

SUMMARY OF PUBLISHED APPELLATE OPINIONS INVOLVING CEQA

October 18, 2007 through January 12, 2008

Prepared by Tamara Galanter
Shute, Mihaly & Weinberger LLP

Save Round Valley Alliance v. County of Inyo, ___ Cal.App.4th ___ 2007 WL 4376023. The Fourth District Court of Appeal held that the EIR's alternatives analysis was legally inadequate because it failed to analyze a land exchange offered by the Bureau of Land Management. The Court concluded that substantial evidence failed to support the County's and EIR's numerous assertions that such alternative was infeasible, stating that the County cannot accept "the project proponent's assertions about an alternative" but must independently analyze the alternative without regard to the investment in and potential approval of the proposed project. The Court also ruled that the County acted within its discretion in omitting from the project description second dwelling units that future lot owners could build because the possibility "is extremely uncertain" and the impacts are "highly speculative." The Court found that the EIR adequately analyzed the project's biological impacts as well as the visual impacts associated with a proposed fire station and water tanks because the failure to analyze the visual impacts "did not preclude informed decisionmaking or [] public participation."

Stockton Citizens for Sensible Planning v. City of Stockton, 157 Cal.App.4th 332 (2007). The Third District Court of Appeal set aside approval for a Wal-Mart retail store to be constructed as part of a commercial and residential development for which an EIR had already been prepared because such approval required CEQA review. The Court found that the Notice of Exemption for the approval filed by the City did not start the statute of limitations because the City's Community Development Department Director's letter determining that the Wal-Mart was in substantial conformance with the City Master Plan did not constitute a project approval under CEQA. It also did not constitute a determination by a public agency since such approval was a discretionary act that required environmental review that could not be delegated to the Director.

Santa Clarita Organization for Planning the Environment v. County of Los Angeles, 157 Cal.App.4th 149 (2007).

The Second District Court of Appeal held that the West Creek EIR's analysis of the Kern-Castaic water transfer satisfied the third principle set forth in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, 40 Cal.4th 412, 432 (2007), which states that "the future water supplies identified and analyzed must bear a likelihood of actually proving available. . ." The EIR disclosed "that the Monterey Agreement makes the [] transfer legally uncertain" but that even an adverse outcome in that Agreement "is unlikely to 'unwind' the transfer agreement." Further, the record contained "substantial evidence demonstrating a reasonable likelihood that water from the Kern-Castaic transfer would be available for the project's near-and long-term needs." Finally, the court found no evidence to suggest that mitigation measures would not be implemented regarding perchlorate contamination of local water wells and found that the EIR need not discuss funding for mitigation measures.

Porterville Citizens for Responsible Hillside Development v. City of Porterville, 157 Cal.App.4th 885 (2007).

The Fifth District Court of Appeal held that for purposes of considering petitioner's challenge to a mitigated negative declaration for a residential development, the EIR prepared for the 1990 Amendment of the City's General Plan and the urgency ordinance concerning hillside development passed on the same date as the approval of the challenged project constituted extra-record evidence and could not be considered in the litigation because there was no evidence such documents were ever considered in connection with the challenged residential development. The court also found that vague concerns expressed during public hearings concerning aesthetics, drainage and the project's density did not constitute substantial evidence supporting a fair argument that the project as mitigated could have adverse environmental impacts under CEQA. Finally, the court found that petitioner failed to exhaust administrative remedies as to its general plan consistency argument.