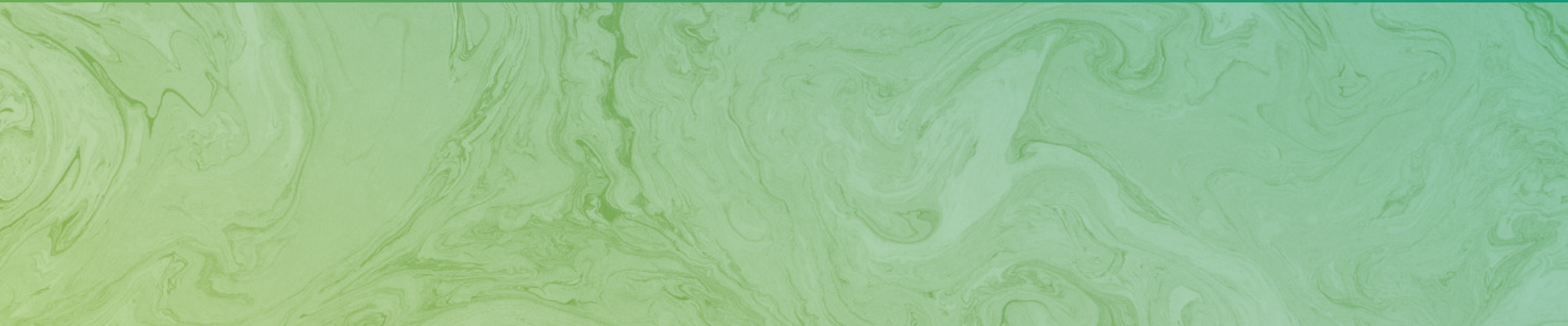


A decorative background featuring a marbled paper pattern in shades of green and teal, covering the upper half of the slide.

CEQA LITIGATION UPDATE

Rick Jarvis

Jarvis Fay LLP

California League of Cities

City Attorneys Spring Conference

May 7, 2025

Published CEQA Cases (September 1, 2024 – March 26, 2025)

- Cases related to four areas of CEQA:
 - CEQA Compliance Issues
 - CEQA Exemptions
 - CEQA Litigation Procedural Issues
 - Cases involving “Abusive CEQA Litigation”
 - i.e., CEQA claims being asserted for economic or other “non-environmental” reasons

COMPLIANCE ISSUES

+

○ •

- Wildfire Risk

- Tribal Consultation



People ex rel. Bonta v. County of Lake
(2024) 105 Cal.App.5th 1222
(certified for partial publication)

Background:

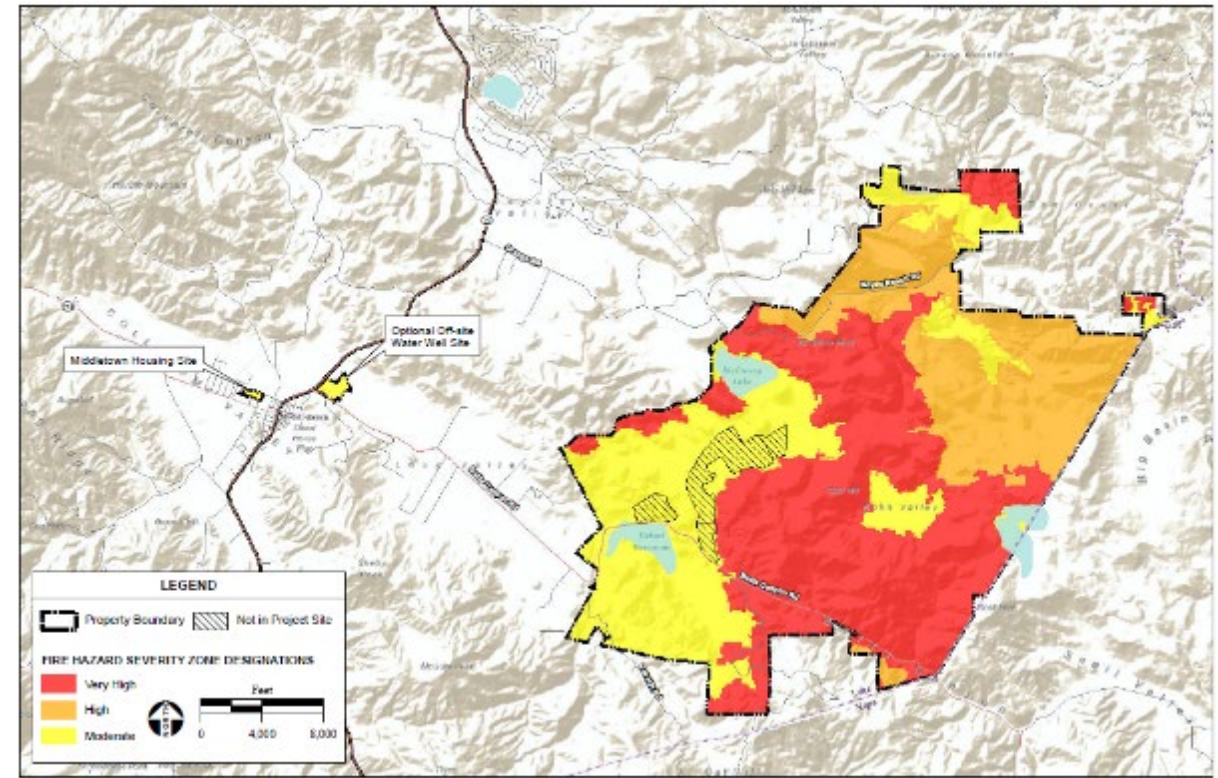
- Petitioners argued that the Final EIR issued for a large mixed-use development on a 16,000-acre site was defective on numerous grounds, including a failure to properly analyze wildfire impacts, GHG emissions, water usage, and project alternatives.

Analysis:

- The Court took issue with the County's use of an errata to analyze the project's potential wildfire risk
 - This was too late in the process – it should have been in the draft EIR
- According to the Court, the County also should have attempted to quantify the wildfire risk of bringing 4,000 new residents compared to the undeveloped nature of the project site

Holding:

- Court held that the FEIR was defective because substantial evidence in the administrative record did not support the conclusion that the project would have less than significant environmental impacts regarding the community's wildfire evacuation and regarding the wildfire ignition risk



Takeaway/Practice Tip:

- Be wary of relying on the use of an “errata” to an EIR that is released after the Final EIR is circulated, especially for major issues.
- Regarding wildfire risk, carefully identify what provisions of a development plan are mitigation measures and document them as such in a mitigation monitoring and reporting plan.

Fairfield[®]
BY MARRIOTT

79-ROOM PROTOTYPE BROCHURE



Koi Nation of Northern California v. City of Clearlake (2025) 109 Cal.App.5th 815

CEQA Refresher:

- CEQA requires that a public agency give formal notification to the designated contact / tribal representative before releasing an MND to give the tribe a chance to request consultation. (Pub. Res. Code § 21080.3.1.)

Background:

- This project involved the construction of a four-story hotel and the construction of a roadway
- The project's consultation was informed by the Koi Nation that a Koi Nation ancestor had property near the project site
- The City sent the Koi Nation formal notification of the project
- On March 9, 2022, the City met with the Koi Nation's representative, who requested the City undertake certain mitigation measures
- The City did not contact the tribe again and circulated its notice to adopt an MND, claiming there was no significant environmental impact to tribal resources

Holding:

- The City improperly determined that it had concluded the initial consultation process, and failed to meaningfully respond to the tribe's subsequent comments on the adequacy of the city's mitigated negative declaration.
- The city's failure to further engage in discussion with the tribe did not adequately comply with the statutory requirement of a "process seeking, discussing and considering carefully the views of others" and "where feasible, seeking agreement." (Gov. Code § 65352.4.)
- Rather, under Public Resources Code section 21080.3.2, consultation may only be concluded either when the parties agree to mitigation measures, or when, "acting in good faith and after reasonable effort, [the agency] concludes that mutual agreement cannot be reached."

Takeaway:

- Even if the local agency determines that there are no impacted tribal resources, it should continue to engage in discussions with any interested tribe and fully respond to all questions and comments from an interested tribe, including offering to meet with tribal representatives to discuss any areas of disagreement.

CEQA EXEMPTIONS

+

•

○

- The “Infill” Exemption
- The Class 1 Categorical Exemption to “Existing Facilities”
- The *Save Our Capitol!* Exemption

*Working Families of Monterey County v. King
City Planning Commission (2024) 106
Cal.App.5th 833*

CEQA Refresher:

- The Class 32 categorical exemption (CEQA Guideline section 15332) states that “Class 32 consists of projects characterized as ***in-fill development*** meeting the conditions described in this section ... [including] (b) [t]he proposed development occurs within city limits on a project site of no more than five acres ***substantially surrounded by urban uses.***”

Background:

- The King City City Council determined that the construction of a new Grocery Outlet store was subject to the Class 32 categorical exemption .
- Plaintiffs argued that the Class 32 exemption did not apply because King City is not large enough to be considered an “urbanized area” under CEQA and thus it is not on an “in-fill site.”



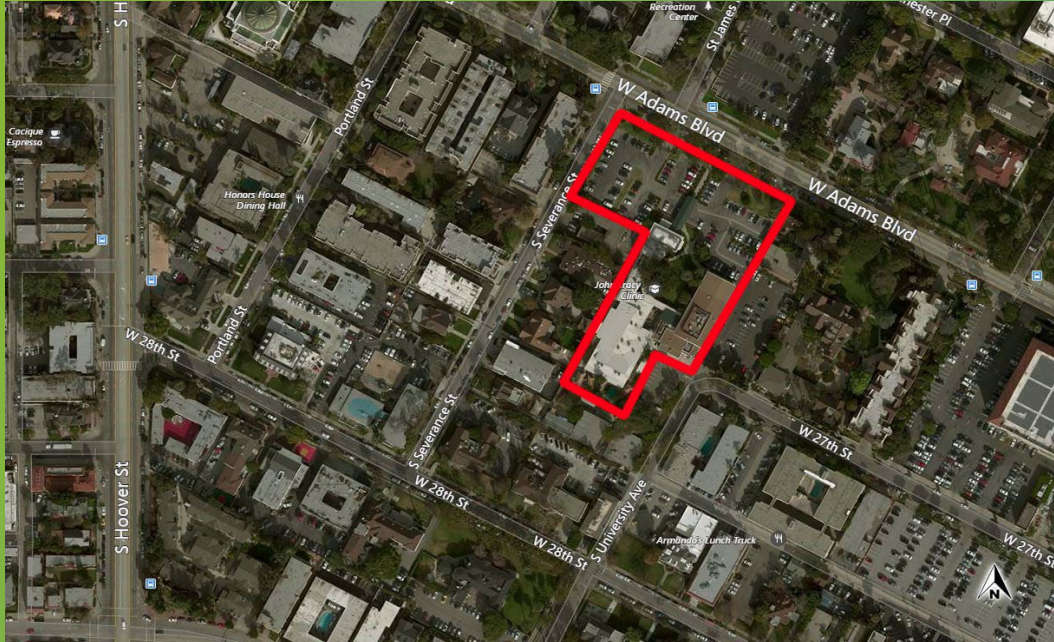
Holding:

- Substantial evidence supported the city’s determination that the project site was “substantially surrounded by urban uses,” notwithstanding argument that King City was too “rural” to be considered “urban.”

Takeaway/Practice Tip:

- CEQA’s Class 32 categorical exemption for “in-fill development projects” (applicable to sites of less than five acres substantially surrounded by urban uses, where the development is consistent with applicable general plan and zoning designations) continues to be an attractive option for complying with CEQA.

West Adams Heritage Association v. City of Los Angeles (2024) 106 Cal.App.5th 395



Background:

- The project at issue involves seven residential buildings comprising 102 apartment units and various amenities near the USC Campus.
- The Zoning Administrator approved the project, finding the Class 32 categorical exemption applied
- The trial court denied a writ of mandate challenging the project approval
- After the court of appeal reversed, holding that the Zoning Administrator's findings regarding noise prevented the application of the Class 32 exemption, the California Supreme Court granted review, vacated the decision, and asked the court to reconsider the noise issue in light of AB 1307.
 - AB 1307 enacted Pub. Res. Code Section 21085, which states that when evaluating residential projects under CEQA, noise generated by residents and their guests is not a significant effect on the environment.



Holding:

The court held that the Class 32 exemption is not inapplicable simply because the project would generate noise (regardless of whether the noise includes amplified music).

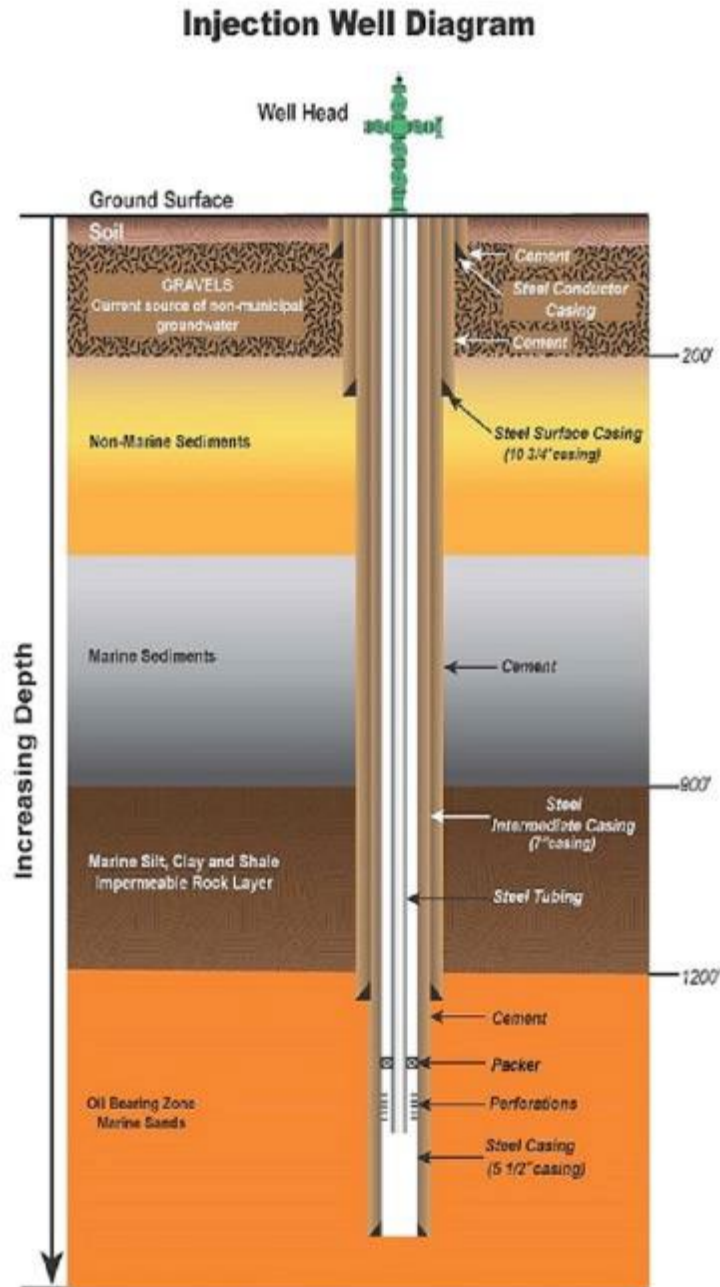
Incidental Note:

The Court remanded the case to the City to expressly determine if the project is consistent with the redevelopment plan, a finding that the court determined the city must make before concluding the Class 32 exemption applies (without addressing the extensive contrary caselaw holding that such supportive findings are not required).

Takeaway/Practice Tip:

- When relying upon the Class 32 in-fill exemption, make sure to adopt express findings as to each of its criteria (even though the CEQA Guidelines do not appear to explicitly require such supporting findings and there are several published decisions—ignored by this court—that hold that such findings are not required).
- If the court of appeal is reversed by the California Supreme Court, expect the court to be extra hostile on remand

Sunflower Alliance v. Department of Conservation (2024) 105 Cal.App.5th 771
(review granted by California Supreme Court)



CEQA Refresher:

- The Class 1 categorical exemption exempts projects from CEQA review when such projects involve minor alterations of existing structures. (CEQA Guidelines § 15301.)

Background:

- The project at issue involves the conversion of a former oil well into a Class II injection well (to store polluted water) that would require minimal work and present no concern of contaminating drinking water.
 - It would save at least 10 vehicle trips per week
- The trial court granted plaintiff's writ petition because injection is a "significantly different use" than oil extraction

Holding:

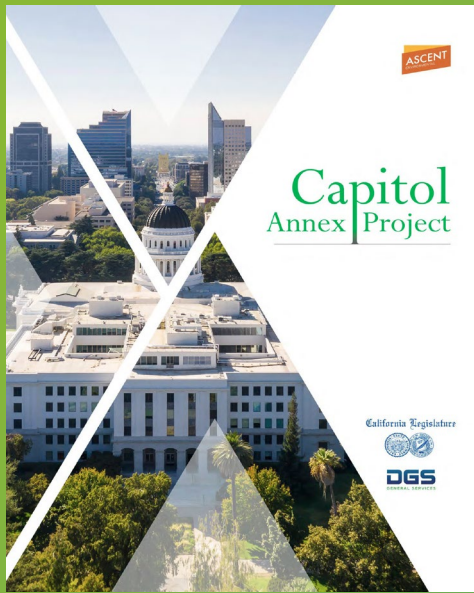
- The Class 1 categorical CEQA exemption applicable to “existing structures” may be applied even if the project proposes to make a materially different use of those structure (here, injection of water rather than pumping out of water), so long as the lead agency finds (based on substantial evidence) that the environmental risks are negligible.
 - The court reasoned the term “negligible” refers to a minor/inconsequential risk of environmental harm, even if the project results in a change of use

Note: The California Supreme Court has granted review to interpret whether “negligible” refers to a negligible change in use or a change that presents a negligible risk of environmental harm

Takeaway/Practice Tip:

Courts may be willing to accept a “practical” view of the scope of categorical exemptions and may be willing to allow the “existing facilities” exemption to be invoked for projects that propose materially different uses of existing structures, so long as the resulting environmental impact is minimal.





Save Our Capitol! v. Department of General Services (2024) 105 Cal.App.5th 828

Background/Petitioner Argument:

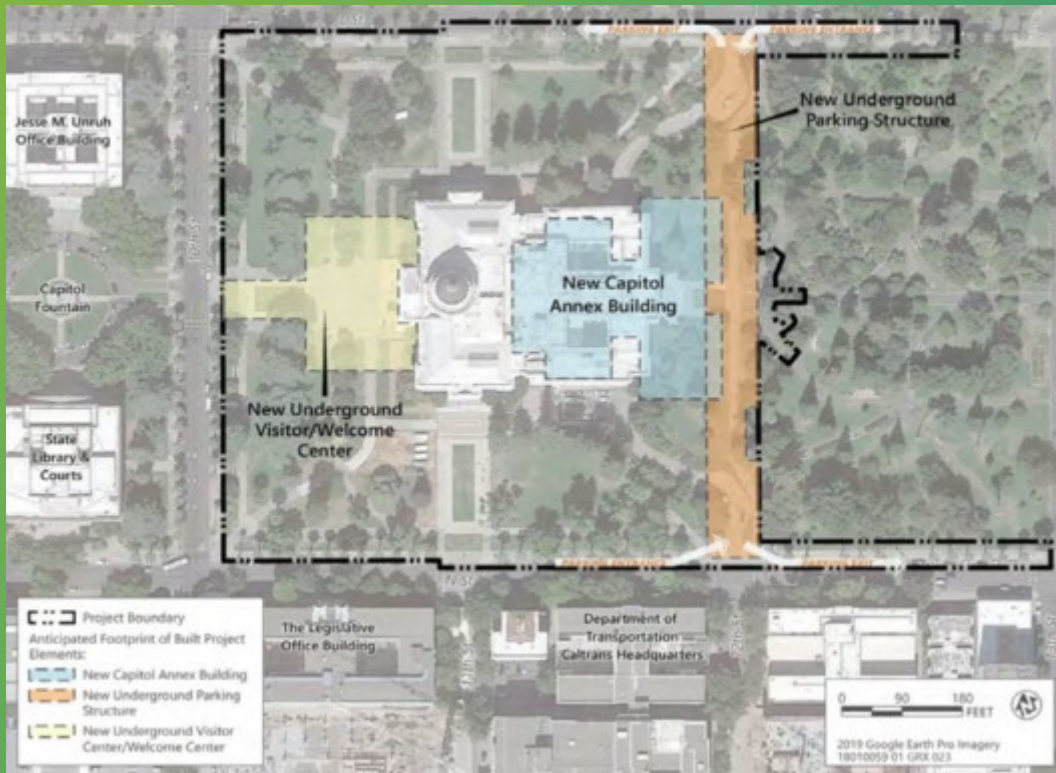
- This is a third in a series of cases involving CEQA issues with the Capital Renovation Project
- At issue here is whether CEQA still applies:
 - SB 174 specifically exempts the Capital Renovation Project from CEQA.

Holding:

- The court held that SB 174 mooted the CEQA issue.

Practice Tips:

- If you don't like the law, change it!
 - Fine print caveat: This practice tip may only be used by the State Legislature
- The case may be helpful authority as to how courts in mandamus proceedings must apply the current statutory law as it exists at the time of the decision.
 - When facing circumstances in litigation where there is new, helpful statutory law, try to frame the issue in this manner.



CEQA LITIGATION PROCEDURAL ISSUES

+

•

○

- Recovery of Administrative Record Costs
- Service of Summons under the Subdivision Map Act
(covered in Land Use Update)

***Yolo Land and Water Defense v. County of Yolo* (2024) 105 Cal.App.5th 710
(certified for partial publication)**

Background:

- Petitioner challenged EIR for a mining project, claiming the EIR was inadequate for several reasons

Holding:

Even when a CEQA petitioner elects to prepare the administrative record, the respondent agency may still be able to recover reasonable costs (in this case, about \$3,813.45) it incurs in producing documents to petitioner for preparation of the record, including staff, secretarial, and consultant time. These costs may be in excess of costs others authorized under the Public Records Act.

Takeaway/Practice Tip:

Petitioners who elect to prepare the administrative record in a CEQA action may serve the respondent agency with a Public Records Act request to obtain the necessary documents. While the PRA does not authorize charges for staff time, the agency might nonetheless be able to recover such additional costs if it ultimately prevails in the litigation. So it may be a good practice to keep track of such costs to better enable the agency to recover them later.

“ABUSIVE” CEQA LITIGATION

+

•

○

- Counter-suing a CEQA Petitioner
- A Modified Project Description
- The Harmless Error Doctrine
- Differential Standard of Review for Legislatively Enacted Regulations



Thompson Hotel



Schrader Hotel



Tommie Hollywood Hotel



Selma Hotel



Hollywood
Athletic
Club

Relevant Group, LLC v. Nourmand (9th Cir. 2024) 116 F.4th 917

Background:

- The owner of the Hollywood Athletic Club filed a series of lawsuits alleging CEQA violations against four hotel projects owned by the same developer and being processed by the City of Los Angeles
- The developer filed a RICO action in federal court.

Holding:

- The court held the owner had a first amendment right to file a series of CEQA actions against the developer, regardless of any improper motive
 - The court noted that the CEQA actions were not objectively meritless (and in fact, the CEQA petitioner had prevailed in one of them)

Takeaway:

- You can almost never counter-sue a CEQA petitioner unless you can demonstrate that the CEQA action is completely meritless

Takeaways for Remaining “Abusive CEQA” Cases:

Gooden v. County of Los Angeles (2024) 106 Cal.App.5th 1 (certified for partial publication)

- The County approved an update to an area plan that initially proposed regulating new vineyards in the draft EIR but proposed banning all new vineyards in the final EIR.
- Court held the County’s decision to ban new vineyards as part of the area plan, despite the proposed ban not being disclosed in the draft EIR, because the ban did not make the project description unstable.
- Takeaway: the court articulated a refined test for determining when a modified project requires recirculation or requires CEQA review to start from scratch: does the deviation between the project description and the ultimately approved project “alter the ‘nature of the project’ or any of its ‘main features’”?

California Natural Gas Vehicle Coalition v. State Air Resources Board (2024) 105 Cal.App.5th 304

- CARB adopted regulations requiring a certain percentage of new vehicle sales to be “zero emission,” with targets for 2023 and 2030.
- The Court upheld CARB’s regulation, reasoning that CARB’s rejection of a “Low-NOx Alternative” was supported by substantial evidence, that CARB’s adequately considered alternatives and that CARB’s error in not responding to public comments regarding the Low-NOx Alternative was harmless error.
- Takeaway: This case is a good example of both a deferential standard of review & the harmless error doctrine.

Western States Petroleum Association v. California Air Resources Board (2025) 108 Cal.App.5th 938

- CARB issued a regulation designed to limit emissions from certain ocean-going vessels while docked or anchored in California, relying on a programmatic tiered approach to environmental review.
- Court rejected challenge to CARB regulations limiting toxic emissions from oil tankers and other vessels while at berth in California ports or terminals.
- Takeaway: Courts show broad deference to regulatory bodies when they legislatively adopt rules intending to protect the environment.



THANK YOU

Rick Jarvis
Jarvis Fay LLP