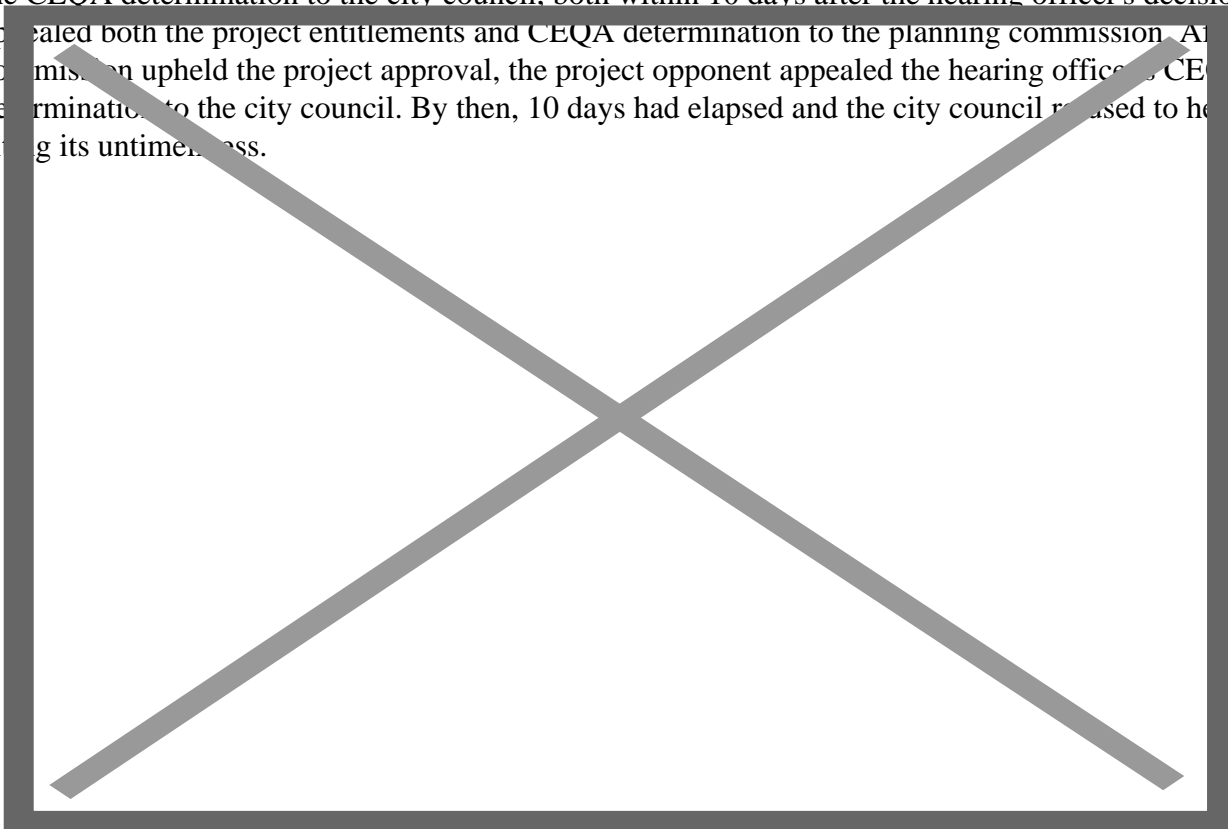


## City's Bifurcated Procedure For Appealing Approval of Entitlements Separately From CEQA Determinations Upheld

The Fourth District Court of Appeal upheld a mitigated negative declaration where the project opponent correctly appealed the approval of entitlements but failed to properly appeal the CEQA determination under the City of San Diego's bifurcated appeals process. *Clews Land & Livestock, LLC v. City of San Diego*, 19 Cal. App. 5th 161 (2017). A city hearing officer approved permits and adopted a mitigated negative declaration for development of a private school on Clews Ranch Road, adjacent to a horse ranch owned by Clews Land & Livestock. Under the city code the entitlement approvals had to be appealed to the planning commission, and the CEQA determination to the city council, both within 10 days after the hearing officer's decision. Clews Land appealed both the project entitlements and CEQA determination to the planning commission. After the planning commission upheld the project approval, the project opponent appealed the hearing officer's CEQA determination to the city council. By then, 10 days had elapsed and the city council refused to hear the appeal, citing its untimeliness.



Clews Land

filed suit and the trial court upheld the city's actions. On appeal, the court agreed with the trial court that Clews Land failed to exhaust its administrative remedies and rejected the claim that the city's bifurcated appeal process violated CEQA. The hearing officer was the "decision making body" for the project, with authority under the city code to approve the permits and to comply with CEQA by adopting or certifying the appropriate environmental document. And under the city code, all CEQA determinations not made by the city council had to be appealed directly to the city council. Although the court had concluded Clews Land had failed to exhaust administrative remedies, it nevertheless addressed its challenges to the mitigated negative declaration. First, the

court was generally dismissive of the claim that the project would have a significant impact on fire hazards in the area. The court found that neither the project opponent nor their expert, made a fair argument as to why the project would significantly increase fire hazards. The expert's questions and comments were general in nature and did not establish a nexus to the project. Furthermore, that the project was located in a severe fire hazard zone was, on its own, insufficient to establish a significant impact: CEQA requires consideration of a project's impact on the existing environment, not the environment's impact on the project. The court also quickly dismissed claims of impacts on traffic. The project opponent's lay testimony that Clews Ranch Road could not support both the horse ranch and the school was insufficient because no factual basis was offered for this conclusion. The court observed that Clews Ranch Road was 20 feet wide, only 1,650 feet long, and had historically supported traffic to and from the large commercial ranch without incident. In regards to noise impacts, Clews Land alleged that construction of the school and school activities could frighten horses and disrupt ranch operations. The court was not persuaded because the project was located near existing sources of noise, a busy highway and the large horse ranch. Furthermore, the court explained, the particular noise impacts on the horse ranch are not relevant under CEQA, which requires analysis of a project's impact on the environment, not on particular persons or the operation of a nearby business. The court also found no issue with the addition of the school's shuttle bus plan and a condition that the school be closed on red flag fire warning days, after the mitigated negative declaration was circulated. These conditions of approval, the court concluded, were voluntary and therefore did not constitute mitigation measures requiring recirculation of the mitigated negative declaration.

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