

Recent Court Decisions Help to Clarify CEQA Issues

By A. Catherine Norian, Esq.

The California Courts of Appeal recently issued critical decisions in a pair of cases addressing how pre-existing site conditions should be dealt with under the California Environmental Quality Act (CEQA), specifically when determining whether an environmental impact report (EIR) is or is not required and, when an EIR is prepared, when determining the project's impacts.

In the first case, *South Orange County Wastewater Authority (SOCWA) v. City of Dana Point* (G044059), SOCWA argued that the city was remiss in not preparing an environmental impact report (EIR) for a proposed residential development, because the project would be situated next to a SOCWA-owned sewage treatment plant that released noxious odors. The Fourth District Court of Appeal sided with the city in its June 30 opinion, holding that because the noxious odors were pre-existing site conditions, the odor impacts were not impacts of the project itself and, therefore, would not require the city to prepare an EIR or the project applicant to mitigate for the odors.

As the Court explained, CEQA's purpose is to analyze a proposed project's impacts on the environment—not the environment's impact on a proposed project:

"The Legislature did not enact CEQA to protect people from the environment," the Court ruled. "Other statutes, ordinances, and regulations fulfill that function... The South Coast Air Quality Management District regulated SOCWA's operations... and regulation of odor emission forms part of the district's oversight of air pollution. This is the framework established by the Legislature to protect people from odors such as the ones SOCWA's sewage plant might produce. CEQA serves another purpose."

In the second case, *Oakland Heritage Alliance (OHA) v. City of Oakland* (195 Cal.App.4th 884), OHA contended that the city's analysis of a project's impacts due to pre-existing seismic conditions at the site was deficient, in part because the city had determined that mandating compliance with state and local building-code requirements

would sufficiently mitigate the seismic impacts to a less than significant level. In its opinion, the First District Court of Appeals upheld the city's approach, reaffirming the principle under CEQA that statutory and regulatory requirements may acceptably be used to mitigate existing site conditions.

The Court concluded, "Compliance with the Building Code, and other regulatory provisions, in conjunction with the detailed geotechnical investigation, provided substantial evidence that the mitigation measures would reduce seismic impacts to a less than significant level."



A. Catherine Norian is a partner at Gilchrist & Rutter in Santa Monica, Calif. Her practice focuses on land use entitlement and litigation, with a particular emphasis on CEQA compliance.