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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO, CENTRAL DIVISION

THE CALIFORNIA CHAPARRAL INSTITUTE, Petitioner, v. COUNTY OF SAN DIEGO, Respondent.	Case No. 37-2009-00091583-CU-TT-CTL **PETITIONER'S REPLY BRIEF** Hearing: January 15, 2010 Time: 10:00 a.m. Dept.: SD-71 Date Action Filed: June 10, 2009 INDEPENDENT CALENDAR JUDGE: Hon. Ronald S. Prager

DATED: January 8, 2010

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I. SUMMARY OF REPLY BRIEF

The Court should issue a writ of mandate which sets aside the May 13, 2009, Minute Order of respondent COUNTY OF SAN DIEGO's Board of Supervisors (AR 174-175)[1], orders respondent to prepare an EIR on its whole project to clear trees, brush and vegetation from 304.85 square miles of San Diego County's rural backcountry, and orders respondent to suspend all project activities except for funding applications until it has shown it has fully complied with CEQA, for three reasons:

One, respondent has failed to meet its burden of proof that substantial evidence exists in the record to establish each element of the emergency exemption of Cal. Code Regs., Title 14, § 15269(c).[2]

Two, undisputed facts establish as a matter of law that respondent's whole project is to clear 304.85 square miles of San Diego County's rural backcountry -- an area the size of New York City.[3]

Three, the fundamental reasons why CEQA was enacted will not be furthered by allowing respondent to segment its project and declare each segment exempt. Such an adjudication would "in the name of 'emergency' . . . create a hole in CEQA of fathomless depth and spectacular breadth."

II. RESPONDENT HAS NOT MET ITS BURDEN OF PROOF TO ESTABLISH EACH ELEMENT OF THE EMERGENCY EXEMPTION

A. Respondent Has Not Met It's Burden

An agency bears the burden to demonstrate with substantial evidence that its action fell within the exemption. (*California Unions for Reliable Energy v. Mojave Desert Air Quality Management District* (2009) 178 Cal.App.4th 1225, 1239, 1245; *Great Oaks Water Co. v. Santa Clara Valley Water Dist*. (2009) 170 Cal. App. 4th 956, 968.) Substantial evidence must exist in the record of every element of the emergency exemption. (*Calbeach Advocates v. City of Solana Beach* (2002) 103 Cal.App.4th 529, 540-541 (*Calbeach Advocates*); *Western Municipal Water District v. Superior Court* (1986) 187 Cal.App.3d 1104, 1113 (*Western*).)

In this case, respondent fails to meet its burden that substantial evidence exists to establish five elements of the emergency exemption: (1) a short term project; (2) an occurrence not a condition; (3) a high probability of the occurrence in the short term; (4) time constraints so that the agency cannot complete the CEQA paperwork; and (5) the *Western* interpretation of the emergency exemption.

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[1] A cite to a document in the Administrative Record is referred to as AR [Page #]

[2] A cite to Cal. Code Regs., Title 14, §§ 15000, et seq. is referred to as "CEQA Guidelines."

[3] Petitioner requests that the Court take judicial notice under Evidence Code § 452(h) of the fact that the City of New York has "a land area of 305 square miles" by resorting to the source "http://en.wikipedia.org/wiki/New_York_City."

And, in this case, respondent fails to meet its burden to establish the alternative, the Governor issuing an emergency proclamation exempting a project from CEQA under the emergency exemption.

B. No Substantial Evidence of a Short-Term Project

One element of the emergency exemption is a short-term project. Cal. Code Regs., Title 14, § 15269(c) provides:

> "The following emergency projects are exempt from the requirements of CEQA.
>
> . . . (c) Specific actions necessary to prevent or mitigate an emergency. *This does not include long-term projects undertaken for the purpose of preventing or mitigating a situation that has a low probability of occurrence in the short-term*." (Italics added.)

In this case, it is undisputed that respondent's project is a long-term project, to be conducted "over multiple years" "through Fiscal Year 2012-2013." (AR 116, 127-128.)

Respondent's Brief fails to respond at all to California Chaparral's argument that the emergency exemption does not apply because respondent's project is a long-term project. (Respondent's Opposition Brief (ROB) at pp. 1-13.) Respondent admits by omission that substantial evidence does not exist in the record to establish this first element of the emergency exemption.

C. No Substantial Evidence of an Occurrence of Fire

A second element of the emergency exemption is an "occurrence" such as "a fire raging out of control" and not a "condition." Public Resources Code 21060.3[4] defines "emergency":

> "'Emergency' means a sudden, unexpected *occurrence*, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. *"Emergency" includes such occurrences as fire* . . ." (Italics added.)

"(T)he definition limits an emergency to an '*occurrence*,' not a condition . . . For example, if a . . . fire is raging out of control and human life is threatened as a result of delaying a project decision, application of the emergency exemption would be proper." (*Western, supra*, 187 Cal.App.3d at p. 1111; italics in original.)

In this case, there is no evidence in the record of any fire in San Diego County exceeding 100 acres in size during 2008 and 2009 -- the two year period before respondent filed its brief. (AR 140-141.) Indeed, respondent admits "the most recent devastating fire was in 2007 . . ." (ROB 1:5.) Substantial evidence does not establish this second element of the emergency exemption.

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[4] All statutory references are to the Public Resources Code.

D. No Substantial Evidence of Imminent Danger Because of A High Probability of the Occurrence of Fire In The Short Term

A third element of the emergency exemption is "imminent danger" because of a "situation" that has a high "probability of occurrence in the short term." (§ 21060.3; CEQA Guidelines § 15269(c).)

First, there are no "facts" in the record to establish imminent danger. There is no evidence of any fire in San Diego County exceeding 100 acres in size during 2008 and 2009. (AR 140-141.)

Second, there is no "expert opinion supported by facts" in the record. No expert opines fire is "imminent" and has a high "probability of occurrence in the short term." (AR 1 - 185.)

Third, there is no "reasonable assumptions predicated upon facts" in the record for two reasons:

One, the last decade of the history of wildfires in San Diego County does not establish "reasonable assumptions predicated upon facts" to establish the element of imminent danger. The true facts are that there were only minor fires from 2000 through 2002 and 2004 through 2006; the major fire of October 2003 had been over for five years and seven months when respondent invoked the emergency exemption; the major fire of October 2007 had been over for one year and seven months; and there were no fires exceeding 100 acres during 2008 and 2009. (AR 140-141.) What can at best be reasonably assumed from these "facts" is that the occurrence of wildfire is highly unpredictable.

Two, the Governors' proclamation and minute orders also do not establish facts from which there is a reasonable assumption of the element of "imminent danger." (AR 144-145, 147-149, 151-153.) California Chaparral can find no statute, regulation or opinion which provides or holds a Governor's proclamation or minute order of emergency which *does not exempt a project from CEQA* constitutes substantial evidence. Further, the proclamation and minute orders do not state facts from which an imminent fire can be reasonably assumed. (*Id*.) And they do not contain expert opinion. (*Id*.)

Finally, respondent's argument substantial evidence exists in the record is nothing more than argument without merit for two reasons:

Respondent first responds by characterizing that the holding of *Calbeach Advocates* is that the emergency exemption "applies . . . if the project's purpose is to prevent an occurrence that is *likely to happen in the future*" citing to 103 Cal.App.4th at p. 537. (ROB 8:22-24; italics added.) Respondent mischaracterizes *Calbeach Advocates*. There is no broad language in the opinion about "likely to

happen in the future." (*Id*.) Rather, the Court expressly held in *Calbeach Advocates* that the emergency exemption applied because experts opined a coastal bluff could collapse "within a few weeks":

> "CalBeach also contends substantial evidence does not support the finding that the notch that developed in the bluff required immediate action. CalBeach bases its contention on the length of time between the bluff fracture in February 2000 and the application for an emergency permit in December 2000. As discussed in Skelly's November 16 letter, the clean sands in the middle of the bluff and the fissure in the Torrey sandstone eroded quite rapidly, such that the notching in the sandstone increased by at least a foot since January. It was this rapid erosion that resulted in an emergency by November 16, when that letter was written. Further, Skelly stated the bluff condition had become an emergency; the bluff could collapse "within a few weeks," requiring "immediate action." Crampton stated, "If this remaining section of coastline is not stabilized, this coastal bluff will also collapse, placing the bluff-top residences in *immediate* peril." (Italics added.) The professional opinion of these two engineers, both of whom have substantial experience in coastal stabilization projects and coastal erosion, provides substantial evidence that the condition of the bluff required immediate action." (*Calbeach Advocates, supra,* 103 Cal.App.4th at p. 538; italics in original."

Respondent second claims there is an "imminent threat of fire danger" because the "record specifically documents those fires which burned *at least 100 acres* from 2000 to 2007." (ROB 9:24-25; italics in original.) More than two years after the October 2007 fire, with no fires during 2008 and 2009, respondent argues wildfires are always raging out of control for purposes of CEQA review.

Arguments without facts, without expert opinion, and unreasonable assumptions, do not create substantial evidence which establishes this third element of the emergency exemption.

E. No Substantial Evidence of Time Constraints So That Respondent Cannot Complete The Requisite CEQA Paperwork

A fourth element of the emergency exemption is that "a project arises for which the lead agency simply *cannot* complete the requisite paperwork within the time constraints of CEQA." (*Western, supra,* 187 Cal.App.3d at p. 1111; italics in original.)

In this case, Respondent's Brief admits respondent has had *more than seven years* to complete the requisite paperwork. Respondent's Brief represents in the "Statement of Relevant Facts":

> ". . . The County worked with other governmental agencies in identifying the areas of of highest priorities for potential fire danger. (AR 3, 30.)" (ROB 2:2-4.)

However AR 3 admits this "work" started more than seven years ago, in September 2002:

> ". . . *Since September 2002*, the County of San Diego has worked with the Forest Area Safety Taskforce (FAST), a coalition of 81 local, State and federal agencies and community organizations and private citizens, chaired by the County of San Diego." (AR 3; italics added.)

Respondents Brief then represents in the "Statement of Relevant Facts":

> "In an effort to reduce the potential for losses do to fire, the County of San Diego created a Fire Safety and Fuels Reduction ('FSFR') program. . . ." (ROB 2:1-2.)

However, respondent created that FSFR program *five and one-half years ago* during June 2004. The "Agenda Item Information Sheet" to the Board of Supervisors states:

> "**PREVIOUS RELEVANT BOARD ACTIONS:**
>
> . . . *June 16, 2004* (4), established the San Diego County Fire Safety and Fuels Reduction Program to "maximize federal grants and provide comprehensive fuels treatment in all high-risk areas." (AR 121; italics added.)

Respondents Brief then represents in the "Statement of Relevant Facts":

> ". . . The removal of dead, dying and diseased trees in the high priority areas of Palomar Mountain, Lost Valley and greater Julian directly contributed to the success of protecting the structures and limiting losses in the Palomar Mountain communities during the 2007 wildfires. (AR 51, 63.)" (ROB 2:5-8.)

However, AR 51 admits respondent did this work "from 2004 to 2006":

> ". . . The Dead, Dying and Diseased Tree program removed dead trees within 200 feet of of structures and roads *from 2004 to 2006* on Palomar Mountain." (AR 51; italics added.)

Respondent does not then dispute the accuracy of the facts summarized in Petitioner's Opening Brief that after 2006, respondent did everything but CEQA paperwork: respondent applied for Federal grants of $487,767,500 (AR 66); had its task force identify and rank nine high fire risk areas (AR 25); directed staff to develop a "comprehensive program" to remove trees, brush and vegetation (AR 28); held workshops on the comprehensive program (AR 34-39); held a Board of Supervisors hearing on the final "Vegetation Management Report" which summarized "what is planned in the next five years" (AR 26, 49-55); adopted an order which received the Report and directed "staff to conduct appropriate California Environmental Quality review for any new proposed projects which will implement actions identified in the Vegetation Management Report" (copy attached to POB); approved the subproject (AR 66, 132-133); and declared the subproject exempt from CEQA (AR 174-175).

Substantial evidence does not establish this fourth element of the emergency exemption.

F. <u>No Substantial Evidence To Establish The Western Interpretation</u>

In *Western, supra*, 187 Cal.App.3d at p. 1104, the Court of Appeal gave the following binding interpretation of the emergency exemption:

> "The "emergency" exception of section 21080, subdivision (b)(4) is obviously extremely narrow. "Emergency" as defined by section 21060.3 is explicit and detailed. We particularly note that the definition limits an emergency to an "*occurrence*," not a condition, and that the occurrence must involve a "*clear and imminent danger, demanding immediate action*."
>
> As one commentator has noted: "At least in principle, the emergency exemptions are appropriate, common sense provisions. The theory behind these exemptions is that **if a project arises for which the lead agency simply *cannot* complete the requisite paperwork within the time constraints of CEQA, then pursuing the project without complying with the EIR requirement is justifiable. For example**, **if . . . a fire is raging out of control and human life is threatened as a result of delaying a project decision, application of the emergency exemption would be proper**." (Comment, *The Application of Emergency Exemptions Under CEQA: Loopholes in Need of Amendment*? (1984) 15 Pacific L.J. 1089, 1105, fn. omitted.)
>
> Although (real party) urges that 'CEQA, including its environmental impact report requirements, shall not apply to specific actions necessary to prevent or mitigate earthquakes or other soil or geological movements,' this interpretation is unsupported by the text of the exemption. Such a construction completely ignores the limiting ideas of "sudden," "unexpected," "clear," "imminent" and "demanding immediate action" expressly included by the Legislature and would be in derogation of the canon that a construction should give meaning to each word of the statute. (See *Pacific Legal Foundation* v. *Unemployment Ins. Appeals Bd*. (1981) 29 Cal.3d 101, 114 [172 Cal.Rptr. 194, 624 P.2d 244].) **Moreover, in the name of "emergency" it would create a hole in CEQA of fathomless depth and spectacular breadth. Indeed, it is difficult to imagine a large-scale public works project, such as an extensive deforestation project** . . . , **which could not qualify for emergency exemption from an EIR on the grounds that it might ultimately mitigate the harms attendant on a major natural disaster**. The result could hardly be intended by the careful drafting of the Legislature, and is unmistakably opposed to the policy of construing CEQA to afford the maximum possible protection of the environment. (See *Friends of Mammoth, supra*, 8 Cal.3d at p. 259.)" (*Western, supra*, 187 Cal.App.3d at pp. 1111-1112; italics in original; bold added.)

No substantial evidence exists in the record to establish the elements of this binding interpretation: an occurrence such as a fire raging out of control; sudden; unexpected; clear; imminent; demanding immediate action; threat to human life as a result of delaying a project decision; and time constraints which prevent an agency from completing the requisite CEQA paperwork.

G. <u>No Emergency Proclamation Exempting The Project From CEQA Alternative</u>

California's governors do have the power to and do exempt projects from the requirements of CEQA based on the emergency exemption. California Chaparral has requested that this Court take

judicial notice of Governor Schwarzenegger's February 27, 2009, "Proclamation" of a "State of Emergency - Water Shortage" which suspended the requirements of CEQA regarding drought attack actions based on the emergency exemption.

Governor Gray Davis' March 7, 2003, Emergency Proclamation, and Governor Arnold Schwarzenegger's May 9, 2007, and May 9, 2008, Executive Orders, do not exempt deforestation projects from the requirements of CEQA. (AR 144-145, 147-149, 151-153.)

Respondent's Opposition Brief does not respond at all to California Chaparral's argument. Substantial evidence does not establish the emergency proclamation or order from the Governor exempting the project from CEQA alternative.

III. RESPONDENT VIOLATED CEQA WHEN IT SUBDIVIDED THE WHOLE PROJECT

This Court should adjudicate as a matter of law that respondent's whole project is to clear trees, brush and vegetation from 304.85 square miles of San Diego County's rural backcountry:

A. What Constitutes Respondent's Project Is An Issue of Law

Whether an activity is the project is an issue of law that can be decided on undisputed facts in the record. (*Sunset Sky Ranch Pilots Assn. v. County of Sacramento* (2009) __ Cal.4th __, 2009 Cal. LEXIS 13169 (December 28, 2009); *Muzzy Ranch Co. v. Solano County Airport Land Use Com*. (2007) 41 Cal.4th 372, 382.)

In this case, respondent does not dispute the accuracy of any of the facts summarized in California Chaparral's Opening Brief which establish respondent's whole project is to remove trees, vegetation and brush from 304.85 square miles of San Diego County's rural backcountry. (ROB 1-13.) This Court can and should adjudicate as an issue of law that this constitutes respondent's whole project.

B. The Court Must Consider All Surrounding Circumstances

In *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 (*Save Tara*), the Supreme Court disapproved those opinions which applied a deferential test to an agency's decision as to what constitutes a project (*Id*. at p. 131, fn. 10)[5] and held the court must "independently" determine what constitutes a project (*Id.* at p. 131). The Court then restated the rule enunciated in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, that "an EIR must be performed before

[5] *City of Vernon v. Board of Harbor Comrs.* (1998) 63 Cal.App.4th 677, 690; *Stand Tall on Principles v. Shasta Union High Sch. Dist.* (1991) 235 Cal.App.3d 772, 780; *Mount Sutro Defense Committee v. Regents of the University of California* (1978) 77 Cal.App.3d 20, 40.

a project is approved":

> ". . . (W)e summed up the issue and attempted to state a rule, as follows: 'We agree that environmental resources and the public fisc may be ill served if the environmental review is too early. On the other hand, *the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project*. … For that reason, "'EIRs should be prepared as early in the planning process as possible to enable environmental considerations to influence project, program or design."" (*Id*. at p. 395.) We also observed that *at a minimum an EIR must be performed before a project is approved*, for '[i]f postapproval environmental review were allowed, EIR's would likely become nothing more than *post hoc* rationalizations to support action already taken.' (*Laurel Heights I*, at p. 394.)" (*Save Tara, supra*, 45 Cal.4th at p. 130; italics added.)

Finally, the Supreme Court in *Save Tara* held that in independently deciding what constitutes a project, the "*courts should look . . . to the surrounding circumstances* to determine whether, as a practical matter, the agency has committed itself to the project as a whole or to any particular features . . ." (*Save Tara, supra,* 45 Cal.4th at p. 139; italics added.)

In this case, respondent argues this Court cannot consider, in determining what constitutes the project, respondent's actions preceding 180 days before the Board of Supervisors adopted the emergency exemption. (ROB 12:16-23.) Respondent makes this argument despite the fact that it extensively discusses its own conduct from 2002 through 2009 in its "Statement of Relevant Facts." (ROB 1:16-4:9.) Respondent's argument directly contradicts the holding of *Save Tara* that the "courts should look . . . to the surrounding circumstances." To adopt respondent's argument would constitute reversible error.

Respondent's conduct from 2002 through 2009 establishes that this is the exact situation described in *Laurel Heights I,* that there is such "bureaucratic and financial momentum" behind respondent's whole project that respondent has "a strong incentive to ignore environmental concerns."

C. Respondent's Vegetation Management Report Is Direct Evidence That Respondent Has Committed Itself To The Whole Project

The Executive Summary of respondent's Vegetation Management Report states:

> "Purpose of the Report
>
> . . . * Provide a list of vegetation management projects sorted by FAST target area and lead agency --- what has been completed in the past five years and *what is planned in the next five years* . . ." (AR 26; italics added.)

California Chaparral's Opening Brief quoted this statement as direct evidence of respondent's commitment to the whole project to clear 304.85 square miles of San Diego County's rural backcountry. (AOB 4:10-17.) Respondent's Opposition Brief does not respond to, and therefore omits by silence, that this is indeed direct evidence of respondent's commitment to the whole project. (ROB 1-13.)

D. There Are Reasonable Inferences Respondent Intends To Segment The Whole Project By Federal Grant And Declare Each Segment Exempt

It is undisputed that on March 25, 2009, respondent's Board of Supervisors adopted an order which received the Vegetation Management Report and ordered staff to conduct CEQA review:

> "Direct staff to conduct appropriate California Environmental Quality review for *any new proposed projects* which will implement actions identified in the Vegetation Management Report."[6] (Italics added.)

And it is undisputed that on March 18, 2009 -- seven days *before* the order -- the Deputy Director of the Department of Planning and Land Use completed a Notice of Exemption form for the subproject. (AR 122.)

One clear fact that can and should be reasonably inferred from the Board of Supervisor's use of the plural word "projects" in the order is that respondent intends to segment each portion of the whole project by each Federal grant received.

And one clear fact that can and should be reasonably inferred from the Deputy Director's prior preparation of the Notice of Exemption form is that respondent intends to declare each segment exempt under the emergency exemption.

E. Respondents' Applications for Federal Funding Is Proof Respondent Has Committed Itself To The Whole Project

A state agency must accompany a request for funds with an EIR. Section 21102 provides:

> "No state agency . . . shall request funds . . . other than a project involving only feasibility or planning studies for possible future actions which the agency . . . has not approved . . . which may have a significant effect on the environment unless such request . . . is accompanied by an environmental impact report."

Section 21102 does not expressly apply by its terms to respondent because the County of San Diego is not a state agency. (CEQA Guidelines § 15368.) However, there is a clear inference from section 21102 that a local agency's request for funds is direct evidence and proof of the agency's commitment to

[6] Respondent's counsel agreed the Board of Supervisor's March 25, 2009 Minute Order No. 2 approving receipt of the Vegetation Management Report would be added to the record. A copy is attached to California Chaparral's Opening Brief.

a project and obligation to prepare an EIR.

In this case, it is undisputed that respondent has applied for $487,767,500 of federal funding. (AR 66.) Respondent cannot reasonably argue that it will not accept the Federal funds if the applications are granted. Respondent's completed funding applications are the best evidence that respondent has committed itself to clear 304.85 square miles of San Diego County's rural backcountry.

IV. THE FOREST PRACTICES ACT DOES NOT EXEMPT THE PROJECT FROM CEQA

Respondent's argument that the subproject is exempt from CEQA because of the Forest Practices Act (Public Resources Code §§ 4511 et seq.) has no merit in statute, regulation, court opinion or fact:

The Forest Practices Act, and the regulations enacted thereunder including Cal. Code Regs., Title 14, § 896, do not apply to respondent's project because the project does not involve a "timber harvesting plan." "Timber harvesting plans" are logging operations carried out by timber owners or operators. (*Environmental Protection Information Center v. California Department of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 481 (*Environmental Protection Information Center*). In this case, respondent's project is to remove "vegetation," not just timber, from 304.85 square miles, and is not a logging operation carried out by a timber owner or operator. (AR 20-115.)

Even if the Forest Practices Act and the regulations applied to respondent's project, it would require that the functional equivalent of a full EIR be prepared for respondent's project. (*Environmental Protection Information Center, supra,* 44 Cal.4th at p. 481.) Cal. Code Regs., Title 14, § 896 provides:

> "(a) The purpose of the Forest Practice Rules is to implement the provisions of the Z'berg-Nejedly Forest Practice Act of 1973 *in a manner consistent with other laws, including but not limited to, . . . the California Environmental Quality Act (CEQA)* of 1970, . . . The provisions of these rules shall be followed by Registered Professional Foresters (RPF's) in preparing Timber Harvesting Plans, and by the Director in reviewing such *plans to achieve the policies of the Act as described in Sections* 4512, 4513, *21000, 21001, and 21002 of the Public Resources Code (PRC)*[7], and Sections 51101, 51102 and 51115.1 of the Government Code.
>
> It is the Board's intent that *no THP shall be approved which fails to adopt feasible mitigation measures or alternatives from the range of measures set out or provided for in these rules which would substantially lessen or avoid significant adverse impacts which the activity may have on the environment. The THP process substitutes for the EIR process under CEQA because the timber harvesting regulatory program has been certified pursuant to PRC Section 21080.5.* In recognition of that certification and PRC

[7] Public Resources Code §§ 21000, 21001, 21002 and 21080.5 are part of CEQA.

> Section 4582.75, these rules are intended to provide the exclusive criteria for reviewing THPs. If the Director believes that there are significant adverse environmental impacts not covered in existing rules, matters should be referred to the Board as otherwise specified in these rules."

In this case, there are no facts in the record that establish that respondent complied with the Forest Practices Act and the regulations enacted thereunder including Cal. Code Regs., Title 14, § 896. (AR 1 - 185.) There is no Registered Professional Forester or RPF; a RPF did not prepare a timber harvesting plan; the functional equivalent of a full EIR was not prepared; feasible mitigation measures were not adopted which would substantially lessen or avoid significant adverse impacts; alternatives were not adopted which would substantially lessen or avoid significant adverse impacts; and there was no certification of a timber harvesting plan by the State Board of Forestry under CEQA § 21080.5. (*Id*.)

Indeed, respondent's Board of Supervisors *admitted* CEQA applied when it invoked the CEQA emergency exemption. (AR 174-175.) They *admitted* the subproject was not exempt from CEQA because of the Forest Practices Act when it did not invoke that Act in approving the subproject. (*Id*.)

V. THE FUNDAMENTAL PURPOSES OF CEQA WILL NOT BE FURTHERED BY UPHOLDING THE EXEMPTION

California Chaparral suggests the fundamental purposes of CEQA can be broken down into four tenets: Public agencies must give consideration to environmental consequences in making decisions which may affect the environment; public agencies must make these decisions based on accurate and current information; transparency in government decisionmaking, that public agencies must disclose to the public the information they are relying in making these decisions; and public participation, the public has the right to participate in these decisions affecting their communities. (*See* §§ 21000-21003; and Michael H. Remy, et al., Guide To CEQA (2007 Solano Press Books), pp. 1 - 6, 13-36.)

In this case, it is undisputed that respondent's project will cause significant environmental impacts. Respondent admitted its project will cause a "clear, significant impact" when it invoked the emergency exemption. (*Western, supra,* 187 Cal.App.3d at 1113.) Experts who participated in respondent's workshops on the Vegetation Management Report expressed opinions about "the impact of strategic fuel modifications on ecosystem services (erosion control, water quality, hydrology, slope stability) and ecosystem persistence, structure (soil structure, species composition and potential spread of invasive species, species age (size) structure) and function (soil development, nutrient cycling,

species succession)." (AR 36.) Numerous experts submitted comment letters before the Board of Supervisors' March 25, 2009, hearing on that report setting forth uncontradicted expert opinion that the project will cause significant environmental impacts. (AR 173.) And the comment letter of Anne S. Fege, Ph.D., M.B.A., an Adjunct Professor in the Department of Biology at San Diego State University, submitted before the Board of Supervisors' May 13, 2009, hearing on the subproject, requested that "the Board direct County staff to . . . Comply with CEQA environmental documentation" because, among other reasons, respondent's proposed "vegetation removal increases soil erosion and dramatically reduces native habitats, local wildlife, and in some areas, threatened and endangered species." (AR 125.)

In this case, the first fundamental tenet of CEQA, consideration of environmental consequences, has not been met. Respondent has given no consideration to environmental consequences.

The second fundamental tenet, government decisions based on accurate and current information, has not been met. Respondent has had no studies prepared on environmental impacts.

The third fundamental tenet, transparency in government decisionmaking, has not been met. Respondent has not disclosed any studies to the public on the environmental impacts.

Finally, the fourth fundamental tenet, public participation, has not been met. The public has not been given the opportunities to participate in an EIR scoping hearing; submit comment letters on a draft EIR; and attend a public hearing of the public agency on the Final EIR.

The fundamental reasons why CEQA was enacted will not be furthered by allowing respondent to segment its project and declare each segment exempt. Such an adjudication would "in the name of 'emergency' . . . create a hole in CEQA of fathomless depth and spectacular breadth."

VI. CONCLUSION

The Court should issue the writ of mandate.

DATED: January 8, 2010

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