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Caltrans Decision

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

CASE NO.: 37-2017-00041547-CU-TT-CTL

CITIZENS FOR A RESPONSIBLE
CALTRANS DECISION,

Petitioner,

v.

CALIFORNIA DEPARTMENT OF
TRANSPORTATION,

Respondent.

**PETITION FOR WRIT OF MANDATE
AND DECLARATORY RELIEF**

IMAGED FILE

(CALIFORNIA ENVIRONMENTAL
QUALITY ACT)

1 **INTRODUCTION**

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3 1. Petitioner Citizens for a Responsible Caltrans Decision (“Petitioner” or
4 “CRCD”) files this Petition for Writ of Mandate seeking to set aside the Notice of Exemption
5 for the Interstate-5/State Route-56 Interchange Project (“Project”) that was improperly filed
6 by the California Department of Transportation (“Caltrans”) and failed to give the public
7 notice of its decision, and to challenge the adequacy of the Environmental Impact Report
8 (“EIR”) that Caltrans prepared on the Project.

9 2. After assuring the public in both its Draft EIR and Final EIR that Caltrans
10 would file a Notice of Determination (“NOD”) if the decision were made to approve the
11 project, which is the standard procedure after an agency prepares an EIR, Caltrans instead
12 filed a Notice of Exemption (“NOE”). In its NOE, Caltrans erroneously contends the Project
13 is exempt from the requirements of the California Environmental Quality Act (“CEQA”).

14 3. Caltrans’ contention that the Project is exempt pursuant to Streets and
15 Highways Code Section 103 is unsupported. Streets and Highways Code Section 103 only
16 provides a streamlined review process by the California Coastal Commission. It does not
17 impact any other agency’s duty to review the Project in compliance with CEQA.

18 4. Despite the fact that members of CRCD, comprised of residents that would be
19 severely impacted by the proposed Project’s impacts, have been actively engaged for over
20 five years in commenting on the Draft Environmental Impact Report and in regular
21 communication with Caltrans’ Project Manager for this Project, Caltrans provided no notice
22 to either those who commented on the Draft EIR or to members of the general public that
23 Caltrans intended to change course and file a NOE instead of a NOD.

24 5. Caltrans now claims that the statute of limitations has run and the Project may
25 no longer be challenged. Interested parties relied upon Caltrans’ prior assurances that it
26 would file a NOD if the Project were approved. Therefore, Caltrans is estopped from now
27 asserting the statute of limitations has run following its unanticipated filing of a NOE.

1 formed in response to Caltrans' proposed project. CRCD supports the concept of
2 connectivity between the I-5 and SR-56 freeways, but wants to enhance and protect the
3 quality of life of its residents and their environment. CRCD is particularly concerned about
4 the air pollution, noise, and safety impacts of the Project. Acting as stewards of both local
5 and regional environmental health, CRCD opposes the Project as proposed and believes that
6 Caltrans failed to adequately consider alternatives to the Project.

7 12. Respondent California Department of Transportation ("Caltrans") is a state
8 agency under the laws of California and the "lead" agency under CEQA. Caltrans is
9 responsible for managing California's highway system.

11 **BACKGROUND AND STATEMENT OF FACTS**

12 13. On May 13, 2005, Caltrans filed a Notice of Preparation ("NOP") with the
13 Governor's Office of Planning and Research ("OPR").

14 14. On May 15, 2012, Caltrans filed the Draft EIR with OPR.

15 15. The Draft EIR stated, "Following circulation of the Final EIR/EIS, if the
16 decision is made to approve the project, a Notice of Determination will be published for
17 compliance with the California Environmental Quality Act, and a Record of Decision will be
18 published for compliance with the National Environmental Policy Act." (**Exhibit A**, Draft
19 EIR, p. ES-3.)

20 16. Under the heading, "Final Decision-Making Process," the Draft EIR also
21 stated, "After the public circulation period, all comments would be considered, and Caltrans
22 would select a preferred alternative and make the final determination of the proposed
23 project's effect on the environment. In accordance with CEQA, Caltrans would certify that
24 the proposed project would comply with CEQA, would prepare findings for all significant
25 impacts identified, would prepare a Statement of Overriding Considerations for impacts that
26 would not be mitigated below a level of significance, and would certify that the findings and
27 Statement of Overriding Considerations were considered before project approval. Caltrans
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1 then would file a Notice of Determination (NOD) with the State Clearinghouse to identify
2 whether the project would have significant impacts, if mitigation measures were included as
3 conditions of project approval, that findings were made, and that a Statement of Overriding
4 Considerations was adopted.” (Exhibit B, Draft EIR, p. 2-24.)

5 17. On June 14, 2012 and July 17, 2012, members of CRCD provided extensive
6 comments on the Draft EIR. Among others, these comments pertained to the Project’s
7 inconsistency with the Torrey Pines Community Plan; the omissions and errors in the Draft
8 EIR’s analysis of traffic, noise, air quality, visual, and construction impacts; and the lack of
9 an adequate alternatives analysis.

10 18. On June 26, 2017, Caltrans released the Final EIR. The Final EIR stated:
11 “After the Final EIR/EIS is circulated, if Caltrans decides to approve the project, a Notice of
12 Determination (NOD) will be published in compliance with CEQA by Caltrans, as well as,
13 by the California Coastal Commission (CCC), and Caltrans will publish a Record of
14 Decision (ROD) in compliance with NEPA from Caltrans/FHWA.” (Exhibit C, Final EIR,
15 p. ES-2.)

16 19. The Final EIR added that the Final EIR/EIS did not constitute project approval
17 for CEQA, but that the signing of the Project Report and filing of the Notice of
18 Determination would constitute the approval for CEQA purposes. (Final EIR, p. 2 of the
19 document [prior to page numbering].)

20 20. On or around June 29, 2017, Chatten-Brown & Carstens was contacted by
21 members of CRCD regarding potential representation regarding this Project. (Decl. of Josh
22 Chatten-Brown In Support of Petition for Writ of Mandate and Declaratory Relief (“Chatten-
23 Brown Decl.”), ¶ 2.)

24 21. On July 12, 2017, unbeknownst to interested community members, including
25 members of CRCD, OPR posted the NOE for the Project.

26 22. Prior to August 10, 2017, Mr. Josh Chatten-Brown, an attorney with Chatten-
27 Brown & Carstens, checked OPR’s database to determine what notices had been posted for
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1 the Project using the State Clearinghouse number for the Project listed on the Final EIR –
2 “SCH# 2005051061.” (*Id.* at ¶¶ 3-4.) The results did not show the existence of a NOE for
3 the Project. (*Ibid.*)

4 23. Counsel for CRCDD first became aware that an NOE had been prepared for the
5 Project on September 28, 2017, when Ms. Rachel Hooper, counsel for another community
6 group concerned about the Project, informed Mr. Chatten-Brown that Mr. Glenn Mueller,
7 Caltrans’ counsel, told her that Caltrans issued a Notice of Exemption on July 12, 2017. (*Id.*
8 at ¶ 5.) Mr. Mueller had sent Ms. Hooper a copy of the NOE, which she then forwarded to
9 Mr. Chatten-Brown. (*Ibid.*)

10 24. Only after counsel for CRCDD was informed of the existence of the NOE was he
11 able to locate it through OPR’s online database. (*Id.* at ¶ 6.) However, the NOE on OPR’s
12 online database has a State Clearinghouse number of 2017078159, which is different from
13 that of the Final EIR, which is 2005051061. (*Id.* at ¶ 7.) This is the reason the NOE did not
14 appear on a search of the State Clearinghouse number on the Final EIR.

15 25. After additional discussions regarding Caltrans’ use of a NOE, counsel for
16 CRCDD sent a letter to Caltrans’ counsel requesting Caltrans either rescind the NOE or enter
17 into an agreement that the statute of limitations for challenging Caltrans’ approval of this
18 Project under CEQA runs 180 days from the approval date, which is the applicable statute
19 when neither a NOE nor NOD is filed. (*Id.* at ¶¶ 8-9.) However, Caltrans’ counsel declined
20 CRCDD’s counsel’s request. (*Id.* at ¶ 10.)

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22 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**
23 **AND INADEQUATE REMEDIES AT LAW**

24 26. Petitioner has exhausted its administrative remedies through the detailed
25 comment letters submitted by members of CRCDD on June 14, 2012 and July 17, 2012. In
26 these letters, Petitioner provided Caltrans with a detailed explanation of its concerns and
27 requested that the Project not be approved as proposed.
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1 included therein, shall be addressed under the California Coastal Commission's review per
2 its certified regulatory program."

3 36. Caltrans is wrong. There is no reference to CEQA in Streets and Highways
4 Code section 103; it focuses exclusively on the California Coastal Commission's jurisdiction.

5 37. Streets and Highways Code section 103 subdivision (d) provides, "The
6 California Coastal Commission, the department, and SANDAG shall work cooperatively
7 toward completing all design approvals, reviews, determinations, and permitting for the north
8 coast corridor project on an expedited basis. To meet the goals in this section, the following
9 provisions shall apply: ... (3) A public works plan prepared for the north coast corridor
10 project by the department and SANDAG shall be treated as a long-range development plan to
11 which the provisions in Sections 21080.5 and 21080.9 of the Public Resources Code shall
12 apply."

13 38. Streets and Highways Code section 103 subdivision (a)(4) explains the impact
14 of a public works plan, focusing exclusively on the Coastal Commission's review. "A public
15 works plan allows for an integrated regulatory review by the California Coastal Commission
16 rather than a project-by-project approval approach, but does not change or abridge any of the
17 California Coastal Commission's existing authorities ..."

18 39. The North Coast Corridor Public Works Plan ("PWP") specifically rejects the
19 argument Caltrans now advances. The North Coast Corridor PWP provides: "The Coastal
20 Commission PWP review and approval process is not intended to supplant the review
21 processes required by the California Environmental Quality Act (CEQA), National
22 Environmental Policy Act (NEPA) or other regulatory schemes; compliance with the CEQA,
23 NEPA and/or other regulatory schemes are addressed at the project level, such as ... the I-5
24 Highway Improvements Environmental Impact Statement/Environmental Impact Report."

25 40. The benefit that a public agency receives from filing a NOE is a shorter statute
26 of limitations. Public Resources Code section 21167, subdivision (d), provides for a 35-day
27 limitations period when a NOE is filed, but extends this period to 180 days if a NOE is not
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1 filed, unless an NOD is filed, in which case the statute of limitations is 30 days. However,
2 the 35-day limitations period is triggered only if the notice of exemption otherwise complies
3 with CEQA.

4 41. Caltrans informed the public in its Draft and Final EIRs that it would file a
5 Notice of Determination. When Caltrans filed a NOE instead, Caltrans made no effort to
6 inform the public of this significant change. As a result of Caltrans' failure to inform the
7 public and the public's detrimental reliance upon Caltrans' repeated statements that it would
8 file a NOD, Caltrans is estopped from arguing that the 35-day statute of limitations to
9 challenge the Project has run.

10 42. Guidelines Section 15023, subdivision (h) states, "OPR shall establish and
11 maintain a database for the collection, storage, retrieval, and dissemination of notices of
12 exemption, notices of preparation, notices of determination, and notices of completion
13 provided to the office. This database of notice information shall be available through the
14 Internet." This online CEQAnet database is the one that counsel for CRCDC searched prior to
15 expiration of the 35-day period following Caltrans' filing of the Notice of Exemption.

16 43. CEQA Guidelines Section 15082, subdivision (e) states, "When the notice of
17 preparation is submitted to the State Clearinghouse, the state identification number issued by
18 the Clearinghouse shall be the identification number for all subsequent environmental
19 documents on the project. The identification number should be referenced on all subsequent
20 correspondence regarding the project, specifically on the title page of the draft and final EIR
21 and on the notice of determination."

22 44. The State Clearinghouse number assigned to the Draft and Final EIRs is
23 different than that assigned to the NOE, in violation of CEQA Guidelines Section 15082.

24 45. CEQA Guidelines Section 15062, subdivision (d) provides, "The filing of a
25 Notice of Exemption and the posting on the list of notices start a 35 day statute of limitations
26 period on legal challenges to the agency's decision that the project is exempt from CEQA."
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1 53. The EIR fails to adequately analyze or disclose climate change impacts caused
2 by the Project's GHG emissions. Specifically, the EIR fails to determine whether the
3 Project's impacts will be significant. The EIR erroneously concludes that the project's impact
4 and contribution to climate change are too speculative. The EIR states, "It is Caltrans'
5 determination that, in the absence of further regulatory or scientific information related to
6 GHG emissions and CEQA significance, it is too speculative to make a significance
7 determination regarding the project's direct impact and its contribution on the cumulative
8 scale to climate change." (Draft EIR, p. 4-14.) The EIR also fails to quantify or analyze the
9 Project's construction-related GHG emissions.

10 54. The EIR fails to adequately analyze or disclose noise impacts caused by the
11 Project. Specifically, the EIR fails to analyze all sensitive receptor locations that will likely
12 experience increased noise levels as a result of the Project and ignores the Project's
13 construction noise impacts. The EIR also adopts an improper threshold of significance for
14 noise impacts. Additionally, Caltrans failed to update their noise studies, which were
15 conducted at least ten years ago – in 2004 and 2007. The prior noise studies do not
16 adequately analyze the Project's impacts as those studies fail to account for the increase in
17 traffic in the Project area over the last decade.

18 55. The EIR fails to adequately analyze or disclose lighting impacts caused by the
19 Project on wildlife in nearby Torrey Pines Reserve and Los Penasquitos Lagoon.

20 56. The EIR fails to adequately analyze or disclose the Project's biological impacts.
21 Specifically, the expansion of Carmel Valley Road impacts the ability of wildlife to access
22 the wildlife corridor linking the Los Penasquitos Lagoon, Torrey Pines Reserve, and the
23 Project site.

24 57. The EIR fails to adequately analyze or disclose the Project's health impacts,
25 including asthma, resulting from an increase in traffic pollution.

26 58. The EIR fails to adequately analyze or disclose the Project's visual impacts.
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to vacate and set aside its certification of the EIR on the grounds that the EIR is inadequate;

- 4. For costs of the suit;
- 5. For reasonable attorneys' fees; and
- 6. For such other and further relief as the Court deems just and proper.

DATE: November 1, 2017

Respectfully Submitted,
CHATTEN-BROWN & CARSTENS

By: 

Josh Chatten-Brown
Jan Chatten-Brown
Attorneys for Petitioner