

## **CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions**

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### **SUMMARY**

This report analyzes all published opinions from 1997 through 2012 litigated to the California Court of Appeal or the California Supreme Court concerning the analytical validity of an Environmental Impact Report (EIR) or Negative Declaration – or the applicability of a Categorical Exemption – under the California Environmental Quality Act (CEQA).<sup>1</sup>

This 15-year report of CEQA jurisprudence presents information about the kinds of projects that are targeted by these CEQA lawsuits, identifies the "win-loss" record of CEQA petitioners seeking to overturn an agency decision based on alleged CEQA compliance flaws, describes the types of parties that file CEQA lawsuits and notes the environmental study topics that appellate courts most often consider in CEQA lawsuits. The survey excludes CEQA cases that turned exclusively on a procedural question, such as whether the case was timely filed under the statute of limitations or whether proper notice was provided of the availability of CEQA documentation for public review.

Among the survey's primary findings:

- From 1997 through 2012, the adequacy of an agency's compliance with CEQA was upheld in only 56% of the decisions. In a remarkable departure from other types of agency administrative law challenges, a CEQA petitioner has a nearly 50/50 chance of securing a court victory overturning an agency decision, on the grounds of an alleged substantive deficiency in an environmental study topic area.
- Of the total cases that could be characterized as involving "greenfield" or "infill" construction projects, the clear majority (62%) involved infill development projects. Only 38% involved greenfield projects.
- Over one-third of the projects challenged (36%) were public projects (physical or regulatory projects proposed by a public agency for the benefit of the public, such as infrastructure, schools, and regulations or plans), rather than projects proposed by a private sector applicant such as a developer or hospital.
- Only 9% of the cases involved industrial, manufacturing or port cargo projects, despite the alleged importance of CEQA in fighting industrial pollution. The most commonly challenged types of projects were residential housing projects (17%), followed closely by commercial (retail or office) projects (16%), followed by public infrastructure projects (water supply,

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<sup>1</sup> Public Resources Code § 21000 *et seq.*

waste management, etc.) undertaken by government entities (15%), followed by agency adoption of a plan (*e.g.*, general plan, habitat conservation plan) (12%).

- In reviewing the substantive adequacy of the environmental studies prepared by the agency during the CEQA process, the topic most frequently found to be insufficiently analyzed (in 33% of cases) were utilities (*e.g.*, water and sewer systems) and public services (*e.g.*, fire and police services). The other most frequently criticized topical study areas were biological resources (28%), transportation/traffic (27%), air quality (27%) and hydrology/water quality (20%).
- Two-thirds of cases (67%) were brought, at least in part, by a local organization such as a neighborhood group, homeowner association or a new entity created for the purpose of filing a CEQA lawsuit. Of the local organizations joining lawsuits, almost half (47%) were unincorporated. Individuals joined as plaintiffs in only 30% of cases, and state and regional organizations with a wider than local scope (*e.g.*, the Sierra Club or Center for Biological Diversity) joined as plaintiffs in less than a quarter of cases (22%). CEQA lawsuits were brought by governments and public agencies in 16% of cases.

Because CEQA petitioners are not required to disclose the identity of organizational members or the economic interests of those funding or litigating lawsuits, reported appellate court cases do not typically describe the identify or funding sources for CEQA petitioners. However, media reports on challenged projects typically include more detailed accounts of the true motivation behind CEQA challenges. In recent years, the use of CEQA by labor unions, economic competitors and "bounty-hunter" attorneys seeking cash settlements without affected clients has been reported widely.<sup>2</sup>

Like many works of legal scholarship, this report is based on published case law. Published appellate court cases comprise the majority of appellate court CEQA decisions, and since published opinions are the only decisions that may be relied upon in California courts, they comprise the "CEQA caselaw" that establishes judicial precedent for the proper interpretation and application of CEQA. While only a relatively small subset of CEQA lawsuits actually result in published appellate court decisions,<sup>3</sup> this report is one of the most comprehensive reviews of CEQA case law ever published.

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<sup>2</sup> See, *e.g.*, William Fulton, *Insight: Everyone wants to keep leverage under CEQA*, California Planning & Development Report (Oct. 31, 2014, 2:03 PM), <http://www.cp-dr.com/node/3585>. ("CEQA provides a way for anybody who wants anything out of a public agency to get some leverage over the situation – whether that's unions, environmentalists, businesses, developers, and even local governments themselves.")

<sup>3</sup> During the 15-year study period, just under 10 published appellate court decisions on the substantive adequacy of an agency's environmental analysis were published annually. A companion study evaluating the CEQA lawsuits filed during the last three years of the same study period found that more than 200 CEQA lawsuits were filed annually. Some commentators have speculated (without evidence) that published cases might be unrepresentative of the "win-loss" rate of CEQA litigation on the whole, but there is no reason to suspect that published cases are significantly unrepresentative of the kinds of projects targeted in CEQA lawsuits, the types of parties that file CEQA lawsuits, or the other major findings of this report.

## **BACKGROUND**

The present study is an expansion of Holland & Knight's 2012 report, "Analysis of Recent Challenges to Environmental Impacts Reports."<sup>4</sup> It provides an update to the findings of the 2012 report<sup>5</sup> along with a parallel analysis of all non-procedural Categorical Exemption cases and cases concerning the analytical validity of a Negative Declaration from 1997 through 2012.

Holland & Knight's 2012 report analyzed all published opinions from 1997 to February 2012 in which CEQA plaintiffs litigated the validity of an EIR to the California Court of Appeal or Supreme Court. As shown in the comparison table below (*see* pp. 21-22), the findings for Categorical Exemption and Negative Declaration cases are relatively consistent with the findings for EIRs. The conclusions of the present survey are therefore largely similar to the 2012 report (which analyzed EIRs only). However, the present report enlarges the sampling size of CEQA cases surveyed (thereby decreasing the margin of error), and allows for a comparison between EIRs, Categorical Exemptions and Negative Declarations, based on a variety of factors.

Our goal here is to continue to shed light on CEQA as the debate about the future of the law continues, and as many stakeholders seek better data about how CEQA works, generally speaking, and how CEQA litigation and court decisions affect how CEQA functions.

Both Holland & Knight studies build on several earlier important evaluations of CEQA court decisions:

- In 2011, Clem Shute, a founding partner of the San Francisco law firm Shute, Mihaly & Weinberger, reported that in 43% of published CEQA appellate and Supreme Court cases in California since CEQA was enacted, plaintiffs successfully challenged the adequacy of an agency's CEQA compliance.<sup>6</sup> This is a remarkable statistical anomaly in administrative law litigation both generally and in relation to other laws similar to CEQA:
  - In lawsuits pursued under the National Environmental Policy Act (NEPA), the national equivalent of (and model for) CEQA, there have been no successful United States Supreme Court challenges to NEPA compliance in the 44 years since NEPA was enacted. Rather, the Court has upheld the adequacy of agency NEPA compliance in 100% of cases, nearly all the time in unanimous rulings.<sup>7</sup>

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<sup>4</sup> Available: <http://www.hklaw.com/publications/Analysis-of-Recent-Challenges-to-Environmental-Impact-Reports-12-01-2012/>

<sup>5</sup> Although the 2012 Holland & Knight survey included results from 1997 through February 2012, the present study updates the sample size to include all cases through December 31, 2012.

<sup>6</sup> Remarks, "CEQA at 40: A Look Back, and Ahead" Conference, University of California, Davis School of Law, November 4, 2011; *PowerPoint available*: [http://www.law.ucdavis.edu/centers/environmental/files/Shute\\_PP.pptx](http://www.law.ucdavis.edu/centers/environmental/files/Shute_PP.pptx) & *video available*:

<http://mediasite.ucdavis.edu/Mediasite/SilverlightPlayer/Default.aspx?peid=3881aae481214b5cab28dd58ae72debd1d&playFrom=3455000>

<sup>7</sup> Lazarus, Richard. *The National Environmental Policy Act in the U.S. Supreme Court: A Reappraisal and a Peek Behind the Curtains*, 100 GEO. L.J. 1507, 1510 (2012), *available*: <http://georgetownlawjournal.org/articles/the-national-environmental-policy-act-in-the-u-s-supreme-court-a-reappraisal-and-a-peek-behind-the-curtains/>

- Under the New York State Environmental Quality Review Act, over a 16-year period, agencies won a staggering 84% of the cases that challenged the adequacy of New York's equivalent of an EIR.<sup>8</sup>
  - A meta-study of 11 studies involving administrative agency lawsuits, including 5,081 federal court cases from 1982 through 2009, indicates an overall agency validation rate of 69%.<sup>9</sup>
  - The National Taxpayer Advocate, which is required by federal law to track the 10 most litigated tax issues in federal court, concluded in a recent annual report that challengers prevailed against the IRS in whole or in part in only 22% of those cases.<sup>10</sup>
- Because Mr. Shute's results involved all types of reported CEQA cases dating back to CEQA's enactment more than 40 years ago, two subsequent studies were then completed to evaluate CEQA's more recent litigation history, and to parse differences in CEQA lawsuits challenging each of CEQA's three major compliance tracks: EIRs, Negative Declarations and Categorical Exemptions.
  - Thomas Law Group's 2012 "CEQA Litigation History" report reviewed all California Court of Appeal and Supreme Court cases reviewing the adequacy of an EIR or Negative Declaration over a nearly 15-year period, from 1997 to February 17, 2012.<sup>11</sup> The report focused on "substantive" challenges to CEQA documents (*i.e.*, the reviewing court found fault with an agency's impacts analysis, mitigation or alternatives evaluation, and/or determination of whether an impact was "significant"). In those cases:
    - EIRs were successfully challenged 49% of the time, even though CEQA provides the highest level of judicial deference to EIRs.
    - Negative Declarations were even more vulnerable, with opponents successfully challenging Negative Declarations in just under 60% of published cases. (Negative Declarations are insufficient under CEQA if opponents make a "fair argument" based on substantial evidence that a project "may" cause even one significant adverse impact at a project or cumulative level.)
  - Holland & Knight's 2012 "CEQA Categorical Exemption Litigation History" reviewed lawsuits challenging Categorical Exemptions over the same time period considered in the Thomas Law Group study, and found that opponents successfully overturned Categorical Exemptions in 52% of the reported court cases.<sup>12</sup>

<sup>8</sup> Gerrard, Michael B. *Survey of SEQRA Cases From 2007*. 239 N.Y.L.J. 60 (Mar. 28, 2008).

<sup>9</sup> Zaring, David. *Reasonable Agencies*. 96 VA. L. REV. 135, 170-71 (2010).

<sup>10</sup> National Taxpayer Advocate – 2011 Annual Report to Congress Volume 1, p. 590, Table 3.0.2. Available: <http://www.taxpayeradvocate.irs.gov/Media-Resources/FY-2011-Annual-Report-To-Congress-Full-Report>

<sup>11</sup> Available: <http://thomaslaw.com/wp-content/uploads/2012/03/CEQA-Lit-History.pdf>

<sup>12</sup> Available: <http://www.hkllaw.com/publications/Judicial-Review-of-CEQA-Categorical-Exemptions-from-1997-Present/>

These remarkable litigation statistics demonstrate that opponents can expect to win CEQA challenges about the substantive adequacy of CEQA documentation approximately half the time.

In decisions concluding that the agency did not properly comply with CEQA, the most common judicial remedy is to order the agency to vacate its project approval and repeat the CEQA process. In some cases, the judicial decision is specific about what additional CEQA study is required to address the environmental document's deficiency. In many other cases, however, the court concludes that at least one area of deficiency exists and includes an unspecified directive to "get it right" next time. Since completion of the CEQA public and administrative process at the agency level can often require 1-3 years to complete, and litigating a case through superior and appellate court generally requires 2-4 years, projects targeted by CEQA litigation remain in a cloud of uncertainty for 3-7 years after approval – with a 50/50 chance that the project approval will in fact be ordered vacated (thereby requiring new CEQA administrative processing). Given this prolonged period of legal uncertainty, project implementation generally remains stalled – even if a court injunction against project construction is never granted as part of the litigation process – because a challenged project's future remains too uncertain to qualify for financing from funding sources.<sup>13</sup> CEQA lawsuits accordingly confer tremendous power on project challengers, since the act of filing the lawsuit can effectively delay a project for many years even if the courts ultimately conclude that the agency's CEQA compliance is proper.

Nonetheless, the debate about the extent to which this unprecedented judicial uncertainty in CEQA litigation is a problem has continued, largely in the context of proponents and opponents of CEQA modernization providing anecdotal examples of particular projects. This study is designed to bring the recent body of CEQA jurisprudence – reported California appellate and Supreme Court cases – into greater focus to help inform and advance this ongoing debate.

## **METHODOLOGY**

### *Dataset of Cases*

This study analyzes the entire body of published non-procedural appellate CEQA cases from a recent 15-year period that evaluate the analytical validity of an environmental document (EIR or Negative Declaration) or determine whether a Categorical Exemption should be upheld.

- Ninety-nine cases from 1997 through 2012 involved EIRs and were therefore subject to the greatest level of environmental scrutiny. The dataset of EIR cases included in this survey is the same as was evaluated in the Thomas Law Group study, but includes those cases published through the end of 2012 (the Thomas Law Group study went until February 2012), and excludes any cases depublished since the Thomas Law Group study came out.
- Fifteen cases from 1997 through 2012 concern the validity of a Categorical Exemption. The dataset of Categorical Exemption cases is the same as was analyzed in Holland &

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<sup>13</sup> Funding sources range from federal and state grants and tax credits, to public and private bonds, to private lenders and investors (in addition to some project applicants who do not seek third-party financing).

Knight's 2012 CEQA Categorical Exemption Litigation History study, but excludes those cases that are procedural in nature.

- Thirty-two cases from 1997 to 2012 concern a Negative Declaration and are non-procedural in nature. (Each of these cases discuss the analytical validity of the Negative Declaration.) The dataset of Negative Declaration cases included in this survey is identical to that evaluated in the Thomas Law Group study, but includes those cases published through the end of 2012. (The Thomas Law Group study went until February 2012.) The dataset also excludes cases that have been depublished since the Thomas Law Group study came out.

### *Categorization of Cases*

For purposes of this report, each case was categorized in the following areas: (1) the city and county in which the project was proposed, (2) the prevailing party, (3) whether the project was "public" or "private," (4) the type of project proposed, (5) whether (if applicable) the project was an "infill" or "greenfield" development, (6) the type of impacts discussed, and (7) the type of plaintiff challenging the project.

**(1) City and County:** The survey identifies the city and county where the project was located based on the statement of facts in the opinion. If the project was not located in a city, the closest city is noted. If the challenged project was a regulatory decision without a precise physical location or project footprint, the areas directly affected by the project are noted.

**(2) Prevailing Party:** The party that prevailed in the case, either the plaintiff or the defendant (the agency), is identified.

**(3) Public or Private Project:** Cases in which a public agency or government proposed the project were categorized as "public" projects. Cases in which the opinion characterized a private entity as the proponent of the project, or in which a private entity was listed as a real party in interest, are categorized as "private" projects. When a project was proposed by a public agency but appeared to be proposed for the benefit of a private entity, projects are characterized as "private." Projects proposed by public utilities that largely serve a public function, such as urban water supply projects and waste management projects, are classified as "public."

**(4) Type of Project:** For private projects, the type of project at issue is categorized as residential, infrastructure, commercial, mixed use, industrial, educational, demolition, hospital or "other." Private infrastructure projects are government-funded infrastructure projects in which a private entity appears as a real party in interest, or in which the infrastructure appears to singularly benefit a private entity rather than the public at large. Commercial projects include restaurants, office buildings, vineyards, wedding venues and car washes. Projects are classified as mixed use if they combine residential uses with another type of use, such as retail or commercial. Industrial projects include all industrial activities, including mining operations, ports, manufacturing activities, and oil refineries. Projects were classified as "other" if they could not easily be fit into another category. Public projects were classified as public infrastructure, education infrastructure, plan adoptions or regulatory programs. Public infrastructure projects are construction, demolition or condemnation activities implemented by a public agency in

furtherance of providing public functions, including water supply infrastructure, waste management facilities and parking projects. Education infrastructure projects are construction or demolition of education facilities. Plan adoption projects include approval of or amendments to long-term planning documents, such as general and specific plans, master plans, redevelopment plans, habitat conservation plans, woodland management plans and integrated waste management plans. Regulatory programs include challenged regulations, programs or ordinances, such as pest control programs, code enforcement programs, waste disposal regulations and ordinances banning plastic bags. The tables below also include a short description of each public project surveyed.

**(5) Greenfield or Infill:** New residential, commercial, education, hospital and mixed-use development projects were categorized as either "greenfield" or "infill" based on the project's proposed location and that location's proximity to nearby development and metropolitan area boundaries. Development projects that adaptively reused or redeveloped previously developed sites, proposed new development in areas surrounded by other significant development, or proposed new development within the boundaries of established metropolitan areas or towns, were categorized as infill. Development projects in undeveloped areas, rural areas or on the periphery of developed areas, were categorized as greenfield. If a city acted as the lead agency in the case, the project was presumptively classified as infill, unless the project had a project footprint on an undeveloped parcel outside of the city or in natural areas on the outskirts of the city boundaries. Public regulatory projects, projects without a designated location, and projects that did not directly propose new residential, commercial, educational, hospital or mixed-use development, were listed as "other" (and were not included in the denominator for purposes of the percentage calculations).

**(6) Type of Impact:** For cases in which the plaintiff prevailed,<sup>14</sup> the survey identifies the environmental impact areas (*i.e.*, aesthetics, biological resources, air quality, etc.)<sup>15</sup> that the court cites in the case as being at issue or deficient in the environmental document. In most cases where an environmental document was found deficient, the court identified more than one type of impact area with deficiencies.

### *EIR Cases*

For EIR cases, the "type of impact" is the environmental impact area(s) of the EIR that the court found to be deficient, either because the defendant's impact conclusions in this area were not supported by substantial evidence, because the proposals to mitigate this impact were inadequate, or because the defendant had failed to adequately analyze alternatives that might reduce this impact. If the opinion found deficiencies in the EIR's project description, baseline determination, mitigation measures or alternatives analysis, this was also noted. Some opinions emphasized failings in the EIR process (*e.g.*, reliance on a previous EIR, inappropriate deferral of analysis),

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<sup>14</sup> The survey does not analyze type of impact for cases in which the defendant (agency) prevails, because when the defendant prevails and the environmental document (EIR, Categorical Exemption or Negative Declaration) is upheld, the court does not necessarily identify areas in which the environmental document is contested or problematic.

<sup>15</sup> The survey organizes impact areas for EIRs, Categorical Exemptions and Negative Declarations according to CEQA Guidelines Appendix G, which provides a sample checklist of environmental categories for environmental review (aesthetics, agriculture and forest resources, air quality, etc.).

without being completely clear about which impact conclusions or analyses were affected by these failings. Where the opinion and statement of facts indicated the primary impact areas on which the EIR focused, these cases were categorized by impact area. Opinions that emphasized only procedural failings and did not discuss the validity of the environmental analysis were excluded from the survey.

### *Categorical Exemption Cases*

Under CEQA, "Categorical Exemptions" are established in a regulatory process that identifies types of smaller or environmentally beneficial projects that do not – absent "unusual circumstances" – cause significant adverse environmental impacts. For Categorical Exemption cases, the survey identifies as the "type of impact" what, if any, "unusual circumstances" the court concluded did or could result in a significant adverse environmental impact notwithstanding the small scale or environmental benefits of the project, thereby removing the project from the Categorical Exemption and causing the plaintiff to prevail. The survey also tracks the categorical exemptions discussed for each case in which the plaintiff prevailed.

### *Negative Declaration Cases*

For Negative Declaration cases, the "type of impact" is: (1) the impact area(s) that the court cites as a justification for requiring an EIR, and not a Negative Declaration, for the project, or (2) the impact areas the court holds were otherwise insufficiently analyzed in the Negative Declaration. If, for example, the court states that the Negative Declaration was inappropriate and an EIR was required because the project required extensive analysis in the area of biological resources, the survey would note biological resources as the "type of impact."

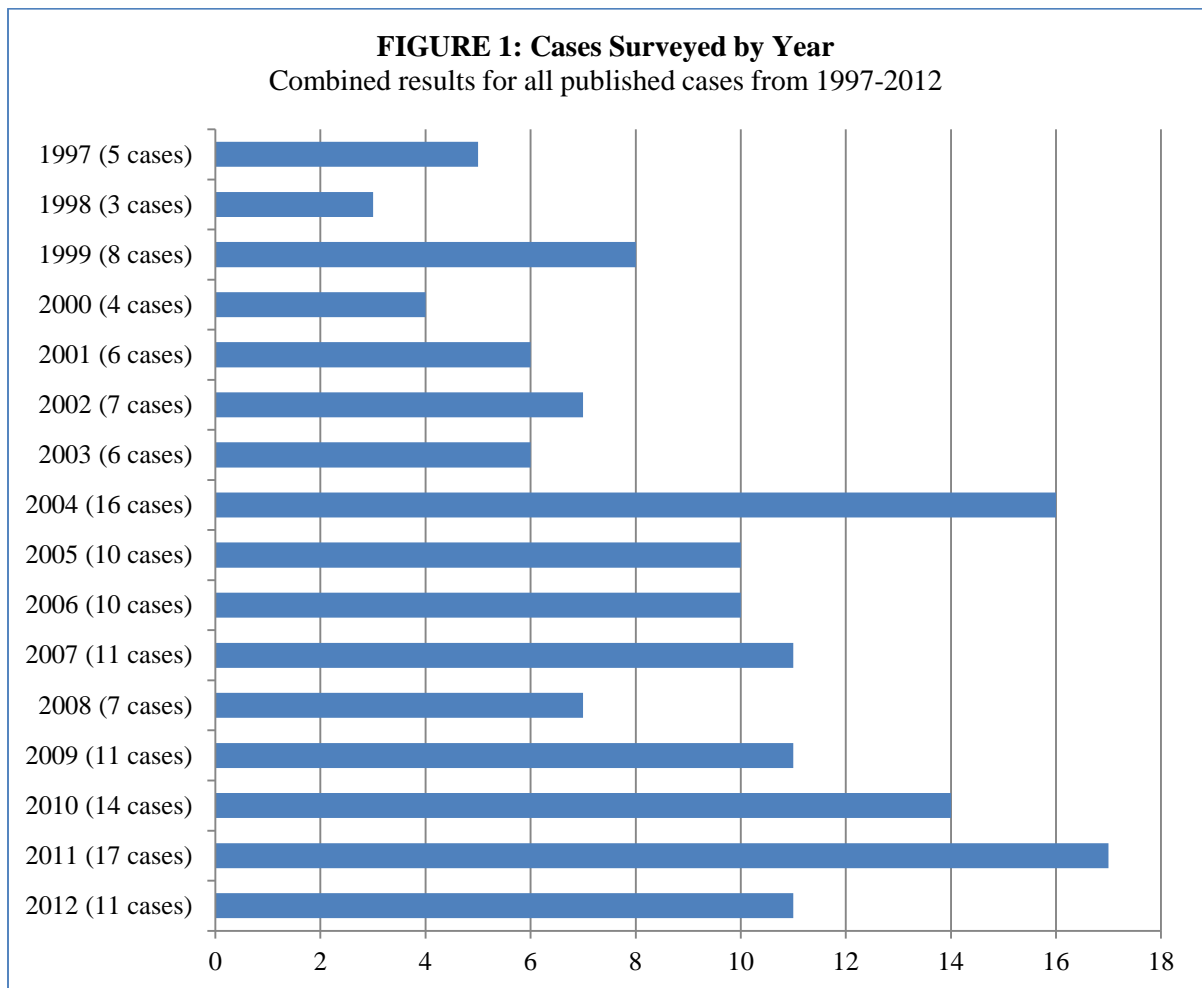
**(7) Type of Plaintiff:** This analysis characterizes plaintiffs who appealed a trial court decision or who defended a trial court decision on appeal. Most cases were brought by two or more types of plaintiffs. Based on the description in the opinion, each plaintiff bringing a challenge was identified from among the following categories: local organization, individual, state/regional organization, government entity, business, Native American Tribe, religious organization or labor organization. A plaintiff was categorized as a "local organization" if it was a local homeowners organization, if its name reflected a specific local area of involvement, or if it appeared to be formed for the sole purpose of the litigation. Organizations with a broader-than-local scope were categorized as "state or regional organizations." Based on a search of the California Secretary of State's online database of registered business associations (website accessed at the time the survey was conducted, between 2012-2014), local organizations were also identified as either "incorporated" or "unincorporated" based on the organization's listed incorporation status. If the organization's incorporation had since been suspended or dissolved, this was also noted. Government entities, businesses and Native American tribes were identified from their names and descriptions in the opinions. In one case, the plaintiff was the project proponent, and brought suit against the lead agency to seek favorable judicial resolution of the status of the project he was promoting. Since this survey intends only to track the classification of project *opponents*, in this one case, the plaintiff type is listed as "N/A."



**FINDINGS**<sup>16</sup>

**CASES SURVEYED:** All published EIR, Categorical Exemption and Negative Declaration cases from 1997 through 2012 that turn on questions of whether the lead agency adequately studied, mitigated and made a significance conclusion about environmental impacts (146 total)

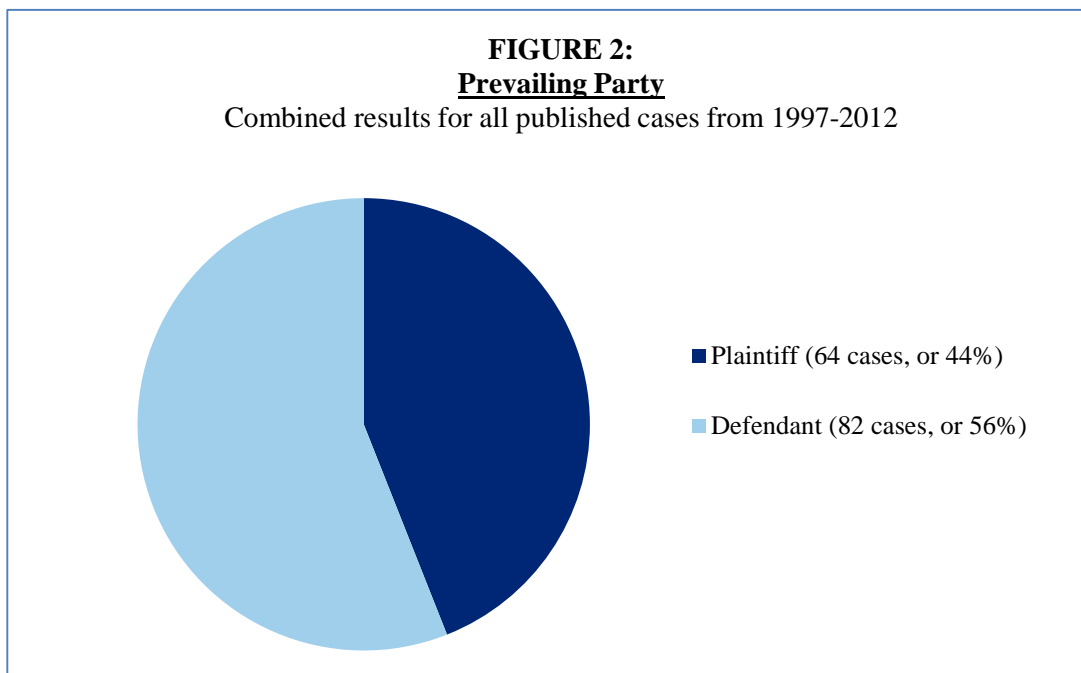
- **EIR cases:** 99 cases
- **Categorical Exemption cases:** 15 cases
- **Negative Declaration cases:** 32 cases
- **Total for all cases:** 146 cases

**PREVAILING PARTY:**

- **EIR cases:** (99 total)
  - 43 plaintiff victories (43%)

<sup>16</sup> Due to rounding, percentages do not always add up to 100%.

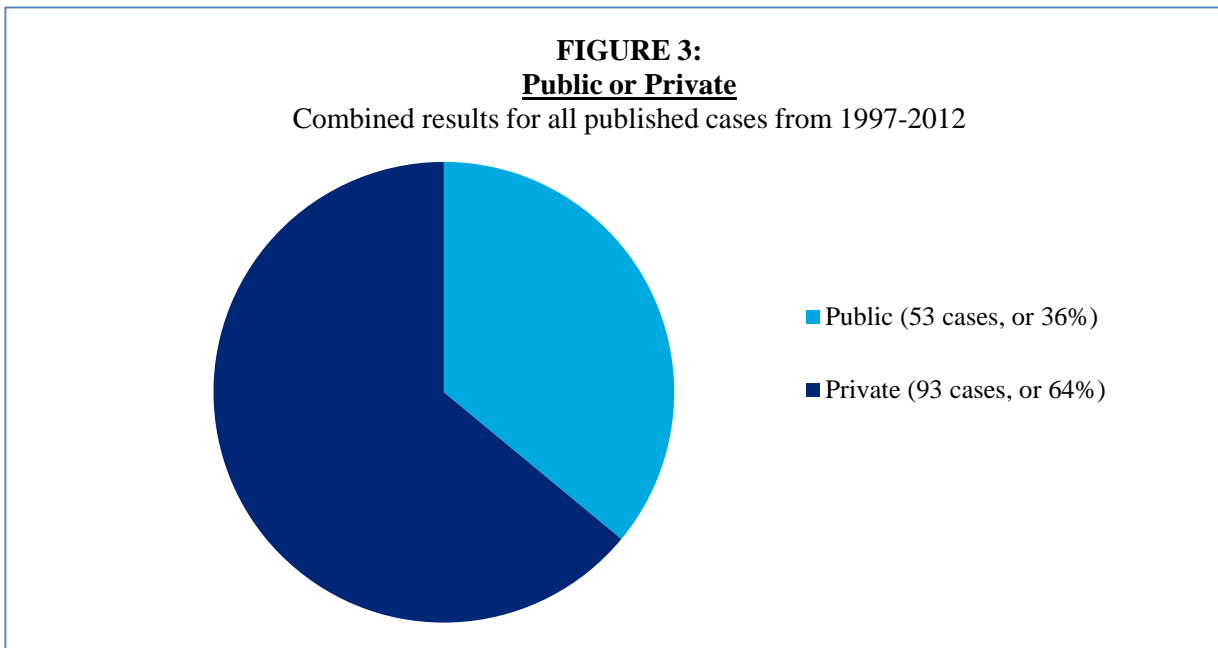
- 56 defendant victories (57%)
- **Categorical Exemption cases:** (15 total)
  - 3 plaintiff victories (20%)
  - 12 defendant victories (80%)
- **Negative Declaration cases:** (32 total)
  - 18 plaintiff victories (56%)
  - 14 defendant victories (44%)
- **Total for all cases:** (146 total)
  - 64 plaintiff victories (44%)
  - 82 defendant victories (56%)



**PUBLIC OR PRIVATE PROJECT:**

- **EIR cases:** (99 total)
  - 35 public projects (35%)
  - 64 private projects (65%)
- **Categorical Exemption cases:** (15 total)
  - 4 public projects (27%)
  - 11 private projects (73%)
- **Negative Declaration cases:** (32 total)

- 14 public projects (44%)
- 18 private projects (56%)
- **Total for all cases:** (146 total)
  - 53 public projects (36%)
  - 93 private projects (64%)



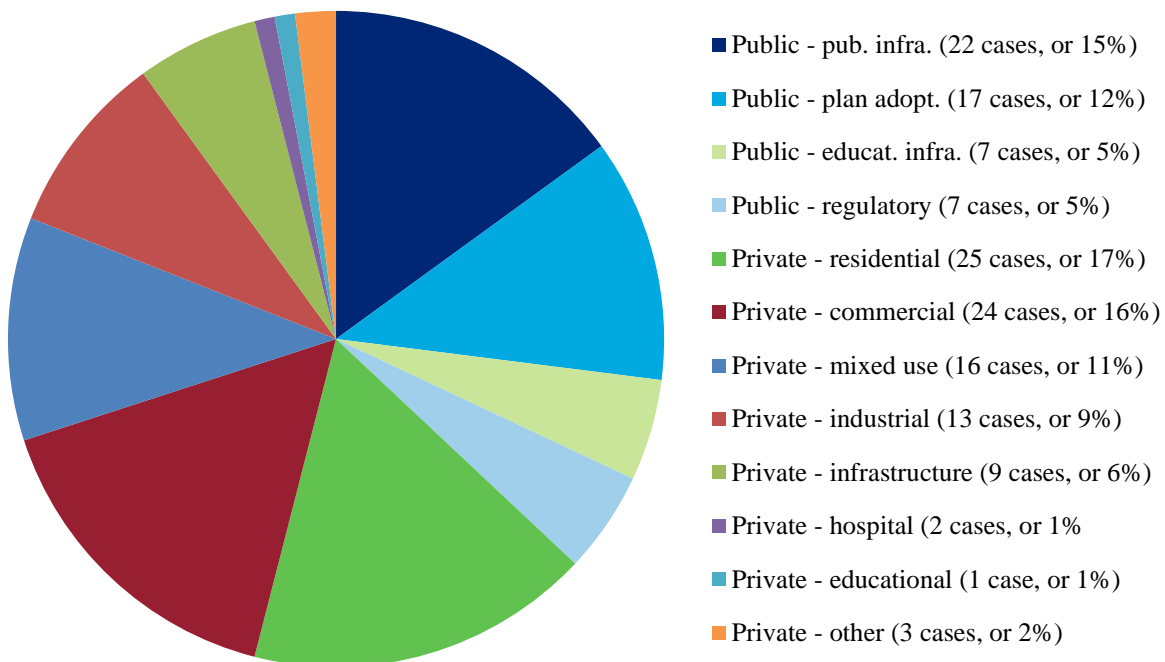
### **TYPE OF PROJECT:**

- **EIR cases:** (99 total)
  - Public Agency Projects
    - public infrastructure: 16 cases, or 16%
    - plan adoption: 11 cases, or 11%
    - educational infrastructure: 6 cases, or 6%
    - regulatory programs: 2 cases, or 2%
  - Private Projects
    - residential: 14 cases, or 14%
    - commercial: 17 cases, or 17%
    - mixed use: 13 cases, or 13%
    - industrial: 10 cases, or 10%

- infrastructure: 5 cases, or 5%
- hospital: 2 cases, or 2%
- educational: 1 case, or 1%
- other: 2 cases, or 2%
- **Categorical Exemption cases:** (15 total)
  - Public Agency Projects
    - educational infrastructure: 1 case, or 7%
    - regulatory programs: 3 cases, or 20%
  - Private Projects
    - residential: 3 cases, or 20%
    - commercial: 3 cases, or 20%
    - mixed use: 1 case, or 7%
    - infrastructure: 4 cases, or 27%
- **Negative Declaration cases:** (32 total)
  - Public Agency Projects
    - public infrastructure: 6 cases, or 19%
    - plan adoption: 6 cases, or 19%
    - regulatory programs: 2 cases, or 6%
  - Private Projects
    - residential: 8 cases, or 25%
    - commercial: 4 cases, or 13%
    - mixed use: 2 cases, or 6%
    - industrial: 3 cases, or 9%
    - other: 1 case, or 3%
- **Total for all cases:** (146 total)
  - Public Agency Projects
    - public infrastructure: 22 cases, or 15%
    - plan adoption: 17 cases, or 12%
    - educational infrastructure: 7 cases, or 5%
    - regulatory programs: 7 cases, or 5%
  - Private Projects

- residential: 25 cases, or 17%
- commercial: 24 cases, or 16%
- mixed use: 16 cases, or 11%
- industrial: 13 cases, or 9%
- infrastructure: 9 cases, or 6%
- hospital: 2 cases, or 1%
- educational: 1 case, or 1%
- other: 3 cases, or 2%

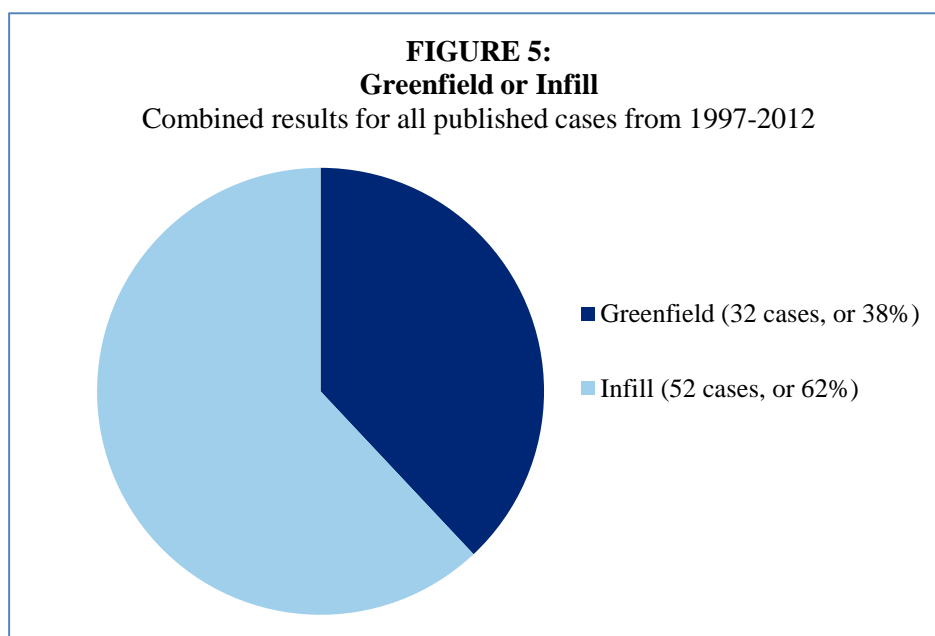
**FIGURE 4:**  
**Type of Project**  
Combined results for all published cases from 1997-2012



**GREENFIELD OR INFILL:** Only cases that could be characterized as "greenfield" or "infill" were categorized and included in these calculations (new residential, commercial, education, hospital and mixed-use development projects (*see* Methodology section above))

- **EIR cases:** (63 total)
  - 26 greenfield (41%)
  - 37 infill (59%)

- **Categorical Exemption cases:** (7 total)
  - 1 greenfield (14%)
  - 6 infill (86%)
- **Negative Declaration cases:** (20 cases)
  - 5 greenfield (29%)
  - 9 infill (64%)
- **Total for all cases:** (90 total)
  - 32 greenfield (38%)
  - 52 infill (62%)



### **TYPE OF PLAINTIFF:**<sup>17</sup>

- **EIR cases:** (99 total)
  - Local organizations were plaintiffs in 73 cases (74%)
    - Of the 98 local organizations joining lawsuits<sup>18</sup>
      - 54 are incorporated entities (55%) (11 of these organizations have since had their incorporation suspended)

<sup>17</sup> Because many cases had multiple types of plaintiffs, percentages do not add up to 100% and the number of organizations bringing suit is larger than the number of cases.

<sup>18</sup> Frequently, more than one local organization joined as plaintiff, making the total number of local organization plaintiffs greater than the number of cases, where a local organization joined.

- 44 are unincorporated associations (45%)
  - Individuals were plaintiffs in 23 cases (23%)
  - State/regional organizations were plaintiffs in 25 cases (25%)
  - Governments were plaintiffs in 17 cases (17%)
  - Businesses were plaintiffs in 9 cases (9%)
  - Native American tribes were plaintiffs in 3 cases (3%)
  - Religious organizations were plaintiffs in 1 case (1%)
- **Categorical Exemption cases:** (15 total)
  - Local organizations were plaintiffs in 7 cases (47%)
    - Of the 8 local organizations joining lawsuits<sup>19</sup>
      - 3 are incorporated entities (38%), out of which 1 has since had its incorporation status dissolved
      - 5 are unincorporated entities (63%)
  - Individuals were plaintiffs in 9 cases (60%)
  - Government entities were plaintiffs in 2 cases (13%)
  - 1 case N/A (where the plaintiff was the project proponent) (7%)
- **Negative Declaration cases:** (32 total)
  - Local organizations were plaintiffs in 18 cases (56%)
    - Of the 20 local organizations joining lawsuits<sup>20</sup>
      - 10 are incorporated entities (50%), out of which 2 have since had its incorporation status dissolved
      - 10 are unincorporated entities (50%)
  - Individuals were plaintiffs in 12 cases (38%)
  - State/regional organizations were plaintiffs in 7 cases (22%)
  - Government entities were plaintiffs in 4 cases (13%)
  - Labor unions and Native American tribes were plaintiffs in 1 case each (3% each)
- **Total for all cases:** (146 total)
  - Local organizations were plaintiffs in 98 cases (67%)
    - Of the 126 local organizations joining lawsuits<sup>21</sup>

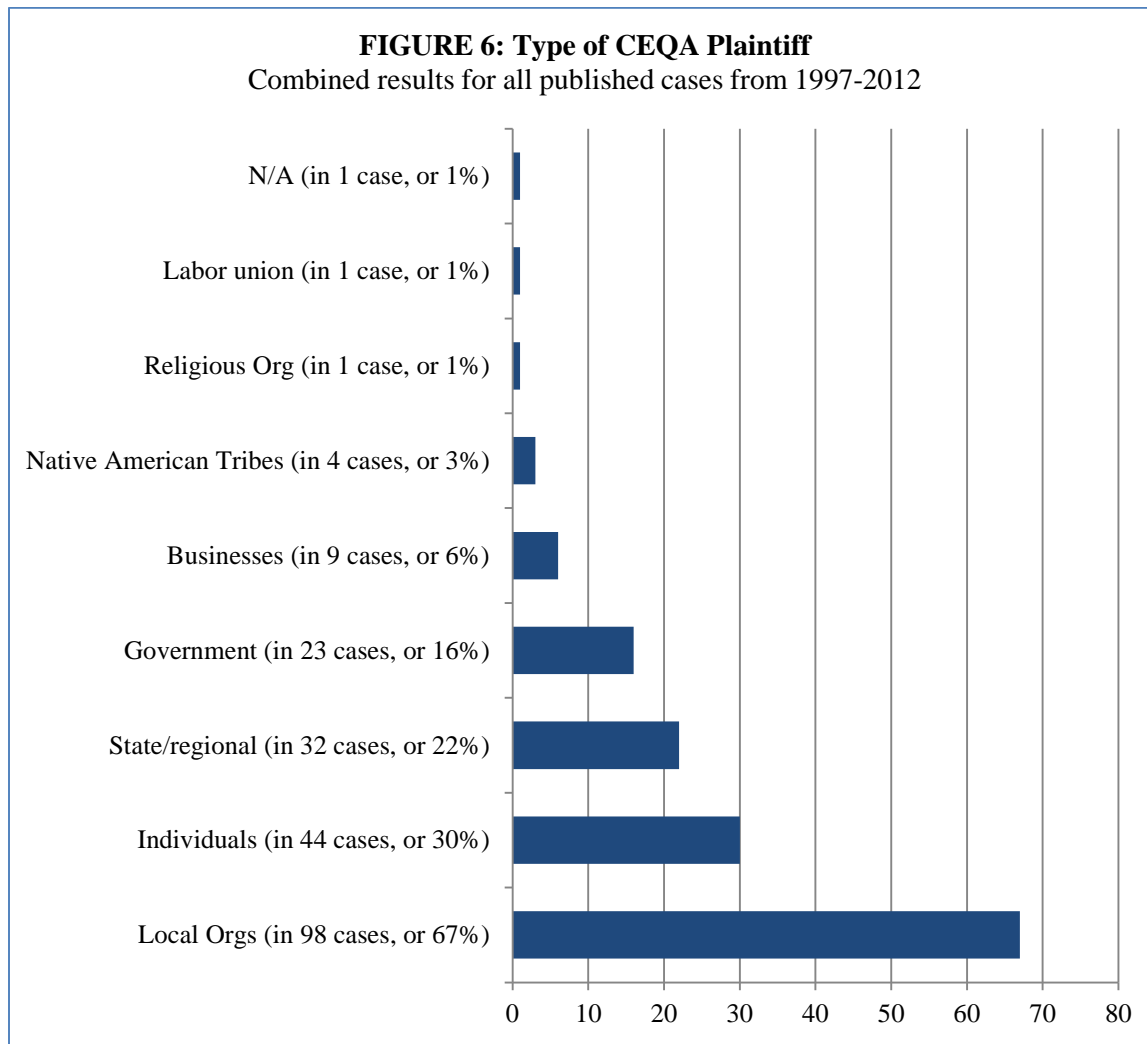
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<sup>19</sup> See note 17, *supra*.

<sup>20</sup> See note 17, *supra*.

<sup>21</sup> See note 17, *supra*.

- 67 are incorporated entities (53%) (14 of these organizations have since had their incorporation suspended)
- 59 are unincorporated associations (47%)
- Individuals were plaintiffs in 44 cases (30%)
- State/regional organizations were plaintiffs in 32 cases (22%)
- Governments were plaintiffs in 23 cases (16%)
- Businesses were plaintiffs in 9 cases (6%)
- Native American tribes were plaintiffs in 4 cases (3%)
- A religious organization, a labor union and project proponent (N/A) were plaintiffs in 1 case each (1% each)





**TYPE OF IMPACT:** Only cases in which the plaintiff prevailed were categorized.

- **EIR cases:** (43 total where plaintiff prevailed)<sup>22</sup>
  - 18 cases involved utilities and service systems (42%)
  - 9 cases involved biological resources (21%)
  - 13 cases involved transportation/traffic (30%)
  - 12 cases involved air quality (28%)
  - 7 cases involved hydrology and water quality (16%)
  - 3 cases involved cultural resources (7%)
  - 2 cases involved land use and planning (5%)
  - 5 cases involved noise (11%)
  - 2 cases involved public services (5%)
  - 1 case each involved aesthetics, agriculture and forest resources, greenhouse gas emissions, mineral resources, population and housing, recreation, urban decay and impact on the project (2% each)
- **Categorical Exemption cases:** (3 total where plaintiff prevailed)
  - 1 cited utilities and service systems (33%)
  - 1 cited threat to environment because of proximity to major drinking water aquifer (hydrology and water supply) (33%)
  - 1 cited cultural resources (33%)
- **Negative Declaration cases:** (18 total where plaintiff prevailed)<sup>23</sup>
  - 2 cases involved utilities and service systems (11%)
  - 9 cases involved biological resources (50%)
  - 4 cases involved transportation/traffic (22%)
  - 5 cases involved air quality (28%)
  - 5 cases involved hydrology and water quality (28%)
  - 3 cases involved cultural resources (17%)
  - 5 cases involved land use and planning (28%)
  - 2 cases involved noise (11%)
  - 3 cases involved aesthetics (17%)
  - 4 cases involved geology and soils (22%)

<sup>22</sup> Because many cases involved multiple impact areas, cases do not add up to the total number in which the plaintiff prevailed and percentages do not add up to 100%.

<sup>23</sup> See note 21, *supra*.

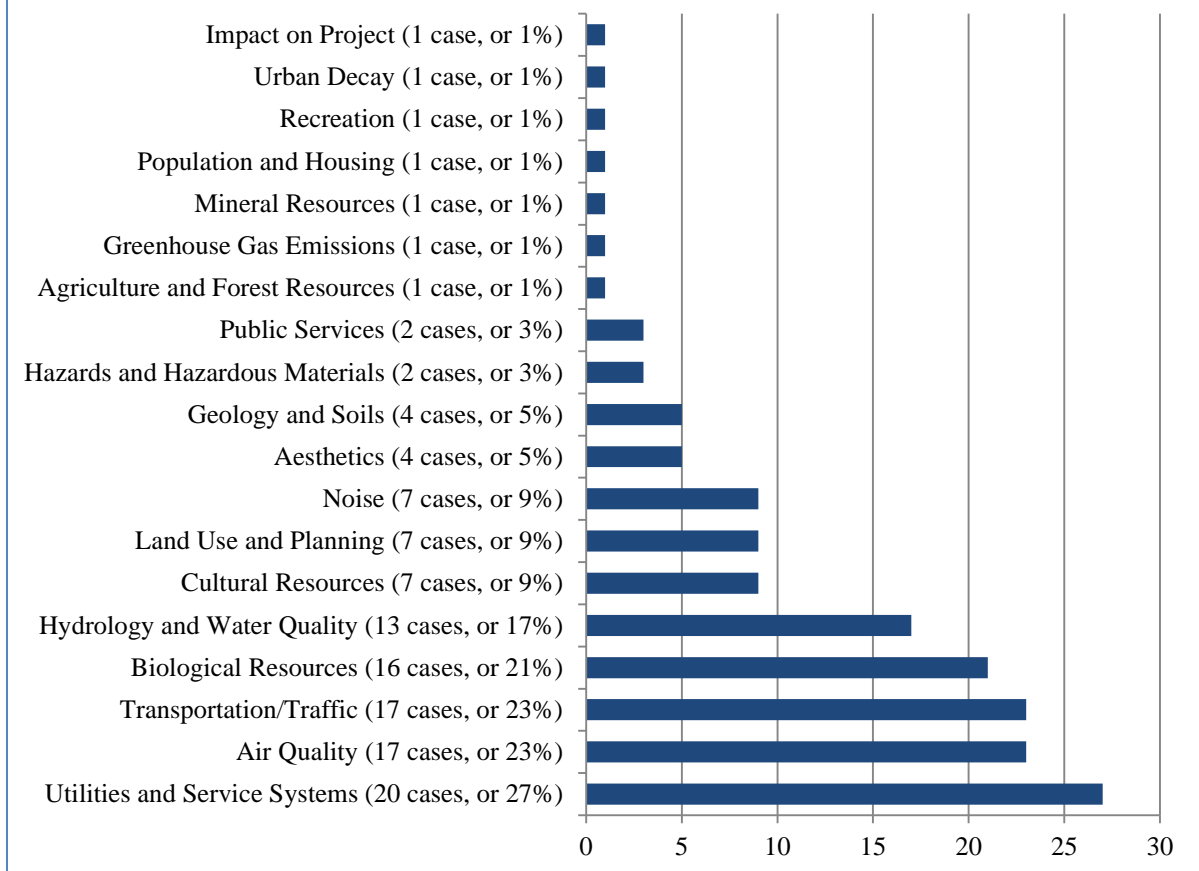
- 2 cases involved hazards and hazardous materials (11%)
- **Total for all cases:** (64 total where plaintiff prevailed)<sup>24</sup>
  - 21 cases involved utilities and service systems (33%)
  - 18 cases involved biological resources (28%)
  - 17 cases involved transportation/traffic (27%)
  - 17 cases involved air quality (27%)
  - 13 cases involved hydrology and water quality (20%)
  - 7 cases involved cultural resources (11%)
  - 7 cases involved land use and planning (11%)
  - 7 cases involved noise (11%)
  - 4 cases involved aesthetics (6%)
  - 4 cases involved geology and soils (6%)
  - 2 cases involved hazards and hazardous materials (3%)
  - 2 cases involved public services (3%)
  - 1 case each involved agriculture and forest resources, greenhouse gas emissions, mineral resources, population and housing, recreation, urban decay and impact on the project (2% each)

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<sup>24</sup> See note 21, *supra*.

**FIGURE 7: Type of Impact (for cases where plaintiff prevailed)**

Combined results for all published cases from 1997-2012



**FIGURE 8:****ANALYSIS OF ALL PUBLISHED APPELLATE CEQA DECISIONS FROM 1997-2012**

This study provides a comprehensive dataset of all the published appellate CEQA cases from the last 15 years that turn on questions of evidence. The following chart compares the findings for EIR, Categorical Exemption and Negative Declaration cases, and presents the combined results.

	<b>EIR cases</b>	<b>Categorical Exemption cases</b>	<b>Negative Declaration cases (Fair Argument)</b>	<b>Combined results for all published cases from 1997-2012</b>
<b>Cases</b>	99 cases	15 cases	32 cases	146 cases
<b>Prevailing Party</b>	43 plaintiff (43%) 56 defendant (57%)	3 plaintiff (20%) 12 defendant (80%)	18 plaintiff (56%) 14 defendant (44%)	64 plaintiff (44%) 82 defendant (56%)
<b>Public or Private</b>	35 public (35%) 64 private (65%)	4 public (27%) 11 private (73%)	14 public (44%) 18 private (56%)	53 public (36%) 93 private (64%)
<b>Type of Project</b>	16 public infra. (16%) 11 plan adopt. (11%) 6 edu. infra. (6%) 2 regulatory (2%)  14 residential (14%) 17 commercial (17%) 13 mixed use (13%) 10 industrial (10%) 5 infrastructure (5%) 2 hospital (2%) 1 educational (1%) 2 other (2%)	0 public infra. 0 plan adopt. 1 edu. infra. (7%) 3 regulatory (20%)  3 residential (20%) 3 commercial (20%) 1 mixed use (7%) 0 industrial 4 infrastructure (27%) 0 hospital 0 educational 0 other	6 public infra. (19%) 6 plan adopt. (19%) 0 edu. infra. 2 regulatory (6%)  8 residential (25%) 4 commercial (13%) 2 mixed use (6%) 3 industrial (9%) 0 infrastructure 0 hospital 0 educational 1 other (3%)	22 public infra. (15%) 17 plan adopt. (12%) 7 edu. infra. (5%) 7 regulatory (5%)  25 residential (17%) 24 commercial (16%) 16 mixed use (11%) 13 industrial (9%) 9 infrastructure (6%) 2 hospital (1%) 1 educational (1%) 3 other (2%)
<b>Greenfield or Infill</b>	26 greenfield (41%) 37 infill (59%)	1 greenfield (14%) 6 infill (86%)	5 greenfield (29%) 9 infill (64%)	32 greenfield (38%) 52 infill (62%)
<b>Type of Plaintiff</b>	73 local orgs (74%) (98 total: 54 incorporated, 44 unincorporated)  23 individual (23%) 25 state/reg. org (25%) 17 government (17%) 9 businesses (9%) 3 Nat. Amer. tribe (3%) 1 religious org. (1%)	7 local orgs (47%) (8 total: 3 incorporated, 5 unincorporated)  9 individuals (60%) 0 state/reg. org 2 government (13%) 0 businesses 0 Nat. Amer. tribe 0 religious orgs.	18 local orgs (56%) (20 total: 10 incorporated, 10 unincorporated)  12 individuals (38%) 7 state/reg. org (22%) 4 government (13%) 0 businesses 1 Nat. Amer. tribe (3%) 0 religious orgs.	98 local orgs (67%) (126 total: 67 incorporated, 59 unincorporated)  44 individuals (30%) 32 state/regional (22%) 23 government (16%) 9 businesses (6%) 4 Nat. Amer. tribe (3%) 1 religious org. (1%)

	0 labor union 0 N/A	0 labor union 1 N/A (7%) <sup>25</sup>	1 labor union (3%) 0 N/A	1 labor union (1%) 1 N/A (1%)
	<b>EIR cases</b>	<b>Categorical Exemption cases</b>	<b>Negative Declaration cases (Fair Argument)</b>	<b>Combined results for all published cases from 1997-2012</b>
<b>Type of Impact</b> (for cases where plaintiff prevailed)	18 utilities and service systems (42%) 9 biological res. (21%) 13 transp./traffic (30%) 12 air quality (28%) 7 hydrology/water quality (16%) 3 cultural res. (7%) 2 land use (5%) 5 noise (11%) 1 aesthetics (2%) 0 geology/soils 0 hazards and haz. materials 2 public services (5%) 1 ag/forest res. (2%) 1 GHG emissions (2%) 1 mineral res. (2%) 1 population and housing (2%) 1 recreation (2%) 1 urban decay (2%) 1 impact on proj. (2%)	1 utilities and service systems (33%) 0 biological res. 0 transp./traffic 0 air quality 1 hydrology/water quality (33%) 1 cultural res. (33%) 0 land use 0 noise 0 aesthetics 0 geology/soils 0 hazards and haz. materials 0 public services 0 ag/forest res. 0 GHG emissions 0 mineral res. 0 population and housing 0 recreation 0 urban decay 0 impact on proj.	2 utilities and service systems (11%) 9 biological res. (50%) 4 transp./traffic (22%) 5 air quality (28%) 5 hydrology/water quality (28%) 3 cultural res. (17%) 5 land use (28%) 2 noise (11%) 3 aesthetics (17%) 4 geology/soils (22%) 2 hazards and haz. materials (11%) 0 public services 0 ag/forest res. 0 GHG emissions 0 mineral res. 0 population and housing 0 recreation 0 urban decay 0 impact on proj.	21 utilities and service systems (33%) 18 biological res. (28%) 17 transp./traffic (27%) 17 air quality (27%) 13 hydrology/water quality (20%) 7 cultural res. (11%) 7 land use (11%) 7 noise (11%) 4 aesthetics (6%) 4 geology/soils (6%) 2 hazards and haz. materials (3%) 2 public services (3%) 1 ag/forest res. (2%) 1 GHG emissions (2%) 1 mineral res. (2%) 1 population and housing (2%) 1 recreation (2%) 1 urban decay (2%) 1 impact on proj. (2%)

### *Analyzed Cases: Tables*

The tables below document the database of analyzed cases (*see pp. 24-58*).

<sup>25</sup> See methodology section above. A plaintiff who was also the project proponent was classified as N/A.

***Additional Information***

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# Holland & Knight

**TABLE 1: ENVIRONMENTAL IMPACT REPORT CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Greenfield Infill Other	Type of Impact: EIR Deficiencies	Type of Plaintiff
Banning Ranch Conservancy v. City of Newport Beach	211 Cal.App.4th 1209 (4th Dist.)	Dec-12	Newport Beach, Orange	Defendant (Agency)	Public	Public infrastructure	Parkland improvements	Greenfield	N/A	Local organization (incorporated)
Preserve Wild Santee v. City of Santee	210 Cal.App.4th 260 (4th Dis.)	Oct-12	Santee, San Diego	Plaintiff	Private	Residential	N/A	Greenfield	Biological resources, water supply	Local organization (unincorporated), state/regional organizations (two)
Mount Shasta Bioregional Ecology Center v. County of Siskiyou	210 Cal.App.4th 184 (3rd Dist.)	Sept-12	Weed, Siskiyou	Defendant (Agency)	Private	Industrial	N/A	Infill	N/A	Local organizations (two, one incorporated, one unincorporated)
Rialto Citizens for Responsible Growth v. City of Rialto	208 Cal.App.4th 899 (4th Dist.)	Jul-12	Rialto, San Bernardino	Defendant (Agency)	Private	Commercial	N/A	Infill	N/A	Local organization (incorporation suspended)
City of Maywood v. Los Angeles Unified School Dist.	208 Cal.App.4th 362 (2nd Dist.)	Jul-12	Maywood, Los Angeles	Plaintiff	Public	Education infrastructure	Construction of a high school	Infill	Transportation/traffic	Government
Citizens for Open Government v. City of Lodi	205 Cal.App.4th 296 (3rd Dist.)	Mar-12	Lodi, San Joaquin	Defendant (Agency)	Private	Commercial	N/A	Greenfield	N/A	Local organizations (two, both unincorporated)

**TABLE 1: ENVIRONMENTAL IMPACT REPORT CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Greenfield Infill Other	Type of Impact: EIR Deficiencies	Type of Plaintiff
Flanders Foundation v. City of Carmel-by-the-Sea	202 Cal.App.4th 603 (6th Dist.)	Jan-12	Carmel-by-the-Sea, Monterey	Plaintiff	Public <sup>26</sup>	Public infrastructure	Sale of city-owned mansion and grounds	Other <sup>27</sup>	Parkland; alternatives	Local organization (incorporated)
Citizens for East Shore Parks v. Calif. State Lands Commission	202 Cal.App.4th 549 (1st Dist.)	Dec-11	Richmond, Contra Costa	Defendant (Agency)	Private	Industrial (marine terminal lease for refinery)	N/A	Other	N/A	Local organization (incorporated) & individual
Friends of Shingle Springs Interchange, Inc. v. County of El Dorado	200 Cal.App.4th 1470 (3rd Dist.)	Nov-11	Shingle Springs, El Dorado	Defendant (Agency)	Private	Commercial	N/A	Infill <sup>28</sup>	N/A	Local organization (incorporation suspended)
Ballona Wetlands Land Trust v. City of Los Angeles	201 Cal.App.4th 455 (2nd Dist.)	Nov-11	Los Angeles, Los Angeles	Defendant (Agency)	Private	Mixed use	N/A	Infill	N/A	State/regional organization, local organization (incorporated) & individual
Pfeiffer v. City of Sunnyvale City Council	200 Cal.App.4th 1552 (6th Dist.)	Oct-11	Sunnyvale, Santa Clara	Defendant (Agency)	Private	Hospital expansion	N/A	Infill	N/A	Individuals
Madera Oversight	199 Cal.App.4th 48	Sep-11	Rio Mesa area,	Plaintiff	Private	Mixed use	N/A	Greenfield	Historic resources,	Local organizations (two, both

<sup>26</sup> City sale of property to private party.

<sup>27</sup> Project within city boundaries but in nature preserve. No specific development proposed as part of project.

<sup>28</sup> Circle K gas station and convenience store off highway interchange.



**TABLE 1: ENVIRONMENTAL IMPACT REPORT CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Greenfield Infill Other	Type of Impact: EIR Deficiencies	Type of Plaintiff
Coalition v. County of Madera	(5th Dist.)		Madera County						water supply; mitigation, future conditions	incorporated) & Native American tribe
Clover Valley Foundation v. City of Rocklin	197 Cal.App.4th 200 (3rd Dist.)	Jul-11	Rocklin, Placer	Defendant (Agency)	Private	Residential	N/A	Infill <sup>29</sup>	N/A	State/regional organization, local organization (incorporated), government
Santa Clarita Organization for Planning the Environment v. City of Santa Clarita	197 Cal.App.4th 1042 (2nd Dist.)	Jun-11	Santa Clarita, Los Angeles	Defendant (Agency)	Private	Hospital expansion	N/A	Infill	N/A	Local organization (incorporated)
Oakland Heritage Alliance v. City of Oakland	195 Cal.App.4th 884 (1st Dist.)	May-11	Oakland, Alameda	Defendant (Agency)	Private	Mixed use	N/A	Infill	N/A	Local organization (incorporated)
Citizens for Responsible Equitable Environmental Development v. City of San	196 Cal.App.4th 515 (4th Dist.)	May-11	San Diego, San Diego	Defendant (Agency)	Private	Residential	N/A	Infill	N/A	Local organization (incorporated) <sup>30</sup>

<sup>29</sup> The project site, while in open space, sits between developed land in Rocklin and in Loomis, in an area identified for housing in the Rocklin General Plan.

<sup>30</sup> While CREED's name does not specify a local area of involvement, news reports indicate that the group is active on local issues in the San Diego area.

**TABLE 1: ENVIRONMENTAL IMPACT REPORT CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Greenfield Infill Other	Type of Impact: EIR Deficiencies	Type of Plaintiff
Diego										
Santa Monica Baykeeper v. City of Malibu	193 Cal.App.4th 1538 (2nd Dist.)	Apr-11	Malibu, Los Angeles	Defendant (Agency)	Public	Public infrastructure	Storm water retention and treatment, habitat restoration, public park	Other	N/A	Local organization (incorporated)
Banning Ranch Conservancy v. Superior Court	193 Cal.App.4th 903 (4th Dist.)	Mar-11	Near Newport Beach, Orange	Defendant (Agency)	Private	Residential	N/A	Infill	N/A	Local organization (incorporated)
LandValue 77, LLC v. Bd. of Trustees of the Calif. State Univ.	193 Cal.App.4th 675 (5th Dist.)	Feb-11	Fresno, Fresno	Plaintiff	Private	Mixed use (development on Fresno State campus)	N/A	Infill	Water supply, traffic, parking, air quality; court-ordered remedies	Business
Sunnyvale West Neighborhood Ass'n v. Sunnyvale City Council	190 Cal.App.4th 1351 (6th Dist.)	Dec-10	Sunnyvale, Santa Clara	Plaintiff	Public	Public infrastructure	Street expansion	Other	Traffic; future conditions, baseline	Local organization (unincorporated) & individuals
Cherry Valley Pass Acres and Neighbors v. City of Beaumont	190 Cal.App.4th 316 (4th Dist.)	Nov-10	Beaumont, Riverside	Defendant (Agency)	Private	Residential	N/A	Greenfield	N/A	Local organizations (two, both incorporated)

California Oak Foundation v. Regents of the University of Calif.	188 Cal.App.4th 227 (1st Dist.)	Sep-10	Berkeley, Alameda	Defendant (Agency)	Public	Education infrastructure	Construction of athletic center at University	Infill	N/A	State/regional organization, local organizations (two, both unincorporated) & individuals
Torrey Hills Community Coalition v. City of San Diego	186 Cal.App.4th 429 (4th Dist.)	Jul-10	San Diego, San Diego	Defendant (Agency)	Private	Mixed use	N/A	Infill	N/A	Local organization (incorporated)
San Diego Navy Broadway Complex Coalition v. City of San Diego	185 Cal.App.4th 924 (4th Dist.)	Jun-10	San Diego, San Diego	Defendant (Agency)	Private	Mixed use	N/A	Infill	N/A	Local organization (incorporated)
Center for Biological Diversity v. County of San Bernardino	185 Cal.App.4th 866 (4th Dist.)	May-10	Unincorporated area, San Bernardino	Plaintiff	Private	Infrastructure (composting facility)	N/A	Other	Water supply; alternatives	State/regional organization & local organization (unincorporated)
Communities for a Better Environment v. City of Richmond	184 Cal.App.4th 70 (1st Dist.)	Apr-10	Richmond, Contra Costa	Plaintiff	Private	Industrial (refinery upgrade)	N/A	Other	Air quality, GHGs, construction noise, traffic; project description, mitigation	State/regional organizations & local organization (incorporated)
Preservation Action Council v. City of San Jose	141 Cal.App.4th 1336 (6th Dist.)	Mar-10	San Jose, Santa Clara	Plaintiff	Private	Commercial	N/A	Infill	Historic resources; alternatives	Local organization (incorporated)

Watsonville Pilots Ass'n v. City of Watsonville	183 Cal.App.4th 1059 (6th Dist.)	Mar-10	Watsonville, Santa Cruz	Plaintiff	Public	Plan adoption	New general plan permitting residential development near airport	Greenfield <sup>31</sup>	Impact on project, water supply; alternatives	State/regional organization & local organizations (one incorporated and one unincorporated)
Jones v. Regents of the Univ. of Calif.	183 Cal.App.4th 818 (1st Dist.)	Mar-10	Berkeley and Oakland, Alameda	Defendant (Agency)	Public	Education infrastructure	Construction of national laboratory at University	Other <sup>32</sup>	N/A	Individual, others not described in opinion
Melom v. City of Madera	183 Cal.App.4th 41 (5th Dist.)	Mar-10	Madera, Madera	Defendant (Agency)	Private	Commercial	N/A	Greenfield <sup>33</sup>	N/A	Individual
Planning & Conservation League v. Castaic Water Agency	180 Cal.App.4th 210 (2nd Dist.)	Dec-09	Wheeler Ridge, Kern; Castaic, Los Angeles	Defendant (Agency)	Public	Public infrastructure	Water transfer	Other	N/A	State/regional organizations
County of Sacramento v. Superior Ct.	180 Cal.App.4th 943 (3rd Dist.)	Dec-09	Sacramento Sacramento	Defendant (Agency)	Private	Commercial	N/A	Infill	N/A	Business
Californians for Alternatives to Toxics v. Dep't of Food & Agriculture	136 Cal.App.4th 1 (1st Dist.)	Dec-09	Statewide	Plaintiff	Public	Regulatory program	Pest control program	Other	Human health, water quality, biological resources	State/regional organization & local organizations (one incorporated and one unincorporated)

<sup>31</sup> Challenged portion of plan related to unincorporated area just outside of city boundaries.

<sup>32</sup> Programmatic EIR involving multiple locations.

<sup>33</sup> Retail center proposed just outside of Madera city limits, although site is entirely enclosed by Highway 99 and by residential development in unincorporated Madera Acres.

Calif. Native Plant Society v. City of Santa Cruz	177 Cal.App.4th 957 (6th Dist.)	Aug-09	Santa Cruz, Santa Cruz	Defendant (Agency)	Public	Plan adoption	Greenbelt master plan	Other	N/A	State/regional organization & local organization (unincorporated)
Tracy First v. City of Tracy	177 Cal.App.4th 1 (3rd Dist.)	Aug-09	Tracy, San Joaquin	Defendant (Agency)	Private	Commercial	N/A	Infill	N/A	Local organization (unincorporated)
City of Long Beach v. Los Angeles Unified School District	176 Cal.App.4th 889 (2nd Dist.)	Jul-09	Long Beach, Los Angeles	Defendant (Agency)	Public	Education infrastructure	Construction of a high school	Infill	N/A	Government
Calif. Native Plant Soc’y v. City of Rancho Cordova	172 Cal.App.4th 603 (3rd Dist.)	Mar-09	Rancho Cordova, Sacramento	Defendant (Agency)	Private	Mixed use (master planned community)	N/A	Greenfield	N/A	State/regional organization
State Water Resources Control Bd. Cases	136 Cal.App.4th 674 (3rd Dist.)	Feb-09	San Francisco Bay/Sacramento–San Joaquin Delta Estuary	Defendant (Agency)	Public	Public infrastructure	State water rights proceeding	Other	N/A	Governments, businesses, state/regional organization, local organizations (three incorporated, one unincorporated) <sup>34</sup>
Gray v. County of Madera	167 Cal.App.4th 1099 (5th Dist.)	Oct-08	Unincorporated area, Madera County	Plaintiff	Private	Industrial (hard rock quarry)	N/A	Other	Water, traffic, noise; mitigation, cumulative impacts	Individuals
Environmental Protection Information Center v. Calif. Dep’t of Forestry and Fire Protection	44 Cal.4th 459 (Supreme Ct.)	Jul-08	Humboldt County	Defendant (Agency)	Private	Other (Logging; habitat conservation plan)	N/A	Other	N/A	State/regional organizations

<sup>34</sup> In multiple-case, multiple-issue appeal, only appellants who brought CEQA claims are listed.

In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings	43 Cal.4th 1143 (Supreme Ct.)	Jun-08	Sacramento -San Joaquin Bay Delta	Defendant (Agency)	Public	Regulatory program	CALFED bay restoration program	Other	N/A	Governments, businesses, state/regional organization, individuals
Sierra Club v. City of Orange	163 Cal.App.4th 523 (4th Dist.)	Apr-08	Orange, Orange	Defendant (Agency)	Private	Residential	N/A	Greenfield	N/A	State/regional organization
St. Vincent's School for Boys, Catholic Charities CYO v. City of San Rafael	161 Cal.App.4th 989 (1st Dist.)	Mar-08	Near San Rafael, Marin	Defendant (Agency)	Public	Plan adoption	General plan amendment removing a development site from the General Plan	Other	N/A	Religious organization
Save Round Valley Alliance v. County of Inyo	157 Cal.App.4th 1437 (4th Dist.)	Dec-07	Unincorporated area four miles west of Lone Pine, Inyo	Plaintiff	Private	Residential subdivision	N/A	Greenfield	Visual impacts; alternatives	Local organization (incorporation suspended) <sup>35</sup>
Santa Clarita Organization for Planning the Environment v. County of Los Angeles	157 Cal.App.4th 149 (2nd Dist.)	Nov-07	Santa Clarita, Los Angeles	Defendant (Agency)	Private	Mixed use	N/A	Greenfield	N/A	Local organization (incorporated)
Mani Brothers Real Estate Group v. City of Los Angeles	153 Cal.App.4th 1385 (2nd Dist.)	Aug-07	Downtown Los Angeles, Los Angeles	Plaintiff	Private	Mixed use	N/A	Infill	Police services	Businesses (rival developers and landowners)

<sup>35</sup> Plaintiff corporation was registered the year the project was approved; has since had its incorporation suspended.

Woodward Park Homeowners Ass'n, Inc. v. City of Fresno	150 Cal.App.4th 683 (5th Dist.)	Apr-07	Fresno, Fresno	Plaintiff	Private	Commercial	N/A	Infill	Traffic, air quality; baseline, mitigation, statement of overriding considerations	Local organizations (incorporated homeowners association and organization with suspended incorporation <sup>36</sup> )
San Joaquin Raptor Rescue Center v. County of Merced	149 Cal.App.4th 645 (5th Dist.)	Apr-07	Unincorporated area north of Le Grand, Merced	Plaintiff	Private	Industrial (mining operation)	N/A	Other	Water quality, traffic, air quality, biological resources; project description	Local organizations (one incorporated and two unincorporated)
Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova	40 Cal.4th 412 (Supreme Ct.)	Feb-07	Sacramento Sacramento	Plaintiff	Private	Mixed use	N/A	Greenfield	Water supply; new information required recirculation	Local organizations (one incorporated, one incorporation suspended <sup>37</sup> )
Eureka Citizens for Responsible Government v. City of Eureka	147 Cal.App.4th 357 (1st Dist.)	Jan-07	Eureka, Humboldt	Defendant (Agency)	Private	Educational (school playground)	N/A	Infill	N/A	Local organization (unincorporated) & individuals
Uphold Our Heritage v. Town of Woodside	147 Cal.App.4th 587 (1st Dist.)	Jan-07	Woodside, San Mateo	Plaintiff	Private	Residential	N/A	Infill	Historic resources; alternatives	Local organization (unincorporated)
Western Placer Citizens for an Agricultural and Rural	144 Cal.App.4th 890 (3rd Dist.)	Nov-06	Near Lincoln, Placer	Defendant (Agency)	Private	Industrial	N/A	Other	N/A	Local organization (incorporation suspended)

<sup>36</sup> Plaintiff's attorney is listed as the agent for service on the corporation's record.

<sup>37</sup> VACRC incorporated two years before project approval; incorporation is now suspended.

Environment v. County of Placer										
Citizens for Open Government v. City of Lodi	144 Cal.App.4th 865 (3rd Dist.)	Oct-06	Lodi, San Joaquin	Defendant (Agency)	Private	Commercial	N/A	Greenfield	N/A	Local organization (unincorporated) <sup>38</sup>
Environmental Council of Sacramento v. City of Sacramento	142 Cal.App.4th 1018 (3rd Dist.)	Aug-06	Natomas Basin, Sacramento & Sutter	Defendant (Agency)	Public	Plan adoption	Habitat conservation plan proposed as part of incidental take permit required for development-inducing flood control measure	Infill <sup>39</sup>	N/A	Local organization (incorporated)
County of San Diego v. Grossmont-Cuyamaca Community College District	141 Cal.App.4th 86 (4th Dist.)	Jul-06	Rancho San Diego, San Diego	Plaintiff	Public	Educational infrastructure	College campus expansion	Greenfield <sup>40</sup>	Traffic; mitigation	Government

<sup>38</sup> While the name is generic, news reports indicate that they operate in the Lodi area. Opinion refers to group as a "nonprofit group," but their name is not registered with the California Secretary of State.

<sup>39</sup> The ITPs issued in the challenged HCP included both development within city boundaries, in an area proposed for new transit development, as well as development in Sutter County outside of the city's boundaries. Even the area outside of city boundaries, however, is an area designated as a "developing community" designated for future growth in SACOG's "Sustainable Communities Strategy" plan.

<sup>40</sup> Cuyamaca College is in "Rancho San Diego," an unincorporated area toward the outskirts of the developed metropolitan San Diego area, but adjacent to it.



City of Marina v. Bd. of Trustees of Calif. State Univ.	39 Cal.4th 341 (Supreme Ct.)	Jul-06	North of Monterey, Monterey	Plaintiff	Public	Educational infrastructure	College campus expansion	Infill <sup>41</sup>	Drainage, water supply, traffic, wastewater, fire protection; mitigation feasibility	Government
Gilroy Citizens for Responsible Planning v. City of Gilroy	140 Cal.App.4th 911 (6th Dist.)	Jun-06	Gilroy, Santa Clara	Defendant (Agency)	Private	Commercial	N/A	Greenfield <sup>42</sup>	N/A	Local organization (unincorporated) & individuals
Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency	134 Cal.App.4th 598 (4th Dist.)	Nov-05	San Diego, San Diego	Defendant (Agency)	Private	Commercial (hotel)	N/A	Infill	N/A	Local organization (incorporated)
California Oak Foundation v. City of Santa Clarita	133 Cal.App.4th 1219 (2nd Dist.)	Nov-05	Santa Clarita, Los Angeles	Plaintiff	Private	Mixed use (industrial & commercial)	N/A	Greenfield	Water supply	State/regional organization & local organization (incorporated)
Lincoln Place Tenants Ass'n v. City of Los Angeles	130 Cal.App.4th 1491 (2nd Dist.)	Jul-05	Los Angeles, Los Angeles	Defendant (Agency)	Private	Residential (demolition & re-development)	N/A	Infill	N/A	Local organizations (two, both unincorporated)
Anderson First Coalition v. City of Anderson	130 Cal.App.4th 1173 (3rd Dist.)	Jun-05	Anderson, Shasta	Plaintiff	Private	Commercial	N/A	Greenfield <sup>43</sup>	Traffic	Local organization (unincorporated) & individuals

<sup>41</sup> Adaptive reuse of decommissioned army base, inland of Marina and Seaside on Monterey Bay.

<sup>42</sup> Project proposed at city boundary, in area annexed by city in 1993 and zoned for high-density commercial use.

<sup>43</sup> Project proposed for "the quasi-rural southwest portion of the City adjoining present City development."

Endangered Habitats League, Inc. v. County of Orange	131 Cal.App.4th 777 (4th Dist.)	Jun-05	Trabuco Canyon, Orange	Plaintiff	Private	Residential	N/A	Greenfield	Biological resources, noise; mitigation, significance standard	State/regional organizations and individual
Bakersfield Citizens for Local Control v. City of Bakersfield	124 Cal.App.4th 1184 (5th Dist.)	Dec-04	Bakersfield, Kern	Plaintiff	Private	Commercial	N/A	Infill	Urban decay, air quality; cumulative impacts	Local organization (unincorporated) <sup>44</sup>
Federation of Hillside and Canyon Ass'ns v. City of Los Angeles	126 Cal.App.4th 1180 (2nd Dist.)	Nov-04	Los Angeles, Los Angeles	Defendant (Agency)	Public	Plan adoption	General plan update	Infill	N/A	Local organizations (two, both unincorporated)
Central Delta Water Agency v. State Water Resources Control Board	124 Cal.App.4th 245 (3rd Dist.)	Nov-04	Sacramento-San Joaquin Delta, Contra Costa & San Joaquin	Plaintiff	Private	Infrastructure (water appropriation)	N/A	Other	"Growth inducement," land use (expanded agricultural cultivation), biological resources, air quality, water quality; secondary impacts analysis	Government & individuals
El Morro Community Ass'n v. Calif. Dep't of Parks & Recreation	122 Cal.App.4th 1341 (4th Dist.)	Nov-04	Laguna Beach, Orange	Defendant (Agency)	Public	Public infrastructure	Conversion of mobile home park to day-use parkland	Other	N/A	Local organizations (one incorporated suspended, one unincorporated)

<sup>44</sup> Defendant asserted that plaintiff organization was an economic competitor, and a "front" for a union; the court did not address this question.

Nacimientto Regional Water Management Advisory Committee v. Monterey County Water Resources Agency	122 Cal.App.4th 961 (1st Dist.)	Sep-04	Lake Nacimientto, San Luis Obispo	Defendant (Agency)	Public	Public infrastructure	Water management project, including reservoir modification	Other	N/A	Local organization (incorporated)
Sierra Club v. County of Napa	121 Cal.App.4th 1490 (1st Dist.)	Aug-04	Near Napa, Napa	Defendant (Agency)	Private	Commercial (winery)	N/A	Greenfield	N/A	State/regional organization
Defend the Bay v. City of Irvine	119 Cal.App.4th 1261 (4th Dist.)	Jun-04	Irvine, Orange	Defendant (Agency)	Public	Plan adoption	General plan amendment and zoning change	Greenfield	N/A	Local organization (incorporated)
Maintain Our Desert Environment v. Town of Apple Valley	124 Cal.App.4th 430 (4th Dist.)	Jun-04	Apple Valley, San Bernardino	Defendant (Agency)	Private	Commercial	N/A	Greenfield	N/A	Local organization (unincorporated)
Mira Mar Mobile Community v. City of Oceanside	119 Cal.App.4th 477 (4th Dist.)	May-04	Oceanside, San Diego	Defendant (Agency)	Private	Residential	N/A	Infill	N/A	Business & individual (mobile home community and owner)
Protect the Historic Amador Waterways v. Amador Water agency	116 Cal.App.4th 1900 (3rd Dist.)	Mar-04	Near Pine Grove, Amador	Plaintiff	Public	Public infrastructure	Water pipeline	Other	Hydrology	Local organization (unincorporated) <sup>45</sup>

<sup>45</sup> Plaintiff filed for incorporation three years after decision; has now dissolved.

Santa Teresa Citizen Action Group v. City of San Jose	114 Cal.App.4th 689 (6th Dist.)	Dec-03	San Jose, Santa Clara	Defendant (Agency)	Public	Public infrastructure	Water recycling program and pipeline	Other	N/A	Local organization (incorporation suspended) & business
Protect Our Water v. County of Merced	110 Cal.App.4th 362 (5th Dist.)	Jul-03	Near Hopeton, Merced	Plaintiff	Private	Industrial (mining)	N/A	Other	Land use (agriculture), biological resources; alternatives, inadequately organized record	Local organizations (one incorporated, two unincorporated)
Friends of the Eel River v. Sonoma County Water Agency	108 Cal.App.4th 659 (1st Dist.)	May-03	Near Potter Valley, Mendocino	Plaintiff	Private <sup>46</sup>	Infrastructure (water diversion)	N/A	Other	Biological resources, water supply; cumulative impacts, alternatives	Local organizations (one incorporated, one unincorporated), state/regional organizations, Native American tribe, individuals
Ass'n of Irrigated Residents v. County of Madera	107 Cal.App.4th 1383 (5th Dist.)	Apr-03	Near Chowchilla, Madera	Defendant (Agency)	Private	Commercial (dairy)	N/A	Other <sup>47</sup>	N/A	State/regional organizations
Neighbors of Cavitt Ranch v. County of Placer	106 Cal.App.4th 1092 (3rd Dist.)	Mar-03	Granite Bay, Placer	Defendant (Agency)	Private	Other (church)	N/A	Infill	N/A	Local organization (unincorporated association of neighboring property owners), individual

<sup>46</sup> No private applicant discussed in opinion, but it is noted that there was "no appearance for Real Party in Interest and Respondent," presumably PG&E.

<sup>47</sup> Project is a dairy, proposed on a site currently used and zoned for agricultural use.

Santa Clarita Organization for Planning the Environment v. County of Los Angeles	106 Cal.App.4th 715 (2nd Dist.)	Feb-03	Santa Clarita, Los Angeles	Plaintiff	Private	Mixed use (mainly residential, some retail)	N/A	Greenfield <sup>48</sup>	Water supply; existing conditions	Local organizations (incorporated)
Natural Resources Defense Council v. City of Los Angeles	103 Cal.App.4th 268 (2nd Dist.)	Oct-02	Los Angeles Harbor, Los Angeles	Plaintiff	Public	Public infrastructure	Construction of a shipping container terminal	Other	Air quality; reliance on previous EIR	State/regional organizations & local organizations (one incorporated, one incorporation suspended)
San Franciscans Upholding the Downtown plan v. City and County of San Francisco	102 Cal.App.4th 656 (1st Dist.)	Sep-02	San Francisco, San Francisco	Defendant (Agency)	Private	Commercial	N/A	Infill	N/A	Local organization (unincorporated) & individuals
Friends of the Santa Clara River v. Castaic Water Agency	95 Cal.App.4th 1373 (2nd Dist.)	Jan-02	Santa Clarita Valley, Los Angeles; Kern	Plaintiff	Public	Public infrastructure	Purchase of water entitlement	Other	Water supply; Tiering off of invalidated EIR	Local organization (incorporated)
Berkeley Keep Jets Over the Bay Committee v. Bd. Of Port Commissioners of the City of Oakland	91 Cal.App.4th 1344 (1st Dist.)	Aug-01	Oakland, Alameda	Plaintiff	Public	Public infrastructure	Airport expansion	Other	Air quality (toxic air contams), noise, biological resources; alternatives, cumulative impacts, mitigation	Local organizations (one incorporated, one unincorporated) & governments

<sup>48</sup> The West Creek development is toward the northwest outskirts of Valencia, northern Los Angeles County, but adjacent to the rest of Valencia.

Napa Citizens for Honest Govt. v. Napa County Bd. of Supervisors	91 Cal.App.4th 342 (1st Dist.)	Aug-01	Napa, Napa	Plaintiff	Public	Plan adoption	Updated specific plan to include industrial uses	Greenfield <sup>49</sup>	Water supply, wastewater treatment, biological resources	Local organizations (unincorporated) & government
Placer Ranch Partners v. County of Placer	91 Cal.App.4th 1336 (3rd Dist.)	Jul-01	Placer (county-wide)	Defendant (Agency)	Public	Plan adoption	General plan update restricting development	Infill <sup>50</sup>	N/A	Businesses
Silverado Modjeska Recreation and Parks District v. County of Orange	197 Cal.App.4th 282 (4th Dist.)	Jul-01	Silverado, Orange	Defendant (Agency)	Private	Residential	N/A	Greenfield	N/A	Government, local organization (unincorporated), individual
Save Our Peninsula Committee v. Monterey County Bd. of Supervisors	87 Cal.App.4th 99 (6th Dist.)	Feb-01	Near Carmel Valley, Monterey	Plaintiff	Private	Residential	N/A	Greenfield <sup>51</sup>	Water supply; baseline conditions	State/regional organization & local organization (unincorporated)
Federation of Hillside & Canyon Ass'ns v. City of Los Angeles	83 Cal.App.4th 1252 (2nd Dist.)	Sep-00	Los Angeles, Los Angeles	Plaintiff	Public	Plan adoption	General plan amendment	Infill	Transportation; mitigation	Local organizations (one incorporated, one unincorporated)
Planning and Conservation League v. Dep't of Water Resources	83 Cal.App.4th 892 (3rd Dist.)	Sep-00	Statewide	Plaintiff	Public	Public infrastructure	Revision of water contracts	Other	Water supply; alternatives	State/regional organization, local organization (incorporated), government

<sup>49</sup> 2,945 acres immediately south of Napa City, between Napa and American Canyon. Identified for development in the County's 1986 general plan.

<sup>50</sup> Plaintiffs objected to the county's decision to modify its final plan to meet forecasted housing needs through infill development rather than through development of new towns in rural areas.

<sup>51</sup> Property is bordered by open space, but is along road with significant residential development, in an area zoned for housing in county general plan.

Cadiz Land Company, Inc. v. Rail Cycle, L.P.	83 Cal.App.4th 74 (4th Dist.)	Aug-00	Mojave Desert, San Bernardino	Plaintiff	Private	Infrastructure (landfill)	N/A	Other	Water quality	Business (agricultural landowner)
Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency	82 Cal.App.4th 511 (3rd Dist.)	Jul-00	Mammoth Lakes, Mono	Plaintiff	Public	Plan adoption	Redevelopment plan	Infill	Procedural (deferral of analysis)	Local organization (incorporation suspended) & individuals
Riverwatch v. County of San Diego	76 Cal.App.4th 1428 (4th Dist.)	Dec-99	Fallbrook, San Diego	Plaintiff	Private	Industrial (rock quarry)	N/A	Other	Air quality	Local organization (unincorporated) & individuals
County of Amador v. El Dorado Water Agency	76 Cal.App.4th 931 (3rd Dist.)	Nov-99	El Dorado, Alpine & Amador	Plaintiff	Public	Public infrastructure	Purchase of hydroelectric project for water use	Other	Hydrology, water supply; baseline determination, existing conditions	Governments & local organization (incorporated)
National Parks & Conservation Ass'n v. County of Riverside	71 Cal.App.4th 1341 (4th Dist.)	May-99	Near Desert Center, San Bernardino	Defendant (Agency)	Private	Infrastructure (landfill)	N/A	Other	N/A	State/regional organization, local organization (unincorporated), government, individuals
Dry Creek Citizens Coalition v. County of Tulare	70 Cal.App.4th 20 (5th Dist.)	Feb-99	Sierra foothills, Tulare	Defendant (Agency)	Private	Industrial	N/A	Other	N/A	State/regional organizations, local organizations (one incorporation suspended, one unincorporated)
Fairview Neighbors v. County of Ventura	70 Cal.App.4th 238 (2nd Dist.)	Jan-99	Moorpark, Ventura	Defendant (Agency)	Private	Industrial	N/A	Other	N/A	Local organization (unincorporated) & individual

City of Vernon v. Bd. of Harbor Commissioners of the City of Long Beach	63 Cal.App.4th 677 (1st Dist.)	Apr-98	Long Beach, Los Angeles	Defendant (Agency)	Public	Plan adoption	Redevelopment plan including mixed use development	Infill	N/A	Governments
Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors of El Dorado County <sup>52</sup>	62 Cal.App.4th 1332 (3rd Dist.)	Mar-98	El Dorado	Plaintiff	Private	Residential	N/A	Greenfield	Mining contamination; mitigation, deferral of analysis	Government, local organizations (one unincorporated, one incorporated)
Los Angeles Unified School District v. City of Los Angeles	58 Cal.App.4th 1019 (2nd Dist.)	Oct-97	Los Angeles (San Fernando Valley), Los Angeles	Plaintiff	Private	Mixed use	N/A	Infill	Noise, air quality; mitigation, cumulative impacts	Government
Galante Vineyards v. Monterey Peninsula Water Management District	60 Cal.App.4th 1109 (6th Dist.)	Aug-97	Monterey	Plaintiff	Public	Public infrastructure	Water supply project	Other	Traffic, air quality, pest population, impact on viticulture; existing conditions	Businesses, local organization (unincorporated), Native American tribe

<sup>52</sup> Portion of opinion discussing EIR is unpublished.



**TABLE 2: CATEGORICAL EXEMPTION CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Green-field/Infill	Exemptions Discussed	Type of Impact: Unusual Circumstances Removing Project from Exemption	Type of Plaintiff
Voices for Rural Living v. El Dorado Irrigation District	209 Cal.App.4th 1096 (3rd Dist.)	Oct-12	Near Shingle Springs, El Dorado	Plaintiff	Private	Infrastructure (water supply)	N/A	Other	15303	Project scope of providing water to a casino is unusual circumstance and falls outside of usual class 3 exemption	Local organization (incorporated)
Robinson v. City and County of San Francisco	208 Cal.App.4th 950 (1st Dist.)	Jul-12	San Francisco, San Francisco	Defendant (Agency)	Private	Infrastructure (utility lines)	N/A	Other	N/A	N/A	Individuals (twelve)
Apartment Ass'n of Greater Los Angeles v. City of Los Angeles	90 Cal.App.4th 1162 (2nd Dist.)	Mar-11	Los Angeles, Los Angeles	Defendant (Agency)	Public	Regulatory program	Systematic code enforcement program	Other	N/A	N/A	Local organization (unincorporated), individual

**TABLE 2: CATEGORICAL EXEMPTION CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Green-field/Infill	Exemptions Discussed	Type of Impact: Unusual Circumstances Removing Project from Exemption	Type of Plaintiff
Hines v. California Coastal Com'n., Board of Supervisors of Sonoma County	186 Cal.App.4th 830 (1st Dist.)	Jun-10	Bodega Bay, Sonoma	Defendant (Agency)	Private	Residential (single-family home)	N/A	Greenfield	N/A	N/A	Individuals (two)
Valley Advocates v. City of Fresno	160 Cal.App.4th 1039 (5th Dist.)	Feb-08	Fresno, Fresno	Plaintiff	Private	Commercial (office building)	N/A	Infill	15301, 15332	Historical resources	Local organization (unincorporated), individual
Madrigal v. City of Huntington Beach	147 Cal.App.4th 1375 (4th Dist.)	Jan-07	Huntington Beach, Orange County	Defendant (Agency)	Private	Commercial (wholesale nursery project)	N/A	Infill	N/A	N/A	Local organizations (two, one incorporated, <sup>53</sup> one unincorporated), individual
Turlock Irr. Dist. v. Zanker	140 Cal.App.4th 1047 (5th Dist.)	Jun-06	La Grange, Stanislaus	Defendant (Agency)	Private	Infrastructure (water supply)	N/A	Other	N/A	N/A	Government entities (water districts, two)

<sup>53</sup> As of January 2013, this organization, the HB River Park Foundation, is listed as "dissolved" on the California Secretary of State's website; presumably, at the time of litigation, the entity was still incorporated.

**TABLE 2: CATEGORICAL EXEMPTION CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Green-field/Infill	Exemptions Discussed	Type of Impact: Unusual Circumstances Removing Project from Exemption	Type of Plaintiff
San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified School Dist.	139 Cal.App.4th 1356 (6th Dist.)	May -06	Near Ben Lomond, Santa Cruz	Defendant (Agency)	Public	Education infrastructure	Closure of two elementary schools and transfer of students to other schools in district	Other	N/A	N/A	Local organization (unincorporated)
Banker's Hill, Hillcrest, Park West Community Preserv. Gp. v. City of San Diego	139 Cal.App.4th 249 (4th Dist.)	May -06	San Diego, San Diego	Defendant (Agency)	Private	Residential (larger housing development)	N/A	Infill	N/A	N/A	Local organization (unincorporated)
Martin v. City and County of San Francisco	135 Cal.App.4th 392 (1st Dist.)	Dec-05	San Francisco, San Francisco	Defendant (Agency)	Private	Residential (single-family home)	N/A	Infill	N/A	N/A	N/A <sup>54</sup>

<sup>54</sup> The plaintiff in this case was the project proponent, who filed a complaint for declaratory relief in response to the agency's decision that his permit application for a home renovation would require formal environmental review. The "type of plaintiff" category seeks to track project opponents, and this field is listed as "not applicable," because in this case there is no project opponent; the plaintiff and the project proponent are the same entity.

**TABLE 2: CATEGORICAL EXEMPTION CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Green-field/Infill	Exemptions Discussed	Type of Impact: Unusual Circumstances Removing Project from Exemption	Type of Plaintiff
Shaen Magan v. County of Kings	105 Cal.App.4th 468 (5th Dist.)	Dec-02	Kings County	Defendant (Agency)	Public	Regulatory program	County ordinance regulating sewage sludge disposal	Other	N/A	N/A	Individual
Santa Monica Chamber of Commerce v. City of Santa Monica	101 Cal.App.4th 786 (2nd Dist.)	Aug-02	Santa Monica, Los Angeles	Defendant (Agency)	Public	Regulatory program	Legislation creating parking district requiring parking permits	Other	N/A	N/A	Local organization (Santa Monica Chamber of Commerce, incorporated), individual
Wollmer v. City of Berkeley	193 Cal.App.4th 1329 (1st Dist.)	Jul-01	Berkeley, Alameda	Defendant (Agency)	Private	Mixed-use	N/A	Infill	N/A	N/A	Individual
Fairbank v. City of Mill Valley	75 Cal.App.4th 1243 (1st Dist.)	Sep-99	Mill Valley, Marin	Defendant (Agency)	Private	Commercial (restaurant)	N/A	Infill	N/A	N/A	Individual
Azusa Land Reclam. Co. v. Main San Gabriel Basin Water-master	52 Cal.App.4th 1165 (2nd Dist.)	Feb-97	Azusa, Los Angeles	Plaintiff	Private	Infrastructure (landfill)	N/A	Other	15301	Landfill overlies a major drinking water aquifer	Government entities (water agencies, four)

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**TABLE 3: NEGATIVE DECLARATION CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Greenfield/Infill	Type of Impact: Negative Declaration Deficiencies	Type of Plaintiff
Abatti v. Imperial Irrigation Dist.	205 Cal.App.4th 650 (4th Dist.)	Apr-12	Imperial County	Defendant (Agency)	Public	Plan adoption	Water district's adoption of a equitable distribution water plan	Other	N/A	Individuals (owners/users of agricultural land in Imperial County)
Center for Sierra Nevada Conservation v. County of El Dorado	202 Cal.App.4th 1156 (3rd Dist.)	Jan-12	El Dorado County	Plaintiff	Public	Plan adoption	Oak woodland management plan	Other	Biological resources	Local organization (two, both incorporated), state/regional organization
Schenck v. County of Sonoma	198 Cal.App.4th 949 (1st Dist.)	Aug-11	Near Santa Rosa, Sonoma	Defendant (Agency)	Private	Commercial (beverage distribution facility)	N/A	Greenfield	N/A	Individual
Citizens for Responsible Equitable Environmental Development v. City of Chula Vista	197 Cal.App.4th 327 (4th Dist.)	Jun-11	Chula Vista, San Diego	Plaintiff	Private	Commercial (shopping center)	N/A	Infill	Hazards and hazardous materials	State/regional organization
South Orange County Wastewater Authority v. City of Dana Point	196 Cal.App.4th 1604 (4th Dist.)	Jun-11	Dana Point, Orange	Defendant (Agency)	Private	Mixed Use	N/A	Infill	N/A	Government entity (South Orange County Wastewater Authority)

**TABLE 3: NEGATIVE DECLARATION CASES**

Case Name	Citation & Court	Date	City, County	Prevailing Party	Public/Private	Project Type	Description of Public Agency Project	Greenfield/Infill	Type of Impact: Negative Declaration Deficiencies	Type of Plaintiff
Save the Plastic Bag Coalition v. City of Manhattan Beach	52 Cal.4th 155, (Supreme Ct.)	Jul-11	Los Angeles, Los Angeles	Defendant (Agency)	Public	Regulatory program	Ordinance banning plastic bags	Other	N/A	Local organization (alliance of plastic bag manufacturers and distributors, unincorporated)
Nelson v. County of Kern	190 Cal.App.4th 252 (5th Dist.)	Nov-10	Near Mohave, Kern	Plaintiff	Private	Industrial (mining)	N/A	Other	Air quality, hydrology, biological resources	Individual, local organization (unincorporated)
Communities For A Better Environment v. South Coast Air Quality Management Dist.	48 Cal.4th 310, (Supreme Ct.)	Mar-10	Los Angeles, Los Angeles	Plaintiff	Private	Industrial (oil refinery)	N/A	Other	Air quality	State/regional organization, labor unions (two), individuals
Inyo Citizens for Better Planning v. Board of Supervisors	180 Cal.App.4th 1, (4th Dist.)	Nov-09	Near Bristol, Inyo County	Plaintiff	Private <sup>55</sup>	Residential (subdivision of one lot into two)	N/A	Greenfield	Hydrology, biological resources, land use	Local organization (unincorporated)

<sup>55</sup> The project challenged in this case was not a private project, but a County General Plan Amendment that altered the definition of "net acreage" for failure to prepare an EIR. The vast majority of the opinion focuses on this Amendment, and as such would otherwise be listed as a public regulatory project with no greenfield/infill determination. However, because there is a real party in interest listed (though the party is barely discussed in the case), this case is listed as private and residential, and is classified as greenfield.

Wollmer v. City of Berkeley	179 Cal.App.4th 933 (1st Dist.)	Oct-09	Berkeley, Alameda	Defendant (Agency)	Private	Mixed Use	N/A	Infill	N/A	Individual, local organization (unincorporated)
California Native Plant Society v. County of El Dorado	170 Cal.App.4th 1026 (3rd Dist.)	Jan-09	El Dorado County	Plaintiff	Private	Other <sup>56</sup>	N/A	Other	Biological resources; mitigation	Local organization (incorporated), state/regional organization
Citizens for Responsible and Open Government v. City of Grand Terrace	160 Cal.App.4th 1323 (4th Dist.)	Feb-08	Grand Terrace, San Bernardino	Plaintiff	Private	Residential (senior housing facility)	N/A	Infill	Land use, aesthetics, noise	Local organization (unincorporated)
Porterville Citizens for Responsible Hillside Development v. City of Porterville	157 Cal.App.4th 885 (5th Dist.)	Nov-07	Porterville, Tulare	Defendant (Agency)	Private	Residential (larger housing development)	N/A	Infill	N/A	Local organization (unincorporated)
Sierra Club v. California Dept. of Forestry and Fire Protection	150 Cal.App.4th 370 (1st Dist.)	Mar-07	Annapolis, Sonoma	Plaintiff	Private	Commercial (vineyard)	N/A	Greenfield	Biological resources, hydrology, geology and soils	State/regional organization, local organization (unincorporated)
City of Arcadia v. State Water Resources Control Bd.	135 Cal.App.4th 1392 (4th Dist.)	Jan-06	County of Los Angeles	Plaintiff	Public	Plan adoption	Adoption of planning document setting a target of zero trash	Other	Geology and soils, noise, traffic, air quality, mitigation, alternatives <sup>57</sup>	Government entities (cities, twenty-two total)

<sup>56</sup> This project was an agency's adoption of an ordinance where developers pay a rare plant impact fee, with the funds being used to create professionally managed rare plant habitats.

<sup>57</sup> This case concerned whether a certain environmental document (a trash total maximum daily load document) could be used as the functional equivalent of a negative declaration; the court held that this environmental document was incompetent as a negative declaration due to insufficient analysis in the subject areas cited and for the procedural deficiencies listed.

							discharge			
Lighthouse Field Beach Rescue v. City of Santa Cruz	131 Cal.App.4th 1170 (6th Dist.)	Aug-05	Santa Cruz, Santa Cruz	Defendant (Agency)	Public	Plan adoption	General plan revision	Other	N/A	Local organization (unincorporated)
Mejia v. City of Los Angeles	130 Cal.App.4th 322 (2nd Dist.)	May-05	Los Angeles, Los Angeles	Plaintiff	Private	Residential (larger housing development)	N/A	Infill	Biological resources, traffic	Individual
County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern	127 Cal.App.4th 1544 (5th Dist.)	Apr-05	County of Kern	Plaintiff	Public	Regulatory program	Ordinance restricting application of sewage sludge on agricultural land	Other	Air quality, utilities and service systems, geology and soils, hydrology and water quality	Government entities (sanitation agencies, twenty-eight total)
Sierra Club v. West Side Irr. Dist.	128 Cal.App.4th 690 (3rd Dist.)	Mar-05	Tracy, San Joaquin	Defendant (Agency)	Public	Public infrastructure	Assignment of water rights to City of Tracy	Other	N/A	State/regional organization
Pocket Protectors v. City of Sacramento	124 Cal.App.4th 903 (3rd Dist.)	Dec-04	Sacramento, Sacramento	Plaintiff	Private	Residential (larger housing development)	N/A	Infill	Land use, aesthetics	Local organization (unincorporated)
Association For Sensible Development At Northstar, Inc. v. Placer County	122 Cal.App.4th 1289 (3rd Dist.)	Oct-04	Near Truckee, Placer	Plaintiff	Private	Residential (affordable housing)	N/A	Greenfield	Land use, hydrology and water quality, traffic, cumulative impacts	Local organization (incorporation status suspended) <sup>58</sup>
Bowman v. City of Berkeley	122 Cal.App.4th 572 (1st Dist.)	Sep-04	Berkeley, Alameda	Defendant (Agency)	Private	Residential (affordable housing)	N/A	Infill	N/A	Individuals (seven), local organization (incorporated)

<sup>58</sup> The case notes that this organization was incorporated at the time of litigation.



El Dorado County Taxpayers for Quality Growth v. County of El Dorado	122 Cal.App.4th 1591 (3rd Dist.)	Sept-04	Near Cool, El Dorado	Defendant (Agency)	Private	Industrial (mining)	N/A	Other	N/A	Local organizations (two, both incorporated <sup>59</sup> ), individual
Architectural Heritage Ass'n v. County of Monterey	122 Cal.App.4th 1095 (6th Dist.)	Aug-04	Salinas, Monterey	Plaintiff	Public	Public infrastructure	Demolition of old jail	Other	Cultural resources, mitigation	Local organization (incorporation status suspended), individual
Ocean View Estates Homeowners Ass'n, Inc. v. Montecito Water District	116 Cal.App.4th 396 (2nd Dist.)	Mar-04	Summerland, Santa Barbara	Plaintiff	Public	Public infrastructure	Modifications to water supply reservoir	Other	Hazards and hazardous materials, aesthetics	Local organization (incorporated)
Fat v. County of Sacramento	97 Cal.App.4th 1270 (3rd Dist.)	Apr-02	Elk Grove, Sacramento	Defendant (Agency)	Private	Commercial (privately owned public airport)	N/A	Greenfield	N/A	Individuals (two)
City of Redlands v. County of San Bernardino	96 Cal.App.4th 398 (4th Dist.)	Jan-02	County of San Bernardino	Plaintiff	Public	Plan adoption	General plan amendments relating to regulation of unincorporated territory	Other	Land use, geology and soils, biological resources, traffic, air quality, public utilities and services, project description	Government entities (two cites: Rancho Cucamonga and Redlands)

<sup>59</sup> As of the time of this survey, one of these organization's incorporation status was "dissolved," though according to the opinion, both were incorporated at the time the suit was filed.

San Bernardino Valley Audubon Soc. v. Metropolitan Water Dist.	71 Cal.App.4th 382 (4th Dist.)	Apr-99	Near Corona, Riverside	Plaintiff	Public	Public infrastructure	Habitat conservation plan and natural community conservation plan for water supply project	Other	Biological resources, cultural resources, mandatory finding of significance (potential to reduce habitat of endangered species), mitigation	State/regional organization
Baldwin v. City of Los Angeles	70 Cal.App.4th 819 (2nd Dist.)	Mar-99	Los Angeles, Los Angeles	Defendant (Agency)	Private	Residential (affordable housing)	N/A	Infill	N/A	Individuals (three)
Pala Band of Mission Indians v. County of San Diego	68 Cal.App.4th 556 (4th Dist.)	Nov-98	Near Pala, San Diego	Defendant (Agency)	Public	Plan adoption	Approval of summary plan and siting element as part of countywide integrated waste management plan	Other	N/A	Native American tribe
Silveira v. Las Gallinas Valley Sanitary Dist.	54 Cal.App.4th 980 (1st Dist.)	Apr-97	San Rafael, Marin	Defendant (Agency)	Public	Public infrastructure	Condemnation of land to be used as buffer zone around sanitation plant	Other	N/A	Individuals (three), local organization (unincorporated)

League for Protection of Oakland's etc. Historic Resources v. City of Oakland	52 Cal.App.4th 896 (1st Dist.)	Feb-97	Oakland, Alameda	Plaintiff	Public <sup>60</sup>	Public infrastructure	Demolition and redevelopment of dilapidated city property	Other	Cultural resources, mitigation measures	Local organization (incorporated)
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<sup>60</sup> A real party in interest, Montgomery Ward, was listed in this case. It is classified as public, however, because the city action to demolish the dilapidated Montgomery Ward Building came in response to public objections and was made for the benefit of the public at large, not any private entity.