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Environmental Law Blog

## Denied CEQA Challenge Remanded for Failure to Attach Corrective Action Plan to Negative Declaration

Posted by [Mary E. Wilke, Esq.](#) in [CEQA](#), [Environmental Litigation](#) on August 11, 2011

The California Fourth District Court of Appeal, in [Citizens for a Responsible Equitable Environmental Development v. City of Chula Vista](#) (June 10, 2011), remanded a lawsuit challenging the City of Chula Vista's ("City") decision to approve the construction of a Target store based on a mitigated negative declaration because the lead agency failed to attach the Corrective Action Plan ("CAP") for the site to the negative declaration. The Appellate Court held that the failure to attach the CAP makes it uncertain whether the construction of the store would cause further migration of the hazardous materials addressed by the CAP into groundwater.

The Target store was to be constructed on property that was contaminated by a previous gas station's leaking underground storage tanks. Plaintiff, a citizens group, filed a petition for writ of mandate in the trial court against the City. The trial court denied the petition. On appeal, plaintiff argued that the record contained substantial evidence of a fair argument that the project may have a significant environmental impact due to contaminated soil, and that the evidence does not show that the potential impact will be mitigated to a level of insignificance. A CAP had been prepared regarding the contamination and planned remediation. The City relied on the CAP to find that the contamination condition was properly mitigated and to determine that a mitigated negative declaration was appropriate. However, the City failed to attach the CAP to the negative declaration and thus it was not part of the record in the trial court case. The Appellate Court agreed with plaintiff's argument that there was substantial evidence of a possible significant environmental impact. The Court cited the CEQA Guidelines; "[T]he Guidelines define substantial evidence as enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (Guidelines, § 15384, subd. (a).)" The Appellate Court remanded the case to the trial court to determine whether completion of the CAP would remediate soil contamination to a point of insignificance. The Appellate Court further advised that if the trial court held that the CAP would not remediate soil contamination to a point of insignificance that the trial court must order the City to prepare a full environmental impact report ("EIR"). The Appellate Court cited [No Oil](#) in support of its conclusion: "an EIR must be prepared 'whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.'" [No Oil, Inc. v. City of Los Angeles](#) (1974) 13 Cal.3d 68, 75.

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