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Protect Grass Valley and Ralph A. Silberstein

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF NEVADA

COMMUNITY ENVIRONMENTAL ADVOCATES, COMMUNITY ENVIRONMENTAL ADVOCATES FOUNDATION, PROTECT GRASS VALLEY AND RALPH A. SILBERSTEIN

Petitioners,

v.

CITY OF GRASS VALLEY,

Respondent;

RUSSELL JETER AS TRUSTEE OF R. JETER FAMILY TRUST [FORMERLY THE R JETER FAMILY TRUST].

Real Party in Interest.

Superior Court CASE NO.: CU20-084791

(Court of Appeal No. C094613)

ORDER DENYING RESPONDENT'S AND REAL PARTY IN INTEREST'S JOINT MOTION FOR SEVERANCE FINDINGS AND LIMITED REMEDY

JUDGE: **Hon. S. Robert Tice-Raskin**
HEARING: **August 11, 2023**
TIME: **10:00 a.m.**
DEPT: **6**

Date Action Filed: August 3, 2020

This matter came on for hearing on August 11, 2023, in Department 6 of the Superior Court of the State of California, County of Nevada, the Honorable S. Robert Tice-Raskin presiding. R. Bruce Tepper and Tal C. Finney appeared for Petitioners Community Environmental Advocates, Community Environmental Advocates Foundation, Protect Grass Valley, and Ralph A. Silberstein. Meghan A. Wharton appeared for Respondent City of Grass Valley. James G. Moose and Nathan O. George appeared for Real Parties in Interest R. Jeter Family Trust and Russell Jeter as Trustee of the R. Jeter Family Trust.

On August 10, 2023, the Court had issued a Tentative Ruling on Respondents' Joint Motion for Severance and Limited Remedy ("Motion"). After argument, the Court made modifications to the Tentative Ruling, a true and correct copy of which is attached hereto as **Exhibit A** and made a part hereof. The Modifications have been fully incorporated in the Court's Final Ruling, provided hereinbelow:

The Court has read and considered the following: the Motion; the papers submitted by the parties, including the initial and reply Memoranda of Points and Authorities submitted by Respondents and Real Party in Interest for their Motion, the Petitioners' Opposition to the Motion, the parties' supporting declarations; and arguments of counsel. For the reasons described below, the Court hereby Orders that Respondents' and Real Parties' Motion is denied.

Respondent, City of Grass Valley ("City") and Real Parties in Interest R. Jeter Family Trust and Russell Jeter as Trustee of the R. Jeter Family Trust ("Real Parties") request the Court to adopt findings under Public Resources Code section 21168.9, subdivision (b), to allow partial decertification of the environmental impact report (EIR) certified by the City for Real Party's project and to allow project activities unaffected by the air quality issue with the EIR found by the Court of Appeal to move forward while the City revises the EIR at issue. Petitioner Community Environmental Advocates oppose the same. *Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, delineates the applicable standard for the request made:

> CEQA "allows a trial court to leave project approvals in place.... CEQA does not require the court, on finding CEQA error, to void all project approvals." (*Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 205, 284 Cal.Rptr.3d 212.) If a court determines a public agency has not complied with CEQA, it must order or issue a peremptory writ of mandate requiring the agency to do one or more of the following: (1) void the project approval "in whole or in part;" (2) suspend any or all project activities that could prejudice consideration or implementation of mitigation measures or project alternatives necessary to bring the determination into compliance with CEQA; or (3) take specific action as necessary to bring the agency's consideration of the project into compliance with CEQA. (§ 21168.9, subd. (a); Guidelines, § 15234, subd. (a).)
>
> The order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance if the court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice the agency's compliance with CEQA, and (3) the court has not found that the remainder of the project did not comply with CEQA. (§ 21168.9, subd. (b); Guidelines, § 15234, subd. (b).) A court may also exercise its equitable discretion to permit an agency to proceed with a project or individual project activities during the remand period. (Guidelines, § 15234, subd. (c).)
> *Id.* at 709.

The question presented is whether a portion of the project can be severed without prejudicing the City's compliance with CEQA.

On appeal, the appellate court found one CEQA deficiency in connection with the project's EIR and reversed the judgment in part on that ground:

> We agree with plaintiffs that the **EIR's air quality analysis is deficient because it does not evaluate adequately State Route (SR) 20/49 as a contributor of mobile source pollution and the associated health risks for future project occupants.** We reject plaintiffs' remaining arguments. Accordingly, we shall reverse the judgment in part, with instructions to grant the petition for writ of mandate with respect to the EIR's analysis of air quality impacts, and affirm the trial court's order and judgment denying the writ petition in all other respects. *Community Environmental Advocates v. City of Grass Valley* (Cal. Ct. App., Jan. 30, 2023, No. C094613) 2023 WL 1095778, at *1, as modified on denial of reh'g (Feb. 28, 2023)(bold supplied).

The appellate court's detailed discussion of the issue was as follows:

Plaintiffs contend the EIR is flawed because, even though the project site is bordered by SR 20/49, the EIR ignored SR 20/49 as an emissions source. **Plaintiffs argue that the City should have prepared a health risk assessment to evaluate the human health risks to sensitive receptors at the project site due to its proximity to SR 20/49.**

The City claims the EIR discussed adequately the potential air quality impacts of the project. Relying on [*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015)] 62 Cal.4th 369 [("CBIA")], the City contends that pollution exposure reduction strategies were incorporated into the project and the air quality impacts of existing traffic on SR 20/49 were properly treated as components of the existing environment, not impacts of the project required to be analyzed in the EIR. We find the City's reliance on CBIA misplaced.

The issue in CBIA was whether thresholds of significance for "new receptors" adopted by the Bay Area Air Quality Management District (the district) were invalid because they required analysis of how existing environmental conditions would impact a proposed project's future residents or users. (*CBIA*, supra, 62 Cal.4th at pp. 378-380.) After the Court of Appeal upheld the thresholds, our Supreme Court granted review to decide under what circumstances, if any, CEQA requires an analysis of how existing environmental conditions will impact future residents or users of a proposed project. (*CBIA*, at pp. 380-381.)

The Supreme Court concluded that CEQA does not generally require an evaluation of how existing hazards or conditions might impact future residents or users of a proposed project. (*CBIA*, supra, 62 Cal.4th at p. 377.) However, the Supreme Court also recognized exceptions to this general rule. (Id. at pp. 391-392.) One such exception applies when a proposed project risks exacerbating existing environmental hazards. The court held that when a proposed project risks exacerbating environmental hazards or conditions that already exist, the agency must analyze the potential impact of such hazards on future residents or users. (*Id.* at pp. 377, 388; *accord, League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63, 136 ["CEQA requires an EIR to analyze 'any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected' "]; CEQA Guidelines, § 15126.2, subd. (a).)

The City argues that the EIR did analyze whether the project's contribution to traffic to SR 20/49 could exacerbate existing hazards associated with mobile source pollution. Relying on the CARB Handbook, the City argues the EIR concluded there was no evidence that the project would create a new health risk or substantially exacerbate any existing significant health risks to existing or future residents. We take no issue with the City's reliance on the CARB Handbook as a threshold of significance, but we conclude it was misapplied here.

According to the CARB Handbook, air pollution studies indicate that living close to high traffic roadways may lead to adverse health effects, including asthma and reduced lung function. A key observation in the studies is that proximity to the roadway, truck traffic densities, and local meteorology (wind patterns) were key factors affecting the strength of association with adverse health effects. The studies reported an association of adverse health effects with proximity to traffic-related emissions within 1,000 feet, with the strongest association within 300 feet, and a 70 percent drop off in particulate pollution levels at 500 feet. Based on these studies, the CARB Handbook recommends against siting new residences and other sensitive receptors within 500 feet of a freeway, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day.

Under Alternative B, the nearest residences in the proposed project would be sited about 170 feet from the SR 20/49 travel lanes, well within the 500-foot recommended buffer. The City nevertheless determined that a detailed health risk assessment was not required. Because total traffic volume on SR 20/49 was below the rural significance threshold of 50,000 vehicles per day, the City concluded "there [was] no significant health risk that the project could exacerbate."

Other information in the EIR, however, shows that the average daily traffic volume for SR 20/49 is expected to increase to 56,000 vehicles by 2035, and that the proposed project would add an additional 1,000 daily vehicle trips to that total. Thus, the total traffic volume would exceed the 50,000-daily-vehicles threshold described in the CARB Handbook under existing-plus-project future conditions. Future residents of the project would be exposed to substantial concentrations of toxic air contaminants associated with SR 20/49.

It follows that SR 20/49 is a potentially significant source of hazardous automobile emissions that the proposed project risks exacerbating. As a result, the project's potentially significant exacerbating effects should have been evaluated in the EIR.

Since the EIR failed to evaluate the potential impact of such emissions on future residents and users, the EIR did not contain sufficient analysis to enable those who did not participate in its preparation to understand and meaningfully consider the extent to which the project could adversely affect the health of the project's occupants. ([*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502,] 515-516, 518-520; *see Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs*., [(2001) 91 Cal.App.4th 1344,] 1370 [" 'agency must use its best efforts to find out and disclose all that it reasonably can,' " italics omitted].)

> The fact that the project design incorporates certain strategies to minimize exposure to toxic air contaminants does not alter this conclusion. **The EIR does not give any sense of the nature or magnitude of the potential health risks posed by the project's proximity to SR 20/49, or the relative effectiveness of the pollution reduction strategies. The draft EIR did not even mention SR 20/49 as a potential emission source, let alone quantify the emissions and correlate them to potential health risks.** Thus, even if the strategies help minimize exposure to toxic air contaminants, it is impossible on this record to conclude that they reduced the project's potentially significant exacerbating effects to less than significant. **We therefore agree with plaintiffs that the EIR failed to evaluate adequately the human health effects of project residents' exposure to mobile source air pollution.**
> *Id.* at *12–13 (bold supplied).

In the disposition, the Third District states:

> **We have concluded that the EIR prepared by the City is an inadequate informational document in that it fails to evaluate adequately the human health effects of residents' exposure to mobile source air pollution.** Therefore, we reverse the judgment denying the petition for writ of mandate on this basis, and remand this matter to the superior court with instructions to enter a new judgment granting the petition (in part) and ordering issuance of a peremptory writ of mandate consistent with the requirements of section 21168.9 and this opinion. On remand, the trial court may exercise its discretion to determine whether the severability criteria in subdivision (b) of section 21168.9 are satisfied. Plaintiffs are awarded their costs on appeal. *Id.* at *19.

Respondents urge the court to find that "the defect in the EIR is limited to the failure to analyze the Project's potential to exacerbate vehicular TAC emissions from SR 20/49 in 2035 by adding 1,000 ADT to that roadway and the health effects of those emissions on future project residents 'within the 500-foot recommended buffer.' " Reply at 6. Respondents further request a finding that "residential development within the 500-foot buffer recommended by CARB and adopted by the City as a threshold of significance is severable from the rest of the Project." *Ibid.*

The Court is not persuaded. The defect in the EIR, per the appellate court's opinion, was that "**Future residents of the project** would be exposed to substantial concentrations of toxic air contaminants associated with SR 20/49," and, as such, "the project's potentially significant exacerbating effects should have been evaluated in the EIR." *Id.* at 13 (bold added). The Third District faulted the EIR for its failure "to evaluate the potential impact of

such emissions on **future residents and users"** and for lacking sufficient analysis as to the "extent to which the project could adversely affect the health of the **project's occupants.**" *Ibid.* (bold added). Per the panel, "The EIR does not give any sense of the nature or magnitude of the potential health risks posed by the project's proximity to SR 20/49, or the relative effectiveness of the pollution reduction strategies. The draft EIR did not even mention SR 20/49 as a potential emission source, let alone quantify the emissions and correlate them to potential health risks." *Ibid.*

This Court, based on the law of this case and the evidence presented, does not find that residential development "within the 500-foot buffer" as suggested by the City is severable from the rest of the project. Moreover, the Court finds that severance will prejudice the City's compliance with CEQA's air quality analysis requirements to evaluate potential impact of SR 20/49 emissions on future project residents and occupants.

The request is denied.

Pursuant to the opinion of the Court of Appeal, the judgment denying the petition for writ of mandate is set aside. A new judgment shall be issued granting the petition in part, solely as to the argument that the EIR is inadequate in that it fails to evaluate adequately the human health effects of exposure to mobile source air pollution by future residents and occupants. The petition is denied as to all remaining arguments. A peremptory writ of mandate is hereby issued directing Respondents to correct the deficiencies in the EIR's analysis of SR 20/49 as a contributor of mobile source emissions and the associated health risks for future project residents and occupants. Any project activity or activities that could result in an adverse change or alteration to the physical environment are suspended until the City has taken the necessary actions to comply with CEQA.

IT IS HEREBY ORDERED, ADJUDGED, and DECREED THAT:

1. For all the reasons set forth in the attached Final Ruling, the Respondents' Joint Motion for Severance Findings and Limited Remedy is denied in its entirety.

IT IS SO ORDERED AND ADJUDGED.

Date: 08/22/2023

HONORABLE S. ROBERT TICE-RASKIN
Judge of the Superior Court

Approved as to form:

DATED: August 21, 2023

COLANTUONO, HIGHSMITH & WHATLEY, PC

for

Michael G. Colantuono, Esq.
Attorneys for The City of Grass Valley

DATED: August 18, 2023

REMY MOOSE MANLEY, LLP

James G. Moose, Esq.
Attorneys for Real Party in Interest
Russ Jeter (Formerly the R. Jeter Family Trust)

Approved as to form:

DATED: August ____, 2023 **COLANTUONO, HIGHSMITH & WHATLEY, PC**

_____

Michael G. Colantuono, Esq.
Attorneys for The City of Grass Valley

DATED: August 18, 2023 **REMY MOOSE MANLEY, LLP**

_____

James G. Moose, Esq.
Attorneys for Real Party in Interest
Russ Jeter (Formerly the R. Jeter Family Trust)

Respectfully submitted,

DATED: August 18, 2023

FINNEY ARNOLD , LLP
Tal C. Finney
Shaune B. Arnold
R. BRUCE TEPPER, ALC

R. Bruce Tepper
Attorneys for Petitioners,
Community Environmental Advocates,
Community Environmental Advocates Foundation,
Protect Grass Valley and Ralph A. Silberstein

EXHIBIT A

COPY OF ORIGINAL TENTATIVE RULING
(See Next Page)

5. CU20-084577 Messenger v. Forest River

Appearances are required for hearing by counsel for a Ruling on the Motions which had been set for July 28, 2023.

6. CU20-084791 Community Environmental Advocates v. City of Grass Valley

Respondents and Real Parties' Motion for Severance is denied.

Respondent City of Grass Valley (City) and Real Parties in Interest R. Jeter Family Trust and Russell Jeter as Trustee of the R. Jeter Family Trust (Real Parties) request the Court to adopt findings under Public Resources Code section 21168.9, subdivision (b), to allow partial decertification of the environmental impact report (EIR) certified by the City for Real Party's project and to allow project activities unaffected by the air quality issue with the EIR found by the Court of Appeal to move forward while the City revises the EIR at issue. Petitioner Community Environmental Advocates oppose the same.

Save Our Capitol! v. Department of General Services (2023) 87 Cal.App.5th 655, delineates the applicable standard for the request made:

CEQA "allows a trial court to leave project approvals in place.... CEQA does not require the court, on finding CEQA error, to void all project approvals." (*Central Delta Water Agency v. Department of Water Resources* (2021) 69 Cal.App.5th 170, 205, 284 Cal.Rptr.3d 212.) If a court determines a public agency has not complied with CEQA, it must order or issue a peremptory writ of mandate requiring the agency to do one or more of the following: (1) void the project approval "in whole or in part;" (2) suspend any or all project activities that could prejudice consideration or implementation of mitigation measures or project alternatives necessary to bring the determination into compliance with CEQA; or (3) take specific action as necessary to bring the agency's consideration of the project into compliance with CEQA. (§ 21168.9, subd. (a); Guidelines, § 15234, subd. (a).)

The order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance if the court finds that (1) the portion or specific project activity or activities are severable, (2) severance will not prejudice the agency's compliance with CEQA, and (3) the court has not found that the remainder of the project did not comply with CEQA. (§ 21168.9, subd. (b); Guidelines, § 15234, subd. (b).) A court may also exercise its equitable discretion to permit an agency to proceed with a project or individual project activities during the remand period. (Guidelines, § 15234, subd. (c).)

Id. at 709.

The question presented is whether a portion of the project can be severed without prejudicing the City's compliance with CEQA.

On appeal, the appellate court found one CEQA deficiency in connection with the project's EIR and reversed the judgment in part on that ground:

We agree with plaintiffs that the **EIR's air quality analysis is deficient because it does not evaluate adequately State Route (SR) 20/49 as a contributor of mobile source pollution and the associated health risks for future project occupants.** We reject plaintiffs' remaining arguments. Accordingly, we shall reverse the judgment in part, with instructions to grant the petition for writ of mandate with respect to the EIR's analysis of air quality impacts, and affirm the trial court's order and judgment denying the writ petition in all other respects.

Community Environmental Advocates v. City of Grass Valley (Cal. Ct. App., Jan. 30, 2023, No. C094613) 2023 WL 1095778, at *1, as modified on denial of reh'g (Feb. 28, 2023)(bold supplied).

The appellate court's detailed discussion of the issue was as follows:

Plaintiffs contend the EIR is flawed because, even though the project site is bordered by SR 20/49, the EIR ignored SR 20/49 as an emissions source. **Plaintiffs argue that the City should have prepared a health risk assessment to evaluate the human health risks to sensitive receptors at the project site due to its proximity to SR 20/49.**

The City claims the EIR discussed adequately the potential air quality impacts of the project. Relying on [*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015)] 62 Cal.4th 369 [("CBIA")], the City contends that pollution exposure reduction strategies were incorporated into the project and the air quality impacts of existing traffic on SR 20/49 were properly treated as components of the existing environment, not impacts of the project required to be analyzed in the EIR. We find the City's reliance on CBIA misplaced.

The issue in CBIA was whether thresholds of significance for "new receptors" adopted by the Bay Area Air Quality Management District (the district) were invalid because they required analysis of how existing environmental conditions would impact a proposed project's future residents or users. (*CBIA*, supra, 62 Cal.4th at pp. 378-380.) After the Court of Appeal upheld the thresholds, our Supreme Court granted review to decide under what circumstances, if any, CEQA requires an analysis of how existing environmental conditions will impact future residents or users of a proposed project. (*CBIA*, at pp. 380-381.)

The Supreme Court concluded that CEQA does not generally require an evaluation of how existing hazards or conditions might impact future residents or users of a proposed project. (*CBIA*, supra, 62 Cal.4th at p. 377.) However, the Supreme Court also recognized exceptions to this general rule. (Id. at pp. 391-392.) One such exception applies when a proposed project risks exacerbating existing environmental hazards. The court held that when a proposed project risks exacerbating environmental hazards or conditions that already exist, the agency must analyze the potential impact of such hazards on future residents or users. (*Id.* at pp. 377, 388; *accord*, *League to Save Lake Tahoe v. County of Placer* (2022) 75 Cal.App.5th 63, 136 ["CEQA requires an EIR to analyze 'any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected' "]; CEQA Guidelines, § 15126.2, subd. (a).)

The City argues that the EIR did analyze whether the project's contribution to traffic to SR 20/49 could exacerbate existing hazards associated with mobile source pollution. Relying on the CARB Handbook, the City argues the EIR concluded there was no evidence that the project would create a new health risk or substantially exacerbate any existing significant health risks to existing or future residents. We take no issue with the City's reliance on the CARB Handbook as a threshold of significance, but we conclude it was misapplied here.

According to the CARB Handbook, air pollution studies indicate that living close to high traffic roadways may lead to adverse health effects, including asthma and reduced lung function. A key observation in the studies is that proximity to the roadway, truck traffic densities, and local meteorology (wind patterns) were key factors affecting the strength of association with adverse health effects. The studies reported an association of adverse health effects with proximity to traffic-related emissions within 1,000 feet, with the strongest association within 300 feet, and a 70 percent drop off in particulate pollution levels at 500 feet. Based on these studies, the CARB Handbook recommends against siting new residences and other sensitive receptors within 500 feet of a freeway, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day.

Under Alternative B, the nearest residences in the proposed project would be sited about 170 feet from the SR 20/49 travel lanes, well within the 500-foot recommended buffer. The City nevertheless determined that a detailed health risk assessment was not required. Because total traffic volume on SR 20/49 was below the rural significance threshold of 50,000 vehicles per day, the City concluded “there [was] no significant health risk that the project could exacerbate.”

Other information in the EIR, however, shows that the average daily traffic volume for SR 20/49 is expected to increase to 56,000 vehicles by 2035, and that the proposed project would add an additional 1,000 daily vehicle trips to that total. Thus, the total traffic volume would exceed the 50,000-daily-vehicles threshold described in the CARB Handbook under existing-plus-project future conditions. Future residents of the project would be exposed to substantial concentrations of toxic air contaminants associated with SR 20/49.

It follows that SR 20/49 is a potentially significant source of hazardous automobile emissions that the proposed project risks exacerbating. As a result, the project's potentially significant exacerbating effects should have been evaluated in the EIR.

Since the EIR failed to evaluate the potential impact of such emissions on future residents and users, the EIR did not contain sufficient analysis to enable those who did not participate in its preparation to understand and meaningfully consider the extent to which the project could adversely affect the health of the project's occupants. ([*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502,] 515-516, 518-520; *see Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, [(2001) 91 Cal.App.4th 1344,] 1370 [" 'agency must use its best efforts to find out and disclose all that it reasonably can,' " italics omitted].)

The fact that the project design incorporates certain strategies to minimize exposure to toxic air contaminants does not alter this conclusion. **The EIR does not give any sense of the nature or magnitude of the potential health risks posed by the project's proximity to SR 20/49, or the relative effectiveness of the pollution reduction strategies. The draft EIR did not even mention SR 20/49 as a potential emission source, let alone quantify the emissions and correlate them to potential health risks.** Thus, even if the strategies help minimize exposure to toxic air contaminants, it is impossible on this record to conclude that they reduced the project's potentially significant exacerbating effects to less than significant. **We therefore agree with plaintiffs that the EIR failed to evaluate adequately the human health effects of project residents' exposure to mobile source air pollution.**

Id. at *12–13 (bold supplied).

In the disposition, the Third District states:

We have concluded that the EIR prepared by the City is an inadequate informational document in that it fails to evaluate adequately the human health effects of residents' exposure to mobile source air pollution. Therefore, we reverse the judgment denying the petition for writ of mandate on this basis, and remand this matter to the superior court with instructions to enter a new judgment granting the petition (in part) and ordering issuance of a peremptory writ of mandate consistent with the requirements of section 21168.9 and this opinion. On remand, the trial court may exercise its discretion to determine whether the severability criteria in subdivision (b) of section 21168.9 are satisfied. Plaintiffs are awarded their costs on appeal.

Id. at *19.

Respondents urge the court to find that "the defect in the EIR is limited to the failure to analyze the Project's potential to exacerbate vehicular TAC emissions from SR 20/49 in 2035 by adding 1,000 ADT to that roadway and the health effects of those emissions on future project residents 'within the 500-foot recommended buffer.' " Reply at 6. Respondents further request a finding that "residential development within the 500-foot buffer recommended by CARB and adopted by the City as a threshold of significance is severable from the rest of the Project." *Ibid.*

The Court is not persuaded. The defect in the EIR, per the appellate court's opinion, was that "**Future residents of the project** would be exposed to substantial concentrations of toxic air contaminants associated with SR 20/49," and, as such, "the project's potentially significant exacerbating effects should have been evaluated in the EIR." *Id.* at 13 (bold added). The Third District faulted the EIR for its failure "to evaluate the potential impact of such emissions on **future residents and users**" and for lacking sufficient analysis as to the "extent to which the project could adversely affect the health of the **project's occupants.**" *Ibid.* (bold added). Per the panel, "The EIR does not give any sense of the nature or magnitude of the potential health risks posed by the project's proximity to SR 20/49, or the relative effectiveness of the pollution reduction strategies. The draft EIR did not even mention SR 20/49 as a potential emission source, let alone quantify the emissions and correlate them to potential health risks." *Ibid.*

This Court, based on the law of this case and the evidence presented, does not find that residential development "within the 500-foot buffer" as suggested by the City is severable from the rest of the project. Moreover, the Court finds that severance will prejudice the City's compliance with CEQA's air quality analysis requirements to evaluate potential impact of

SR 20/49 emissions on future project residents, occupants and users.

The request is denied.

Pursuant to the opinion of the Court of Appeal, the judgment denying the petition for writ of mandate is set aside. A new judgment shall be issued granting the petition in part, solely as to the argument that the EIR is inadequate in that it fails to evaluate adequately the human health effects of exposure to mobile source air pollution by future residents, occupants, and users. The petition is denied as to all remaining arguments. A peremptory writ of mandate is hereby issued directing Respondents to correct the deficiencies in the EIR's analysis of SR 20/49 as a contributor of mobile source emissions and the associated health risks for future project residents, occupants, and users. Any project activity or activities that could result in an adverse change or alteration to the physical environment are suspended until the City has taken the necessary actions to comply with CEQA.

Petitioners shall submit an order after hearing and amended judgment, approved as to form by Respondents, consistent with this ruling.

7. CU20-084829 Fire Ins. v. Harrison

A tentative ruling will likely issue August 10, 2023, at approximately 4:00 p.m. Defendant Liberty Utilities' Motion for Summary Judgment will be denied. The Alternative Motion for Summary Adjudication will likewise be denied. Appearances are required (remote appearances are permitted), but argument will be held at 1:00 pm in Dept. 6, not 10:00 am.

8. CU21-084369 Rabkin v. Rabkin

Appearances are required by counsel. The Court requires a status of the escrow.

9. CU21-085177 Caston v. Berry Hill Apts.

Defendants' unopposed Motion to Compel Plaintiff's Responses to Supplemental Request for Production of Documents is granted. Plaintiff shall serve responses and responsive documents, without objections, by August 21, 2023. Defendants are awarded sanctions of $645.00.

10. CU21-085597 Vickers v. Ralph

PROOF OF SERVICE - CCP §§ 1013a, 2015.5

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 633 W. 5th Street, 28th Floor, Los Angeles, California 90071.

On the date set forth below, I served the foregoing document described as follows:

[PROPOSED] ORDER DENYING RESPONDENT'S AND REAL PARTY IN INTEREST'S JOINT MOTION FOR SEVERANCE FINDINGS AND LIMITED REMEDY

on the interested parties in this action by placing ___ the original/ __X__ a true copy thereof enclosed in a sealed envelope(s) addressed as follows:

SEE ATTACHED SERVICE LIST

[ ] **BY MAIL** I deposited such envelopes in the mail at Los Angeles, California. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business.

[ ] **BY PERSONAL SERVICE** I hand delivered such envelope by hand to the addressee(s) indicated on the Service List attached hereto.

[ ] **BY FEDEX** I caused such envelopes to be served via FedEx. I am readily familiar with the firm's practice of collection and processing of correspondence for FedEx. Under that practice it would be deposited in a box or other facility regularly maintained by FedEx for next day delivery.

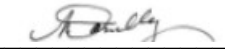
[ ] **BY FACSIMILE MACHINE**: The foregoing document was transmitted to the attached named person(s) by facsimile transmission on said date and the transmission was reported as complete and without error.

[X] **BY ELECTRONIC TRANSMISSION**: The foregoing document was transmitted via electronic mail to the addressee(s), at the e-mail address(es) indicated on the attached service list.

[X] (**STATE**) I declare under penalty of perjury that the foregoing is true and correct.

[ ] (**FEDERAL**) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on August 21, 2023, at Los Angeles, California.



Amanda Donnelly

SERVICE LIST

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