correct by identifying evidence to the contrary.

Conclusion and Implications

The First District's decision contributes to a long line of precedent interpreting the various provisions and requirements of the Coastal Act. The court settled any confusion as to what constitutes an "existing structure" under section 30235 that qualifies for

coastal armoring: any structure built before the Coastal Act went into effect in 1977 may seek a permit to construct shoreline devices to protect against erosion; all other structures developed thereafter may not but instead must adhere to section 30253's structural integrity requirements. The opinion also contributes to the growing body of case law where an applicant has successfully challenged the Commission's "feasible alternative" determination by identifying evidence to the contrary. A copy of the court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A168645M.PDF.
(Bridget McDonald)

SECOND DISTRICT COURT FINDS SERVIENT LANDOWNER MUST CONSENT TO GROWER'S USE OF ACCESS EASEMENT TO TRANSPORT CULTIVATED CANNABIS

JCCrandall LLC v. County of Santa Barbara, 107 Cal.App.5th 1135 (2nd Dist. 2025).

In an opinion published on January 3, 2025, the Second District Court of Appeal in *JCCrandall LLC v. County of Santa Barbara* held in favor of a servient landowner's objection to the County of Santa Barbara's grant of a Conditional Use Permit (CUP) that allowed a cannabis grower to use an access easement to transport cultivated cannabis. In so holding, the court reiterated that, under federal law, cannabis is illegal in California and everywhere else in the United States.

Background

Factual Background

Santa Rita Holdings, Inc. applied to the County of Santa Barbara for a CUP to cultivate cannabis on 2.54 acres of land owned by Kim Hughes, the trustee of the Hughes Land Holding Trust. Hughes consented to cannabis cultivation on an area of the site zoned for agricultural uses.

JCCrandall, LLC, owns a parcel of land, which contains a 1.5-mile long ingress/egress easement that was created by deed in 1998 and is the only way to access the Hughes parcel. The road that runs over the easement is unpaved and approximately 12 feet wide.

To issue a CUP for cannabis cultivation, the County must find that streets and highways are adequate for the proposed use. Thus, in reviewing and ultimately granting Santa Rita Holdings' application—and over JCCrandall's objections—the County determined that the road running over the easement on JCCrandall's parcel was adequate to serve the proposed Project.

At the Trial Court

JCCrandall filed a petition for writ of mandate challenging the County's determination that the easement provided adequate access to the Project. The petition claimed: (1) the easement deed and federal law prohibited use of the easement for cannabis activities; (2) state law requires JCCrandall's consent for cannabis activities on its land and JCCrandall refuses to consent; and (3) the road violates County standards for private roads.

The trial court denied the petition, finding that the County's decision did not involve a fundamental vested right. As such, instead of applying the independent judgment standard, the trial court found that the County's decision was supported by substantial evidence. JCCrandall timely appealed.

The Court of Appeal's Decision

On appeal, the Second Appellate District reversed the trial court's decision, finding that it applied the wrong standard of review. As a result, the trial court erroneously concluded that JCCrandall's permission to use the access easement was not required and that transportation of cannabis exceeded the scope of the easement.

Applicable Standard of Review

In petitioning for administrative mandamus under Code of Civil Procedure section 1094.5, one of two alternative standards of review applies: (1) if the challenged administrative decision involves or affects a fundamental vested right, the court must exercise

its independent judgment to review all evidence in the administrative record; or (2) where no fundamental right is involved, the trial court's review is limited to determining whether the agency's action is supported by substantial evidence in the record.

Here, the court explained that JCCrandall claims a right to exclude an unauthorized cannabis growth—Santa Rita Holdings—from its property. The right to exclude others is the essence of the right to property ownership. Here, JCCrandall's right existed prior to the County's administrative decision, and thus constitutes a fundamental vested right. Moreover, the CUP is premised on Santa Rita Holdings' right to physical use JCCrandall's property. Accordingly, the trial court erred in applying the substantial evidence standard to review the County's issuance of the CUP, but instead should have exercised its independent judgment when reviewing the evidence before it.

Use of Easement to Transport Cannabis

In evaluating whether Santa Rita Holdings could use JCCrandall's easement to transport cannabis, the Second District began by reiterating that, contrary to popular belief, Cannabis is not legal in California. Instead, under federal law and pursuant to the Supremacy Clause of the U.S. Constitution, cannabis is illegal in every state and territory within the United States.

The court thus disagreed with the trial court's interpretation of Civil Code section 1550.5, which provides that, notwithstanding federal law, commercial activity relating to medicinal or adult-use cannabis that is conducted in compliance with California law and applicable local standards shall be deemed: "(1) a lawful object of a contract; (2) not contrary to, an express provision of law, any policy of express law, or good morals; and (3) not against public policy." (Civ. Code, § 1550.5, subd. (b).) Contrary to the trial court's reading, the Second District instead found that this subdivision:

> . . .defies the Supremacy Clause. . .[because]. . .[n]o matter how much California voters and the Legislature might try, cannabis cultivation and transportation are illegal in California as long as it remains illegal under federal law.

Based on this, the court was tasked with determining whether JCCrandall has the right to prevent Santa Rita Holdings from transporting cannabis across their land, particularly given that that transporting cannabis remains a crime under federal law. Business and Professions Code section 26051.5(a)(2), provides that an applicant who seeks a license to conduct commercial cannabis activity must provide evidence of the legal right to occupy and used the proposed location and provide a statement from the landowner as proof of acknowledgement and consent to the permitted commercial cannabis activities to be conducted on the property by the tenant applicant. JCCrandall argued that the statute requires its consent to use its land for commercial cannabis activity. The County, however, claimed the statute only applied between a landlord and tenant.

The Second District noted that, while the statute did refer to the "tenant applicant," it also referred to consent of the "landowner"—here, JCCrandall qualified as such. The court continued that the statute evinced a policy that landowners should not be forced to allow their properties to be used for commercial cannabis activities but instead must affirmatively consent to those uses occurring. Therefore, the statute requires permission for commercial cannabis activities from all landowners where land is so used, including the owners of servient tenants over which cannabis is transported.

Scope of Easement

Regardless of Business and Professions Code section 26051.5(a)(2), the court further found that JCCrandall cannot be forced to allow his property to be used to transport cannabis because such a use exceeds the scope of those allowed under the easement.

The court noted that, when the easement was created in 1998, it not only had been used for legal agricultural purposes, but cannabis was illegal under both California and federal law. The difference between the legality of these activities undermines the County's argument that the easement was used for agricultural purposes. The mode and manner of use of an easement must remain substantially the same as it was when the easement was created, and nothing suggests that the easement was intended for illegal agricultural uses such as transporting cultivated cannabis.

The court also observed that the County failed to point to any evidence that suggested the parties intended for the easement to be used for an illegal purpose. Had the parties so intended, the easement

would have been unenforceable. Accordingly, the court concluded that the scope of JCCrandall's easement did not include the illegal transport of cannabis, and Civil Code section 1550.5(b) could not expand the easement's scope to allow such use. The court closed by opining that a statue that authorizes the permanent physical invasion of the land of another is void as an unconstitutional taking under the Fifth Amendment of the U.S. Constitution.

Conclusion and Implications

The Second District's opinion, although brief, may send shockwaves through the cannabis industry given its stark rebuke about the federal illegality of cannabis cultivation and distribution, even in states—such as California—that have purportedly "legalized" those activities. While the court's opinion arises under a limited set of facts, its overarching impression and analysis of Civil Code section 1550.5 could yield broader implications for the future of how California regulates its cannabis activities and the potential future lawsuits that challenge those regulations based on the rationales expressed by the court. Whether the Second District's opinion stands remains to be seen, as the County has expressed its intent to appeal the decision to the California Supreme Court. A copy of the court's opinion can be found online at: https://www4.courts.ca.gov/opinions/documents/B333201A.PDF
(Bridget McDonald)

SECOND DISTRICT COURT AFFIRMS GRANTING 473(B) RELIEF IN CEQA CHALLENGE BECAUSE RESPONDENTS TIMELY FILED MOTION AND DID NOT MAKE UNREASONABLE MISTAKE OF LAW

Parents Against Santa Susana Field Lab et al. v. California Department of Toxic Substances Control et al., *Unpub.*, Case No. 2D CIV. B337733 (2nd Dist. Dec. 16, 2024).

In an *unpublished* opinion filed on December 16, 2024, the Second District Court of Appeal affirmed the trial court's order granting respondents' motion to set aside the judgment under Code of Civil Procedure section 473, subdivision (b) (473(b)). The court found that the 473(b) request was a legitimate form of relief for respondents, and it was timely requested. Additionally, it was not unreasonable for respondents to believe that their alternative writ of mandate met the hearing request under Public Resources Code section 21167.4.

Factual and Procedural Background

The Santa Susana Field Lab is a decommissioned nuclear reactor and testing site located in southeast Ventura County. In 2017, the California Department of Toxic Substances Control (Department) released a draft Environmental Impact Report (EIR) discussing the remediation of soils and groundwater around the lab. The Parents Against Santa Susana Field Lab, Physicians for Social Responsibility/Los Angeles Chapter, Inc., and Public Employees for Environmental Responsibility, Inc. (collectively: respondents) submitted comments to the Department on the draft EIR.

In May 2022, before releasing a final EIR, the Department announced it had entered into a settlement agreement with The Boeing Company regarding cleaning up the area around the field lab. The agreement stated that it was not effective until the Regional Water Quality Control Board, Los Angeles Region (Water Board), approved a memorandum of understanding. The Water Board did so in August.

Trial Court Proceeding

In October, respondents filed a California Environmental Quality Act (CEQA) writ petition challenging the settlement agreement. They also filed an *ex parte* application for an alternative writ of mandate to compel the Department, the Water Board, and Boeing to either vacate the agreement or show cause why it should not be vacated. The trial court denied the alternative writ application in December and ordered the parties to meet and confer regarding scheduling. A joint stipulation proposing a briefing and hearing schedule for the case was filed seven months later. By January 2023, respondents did not request a hearing before the 90-day deadline for respondents to request a hearing on their CEQA writ petition.

In June, the Department moved to dismiss respondents' writ petition for failing to request a hearing. The trial court granted the Department's motion in December. In doing so, the court rejected the respondents' argument that their *ex parte* application satisfied section 21167.4's hearing-request requirement, concluding that a request for "provisional remedies" does not satisfy the statute. Rather, to satisfy section 21167.4, a request must specify that it is for a "hearing on the merits of the petition." Respondents' application requested that the court issue an alternative writ, which is not a final determination on the merits.

The trial court dismissed the action and entered judgment for the Department. Later that day respondents moved for 473(b) relief, arguing that their error in assuming that the alternative writ satisfied section 21167.4's hearing-request requirement was excusable.

The trial court found that while compliance with section 21167.4 "is not complex," "there is no case law specifying that an application for an alternative writ does not constitute a request for a hearing." Respondents also had a:

> . . .good faith belief that it was appropriate to rely on a writ practice guide for the proposition that the issuance of an alternative writ places the matter on the court's calendar for a hearing on the merits," and "demonstrated early diligence in pursuing the case.

The court therefore granted respondents' request for 473(b) relief and vacated the judgment of dismissal.

The Court of Appeal's Decision

473(b) Relief Available to Respondents as Interim Procedure

Appellants contended that the order granting respondents' motion to set aside the judgment must be vacated because 473(b) relief was "categorically unavailable" when a party fails to timely request a hearing under section 21167.4, subdivision (a). Respondents countered that the Department forfeited this contention because it was not raised during the proceedings below.

The Second District Court of Appeal first rejected respondents' argument that the contention was forfeited because the relevant decisions confronting this issue unanimously concluded that 473(b) relief is available when a party misses a section 21167.4 deadline.

However, the court rejected the appellants' contention on the merit because there was clear case law holding that 473(b) relief is available when excusable error leads to a section 21167.4 dismissal. The court cited *McCormick v. Board of Supervisors*, 198 Cal.App.3d 352 (1988), where that court noted that 473(b) relief was permitted "unless absolutely forbidden by statute." *McCormick* relied on *Simpson v. Williams*, 192 Cal.App.3d 285 (1987) for the proposition that 473(b) relief is available unless a statute or court rule precludes it, a proposition the appellant argued was undermined by the California Supreme Court's decision in *Maynard v. Brandon*, 36 Cal.4th 364 (2005) (*Maynard*), which analyzed whether 473(b) relief was available under the mandatory fee arbitration act (MFAA). The *Maynard* court likened the request for a post-arbitration trial to the filing of a notice of appeal, a jurisdictional requirement not subject to 473(b) relief, and concluded that the 473(b) relief was unavailable because the terms, goals, and legislative history evidenced the Legislature's intent to deny relief for missing MFAA deadlines.

However, the court pointed out that while the *Maynard* court disapproved *Simpson*'s broad conclusion that 473(b) relief is available unless a statute specifically precludes it, *Maynard* also acknowledged that *Simpson*'s conclusion continues to hold true with regard to "interim procedural deadlines." The court found from case law that section 21167.4 is essentially a procedural provision to expedite the CEQA litigation. Thus, the court distinguished section 21167.4's procedure from the filing of a notice of appeal or the post-arbitration request for a trial at issue in *Maynard* and concluded that *McCormick* and its progeny remained good law to allow 473(b) relief available to respondents.

No Delay in Respondents' 473(b) Relief Request

The court further disagreed with the appellants' contention that the trial court abused its discretion when it granted respondents' request for 473(b) relief. According to McCormick, a motion for 473(b) relief is granted liberally where the party in default moves promptly to seek relief and where the party opposing

the motion will not suffer prejudice if relief is granted. While an attorney's failure to take reasonably prudent steps to avoid entry of judgment will not justify the granting of 473(b) relief, the attorney's honest mistake of law will create an exception to that rule.

The court noted that respondents moved for 473(b) relief the afternoon the trial court entered the judgment of dismissal and concluded that that was not a "long delay" in seeking a section 21167.4 hearing that resulted in prejudice. Moreover, because appellants' opening brief did not address this issue, the court found this argument forfeited.

Additionally, the court found that any delay that occurred after respondents missed section 21167.4's hearing-request deadline was largely due to the Department's decision to wait five months to assert that respondents had missed that deadline. Because the relevant time period for calculating any delay is how long it takes a party to request 473(b) relief, not how long it takes for a party to request a section 21167.4 hearing, the court concluded respondents' request for relief the day the trial court entered the dismissal judgment was a prompt request for relief.

No Unreasonable Mistake of Law

Finally, finding that the trial court needed only very slight evidence of an honest mistake of law to justify granting their motion, the court concluded that respondents easily exceeded this threshold.

The court noted that there was no case law specifying that applying for an alternative writ does not satisfy that hearing-request requirement. Additionally, the court found it was reasonable for respondents to rely on the Code of Civil Procedure, a Supreme Court case, and an often-consulted writs practice guide to believe that an alternative writ could satisfy the hearing-request requirement because CEQA petitions for writs of mandate are governed by the same rules of civil procedure as any other writ of mandate proceeding.

The court also rejected the appellants contention that respondents' misconception was unreasonable because the trial court denied their application for an alternative writ more than a month before the deadline to request a section 21167.4 hearing had passed, which should have prompted them to request a hearing. The court pointed out that nothing in section 21167.4 requires a party to make multiple hearing requests, and nothing in the denial order mentioned whether respondents had fulfilled section 21167.4's requirements.

Finally, appellants argued respondents were unreasonable because case law demonstrates that section 21167.4 requires strict compliance. However, the case law appellants cited dealt with a party that only stipulated a hearing date. In contrast, the court found respondents had filed and served a written request for a hearing when they applied for the alternative writ, so the case law would not apply if respondents reasonably misunderstood their alternative writ's hearing request satisfied the 21167.4 request. Thus, the court concluded there was no abuse of discretion in the trial court's conclusion that the respondents' misconceptions about the law were reasonable.

Conclusion and Implications

Ironically, the existence of this case would close the door for another honest or reasonable mistake of law but helps clarify the law that alternative writs cannot replace a proper hearing request to one's original CEQA writ petition. Also paradoxically, while the Second District Court of Appeal stated the trial court only needed very slight evidence to liberally grant its order for the 473(b) relief, this case highlights the importance and benefit of conducting thorough and ample legal research, even if it somehow reaches an erroneous conclusion, to qualify for an honest mistake of law, especially when the law is not so clear and obscure on the subject issue.
(David Song)

FOURTH DISTRICT COURT AFFIRMS UPLAND PARK PROJECT AMID CEQA CHALLENGES

Sicking v. City of Upland, Unpub., Case No. EO82066 (4th Dist. Dec. 5, 2024).

In *Sicking v. City of Upland*, the California Court of Appeal addressed a dispute involving the City of Upland's approval of a revitalization project for Upland Memorial Park, in an *unpublished* decision. The project, partially funded through a Proposition 68 grant, included upgrades and new facilities aimed at enhancing community recreational opportunities. However, the project faced legal challenges under the California Environmental Quality Act (CEQA). Plaintiff Lois Sicking argued that the City failed to comply with CEQA by issuing a Mitigated Negative Declaration (MND) instead of preparing a more comprehensive Environmental Impact Report (EIR). Her concerns centered on the adequacy of the project description and the potential environmental impacts on the park's trees and bird species.

The Court of Appeal upheld the City's actions, concluding that the MND satisfied CEQA requirements and that no substantial evidence supported a fair argument for significant environmental impacts.

CEQA Overview

CEQA mandates that public agencies assess and disclose the environmental impacts of projects they approve or undertake. The law aims to inform decision-makers and the public, minimize environmental damage, and promote sustainable development through alternatives or mitigation measures. If a project's potential impacts are deemed significant, an EIR must be prepared. However, if impacts can be mitigated to a less-than-significant level, an agency may adopt an MND.

The Court of Appeal's Decision

The Project Description

Sicking challenged the adequacy of the project description in the MND, asserting it was not "accurate, stable, or finite," as required by CEQA. She argued that the description's use of the term "mainly" to describe proposed upgrades and rehabilitations was misleading, given that many improvements were new rather than renovations. Additionally, she criticized the omission of specific details about certain project elements and claimed the description's general language deprived the public of meaningful participation.

The Court of Appeal rejected these arguments, emphasizing that CEQA does not require exhaustive detail in project descriptions. Instead, the description must provide sufficient clarity to evaluate potential environmental impacts. The MND's description, spanning multiple pages and supported by attached site plans, adequately outlined the scope of the renovations and additions. The Court of Appeal found no merit in Sicking's assertion that general language, such as "but not limited to," rendered the description unstable or incomplete.

Substantial Evidence and Environmental Impacts

Under CEQA's "fair argument" standard, an EIR is required if substantial evidence supports a reasonable possibility that a project may have significant environmental effects. Sicking argued that substantial evidence existed to suggest significant impacts on the park's trees and bird species, warranting the preparation of an EIR.

Impacts on Trees

Sicking contended that the project would harm the park's tree inventory, including heritage oaks and sycamores. However, the Court of Appeal noted the absence of concrete evidence about the number or condition of trees to be removed. The MND repeatedly emphasized the City's goal of preserving existing trees and outlined measures to minimize tree loss, such as incorporating tree preservation into project planning.

Public comments, including speculation about potential tree removal, were deemed insufficient to meet CEQA's substantial evidence threshold. The Court of Appeal highlighted that concerns about climate change or aesthetic impacts from tree removal, while important, require technical or expert support to constitute substantial evidence.

Impacts on Bird Species

Sicking also raised concerns about the project's impacts on birds, including Cooper's Hawks, American Kestrels, and other species observed in the park. A survey by a third-party ecologist documented the presence of these species and recommended measures to avoid disturbing nesting habitats.

The Court of Appeal concluded that the mitigation measures outlined in the MND were adequate to reduce potential impacts on birds to a less-than-significant level. These measures included pre-construction surveys by qualified biologists, work stoppages near active nests, and monitoring during construction. The Court of Appeal found no evidence suggesting these measures would fail to protect bird populations or their nesting habitats.

Conclusion and Implications

The Court of Appeal's analysis reinforced several principles of CEQA compliance. In looking to the project description, while a project description must be clear and accurate, it need not provide exhaustive details beyond what is necessary for environmental review.

As to substantial evidence, speculation, fears, or general concerns are not enough. Evidence must be factual, technical, or supported by expert opinion. As to mitigation measures, agencies may rely on mitigation measures to address potential impacts, provided they are specific, feasible, and enforceable. The Court of Appeal found the City's measures for protecting trees and birds met these criteria.

The decision in *Sicking v. City of Upland* affirms the broad discretion agencies have in determining the appropriate level of environmental review under CEQA. It underscores the importance of crafting clear and comprehensive project descriptions and implementing robust mitigation measures to address environmental concerns. The ruling also highlights the high evidentiary bar for challenging an MND based on potential environmental impacts.

For public agencies, the case serves as a reminder to thoroughly document compliance with CEQA and address potential environmental impacts with specific and enforceable mitigation measures. For project opponents, it illustrates the necessity of providing concrete, expert-supported evidence to challenge an agency's environmental determinations successfully.

As cities and municipalities continue to pursue infrastructure and recreational improvements, this decision provides guidance on balancing development objectives with environmental requirements. The court's *unpublished* opinion is available here: https://www4.courts.ca.gov/opinions/nonpub/E082066.PDF (Darien Key)

SUPERIOR COURT ORDERS SONOMA COUNTY TO CEASE ISSUING WELL PERMITS EXCEPT FOR EMERGENCY PERMITS

Russian Riverkeeper v. County of Sonoma, Case No. SCV-273415 (Sonoma Super. Ct. Nov 11, 2024).

The Superior Court of Sonoma County recently ruled against Sonoma County in a writ case brought by environmental organizations, Russian Riverkeeper and California Coastkeeper. At the heart of the case were amendments to Sonoma County's Chapter 25B Water Well Construction Standards. The amendments, adopted in April 2023, were intended to regulate groundwater extraction but were challenged for failing to comply with the California Environmental Quality Act (CEQA) and the public trust doctrine.

The court's ruling not only voided the amendments but also highlighted key procedural and substantive shortcomings in Sonoma County's approach to groundwater management. Specifically, the court emphasized violations of CEQA, failures under the public trust doctrine, and inadequate consideration of environmental and cumulative impacts associated with groundwater well permits. As a result of the court's ruling, Sonoma County is now prohibited from issuing new non-emergency water well permits under the voided ordinance.

The Superior Court's Decision

The Public Trust Doctrine

The public trust doctrine is a facet of California environmental law, requiring the government to pro-

tect natural resources, such as navigable waterways, for public use and ecological sustainability.

The court found that Sonoma County failed to uphold its public trust obligations when issuing groundwater well permits. While the County claimed to have established a Public Trust Review Area (PTRA) as part of its amendments, the court determined that this effort lacked sufficient evidentiary support. The court determined the County's methodology for identifying sensitive areas relied solely on the presence of salmonid habitats and ignored other critical public trust resources. Moreover, the County's failure to analyze the cumulative impacts of groundwater extraction on public trust resources underscored a broader disregard for its obligations under the doctrine.

CEQA Violations and the Role of Evidence

CEQA mandates that public agencies assess and mitigate significant environmental impacts before approving projects. Sonoma County had attempted to exempt its well construction standards from CEQA review by invoking categorical and common-sense exemptions. However, the court rejected these claims, finding no substantial evidence to support the applicability of these exemptions.

The court also criticized the County for relying on unsubstantiated assumptions about the environmental benefits of its conservation measures. Key requirements, such as water use restrictions and monitoring protocols, were deemed unsupported by any quantitative analysis or evidence demonstrating their effectiveness. This lack of evidence not only invalidated the County's CEQA exemptions but also highlighted deficiencies in its environmental decision-making process. Furthermore, the court underscored that CEQA prohibits reliance on mitigation measures to justify exemptions, as mitigation measures are relevant only when an Environmental Impact Report (EIR) or a Mitigated Negative Declaration (MND) is prepared.

The Writ of Mandate

As a result of the above rulings, the court issued a writ of mandate compelling Sonoma County to set aside its amendments to Chapter 25B of the County Code. This writ requires the County to rescind the categorical exemption it had applied under CEQA, void the amendments, and suspend the issuance of new water well permits except in emergencies. The court also directed the County to re-evaluate its groundwater management policies in compliance with both CEQA and the public trust doctrine, including proper consideration of cumulative impacts and substantial evidence for any proposed mitigation measures. The court retained jurisdiction over the matter, ensuring Sonoma County's compliance with these directives.

Conclusion and Implications

As a result of the court's rulings, Sonoma County is now prohibited from issuing new non-emergency water well permits under the voided ordinance. The court specifically ordered the County to rescind the categorical CEQA exemption it had previously applied and to suspend the issuance of permits unless it complies with the requirements of CEQA and the public trust doctrine.

Furthermore, the County is mandated to reassess its groundwater management practices, taking into account cumulative impacts, public trust resources, and adequate mitigation measures. These obligations reflect the court's insistence on more rigorous and transparent environmental decision-making processes.

The Sonoma County case charts new ground for groundwater management and environmental law in California. By holding the County accountable under both CEQA and the public trust doctrine, the Superior Court highlighted the importance of evidence-based policymaking and what public agencies should consider when balancing water use with ecological preservation.

For other jurisdictions, this decision underscores the necessity of robust environmental analysis and public trust considerations when managing shared natural resources. It also serves as a cautionary tale about the risks of relying on inadequate exemptions or unsupported assumptions in environmental planning.

Sonoma County's next steps will likely involve substantial revisions to its well-construction standards, informed by further environmental impact assessments. As California continues to grapple with water scarcity, this ruling highlights parts of the legal framework for the ever-expanding regulation of groundwater resources.
(Darien Key, Derek Hoffman)

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