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California Land Use & Development Law Report

Supreme Court Agrees To Review Ninth Circuit NEPA Decision

On March 18, the U.S. Supreme Court decided to hear the case of [United States Forest Service v. Pacific Rivers Council](#), in which the Ninth Circuit overturned an Environmental Impact Statement for a 2004 amendment to a programmatic framework governing a series of logging plans for national forest lands in the Sierra Nevada Mountains. The Ninth Circuit's June 2012 decision announced that under the National Environmental Policy Act, an EIS must analyze the environmental consequences of a proposed plan "as soon as it is reasonably possible to do so" – even where the plan does not authorize any particular project, which would require its own site-specific NEPA review before going forward. The decision generated a substantial amount of controversy and a vigorous dissent, which argued that "the majority's opinion amounts to an inappropriate and substantial shift in our NEPA jurisprudence." See our [June 20th, 2012, post](#) for a discussion of the prior decision, which is one of a growing line of cases showing the deep divisions within the Ninth Circuit on environmental matters.

The issues in the case before the Supreme Court include: (1) whether the plaintiffs have standing; (2) whether their challenge is ripe in the absence of any site-specific logging project at issue; and (3) the level of environmental review required under NEPA for "programmatic" – as opposed to site-specific – federal agency actions. [United States Forest Service v. Pacific Rivers Council, Supreme Court Case No. 12-623](#).

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