CEQA Update: 2014 Case Law And Legislative Developments

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I. CEQA LEGISLATION

A. AB 52 and Tribal Cultural Resources/Consultation

Substantive Provisions

- Generally adds new resource area of "tribal cultural resources" to CEQA impact analysis requirements. Statutes 2014, ch. 532 (Public Resources Code §§21073, 21074, 21080.3.1, 21080.3.2, 21083.09, 21084.2, 21084.3).
- Applies to projects for which EIR notice of preparation, or notice of negative declaration, filed on or after July 1, 2015.
- Tribal cultural resources are "sites, features, places, cultural landscapes, sacred places and objects with cultural value to a California native American tribe, and are either listed in state or local register, eligible for state register, or determined by lead agency in its discretion to be significant based on register listing criteria.
- Lead agency discretionary determinations to be made on the basis of substantial evidence (same standard that courts have applied to determining historicity of discretionary historical resources) but lead agency must consider the significance of the resource to the tribe
- Cultural landscapes may qualify as TCRs if "geographically defined in terms of the size and scope" of the landscape
- Lead agencies generally must avoid any damaging effects to TCRs, if feasible
- Any project that causes a substantial adverse change in the significance of a TCR is a project that has a significant impact under CEQA, and CEQA document must discuss whether project has significant impact, and whether feasible alternatives or mitigation will avoid the impact
- Mitigation may include measures identified during consultation, or avoidance/preservation in place, protecting the character or use of the resource, or conservation easement or other property interest

Consultation Provisions

- Lead agencies must give notices to tribes who have requested such notices within 14 days after determining project application complete, or for agency project, deciding to undertake the project
- Definition of tribes is not limited to federally recognized tribes
- Notice must include brief project description, lead agency contact, and provide 30 days for tribe to respond
- If tribe responds by requesting consultation, lead agency must initiate within 30 days. Parties must consult in good faith, and consultation is concluded either when parties agree on mitigation, or when a party concludes, after good faith reasonable effort, that agreement is not possible
- Consultation has same meaning as in Government Code §65352.4 – meaningful & timely process of seeking and considering each party's views, in manner that is respective of each party's sovereignty

- CEQA document may be certified or adopted only if consultation concluded, or tribe requested consultation but did not participate, or tribe did not request consultation.

Confidentiality Protections

- Any confidential information obtained during the process must be published only in confidential appendix to CEQA document (unless tribe consents to more disclosure), and public portion of document must include general description
- Sharing information with project applicant and advisors allowed, but applicant and applicant's legal advisors must, using a reasonable degree of care, maintain confidentiality

B. Exemptions Added or Changed

New Exemption for Groundwater Sustainability Plans. SB 1168 (Statutes 2014, ch. 346) was part of a package of bills that generally provide for the comprehensive regulation of groundwater in the state. SB 1168 requires local groundwater sustainability plans to be prepared, and these plans are exempt from CEQA, although that exemption does not extend to projects that implement actions in those plans. Water Code §10728.6.

Extension of the Exemption for Biogas Lines in Some Valley Counties. AB 1104 (Statutes 2014, ch. 534) extended the effective date for the statutory exemption for biogas pipelines in Fresno, Kern, Kings or Tulare counties, from January 1, 2013 to until January 1, 2018. Public Resources Code §21080.23.5.

Minor Expansion of the Infill Housing Exemption. SB 674 (Statutes 2014, ch. 549) changed one of the limiting parameters in the statutory exemption for in-fill residential housing, expanding the definition of a residential project so that the project can include up to 25 per cent of neighborhood serving goods, services and retail, measured as a portion of total building square footage in the project. The limit previously had been 15 per cent of total floor area. Public Resources Code §21159.24.

II. CEQA CASE LAW DEVELOPMENTS

A. Does CEQA Apply? Is there a "Project"?

***Tuolumne Jobs & Small Business Alliance v. Superior Court* (2014) 59 Cal.4th 1029**

- No CEQA review required when board or council adopts a voter-sponsored initiative measure.
- Court made this ruling based on conflict between Elections Code and CEQA, not on question of whether action is ministerial

- This was the last piece of the CEQA/ballot measure puzzle. Rules are now clear – Voter measures not subject to CEQA whether placed on ballot or adopted by council or Board. Agency-sponsored measures must undergo CEQA review before they are placed on the ballot.
- Court also confirms the remedy if voters do not agree with council action to adopted a voter-sponsored measure – under normal Elections Code rules, that action can be referended if a proper petition with sufficient signatures is circulated and submitted within 30 days after the council or board action

***Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.**

- County was not barred from arguing that activity was not a project, even though it had prepared a mitigated negative declaration (compare to *Eel River* case, discussed later)
- County argued there was no development scenario for subdivision of farmland for purposes of financing – no development anticipated
- Court held that subdivision gave potential for greater use, that plus the fact that subdivision maps specifically listed in statues as subject to CEQA meant this approval was a "project"
- "Common sense" exemption did not apply because there was some possibility of future development and impacts

***Picayune Rancheria of Chukchansi Indians v. Brown* (2014) 229 Cal.App.4th 14163.[1]**

- Governor is not a "public agency" required to comply with CEQA
- Action at issue here was Governor's concurrence in federal determination allowing tribe on recently acquired tribal lands
- Interpreting that statute broadly to include the Governor as public agency would violate the explicit approach to statutory interpretation set forth in Public Resources Code §21083.1 (which states Legislature's intent that CEQA not be interpreted to add provisions not explicitly set forth in statute or Guidelines

[1] Andrew Sabey and Linda Klein of Cox Castle are counsel for the real party in this case.

B. When Is CEQA Pre-Empted by Federal Law?

***Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314.**

- CEQA challenge to high speed rail EIR not preempted, under market participation doctrine (pursuant to which state's role as market participant is not preempted by federal law, even if the same activity would be pre-empted if taken by state in its regulatory capacity

***Friends of the Eel River v. North Coast Railroad Authority* (2014) 230 Cal.App.4th 85 (petition for review granted, Supreme Court Case No. S222472, opening brief due February 23, 2015)**.[2]

- Federal rail laws preempt CEQA as applied to railroad operations – decision to resume rail operations on existing line was operational, in contrast to agency decision where to place rail line, as in *Atherton*
- Agency's decision to earlier prepare an EIR did not estop them from later claiming no EIR required (same holding on this point as in *Del Cerro Mobile Estates* (2011) 197 Cal.App.4th 173, and *Santa Barbara County Flower and Nursery Growers* (2004) 121 Cal.App.4th 864).

***California High Speed Rail Authority – Petition for Declaratory Order.* U.S. Surface Transportation Board Decision FD 35861 (December 12, 2014; decision subject to 60-day appeal to Federal Circuit Court).**

- Federal board held 2-1 that federal rail regulation preempts CEQA

C. Statutory and Categorical Exemptions

***San Francisco Beautiful v. City & County of San Francisco* (2014) 226 Cal.App.4th 1012**

- Installation of 726 utility boxes for AT&T "Lightspeed" fiber optic system fit within categorical exemption for limited numbers of new small facilities. Guideline 15303.
- Significant effects exception did not defeat exemption – court noted split in case law on this point (pending before Supreme Court in *Berkeley Hillside* to be argued December 2), but stated that petitioners had not identified any way in which these utility boxes were unusual compared to other utility installations
- No evidence of combined impacts, so the exception for cumulative impacts of projects of the same type did not apply

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[2] Andrew Sabey and Mike Zischke of Cox Castle are counsel for the railroad in this case.

- City requirement for review of individual installations was a public works requirement, not a mitigation measure, so the project did not improperly "mitigate into" the categorical exemption

***North Coast Rivers Alliance v Westlands Water District* (2014) 227 Cal.App.4th 832.**

- Interim renewal of contracts to provide Central Valley Project water found to be statutorily and categorically exempt
- One of the claimed exemptions did not apply – project was not a ratesetting, so that statutory exemption did not apply. Public Resources Code §21080(b)(8)
- Statutory exemption for pre-CEQA projects did apply. Guidelines §15261. Project was part of the ongoing, normal intrinsic operation of pre-1970 facilities.
- Categorical exemption for existing facilities also applied. Guideline §15301.
- Significant effects exception did not apply; in fact there was no change in operations at all, compared to baseline.

D. Negative Declaration Case Law

***Citizens for the Restoration of L Street v. City of Fresno* (2014) 229 Cal.App.4th 340.**

- City code did not authorize historic commission to approve negative declarations, so city's delegation to that commission improper procedure
- Even under fair argument, lead agency decision on whether a building is a discretionary historic resources is to be upheld if supported by substantial evidence. Court affirms this holding from *Valley Advocates* (2014) 160 Cal.App.4th 1039.
- Petitioner argued this holding conflicts with *Architectural Heritage Association v. County of Monterey* (2004) 122 Cal. App. 4th 1095 and all other fair argument precedent. In *Architectural Heritage,* the court applied the fair argument standard to the determination of historicity, although the agency's CEQA document and supported study conceded the resource was historic

***Rominger v. County of Colusa* (2014) 229 Cal.App.4th 690.**

- County had discretion to set significance threshold for loss of farmland, and petitioners made no showing of significant farmland loss impact notwithstanding that threshold
- Expert letter on potential traffic impacts did support fair argument, so EIR required on that issue, even though county had evidence on its side

- Analysis and mitigation of odor impact upheld, project was required to install measures recommended by agencies (note that those measures not specified, this may be at the outer limits of permissible deferral)
- No evidence supported fair argument on noise, water supply impacts
- Dust control plan upheld against deferred mitigation challenge
- Reliance on regulatory standards and 35 per cent reduction against business as usual was adequate mitigation for greenhouse gas emissions

E. New Case Law on Greenhouse Gas Emissions – Plan EIRs Set Aside for Failure to Evaluate Consistency with Governor's Executive Order

***Cleveland National Forest Foundation v. San Diego Association of Governments* (2014) 231 Cal.App.4th 1056 (petition for review filed January 6, 2015, Supreme Court Case No. S223603)**

- 2-1 decision, majority sets aside EIR on SANDAG's regional transportation plan/sustainable communities strategy set aside for failure to evaluate the plan consistency with Executive Order S-3-05, which sets goal of reducing GHG emissions to 80 per cent below 1990 levels by 2050
- SANDAG argued the Order does not bind local agencies, but the court found it underpins all state GHG legislation, including AB 32 and SB 375
- Court also rejected SANDAG argument that it cannot analyze the consistency of the RTP with the Executive Order (and in particular the requirement to reduce emissions by 2050 by 80 per cent) because there is no statute or regulation that translates this long term goal into a scientifically based emission reduction target
- EIRs necessarily includes some forecasting, and failure to analyze the consistency of the plan with the Order made the EIR fundamentally misleading, particularly given that under the plan emissions likely would increase after 2020.
- Court also finds discussion of mitigation inadequate; EIR discussed "easy" measures that do not do much, and onerous measures that may not be feasible – was missing feasible mitigation that would reduce emissions
- Court also finds the alternatives analysis deficient because it did not consider an alternative that reduces VMT. The alternatives focused entirely on congestion relief, not on reducing VMT which is critical component of reducing GHG.
- More precise description of existing particulate exposures was available, and should have been included in EIR – rejected SANDAG argument that this should be done later in the context of particular projects
- EIR had insufficient description of the adverse health effects associated with increased emissions
- EIR deferred analysis of air quality mitigation measures – most of the program EIR mitigation measures called for review at next tier
- Analysis of plan's impact on farmland inadequate – used the database recommended in the Guidelines checklist, but this dataset had known gaps

(omitted information on small farms) and thus this did not provide adequate analysis or disclosure
- Dissenting Justice states Order has no basis in state law, Governor has no power to set a threshold of significance, and with no model addressing regional targets between 2035 and 2050 it is impossible for SANDAG to do a consistency analysis; SANDAG applied the CARB reduction targets for the region, which go to 2020 and 2035, and this was sufficient
- What a line – "This insinuation of the judicial power into the environmental planning process and usurping of legislative authority is breathtaking. Now we, the courts, without institutional planning expertise or knowledge, get to tell a lead agency what it must use as a threshold of significance."
- Dissent also states that the majority rulings on level of detail conflict with Supreme Court's *Bay-Delta* decision.

***Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152 (petition for review filed January 5, 2015, Supreme Court Case No. S223591)**

- Original decision unpublished, issued October 29, published on November 24 shortly following *Cleveland National Forest Foundation* decision
- County adopted climate action plan as called for in 2011 General Plan EIR, court finds County did not adopted enforceable GHG reduction measures in the climate plan
- Plan quantified the reduction measures, but did not insure they would be implemented
- Climate plan did not provide continual reduction of emissions as required by Governor's Executive Order and General Plan mitigation measures, so new EIR required

F. Other EIR Cases

***Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645**

- EIR for road widening failed to specify significance threshold for damage to old growth redwood tree root zones, and set forth mitigation measures to reduce impacts
- Given the significance of the impacts, it was insufficient to simply that project would incorporate construction techniques that would avoid impacts; enforceable mitigation was needed

***California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173**

- Mitigation for urban decay impacts inadequate, mitigation was improperly deferred to future developer studies of decay impacts.
- EIR also required fees for retail strategy plan, but no linkage to specific mitigation.
- Rejection of a mixed use alternative as environmentally inferior was not supported by substantial evidence; EIR had indicated the alternative was economically infeasible but did not provide support for the adopted rationale of environmental inferiority
- EIR's cursory analysis of energy impacts was insufficient, did not set forth mitigation measures that complied with Appendix F of the Guidelines

***Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036.[3]**

- Required level of specificity in EIR not based on whether it is program EIR or project EIR; instead, nature of project controls
- No basis for argument that a program EIR was required
- Conceptual level of detail in project description sufficient
- Adequate discussion of environmental cleanup, and reliance on regulatory cleanup standards as mitigation appropriate
- Recirculation not required, and nothing improper about private meetings between agency, developers, and Coast Guard to resolve Coast Guard comments
- EIR required consistency with Interior Secretary's standards for historic resources, and this was sufficient mitigation, sufficient detail

***Town of Atherton v. California High-Speed Rail Authority* (2014) 228 Cal.App.4th 314.**

- Program EIR upheld, ok to defer analysis of specific rail alignment to second tier EIR which is to be prepared
- Ridership modeling supported by substantial evidence
- EIR had reasonable range of alternatives, determinations supported by substantial evidence; and one alternative claim was a repeat of prior round of litigation, barred by collateral estoppel

***Citizens Opposing a Dangerous Environment v. County of Kern* (2014) 228 Cal.App.4th 360.**

- Reliance on FAA hazard determinations was appropriate mitigation for impacts of wind farm on aviation safety at private airfield

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[3] Andrew Sabey and Mike Zischke of Cox Castle represent one of the real parties, the Treasure Island Homeless Development Initiative, Inc.

***Paulek v. California Department of Water Resources* (2014) 231 Cal.App.4th 35.**

- Petitioners specific questions about workability of project and adverse impacts were sufficient to object to project for purposes of exhaustion under Public Resources Code §21177
- OK for agency to delete emergency outlet extension from overall dam remediation project; it was not required to be evaluated as reasonable foreseeable part of project, and did not create new significant impact because the risk of flooding was existing baseline environmental condition, not an impact of the project
- Response to comments was adequate; lead agency referred to discussion in EIR and was not required to restate that discussion in the response

***Friends of the Kings River v. County of Fresno* (2014) 232 Cal.App.4th 105 (December 8, decision not final).**

- EIR for large mining project upheld
- A pending appeal under SMARA to the Surface Mining Board did not invalidate County issuance of conditional use permit
- Court rejected argument that county was required to adopt agricultural conservation easements as mitigation for permanent loss of farmland; county had considered such easements, compared them to the mitigation which was imposed, and found that easements would not reduce permanent conversion of farmland, so would not mitigate
- Petitioner argued easements were required under *Masonite Corp. v. County of Mendocino* (2013) 218 Cal.App.4th 230; court here stated that *Masonite* held easements can be feasible mitigation and must be considered; here, the county did consider them.

***Center for Biological Diversity v. California Department of Forestry & Fire Protection* (2014) First District Case No. A138914 (December 30, decision not final).**

- CEQA functional equivalent document for non-industrial timber management plan upheld (NTMPs are long term timber plans for smaller properties where the primary business is not timber production)
- Court characterized challenges to cumulative analysis as substantial evidence issues, rejected petitioner argument that they were informational defects for court's independent review
- Alternatives analysis upheld (three alternatives evaluated), in part because NTMP had already mitigated all impacts, no further alternatives needed to be considered
- Recirculation not required based on added information – information is always added to Final EIR, here there was no new significant impact

- Court also rejected challenges under California Endangered Species Act, and held CDFW did not have affirmative duty to reject plan; it was responsible agency under CEQA, and it met the duties of responsible agency

F. Subsequent Review and Statute of Limitations Decisions

***Citizens for a Green San Mateo v. San Mateo Community College Dist.,* (2014) 226 Cal.App.4th 1572**

- Lawsuit barred under 30- day statute and 180-day statute
- Filed more than 30 days after a notice of determination, and prior initial study mentioned the tree-cutting in question
- Filed more than 180 days after the agency approved the contract for the work

***Citizens Against Airport Pollution v. City of San Jose* (2014) 227 Cal.App.4th 788.**

- Eighth addendum to EIR for airport master plan upheld, decision not to prepare further EIR supported by substantial evidence
- Action was not a new project, but modification of prior plan
- GHG impacts are not "new", do not trigger SEIR

***Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429 (December 15, decision not final).**

- County addendum and notice of determination for changes to medical building did not disclose height increase from 75 to 90 feet
- Based on that lack of disclosure, 30-day statute of limitations did not run from notice of determination; instead, the 180 day statute was triggered when the neighbors were notified of the height of the hew building by a construction worker at the site
- Because neither the addendum nor the notice of determination mentioned the height change, cases such as *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32 did not apply; instead, this was governed by *Concerned Citizens of Costa Mesa, Inc. v. 32d Dist. Agricultural Ass'n* (1986) 42 Cal.3d 929, which held that a 180 day statute ran from the first concert at a new amphitheater; that was the date the neighbors discovered there had been substantial changes in the amphitheater with no CEQA review.

G. Litigation Procedures, Records, Streamlining

Board committee transcripts properly included in record. *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498.

- Primary holdings in this case related to upholding city findings of general plan consistency for large ParkMerced redevelopment project
- On CEQA record, trial court ordered transcripts of Board committees to be prepared and included in record, petitioners objected on basis these transcripts not before the Board
- Transcripts were written materials relevant to decision, under Public Resources Code §21167.6(e)(10), did not need to be presented to Board to be included in record

Petitioner's Election to Prepare Record Does Not Preclude Awarding Costs to Agency. *Coalition for Adequate Review v. City and County of San Francisco* (2014) 229 Cal.App.4th 1043.

- City sought $64,000 in costs, mostly paralegal time, for compiling supplemental record, trial court denied on basis such large award would "chill" CEQA litigation
- Court of Appeal reversed, holding that petitioners' election to prepare does not bar agency recovery, no basis in statute for "chill" theory
- Holding in *St. Vincent's School* allowing agency recovery of costs not limited to situation where petitioners makes extraordinary demands for documents
- Paralegal time may be recovered for *preparation* of record, but not for reviewing record for completeness; that is a task faced in any record case

Record Prep Cost Award May Include Outside Counsel Time. *The Otay Ranch, L.P. v. County of San Diego* (2014) 230 Cal.App.4th 60.

- Upheld a trial court award of administrative record preparation costs that included record preparation costs incurred by county's retained outside counsel and paralegals
- Petitioner initially elected to prepare record, but did not do so, County took over preparation and needed outside help; County sought $66,000 for 18,000 page record, court awarded $37,000
- Court of Appeal said such recovery consistent with long line of cases allowing labor costs for record, in trial court's discretion
- Court rejected petitioner's argument that this amounted to an award of attorneys' fees

Comment: Trial court discretion is the common factor in all the above decisions; they do not necessarily mandate that such transcripts be included, or costs awarded, but uphold trial court discretion to do so.

CEQA Litigation Streamlining Upheld Against Constitutional Challenge. *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837.

- Expedited litigation procedures of SB 743 (for the new Kings Arena) upheld against a state constitutional challenge
- Did not violate separation of powers – Legislature created CEQA, Legislature can take it away, or limit application
- Court also upheld denial of preliminary injunction – petitioners argued there was no harm to the team, but they failed to demonstrate required irreparable harm to obtain injunction

III. CEQA CASES PENDING IN THE SUPREME COURT

A. *City of San Diego v. Trustees of CSU*, No. S199557

Supreme Court Case Summary: This case includes the following issue: Does a state agency that may have an obligation to make "fair-share" payments for the mitigation of off-site impacts of a proposed project satisfy its duty to mitigate under [CEQA] by stating that it has sought funding from the Legislature to pay for such mitigation and that, if the requested funds are not appropriated, it may proceed with the project on the ground that mitigation is infeasible?

Case Status: Review granted April 18, 2012; merits briefing complete on October 31, 2012; amicus briefing completed on October 11, 2013.

B. *Berkeley Hillside Preservation v. City of Berkeley*, No. S201116[4]

Supreme Court Case Summary: This case presents the following issue: Did the City of Berkeley properly conclude that a proposed project was exempt from [CEQA] under the categorical exemptions set forth in California Code of Regulations, title 14, sections 15303, subdivision (a), and 15332, and that the "Significant Effects Exception" set forth in section 15300.2, subdivision (c), of the regulations did not operate to remove the project from the scope of those categorical exemptions?

Case Status: Review granted May 23, 2012, merits briefing completed December 17, 2012, amicus briefing completed February 10, 2014, argued December 2, 2014 (Los Angeles), decision due within 90 days of argument.

[4] Mike Zischke and Andrew Sabey of Cox Castle filed an amicus brief in this case

C. *City of Hayward v. Trustees of CSU*, No. S203939

Review granted and briefing deferred pending decision in *City of San Diego v. Trustees of CSU*

D. *CBIA v. Bay Area Air Quality Management District*, No. S213478[5]

Supreme Court Case Summary: The court limited review to the following issue. Under what circumstances, if any, does [CEQA] require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?

Case Status: Review granted November 26, 2013, merits briefing completed March 17, 2014, amicus briefing completed May 28, 2014

E. *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, No. S214061

Supreme Court Case Summary: This case presents the following issue: When a lead agency performs a subsequent environmental review and prepares a subsequent environmental impact report, a subsequent negative declaration, or an addendum, is the agency's decision reviewed under a substantial evidence standard of review (*Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385), or is the agency's decision subject to a threshold determination whether the modification of the project constitutes a "new project altogether," as a matter of law (*Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288)?

Case Status: Review granted January 15, 2014; merits briefing completed April 20, 2014; amicus briefing completed September 15, 2014.

F. *Center for Biological Diversity v. California Department of Fish & Wildlife* (Newhall Ranch), No. S217763[6]

Supreme Court Case Summary: This case presents the following issues: (1) Does the California Endangered Species Act (Fish & Game Code, § 2050 et seq.) supersede other California statutes that prohibit the taking of "fully protected" species, and allow such a taking if it is incidental to a mitigation plan under [CEQA]? Does [CEQA] restrict judicial review to the claims presented to an agency before the close of the public comment period on a draft environmental impact report? (3) May an agency deviate from the Act's existing conditions

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[5] Andrew Sabey and Mike Zischke of Cox Castle represent CBIA in this case

[6] Mike Zischke, Andrew Sabey and Linda Klein of Cox Castle represent several business groups as amicus in this case.

baseline and instead determine the significance of a project's greenhouse gas emissions by reference to a hypothetical high "business as usual" baseline?

Case Status: Review granted July 9, 2014, merits briefing underway (reply extended to November 26)

G. *Citizens for Environmental Responsibility v. 14th District Agricultural Association*, No. S218240

Review granted and briefing deferred pending decision in *Berkeley Hillside Preservation v. City of Berkeley*

H. *Sierra Club v. County of Fresno*, No. S219783

Supreme Court Case Summary: This case presents issues concerning the standard and scope of judicial review under [CEQA] (note: the Court of Appeal also held that it was not enough to identify health impacts of pollutants, but they had to be analyzed in greater detail).

Case Status: Review granted October 1, 2014; opening brief due December 2, 2014.

I *Friends of the Eel River v. North Coast Railroad Authority,* No. S222472[7]

Supreme Court Case Summary: This case includes the following issues: (1) Does the Interstate Commerce Commission Termination Act [ICCTA] preempt the application of CEQA to a state agency's proprietary acts with respect to a state-owned and funded rail line or is CEQA not preempted in such circumstances under the market participant doctrine (see *Town of Atherton v. California High Speed Rail Authority* (2014) 228 Cal.App.4th 314)? (2) Does the ICCTA preempt a state agency's voluntary commitments to comply with CEQA as a condition of receiving state funds for a state-owned rail line and/or leasing state-owned property?.

Case Status: Review granted October 1, 2014; opening brief due February 23, 2015.

[7] Andrew Sabey and Mike Zischke of Cox Castle are counsel for the railroad in this case.