Blogs
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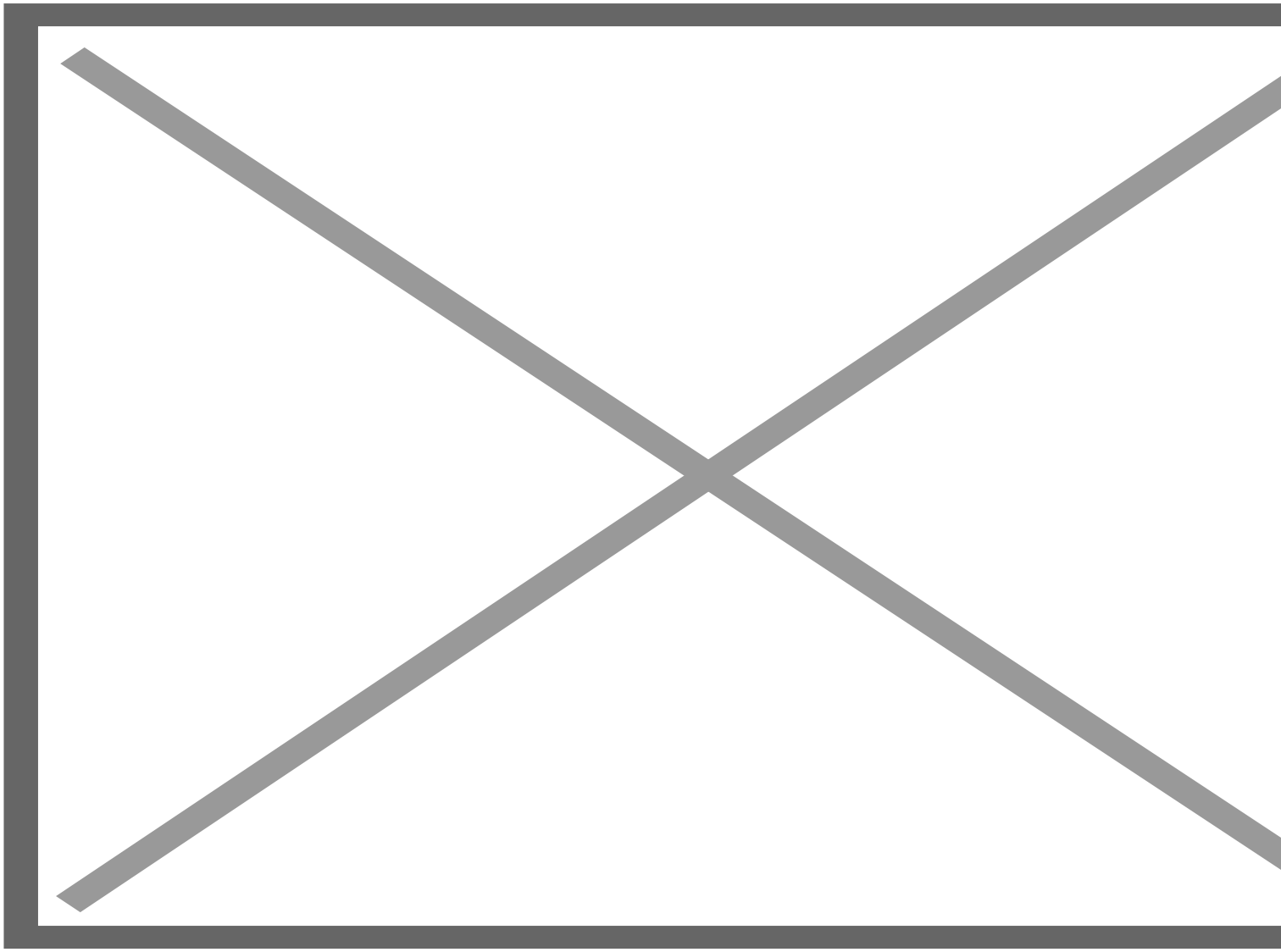
California Land Use & Development Law Report

Air District Permit May Be Challenged Under CEQA

In an unsurprising decision, a court of appeal held that CEQA claims may be asserted against an air quality management district. *Friends of Outlet Creek v. Mendocino County AQMD*, (First Dist. Ct. App., No. A148508 (decided 3/23/17; ordered published 5/25/17) The Mendocino County Air Quality Management District granted an "Authority to Construct" – a permit issued after the district determines a project will comply with air quality laws – for an asphalt production project. The district determined that no additional CEQA review was required in light of prior environmental review undertaken by the County.



Friends of Outlet Creek sued, claiming the district violated both CEQA and its own regulations in issuing the permit. The district demurred, contending that the only vehicle for bringing claims against an air district is Health & Safety Code section 40864, which states: "Judicial review may be had of a decision of [an air district] hearing board by filing a petition for a writ of mandate in accordance with Section 1094.5 of the Code of Civil Procedure." The district contended this section did not authorize claims under CEQA. The court sided with Friends. It ruled that claims may be brought directly under CEQA, and that a petitioner need not invoke section

40864 to challenge an air district decision. It noted "there is considerable precedent that air quality management districts can be sued for failing to comply with CEQA," while "no case . . suggests that only Health and Safety Code section 40864 can be invoked in challenging an action by an air quality management district." Moreover, the district had acknowledged that it has an obligation to comply with CEQA, in both its decision for the asphalt production project and in its regulations. The court cautioned, however, that Friends could not obtain greater relief under CEQA than it could under section 40864. The remedy would be limited to a writ of mandate under CCP section 1094.5, and the case could be used only to address the validity of the district's permit, not the county's prior decisions related to the project.

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