

## Analysis of Recent Challenges to Environmental Impact Reports

### SUMMARY

This report analyzes 95 published opinions from 1997 to 2012 in which CEQA plaintiffs litigated the validity of an Environmental Impact Report (EIR) to the California Court of Appeal or Supreme Court. Among its findings:

- Of the cases which could be characterized as involving “greenfield” or “infill” projects, 59% involved infill development projects.
- More than a third of projects challenged (36%) were public projects rather than private development.
- Notwithstanding claims about CEQA’s importance as a tool in fighting industrial pollution, fewer than 11% of these cases involve industrial projects. The most commonly challenged types of projects were infrastructure projects (19% of cases) and mixed use developments (also 19%), followed by residential and commercial development.
- The vast majority of cases - 73% - were brought, at least in part, by local organizations as plaintiffs. State and regional-level organizations (e.g., environmental organizations such as the Sierra Club) were only involved in 26% of the cases, most of the time in tandem with a local organization plaintiff. 43% of the local organizations are unincorporated associations, which do not need to disclose their members, including potential economic or other interests, when filing CEQA lawsuits.
- In the cases in which courts found an EIR deficient, the adequacy of water supply (34%), traffic impacts (25%), and air quality impacts (25%), were the most likely to be identified as inadequately analyzed.<sup>1</sup>

### BACKGROUND

This study was prompted as part of the ongoing debate about the future of CEQA, and a desire by many stakeholders to have better data about how CEQA works generally and how CEQA litigation and court decisions affect how CEQA works. This study builds on several earlier important evaluations of CEQA court decisions:

- In 2011 Clem Shute, a founding partner of the San Francisco law firm of Shute, Mihaly & Weinberger, reported that in 43% of published CEQA appellate and Supreme Court cases since CEQA was enacted, plaintiffs successfully challenged the adequacy of an agency’s

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<sup>1</sup>In 2001, the Legislature stepped in with two significant bills designed to ensure that the CEQA environmental review and project approval process included adequate disclosure, analysis, and supplies of water. Notwithstanding this and follow-up legislation, the cases evaluated during the study period continued to involve litigation about the adequacy of water impacts analyses under CEQA.

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CEQA compliance.<sup>2</sup> This statistic 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, the United States Supreme Court has upheld the adequacy of agency NEPA compliance in 100% of cases, nearly all the time in unanimous rulings (that is, there have been no successful Supreme Court challenges to NEPA compliance in the 44 years since NEPA was enacted).<sup>3</sup>
  - Under the New York State Environmental Quality Review Act, over a 16-year period challengers won just under 16% of the cases that challenged the adequacy of New York's equivalent of an EIR.<sup>4</sup>
  - A meta-study of eleven studies, including 5081 federal court cases from 1982 to 2009, indicates an overall agency validation rate of 69%.<sup>5</sup>
  - The National Taxpayer Advocate, which is required by federal law to track the ten most litigated tax issues in federal court, reported in a recent annual report that challengers prevailed against the IRS in whole or in part in only 22% of those cases.<sup>6</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 track record, and to parse differences in CEQA lawsuits challenging each of CEQA's three 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 15-year period from 1997 to February 17, 2011.<sup>7</sup> The report focused on "substantive" challenges to CEQA documents (i.e., where the 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 about half of the time, even though CEQA provides the highest level of judicial deference to EIRs.

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<sup>2</sup> Remarks, "CEQA at 40: A Look Back, and Ahead" Conference, University of California, Davis School of Law, November 4, 2001; *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>3</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/>

<sup>4</sup> Gerrard, Michael B. Survey of SEQRA Cases From 2007. 239 N.Y. L.J. 60 (Mar. 28, 2008).

<sup>5</sup> Zaring, David. Reasonable Agencies. 96 VA. L. REV. 135, 170-71 (2010).

<sup>6</sup> National Taxpayer Advocate - 2011 Annual Report to Congress Volume 1, p. 590, Table 3.0.2. *Available*: <http://www.irs.gov/uac/National-Taxpayer-Advocate's-2011-Annual-Report-to-Congress>

<sup>7</sup> *Available*: <http://thomaslaw.com/wp-content/uploads/2012/03/CEQA-Lit-History.pdf>

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- 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 court in 52% of the reported court cases.<sup>8</sup>

## Methodology

Notwithstanding these remarkable litigation statistics, which demonstrate that opponents can expect to win CEQA challenges about the substantive adequacy of CEQA documentation more than half the time (50% for EIRs, 58% for Negative Declarations, and 52% for Categorical Exemptions), the debate about the extent to which CEQA litigation is a problem has continued, largely in the context of proponents and opponents of CEQA modernization providing anecdotal examples of particular projects.

To advance the debate about the need to modernize CEQA, this study focuses on the subset of 95 cases evaluated in the Thomas Law Group study which were subject to the greatest level of environmental scrutiny: Environmental Impact Reports (EIRs). Each case within this group was categorized in the following areas: the city and county in which the project was proposed, the type of project proposed, whether the project was a “public” project proposed by a public agency or a “private” project proposed by a private entity, whether the project could be considered an “infill” or “greenfield” development, the type of deficiency identified in the EIR, and the type of plaintiff challenging the EIR.

**Location of Project:** Based on the statement of facts in the opinion, the county in which the project was proposed to be located was identified, as well as the city or other local area.

**Type of Project:** Based on the statement of facts in the opinion, the type of project analyzed in the EIR was categorized as either residential, commercial, industrial, educational, mixed use, infrastructure, hospital, development-restricting plan amendment, or other. Commercial projects included retail establishments and hotels, as well as gas stations, wineries, and dairies. Infrastructure projects included water supply-related projects, waste storage and disposal facilities, and transportation initiatives.

**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, were categorized as “private” projects. When a project was proposed by a public agency but

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<sup>8</sup> Available: <http://www.hklaw.com/publications/Judicial-Review-of-CEQA-Categorical-Exemptions-from-1997-Present/>

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appeared to be proposed for the benefit of a private entity or public utility, projects were characterized as “private.”

**Greenfield or Infill:** New residential, commercial, educational, hospital and mixed use development projects were categorized as either “greenfield” or “infill” projects based on their proposed location and that location’s proximity to nearby development and metropolitan area boundaries. Development projects that adaptively reused existing development, 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” developments. Projects that do not fit neatly into either classification were listed as “other” in this category. If a project did not directly propose new residential, commercial, educational, hospital or mixed use development, it was classified as “other.”

**EIR Deficiency:** Opinions decided in the plaintiffs’ favor were analyzed to determine the type of impact that the court concluded was inadequately addressed in the EIR, either because the court held that the defendant’s impact conclusions in this area were not supported by substantial evidence, because the court held that the defendant’s proposals to mitigate this impact were inadequate, or because the court held that 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. Many opinions emphasized failings in the EIR process (e.g., reliance on a previous EIR, inappropriate deferral of analysis), without stating that any particular 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. If only procedural concerns were noted, and the opinion did not undertake any discussion of specific impact areas, the cases were categorized as “procedural.”

**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 different types of plaintiffs. Based on the description in the opinion, each plaintiff bringing a challenge was identified in the following categories: local organization, statewide or regional organization, government entity, business, individual, or Native American tribe. Plaintiffs were categorized as a “local organization” if they are a local homeowners organization or if their name reflects a specific local area of involvement. Environmental or other 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 database of registered business associations, local organizations were also identified as either “incorporated” or “unincorporated” entities based on whether they had filed for incorporation at the time of the lawsuit. If their incorporation has since been suspended or dissolved, this was also noted. Governments, businesses, and Native American tribes were identified from their names and descriptions in the opinions.

## FINDINGS<sup>9</sup>

### **Types of Projects Challenged:**

- 18 infrastructure projects: 19% of projects
  - 12 water projects
  - 3 waste facilities
  - 2 transportation projects
  - 1 other
- 18 mixed use: 19%
- 15 residential: 16%
- 15 commercial (retail, hotel, gas station, etc.): 16%
- 10 industrial: 11%
- Eight “other” (a sale of city-owned property, a statewide pest control program, a logging project, a greenbelt expansion plan, a bay restoration program, a habitat conservation plan, a church, and the conversion of a mobile home park to day-use parkland): 8%
- Seven educational: 7%
- Two hospital expansions: 2%
- Two development-restricting general plan amendments: 2%

### **Public vs. Private:**

- 61 private projects: 64% of projects
- 34 public projects: 36%

### **Greenfield vs. Infill:**

In 59 cases, projects could be characterized as “greenfield” or “infill” projects. Of those cases:

- 35 were infill projects: 59% of projects
- 24 were greenfield: 41%

### **Types of Plaintiffs:<sup>10</sup>**

- 69 of the cases were brought by local organizations: 73% of cases
  - Of the 94 local organizations joining lawsuits:

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<sup>9</sup>Due to rounding, percentages may not add up to 100%.

<sup>10</sup>Because many cases had multiple types of plaintiffs, cases do not add up to 95, percentages do not add up to 100%, and the number of organizations bringing suit is larger than the number of cases.

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- 54 are incorporated entities: 57% of local organizations (10 of these organizations have since had their incorporation suspended)
- 40 are unincorporated associations: 43%
- 25 of the cases were brought by state/regional organizations: 26%
- 23 cases were brought by named individuals: 24%
- 17 cases were brought by governments: 18%
- Nine cases were brought by businesses: 9%
- Three cases were brought by Native American tribal organizations: 3%
- One case was brought by a religious organization: 1%

## **EIR Deficiencies Identified by Courts:**<sup>11</sup>

In the 44 cases in which courts found a deficiency in an EIR:

- 15 cases involved water supply issues (34%)
- 11 cases involved traffic impacts (25%)
- 11 cases involved air quality/pollutants (25%)
- Eight cases involved biological resources (18%)
- Five cases involved noise (11%)
- Four cases involved water quality (9%)
- Three cases involved historic resources (7%)
- Two cases involved waste water (5%)
- Two cases involved transit and transportation (5%)
- Two cases involved hydrology (5%)
- Two cases involved land use (5%)
- One case each involved the following:
  - Drainage
  - Fire services
  - General “growth inducement” impacts
  - Greenhouse gas emissions
  - Human health
  - Impact on the project

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<sup>11</sup>Because cases involved multiple impact areas, cases do not add up to 44 and percentages do not add up to 100%.

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- Mining contamination
- Parking
- Parks & open space
- Police services
- Urban decay
- Visual impacts
- Viticulture impacts

Three cases discussed essentially procedural failings without discussing specific impact areas of concern.

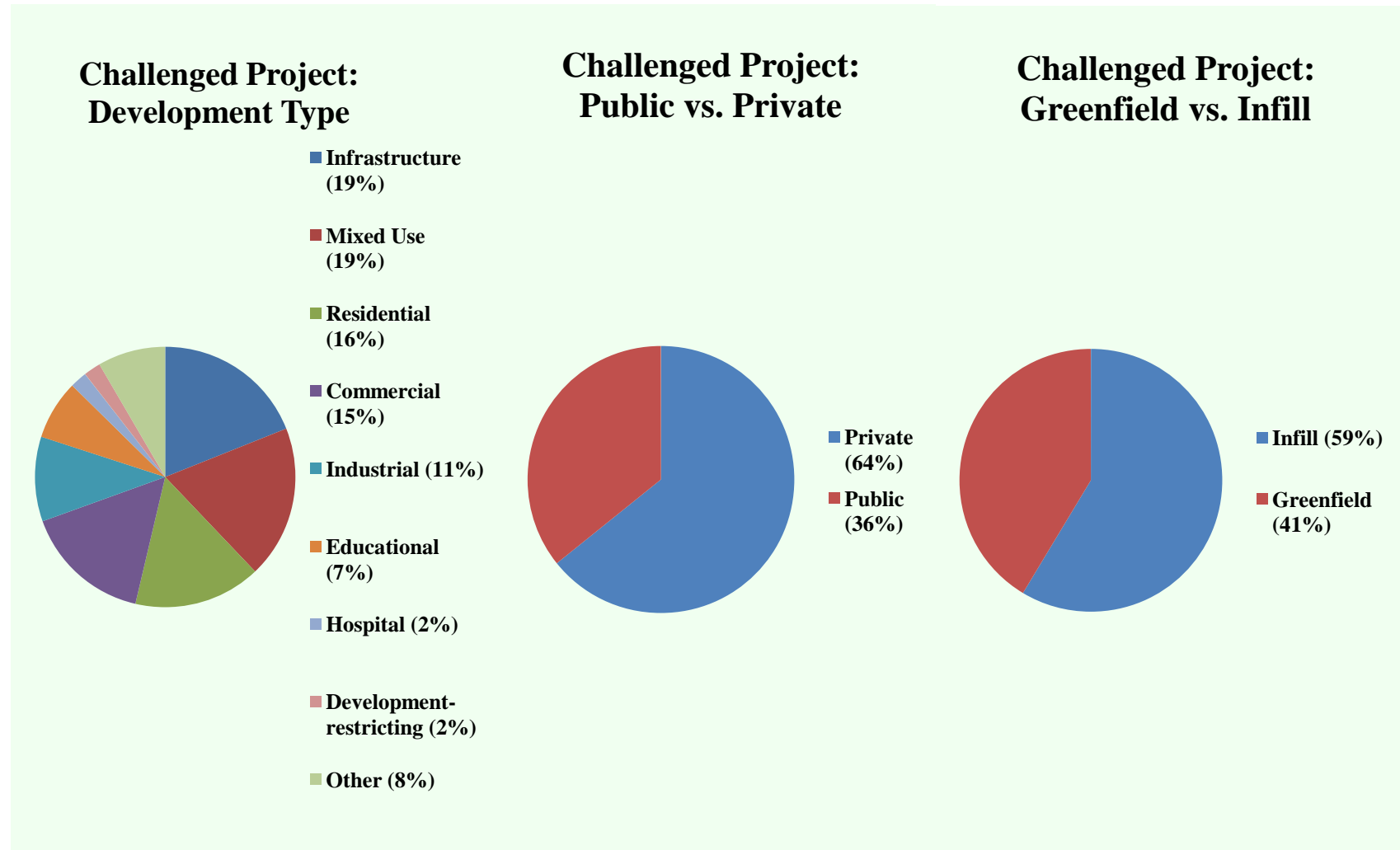
The figures and tables below provide illustrations of these conclusions and document the database of analyzed cases. For more information on CEQA reform and CEQA compliance practices, please contact:

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FIGURE 1

Distribution of Challenged Projects by Development Type, Project Proponent Type, and Development Location Type





**FIGURE 2**  
**Distribution of Plaintiff Types**

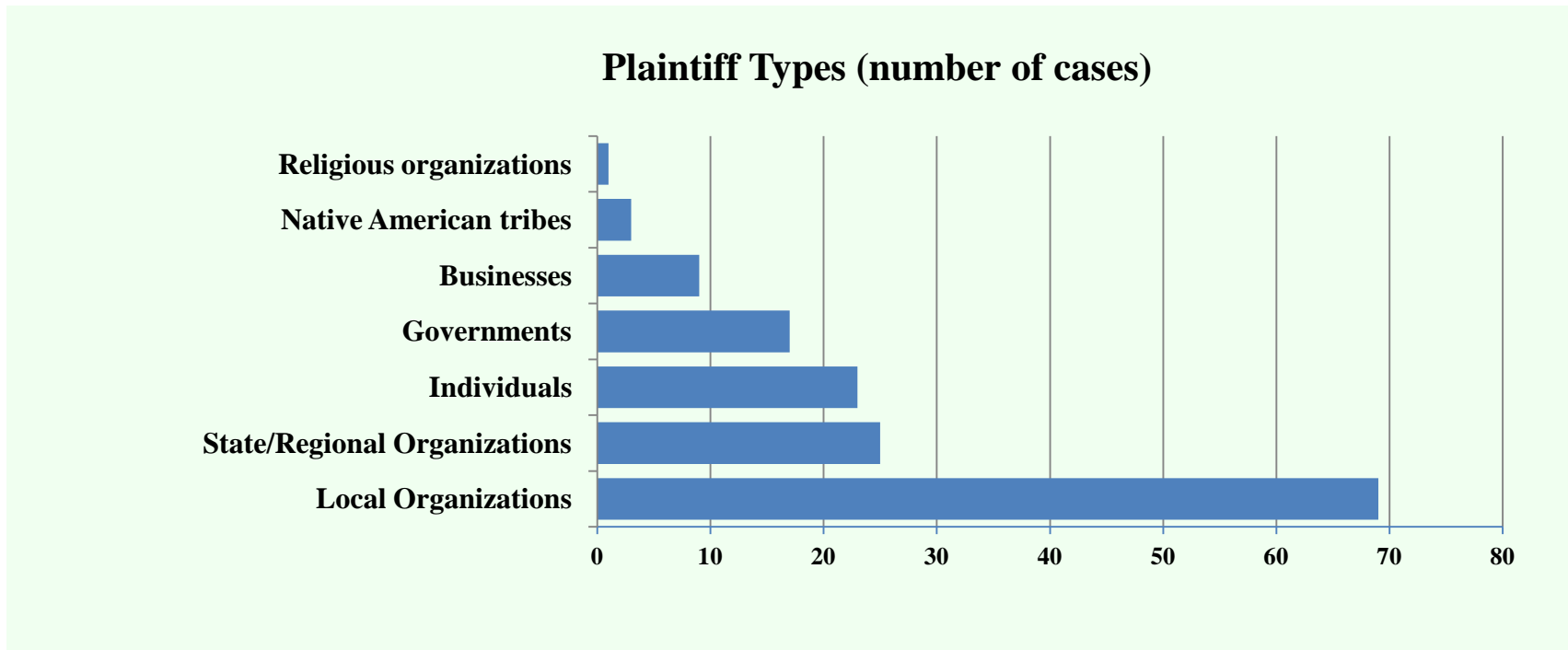
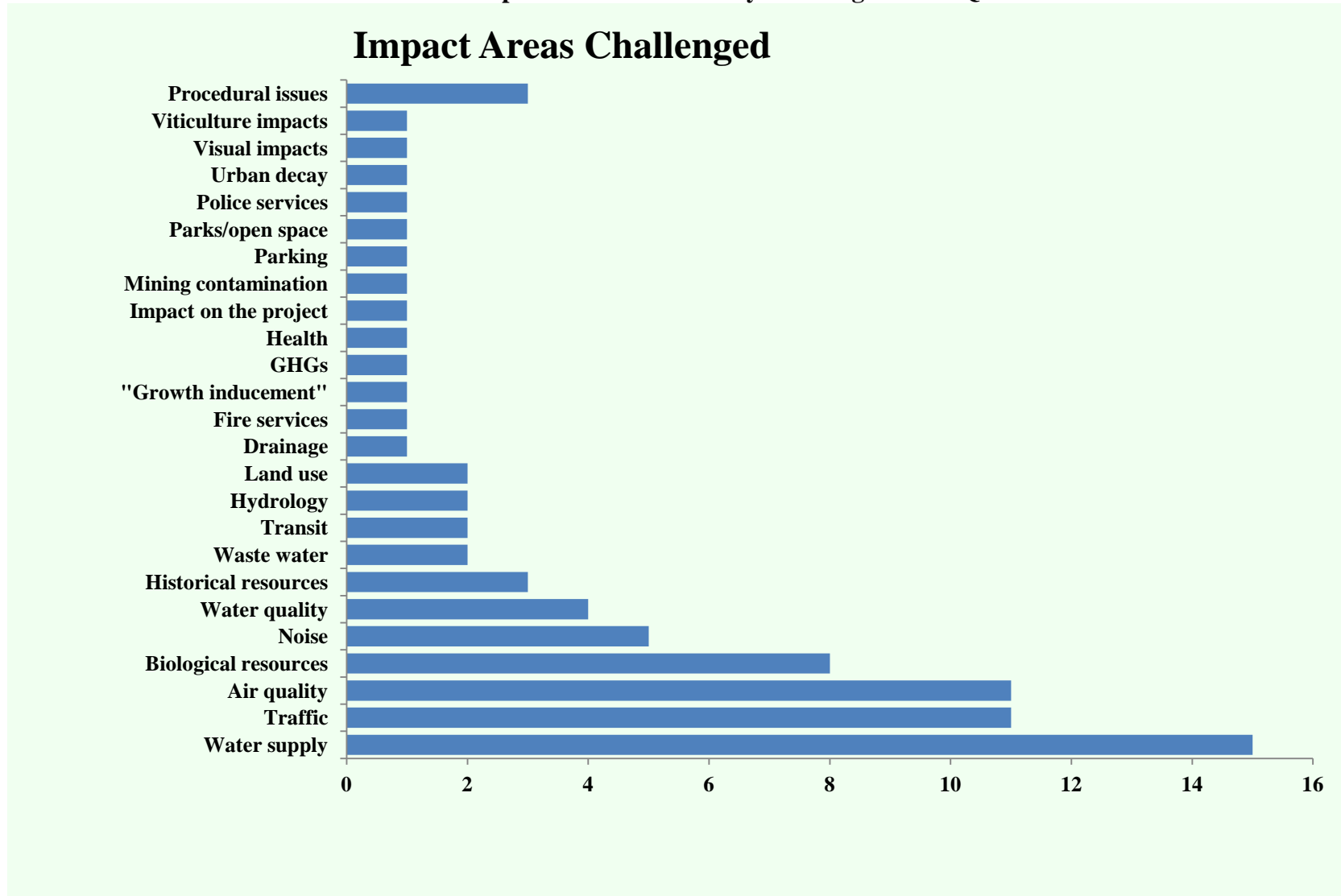


FIGURE 3

Distribution of Impact Areas Successfully Challenged in CEQA Lawsuits



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**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

Case Name	Citation & Court	Date	City, County	Public/Private	Project Type	Greenfield/Infill/Other	EIR deficiencies	Type of plaintiff and lead attorneys
Flanders Foundation v. City of Carmel-by-the-Sea	202 Cal.App.4th 603 (6th Dist.)	Jan-12	Carmel-by-the-Sea, Monterey	Public <sup>12</sup>	Other (sale of city-owned mansion and grounds)	Other <sup>13</sup>	Parkland; alternatives	Local organization (incorporated)
City of San Diego v. Bd. of Trustees of the Calif. State Univ. <sup>14</sup>	201 Cal.App. 4th 1134 (4th Dist.)	Dec-11	San Diego, San Diego	Public	Educational (campus expansion)	Infill	Traffic, transit; mitigation	Government
Madera Oversight Coalition v. County of Madera	199 Cal.App.4th 48 (5th Dist.)	Sep-11	Rio Mesa area, Madera County	Private	Mixed use	Greenfield	Historic resources, water supply; mitigation, future conditions	Local organizations (two, both incorporated) & Native American tribe
LandValue 77, LLC v. Bd. of Trustees of the Calif. State Univ.	193 Cal.App.4th 675 (5th Dist.)	Feb-11	Fresno, Fresno	Private	Mixed use (development on Fresno State campus)	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	Public	Infrastructure (street extension)	Other	Traffic; future conditions, baseline	Local organization (unincorporated) & individuals
Center for Biological Diversity v. County of San Bernardino	185 Cal.App.4th 866 (4th Dist.)	May-10	Unincorporated area, San Bernardino	Private	Infrastructure (composting facility)	Other	Water supply; alternatives	State/regional organization & local organization (unincorporated)

<sup>12</sup>City sale of property to private party.

<sup>13</sup>Project within city boundaries but in nature preserve. No specific development proposed as part of project.

<sup>14</sup>Supreme Court review granted April 2012.

**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

Watsonville Pilots Ass'n v. City of Watsonville	183 Cal.App.4th 1059 (6th Dist.)	Mar-10	Watsonville, Santa Cruz	Public	Residential (new general plan permitting residential development near airport)	Greenfield <sup>15</sup>	Impact on project, water supply; alternatives	State/regional organization & local organizations (one incorporated and one unincorporated)
Communities for a Better Environment v. City of Richmond	184 Cal. App.4th 70 (1st Dist.)	Apr-10	Richmond, Contra Costa	Private	Industrial (refinery upgrade)	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	Private	Commercial	Infill	Historic resources; alternatives	Local organization (incorporated)
Californians for Alternatives to Toxics v. Dep't of Food & Agriculture	136 Cal.App.4th 1 (1st Dist.)	Dec-09	Statewide	Public	Other (pest control program)	Other	Human health, water quality, biological resources	State/regional organization & local organizations (one incorporated and one unincorporated)
Gray v. County of Madera	167 Cal.App.4th 1099 (5th Dist.)	Oct-08	Unincorporated area, Madera County	Private	Industrial (hard rock quarry)	Other	Water supply, 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	Private	Other (Logging; habitat conservation plan)	Other	Procedural <sup>16</sup>	State/regional organizations

<sup>15</sup>Challenged portion of plan related to unincorporated area just outside of city boundaries.

<sup>16</sup>The court held that the agency failed to approve an integrated Sustainable Yield Plan when it incorporated an EIR by reference.

**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

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	Private	Residential subdivision	Greenfield	Visual impacts; alternatives	Local organization (incorporation suspended) <sup>17</sup>
Mani Brothers Real Estate Group v. City of Los Angeles	153 Cal.App.4th 1385 (2nd Dist.)	Aug-07	Downtown Los Angeles, Los Angeles	Private	Mixed use	Infill	Police services	Businesses (rival developers and landowners)
Woodward Park Homeowners Ass'n, Inc. v. City of Fresno	150 Cal.App.4th 683 (5th Dist.)	Apr-07	Fresno, Fresno	Private	Commercial	Infill	Traffic, air quality; baseline, mitigation, statement of overriding considerations	Local organizations (incorporated homeowners association and organization with suspended incorporation <sup>18</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	Private	Industrial (mining operation)	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	Private	Mixed use	Greenfield	Water supply; new information required recirculation	Local organizations (one incorporated, one incorporation suspended <sup>19</sup> )
Uphold Our Heritage v. Town of Woodside	147 Cal.App.4th 587 (1st Dist.)	Jan-07	Woodside, San Mateo	Private	Residential	Infill	Historic resources; alternatives	Local organization (unincorporated)

<sup>17</sup>Plaintiff corporation was registered the year the project was approved; has since had its incorporation suspended.

<sup>18</sup>Plaintiff's attorney is listed as the agent for service on the corporation's record.

<sup>19</sup>VACRC incorporated two years before project approval; incorporation is now suspended.

**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

County of San Diego v. Grossmont-Cuyamaca Community College District	141 Cal.App.4th 86 (4th Dist.)	Jul-06	Rancho San Diego, San Diego	Public	Educational (campus expansion)	Greenfield <sup>20</sup>	Traffic; mitigation	Government
City of Marina v. Bd. of Trustees of Calif. State Univ.	39 Cal.4th 341 (Supreme Ct.)	Jul-06	North of Monterey, Monterey	Public	Educational (campus expansion)	Infill <sup>21</sup>	Drainage, water supply, traffic, wastewater, fire protection; mitigation feasibility	Government
California Oak Foundation v. City of Santa Clarita	133 Cal.App.4th 1219 (2nd Dist.)	Nov-05	Santa Clarita, Los Angeles	Private	Mixed use (industrial & commercial)	Greenfield	Water supply	State/regional organization & local organization (incorporated)
Anderson First Coalition v. City of Anderson	130 Cal.App.4th 1173 (3rd Dist.)	Jun-05	Anderson, Shasta	Private	Commercial	Greenfield <sup>22</sup>	Traffic	Local organization (unincorporated) & individuals
Endangered Habitats League, Inc. v. County of Orange	131 Cal.App.4th 777 (4th Dist.)	Jun-05	Trabuco Canyon, Orange	Private	Residential	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	Private	Commercial	Infill	Urban decay, air quality; cumulative impacts	Local organization (unincorporated) <sup>23</sup>

<sup>20</sup>Cuyamaca College is in “Rancho San Diego,” an unincorporated area towards the outskirts of the developed metropolitan San Diego area, but adjacent to it.

<sup>21</sup>Adaptive reuse of decommissioned army base, inland of Marina and Seaside on Monterey Bay.

<sup>22</sup>Project proposed for “the quasi-rural southwest portion of the City adjoining present City development.”

<sup>23</sup>Defendant asserted that plaintiff organization was an economic competitor, and a “front” for a union; the court did not address this question.

**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

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	Private	Infrastructure (water appropriation)	Other	“Growth inducement,” land use (expanded agricultural cultivation), biological resources, air quality, water quality; secondary impacts analysis	Government & individuals
Protect the Historic Amador Waterways v. Amador Water agency	116 Cal.App.4th 1900 (3rd Dist.)	Mar-04	Near Pine Grove, Amador	Public	Infrastructure (water pipeline)	Other	Hydrology	Local organization (unincorporated) <sup>24</sup>
Protect Our Water v. County of Merced	110 Cal.App.4th 362 (5th Dist.)	Jul-03	Near Hopeton, Merced	Private	Industrial (mining)	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	Private <sup>25</sup>	Infrastructure (water diversion)	Other	Biological resources, water supply; cumulative impacts, alternatives	Local organizations (one incorporated, one unincorporated), state/regional organizations, Native American tribe, individuals

<sup>24</sup>Plaintiff filed for incorporation three years after decision; has now dissolved.

<sup>25</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.

**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

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	Private	Mixed use (mainly residential, some retail)	Greenfield <sup>26</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	Public	Infrastructure (shipping container terminal)	Other	Air quality; reliance on previous EIR	State/regional organizations & local organizations (one incorporated, one incorporation suspended)
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 County	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	Public	Infrastructure (airport expansion)	Other	Air quality (toxic air contaminants), noise, biological resources; alternatives, cumulative impacts, mitigation	Local organizations (one incorporated, one unincorporated) & governments
Napa Citizens for Honest Government v. Napa County Bd. of Supervisors	91 Cal.App.4th 342 (1st Dist.)	Aug-01	Napa, Napa	Public	Industrial (updated specific plan)	Greenfield <sup>27</sup>	Water supply, wastewater treatment, biological resources	Local organizations (unincorporated) & government
Save Our Peninsula Committee v. Monterey County Bd. of Supervisors	87 Cal.App.4th 99 (6th Dist.)	Feb-01	Near Carmel Valley, Monterey	Private	Residential	Greenfield <sup>28</sup>	Water supply; baseline conditions	State/regional organization & local organization (unincorporated)

<sup>26</sup>The West Creek development is towards the northwest outskirts of Valencia, northern Los Angeles County, but adjacent to the rest of Valencia.

<sup>27</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>28</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.



**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

Vedanta Society of Southern Calif. v. Calif. Quartet, Ltd.	84 Cal.App.4th 517 (4th Dist.)	Oct-00	Trabuco Canyon, Orange	Private	Residential	Greenfield	Procedural <sup>29</sup>	State/regional organizations & local organizations (three, all incorporated)
Federation of Hillside & Canyon Ass'ns v. City of Los Angeles	83 Cal.App.4th 1252 (2nd Dist.)	Sep-00	Los Angeles, Los Angeles	Public	Mixed use (overall 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	Public	Infrastructure (revision of water contracts)	Other	Water supply; alternatives	State/regional organization, local organization (incorporated), government
Cadiz Land Company, Inc. v. Rail Cycle, L.P.	83 Cal.App.4th 74 (4th Dist.)	Aug-00	Mojave Desert, San Bernardino	Private	Infrastructure (landfill)	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	Public	Mixed use (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-09	Fallbrook, San Diego	Private	Industrial (rock quarry)	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	Public	Infrastructure (purchase of hydroelectric project for water use)	Other	Hydrology, water supply; baseline determination, existing conditions	Governments & local organization (incorporated)

<sup>29</sup>The City deemed the EIR approved when the Board of Supervisors tied in voting whether to affirm Planning Commission approval.

**TABLE 1: Successful Challenges to the Merits of EIRs (Plaintiff Victories)**

Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors of El Dorado County <sup>30</sup>	62 Cal.App.4th 1332 (3rd Dist.)	Mar-98	El Dorado	Private	Residential	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	Private	Mixed use	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	Public	Infrastructure (water supply project)	Other	Traffic, air quality, pest population, impact on viticulture; existing conditions	Businesses, local organization (unincorporated), Native American tribe

<sup>30</sup>Portion of opinion discussing EIR is unpublished.

**TABLE 2: Unsuccessful Challenges to the Merits of EIRs (Defendant Victories)**

Case Name	Citation & Court	Date	City, County	Public/Private	Project Type	Greenfield/Infill/Other	Type of plaintiff and lead attorneys
Pfeiffer v. City of Sunnyvale City Council	200 Cal.App.4th 1552 (6th Dist.)	Feb-12	Sunnyvale, Santa Clara	Private	Hospital expansion	Infill	Individuals
Citizens for East Shore Parks v. Calif. State Lands Commission	202 Cal.App.4th 549 (1st Dist.)	Dec-11	Richmond, Contra Costa	Private	Industrial (marine terminal lease for refinery)	Other	Local organization (incorporated) & individual
Ballona Wetlands Land Trust v. City of Los Angeles	201 Cal.App.4th 455 (2nd Dist.)	Nov-11	Los Angeles, Los Angeles	Private	Mixed use	Infill	State/regional organization, 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	Private	Commercial	Infill <sup>31</sup>	Local organization (incorporation suspended)
Clover Valley Foundation v. City of Rocklin	197 Cal.App.4th 200 (3rd Dist.)	Jul-11	Rocklin, Placer	Private	Residential	Infill <sup>32</sup>	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	Private	Hospital expansion	Infill	Local organization (incorporated)
Oakland Heritage Alliance v. City of Oakland	195 Cal.App.4th 884 (1st Dist.)	May-11	Oakland, Alameda	Private	Mixed use	Infill	Local organization (incorporated)
Citizens for Responsible Equitable Environmental Development v. City of San Diego	196 Cal.App.4th 515 (4th Dist.)	May-11	San Diego, San Diego	Private	Residential	Infill	Local organization (incorporated) <sup>33</sup>

<sup>31</sup>Circle K gas station and convenience store off highway interchange.

<sup>32</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>33</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 2: Unsuccessful Challenges to the Merits of EIRs (Defendant Victories)**

Banning Ranch Conservancy v. Superior Court	193 Cal.App.4th 903 (4th Dist.)	Mar-11	Near Newport Beach, Orange	Private	Residential	Infill	Local organization (incorporated)
Santa Monica Baykeeper v. City of Mailbu	193 Cal.App.4th 1538 (2nd Dist.)	Apr-11	Malibu, Los Angeles	Public	Infrastructure <sup>34</sup>	Other	Local organization (incorporated)
Cherry Valley Pass Acres and Neighbors v. City of Beaumont	190 Cal.App.4th 316 (4th Dist.)	Nov-10	Beaumont, Riverside	Private	Residential	Greenfield	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	Public	Educational	Infill	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	Private	Mixed use	Infill	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	Private	Mixed use	Infill (downtown)	Local organization (incorporated)
Jones v. Regents of the Univ. of Calif.	183 Cal.App.4th 818 (1st Dist.)	Mar-10	Berkeley and Oakland, Alameda	Public	Educational	Other <sup>35</sup>	Individual, others not described in opinion
Melom v. City of Madera	183 Cal.App.4th 41 (5th Dist.)	Mar-10	Madera, Madera	Private	Commercial	Greenfield <sup>36</sup>	Individual
Planning & Conservation League v. Castaic Water Agency	180 Cal.App.4th 210 (2nd Dist.)	Dec-09	Wheeler Ridge, Kern; Castaic, Los Angeles	Public	Infrastructure (water transfer)	Other	State/regional organizations
Calif. Native Plant Society v. City of Santa Cruz	177 Cal.App.4th 957 (6th Dist.)	Aug-09	Santa Cruz, Santa Cruz	Public	Other (greenbelt master plan)	Other	State/regional organization & local organization (unincorporated)

<sup>34</sup>Project with 3 elements: 1) storm water detention and treatment, 2) habitat restoration, 3) public park

<sup>35</sup>Programmatic EIR involving multiple locations.

<sup>36</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.

**TABLE 2: Unsuccessful Challenges to the Merits of EIRs (Defendant Victories)**

City of Long Beach v. Los Angeles Unified School District	176 Cal.App.4th 889 (2nd Dist.)	Jul-09	Long Beach, Los Angeles	Public	Educational (school)	Infill	Government
Sierra Club v. City of Orange	163 Cal.App.4th 523 (4th Dist.)	Apr-08	Orange, Orange	Private	Residential	Greenfield	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	Public	General plan amendment removing development site from plan	Other	Religious organization
County of Sacramento v. Superior Ct.	180 Cal.App.4th 943 (3rd Dist.)	Dec-09	Sacramento, Sacramento	Private	Commercial	Infill	Business
Tracy First v. City of Tracy	177 Cal.App.4th 1 (3rd Dist.)	Aug-09	Tracy, San Joaquin	Private	Commercial	Infill	Local organization (unincorporated)
Calif. Native Plant Soc'y v. City of Rancho Cordova	172 Cal.App.4th 603 (3rd Dist.)	Mar-09	Rancho Cordova, Sacramento	Private	Mixed use (master planned community)	Greenfield	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	Public	Infrastructure (state water rights proceeding)	Other	Governments, businesses, state/regional organization, local organizations (three incorporated, one unincorporated) <sup>37</sup>
In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings	43 Cal.4th 1143 (Cal. Supreme Court)	Jun-08	Sacramento-San Joaquin Bay Delta	Public	Other (bay restoration program)	Other	Governments, businesses, state/regional organization, individuals
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	Private	Mixed use	Greenfield	Local organization (incorporated)

<sup>37</sup>In multiple-case, multiple-issue appeal, only appellants who brought CEQA claims are listed.

**TABLE 2: Unsuccessful Challenges to the Merits of EIRs (Defendant Victories)**

Eureka Citizens for Responsible Government v. City of Eureka	147 Cal.App.4th 357 (1st Dist.)	Jan-07	Eureka, Humboldt	Private	Educational (school playground)	Infill	Local organization (unincorporated) & individuals
Western Placer Citizens for an Agricultural and Rural Environment v. County of Placer	144 Cal.App.4th 890 (3rd Dist.)	Nov-06	Near Lincoln, Placer	Private	Industrial	Other	Local organization (incorporation suspended)
Citizens for Open Government v. City of Lodi	144 Cal.App.4th 865 (3rd Dist.)	Oct-06	Lodi, San Joaquin	Private	Commercial	Greenfield	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	Public	Other (habitat conservation plan) <sup>39</sup>	Infill <sup>40</sup>	Local organization (incorporated)
Gilroy Citizens for Responsible Planning v. City of Gilroy	140 Cal.App.4th 911 (6th Dist.)	Jun-06	Gilroy, Santa Clara	Private	Commercial	Greenfield <sup>41</sup>	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	Private	Commercial (hotel)	Infill	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	Private	Residential (demolition & re-development)	Infill	Local organizations (two, both unincorporated)

<sup>38</sup>While 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>HCP was proposed as part of ITP required for development-inducing flood control measure.

<sup>40</sup>The ITPs issued in the challenged HCP included both development within city boundaries, and 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>41</sup>Project proposed at city boundary, in area annexed by city in 1993 and zoned for high-density commercial use.

**TABLE 2: Unsuccessful Challenges to the Merits of EIRs (Defendant Victories)**

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	Public	Mixed use (general plan update)	Infill	Local organizations (two, both unincorporated)
El Morro Community Ass'n v. Calif. Dep't of Parks & Recreation	122 Cal.App.4th 1341 (4th Dist.)	Nov-04	Laguna Beach, Orange	Public	Other (conversion of mobilehome park to day-use parkland)	Other	Local organizations (one incorporated suspended, one unincorporated)
Nacimientto Regional Water Management Advisory Committee v. Monterey County Water Resources Agency	122 Cal.App.4th 961 (1st Dist.)	Sep-04	Lake Nacimiento, San Luis Obispo	Public	Infrastructure (water management)	Other	Local organization (incorporated)
Sierra Club v. County of Napa	121 Cal.App.4th 1490 (1st Dist.)	Aug-04	Near Napa, Napa	Private	Commercial (winery)	Greenfield	State/regional organization
Defend the Bay v. City of Irvine	119 Cal.App.4th 1261 (4th Dist.)	Jun-04	Irvine, Orange	Public	Mixed use (general plan amendment & zoning change)	Greenfield	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	Private	Commercial	Greenfield	Local organization (unincorporated)
Mira Mar Mobile Community v. City of Oceanside	119 Cal.App.4th 477 (4th Dist.)	May-04	Oceanside, San Diego	Private	Residential	Infill	Business & individual (mobile home community and owner)
Santa Teresa Citizen Action Group v. City of San Jose	114 Cal.App.4th 689 (6th Dist.)	Dec-03	San Jose, Santa Clara	Public	Infrastructure (water recycling program and pipeline)	Other	Local organization (incorporation suspended) & business
Ass'n of Irrigated Residents v. County of Madera	107 Cal.App.4th 1383 (5th Dist.)	Apr-03	Near Chowchilla, Madera	Private	Commercial (dairy)	Other <sup>42</sup>	State/regional organizations

<sup>42</sup>Project is a dairy, proposed on site currently used and zoned for agricultural use.

**TABLE 2: Unsuccessful Challenges to the Merits of EIRs (Defendant Victories)**

Neighbors of Cavitt Ranch v. County of Placer	106 Cal.App.4th 1092 (3rd Dist.)	Mar-03	Granite Bay, Placer	Private	Other (church)	Infill	Local organization (unincorporated association of neighboring property owners), individual
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	Private	Commercial	Infill	Local organization (unincorporated) & individuals
Placer Ranch Partners v. County of Placer	91 Cal.App.4th 1336 (3rd Dist.)	Jul-01	Placer (countywide)	Public	General Plan update restricting development	Infill <sup>43</sup>	Businesses
Silverado Modjeska Recreation and Parks District v. County of Orange	197 Cal.App.4th 282 (4th Dist.)	Jul-01	Silverado, Orange	Private	Residential	Greenfield	Government, local organization (unincorporated), individual
National Parks & Conservation Ass'n v. County of Riverside	71 Cal.App.4th 1341 (4th Dist.)	May-99	Near Desert Center, San Bernardino	Private	Infrastructure (landfill)	Other	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	Private	Industrial	Other	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	Private	Industrial	Other	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	Public	Mixed use	Infill	Governments

<sup>43</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.