



## 2011 Mid-year CEQA Update

Published Court Case Overview and  
What they Mean to Environmental Review

In the next 60-90 minutes.....

- Update of CEQA published case law since February 2011.

PMC

## State Supreme Court denials.....

- Friends of Juana Briones House v. City of Palo Alto
- Cherry Valley Pass Acres and Neighbors v. City of Beaumont
- Sunnyvale West Neighborhood Assn v. City of Sunnyvale

## Set Aside of Entire EIRs....

- Land Value 77, LLC v. Board of Trustees of California State University
  - Fifth District Court of Appeal determined that when a court determines an EIR legally inadequate, the court must set aside the entire EIR and not just portions.
  - Note – does not mean that the remedy is to recirculate the entire EIR.

## CEQA and Density Bonus Law....

- **Wollmer v. City of Berkeley**
  - Upholding of use of exemption (Section 15332) for infill project that made use of density bonus law to exceed the number of units otherwise allowed on site .
  - Court determined that use of density bonus law still met requirements of exemption.
  - Traffic conditions not an unusual circumstance.
  - Project-proposed traffic improvement not a CEQA mitigation measure.

## Use of Addendums Wins Again....

- **CREED v. City of San Diego**
  - Use of an addendum to a 1994 EIR.
  - Court upheld City's ability to approve WSA as part of addendum action.
  - Court rejected CREED's "dumping" of 4,000 pages of electronic documents during hearing process as exhaustion of administrative remedies.
  - Court determined that climate change was known at the time of 1994 EIR and is not new information triggering the need for supplemental environmental review.

## Multiple Issues on EIR Upheld

- Clover Valley Foundation v. City of Rocklin
  - Cultural resource details withheld appropriate.
  - EIR's analysis of sewer line's growth inducing impacts appropriate, including reliance of General Plan and its EIR.
  - Performance standard mitigation for listed species appropriate.
  - City's determination of appropriate analysis periods for traffic analysis was supported by substantial evidence.
  - Water agency's assurances that adequate water is available constituted substantial evidence.

## Definition of Project

- Cedar Fair L.P. v. City of Santa Clara
  - Case involved whether City approval of a "term sheet" for the new 49ers football stadium was a project under CEQA.
  - "Term Sheet" is similar to a letter of intent.
  - Court utilized the test under Save Tara v. City of West Hollywood to determine if the City committed itself to a project.
  - Court determined that term sheet included provisions that preserved the City's discretion to not proceed or alter the project based on the results of CEQA.

## School Impacts and SB 50

- Chawanakee Unified School District v. County of Madera
  - Court distinguished between direct and indirect impacts in relation to the scope of SB 50.
  - Court determined that SB 50 does not limit CEQA requirements to address indirect impacts on the physical environment that are not school facilities.
  - Court noted that SB 50 does not prohibit CEQA from addressing traffic impacts near existing schools while new schools are under construction.
  - Court also determined that the environmental impacts of constructing new schools are not impacts on school facilities and are not limited by SB 50.

## Support of Performance Standards

- Oakland Heritage Alliance v. City of Oakland
  - Court upheld City reliance on existing building standards to address seismic hazards.
  - Court rejected that performance-based seismic design standards be used instead of current standards.

## Notice of Determination Timing

- **Latinos Unidos de Napa v. City of Napa**
  - Court found that for the 30-day status of limitations to apply, the Notice of Determination must be posted for the full entire 30 days and not partial days.
  - Note – CEQA requires the County Clerk to post the Notice of Determination within 24 hours of receipt.

## Was Case Moot and Groundwater

- **Santa Monica Baykeeper v. City of Malibu**
  - While case was not determined moot, it does provide a good discussion on how mootness is determined.
  - While court ruled in favor of City, the case does highlight troubles of when other agencies submit materials into the record attacking the analysis.
  - Court ruled that wastewater/groundwater impacts from previously approved project was time barred from challenge.
  - Groundwater impact conclusions supported by substantial evidence and Baykeeper does not cite conflicting evidence.

## Admin Remedies and Climate Change

- SCOPE v. City of Santa Clarita
  - Project involved was a hospital expansion.
  - Court held that SCOPE did exhaust administrative remedies even though comments during process were vague.
  - Court ruled that City's conclusions on climate change and use of mitigation measures was supported by substantial evidence and did utilize much of what SCOPE suggested.
  - Court determined that the City was not required to make findings of infeasibility on nonspecific mitigation measures.

## Fair Argument Standard

- Save the Plastic Bag Coalition v. City of Manhattan Beach – Supreme Court Decision
  - Court determined in this case that the City's negative declaration conclusions were based on substantial evidence and common sense and that CEQA does not require exhaustive comparative analysis of relative environmental detriments for every alternative course of action.
  - However, the court determined that the conclusions may be different on a ban on plastic bags in larger agencies.

## Fair Argument and Climate Change

- CREED v. City of Chula Vista
  - Project involved preparation of a mitigated negative declaration. CREED submitted 4,000 pages of materials arguing that an EIR was required. Court agreed associated with impacts on hazards.
  - However, the court rejected CREED's argument that use of AB 32 as a threshold for climate change was arbitrary.

## Addressing Existing Envir Conditions

- South Orange County Wastewater Authority v. City of Dana Point
  - Issue involve whether an EIR was required to address odor and noise issues from an existing sewer plant.
  - Court ruled in favor of City and noted that the intent of CEQA is not to protect people from the existing environment as there are other laws and regulations that address this.
  - Court utilized the Baird v. Contra Costa case.

## New Information

- **Silverado Modjeska Recreation and Parks District v. County of Orange**
  - Case involved 12-unit subdivision where an EIR and a SEIR (based on compliance with a writ).
  - Court determined that previous issues resolved in a prior suit cannot be raised again in another suit.
  - New information provided on the arroyo toad was not considered of substantial importance that would trigger re-circulation of the SEIR.