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Recent lessons for developers from the environmental bench

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The last few months have been busy ones in the field of environmental review at the California Court of Appeal. A number of California Environmental Quality Act (CEQA) decisions have been issued, and a few provide interesting insights both for developers and their lawyers. To help understand these recent cases, here is a list highlighting key lessons:

1. Address community concerns at the front end. In *Clover Valley Foundation v. City of Rocklin* (July 8, 2011), the applicant reduced a project from 974 homes to 558 homes, and increased open space from 69.9 acres to 366 acres. The city responded to 270 comments received during public review, and then prepared responses to comments received on the Final Environmental Impact Report. While this is an extreme example, the work done at the agency level and the information made available to the public helped the court reject all project challenges.

2. Remember that CEQA does not protect people from the environment. In *South Orange County Wastewater Authority (SOCWA) v. City of Dana Point* (June 30, 2011), SOCWA tried to force the city to prepare an EIR for the proposed rezoning of property adjacent to a sewage treatment plan. The court rejected the notion that CEQA should be used to defend a proposed project from an existing condition, instead CEQA should be used to protect the existing environment from an adverse project impact. That, and the fact that SOCWA was trying to stick the developer with a $4.6 million bill for the plant's aeration tank, led the court to uphold the project's environmental review.

3. No one likes a last minute document dump. In *Citizens for Responsible Equitable Environmental Development (CREED) v. City of San Diego* (June 10, 2011), petitioner dropped a truck-load of documents opposing the project on the City Council at the last minute. The city and developer cried foul. The court agreed and held that the unorganized documents and unelaborated objections did not satisfy the exhaustion of remedies doctrine.

4. Monitor agency deadlines carefully. In *Latinos Unidos de Napa v. City of Napa* (June 27, 2011), the court held that the city had not posted a Notice of Determination for the required 30 days. Because time is computed by excluding the first day of posting and including the last day, CEQA's longer 180-day, statute of limitations applied when the city posted the notice the same day it was received and removed it before the end of the 30th day.

5. Make sure your trial court order is clear and unambiguous. In *Silverado Modjeska Recreation and Parks Dict. v. County of Orange* (July 8, 2011), the court rejected petitioners' second bite at the apple. After the trial court determined the county complied with a prior writ of mandate, the appellate court rejected later efforts to re-litigate the same issues because both the new and original petitioners shared a "common interest" in enforcing CEQA.

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