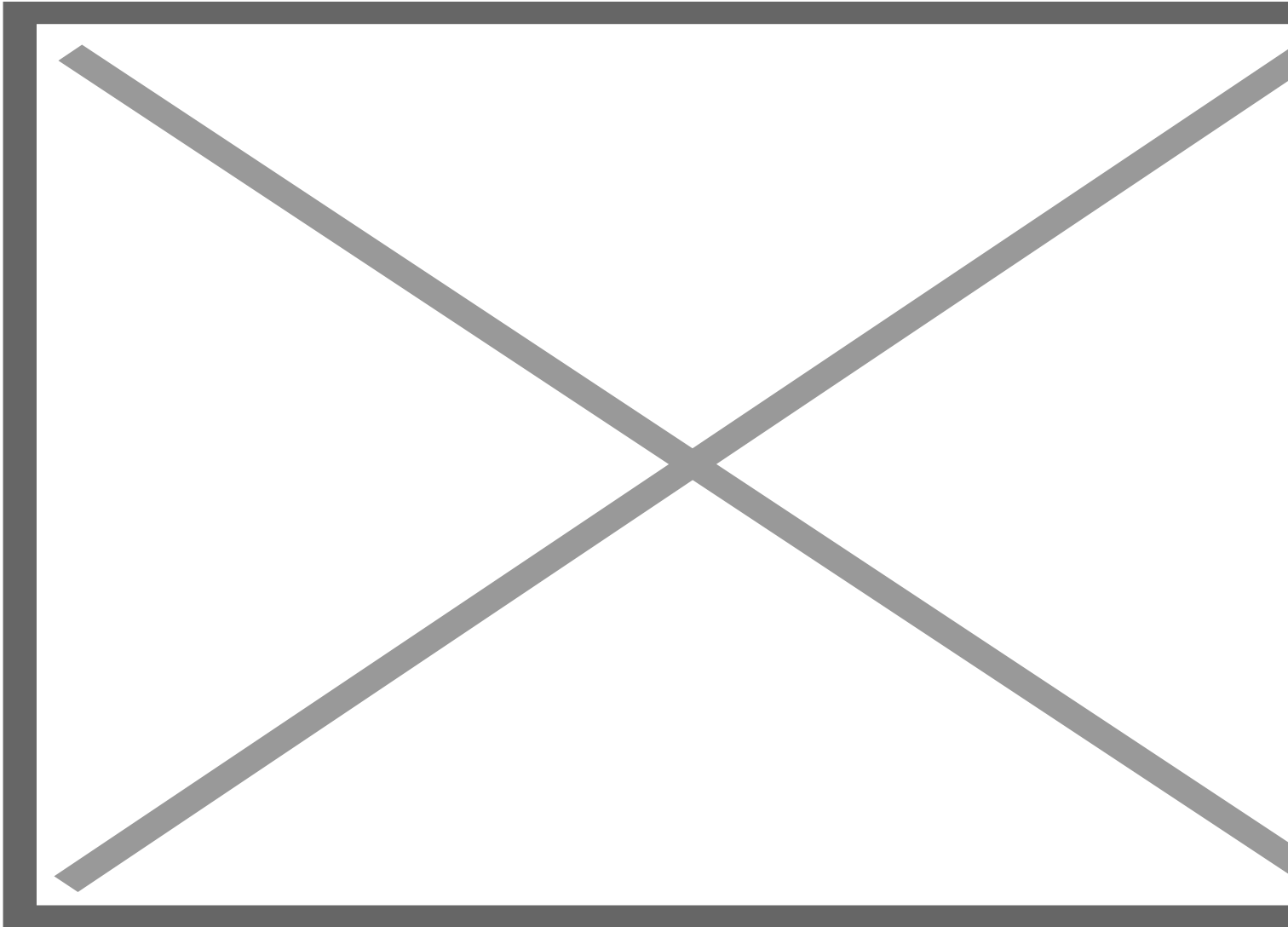


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June 27, 2017

Tie Vote Decision Resulting in Upholding Permit Approval was Subject to Challenge Under CEQA

The court of appeal rejected a claim that a tie vote of the air quality management district's hearing board resulted in "no action" and hence was not subject to judicial challenge. [Grist Creek Aggregates, LLC v. Mendocino County Air Quality Management District](#) (No. A149861, June 14, 2017).



The Mendocino County Air Quality Management District approved a permit for Grist Creek Aggregates to construct a heating and blending unit for production of rubberized asphalt. Plaintiff appealed issuance of the permit to the District's Hearing Board. After two hearings, the four members of the Hearing Board who participated in the appeal split evenly on their vote. The notice of the tie vote stated that the Hearing Board "was unable to make a decision due to a 2-2 tie vote. The Hearing Board will not hold any further hearings on the appeal." Plaintiff sought a writ of administrative mandate under Code of Civil Procedure section 1094.5 contending that the District and Hearing Board violated CEQA by approving issuance of the permit without having conducted environmental review. The Hearing Board argued that the 2-2 vote resulted in no action, and hence there was no "final administrative order or decision" subject to judicial review. The appellate court disagreed. Acknowledging that tie votes by administrative agencies mean different things in different contexts, the court concluded that in the statutory and procedural context presented, the tie vote gave rise to a claim for abuse of discretion by the Hearing Board. The effect of the Hearing Board's vote was to deny plaintiff's appeal, thereby leaving approval of the permit in place. Thus, the Hearing Board's failure to act was itself a "decision"

not to revoke the permit, which the court could review for abuse of discretion under Section 1094.5. While it was true, the court said, that lack of any factual findings by the Hearing Board would make such review more difficult, the tie vote did not render the decision immune from judicial review.