

The California Environmental Quality Act: Appellate Decisions

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In this article, the authors review recent appellate decisions involving the California Environmental Quality Act.

Tsakopoulos Investments LLC v. County of Sacramento (3rd App. Dist., September 2003)

In the published portion of this opinion, the court of appeal upheld Sacramento County's greenhouse gas (GHG) analysis used in an environmental impact report (EIR) for a community master plan, distinguishing the county's process from other recent cases in which a lead agency's GHG analyses were rejected because they were not supported by substantial evidence. The court did not go so far as to opine on whether substantial evidence supported the methodology used by the county here because the petitioner's challenge was limited to asserting that the county used the same methodology previously rejected in the reported caselaw. Therefore, the court of appeal held the county's methodology was presumed to be adequate.

The petitioner asserted that the county had employed GHG methodologies previously rejected by the courts in 2015's *Center for*

Biological Diversity v. Department of Fish & Wildlife and 2018's *Golden Door Properties LLC v. County of San Diego*. The court disagreed, distinguishing those cases.

In *Center for Biological Diversity*, the lead agency compared a project's GHG emissions to a hypothetical "business as usual" baseline, finding that the project's GHG emissions were less than significant because they would be 31% below business as usual, which exceeded the California Air Resources Board's determination that a 29% reduction was needed statewide to achieve the state's GHG reduction goals. However, the court there found that there was no substantial evidence in the record to support the determination that the project-level reduction was consistent with achieving reductions needed statewide, noting that new projects may be in a better position to implement greater efficiencies than existing projects. In other words, GHG reductions necessary to achieve state-level goals could not

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simply be extrapolated linearly to project-level reductions.

In *Golden Door Properties*, San Diego County had developed GHG significance thresholds that included an efficiency metric of 4.9 tons of carbon dioxide equivalent per service population. However, this efficiency metric relied in part on statewide service population and GHG data, and the court there found there was no substantial evidence to support the use of this statewide data for projects within San Diego County and that the metric did not account for variations from project to project.

The court of appeal in *Tsakopoulos* held that Sacramento County's GHG analysis and significance thresholds were distinguishable from these cases because they were derived from county-specific data and emissions factors from county-specific sectors. While the court stopped short of addressing the merits of the analysis beyond whether they differed from previously rejected methodologies, the opinion underscores the discretion afforded to lead agencies in setting significance thresholds and offers some validation of one agency's methodology for doing so.

***Yerba Buena Neighborhood Consortium LLC v. Regents of University of California* (1st App. Dist., October 2023)**

Several parties challenged an EIR prepared by the Regents of the University of California in connection with a planning document for the development of University of California, San Francisco. The development plan included enhancements, the construction of new buildings including a new hospital, replacement of student housing, and upgrades to campus infrastructure. The trial court found the EIR for

the plan compliant with CEQA and entered judgment for the regents. The petitioners filed separate appeals, which the court of appeal ultimately rejected, affirming the trial court's judgment upholding the EIR.

First, the court determined that the EIR adequately considered alternatives by considering "no project" and "reduced project alternatives," as well as other alternatives that had smaller deviations from the plan. The court rejected an argument that the EIR was deficient for failing to evaluate an offsite alternative because nothing in CEQA requires such analysis, the regents disclosed in the EIR that they considered an offsite option but did not conduct a detailed evaluation because an offsite alternative was not consistent with the plan's objectives, and substantial evidence supported the regents' decision.

Second, one petitioner argued that the EIR failed to analyze the plan's impact on public transit in San Francisco and therefore failed to analyze the impact that transit delay would have on vehicle miles traveled (VMT). The court determined that substantial evidence supported the argument that the plan might have a significant impact on public transit, requiring its discussion in the EIR. However, the EIR and appendix, taken together, contained "sufficient information about transit impacts to serve the EIR's function as an informational document." The court determined that substantial evidence supported the EIR's conclusion that, even with traffic delays from the proposed project, people would continue using public transit (as opposed to resorting to personal vehicles), and the EIR need not consider VMT as a significant impact.

Third, the court rejected the argument that

the EIR improperly concluded that it was not feasible to avoid demolishing several historic buildings on campus. The court noted that a project may reject as infeasible an “alternative that is impractical or undesirable from a policy standpoint.” Here, the regents determined that “the erection of buildings [was] better suited to the demands of modern medical research and treatment [and] outweigh[ed] the cultural impact of the loss of the older buildings,” which was within their right to do.

Fourth, the court rejected the argument that the EIR failed “to consider views from surrounding residential neighborhoods and mistakenly [found] the visual impact of the proposed New Hospital not significant.” The court determined that the plan fell under CEQA Section 21099(d)(1), which states that “[a]esthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment.” In determining that Section 21099(d)(1), applied, the court determined that the plan covered an “employment-center project” because it was zoned in a manner that allowed “commercial uses.”

Fifth, the court determined that the EIR did not unnecessarily defer mitigation for wind impacts because the CEQA Guidelines allow deferral of the “specific details” of mitigation measures when it is “impractical or infeasible to include those details during the project’s environmental review.” Here, the mitigation measure included wind tunnel testing, which the regents appropriately deferred until they had finalized a building design for the plan.

Further, because the regents adopted a statement of overriding considerations for wind

impacts, the EIR did not need to mitigate wind impacts below the level of significance.

***Marina Coast Water District v. County of Monterey* (6th App. Dist., September 2023, modified October 2023)**

The petitioner water district challenged county approval of a water company’s application for a permit to construct a desalination plant and associated facilities. As originally conceived, the project had anticipated relying on coastline water wells within a city’s jurisdiction, but the city denied the water company’s application for a requisite coastal development permit, which the company timely appealed to the California Coastal Commission. Despite the status of the coastal development permit appeal putting the project’s water supply source in some doubt, the county approved the company’s permit to construct and operate the desalination plant.

The petitioner challenged the county’s approval, alleging that the county violated CEQA by failing to prepare a subsequent or supplemental EIR to account for the uncertainty surrounding the project’s water supply source in light of the city’s permit denial and other new information. The petitioner also argued that the county’s statement of overriding considerations was not supported by substantial evidence and that the county violated its own general plan in approving the project without an identified long-term water supply source.

The trial court granted the water district’s writ petition in part, agreeing with the petitioner that the county improperly relied on the benefits of the project in the statement of overriding considerations without addressing the uncertainty surrounding the project’s water supply. The trial court rejected the other two

grounds for the petition. Reversing the trial court's partial grant of the writ, the court of appeal determined that the county was entitled to rely on the project's anticipated benefits despite uncertainties about its water supply and that the statement of overriding consideration's alleged failure to explain the uncertainties was not prejudicial, given other relevant evidence in the record that made those uncertainties plain.

After surveying the record, the court of appeal also affirmed the trial court's decision that environmental review was not required. Specifically, the appellate court concluded that the city's permit denial did not change the project's plan or the circumstances under which it had been undertaken: the approval of the project's coastline wells still depended on approval by an agency other than the county, and the city's initial denial subject to the Coastal Commission appeal did not materially alter the uncertainty of whether the wells would be ultimately approved.

Historic Architecture Alliance v. City of Laguna Beach (4th App. Dist., October 2023)

This case involved a proposed remodeling of a home listed on the City of Laguna Beach's Historic Resources Inventory. The city determined that the project was consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties and therefore categorically exempt from CEQA under the historical resource exemption. The city's Design Review Board determined that no exception to the categorical exemption applied because the project would not diminish or detract from the historic significance of the property. The city denied an appeal challenging this determination.

The petitioners subsequently filed a petition, arguing that the city's decision was not supported by substantial evidence and that an exception to the categorical exemption applied because the project would result in a substantial adverse change in the significance of a historical resource. The trial court denied the petition.

The court of appeal affirmed, finding that substantial evidence supported the city's finding that the project was categorically exempt because it was consistent with the Secretary's Standards. The court of appeal also concluded that the fair argument standard does not apply when application of the historical resource exemption and the historical resource exception depend on the same factual issue - consistency with the Secretary's Standards.

California Construction and Industrial Materials Association v. County of Ventura (2nd App. Dist., November 2023)

This case involved a Ventura County ordinance that created two overlay zones in the county's rural areas to protect wildlife migration corridors. The petitioners challenged the ordinance, arguing that it violated the Surface Mining and Reclamation Act (SMARA) and CEQA. The court of appeal affirmed the trial court's determination that the ordinance clearly fell within CEQA's Class 7 and Class 8 categorical exemptions for agency actions that assure the maintenance, restoration, or enhancement of a natural resource or the environment when the "regulatory process involves procedures for protection of the environment."

Among other things, the court of appeal relied on ample evidence in the record, including studies and other documents citing the

need to preserve wildlife corridors and establish development standards compatible with wildlife movement. The court also rejected the petitioners' argument that the "unusual circumstances" exception precluded application of the categorical exemptions because the petitioners cited no evidence to support their claim that the amount of land covered by the ordinance is significantly larger than other projects

subject to the Class 7 and Class 8 categorical exemptions. To the contrary, reported cases have upheld the use of these exemptions for projects covering much larger areas of land. Moreover, the petitioners could not show a fair argument beyond speculation that the ordinance may have an adverse impact on the environment.