

Agency Actions to Implement a Previously-Approved Project Are Not Subsequent Discretionary Approvals Requiring Supplemental Environmental Review

After a public agency approves a project, the agency's actions to implement the project—in this case, applying for and accepting a streambed alteration agreement from the California Department of Fish and Wildlife—are not subsequent discretionary approvals that require supplemental environmental review under CEQA. [Willow](#)



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approving the project, the City applied for and received a streambed alteration agreement from CDFW. The original SAA for the project expired at the end of 2017, before the project was completed. The City then applied for a new SAA and, following some negotiations over measures with CDFW, accepted and signed a new SAA in 2018. By that time, the railroad bridge had been added to the California Register of Historical Resources. The petitioner sued the City, arguing that the City's application for and acceptance of a new SAA were discretionary approvals that required supplemental environmental review under CEQA. (Under Public Resources Code section 21166 and CEQA Guidelines section 15162, supplemental environmental review following project approval is required only in connection with a subsequent discretionary approval for the project.) The court held that the

City's application for and acceptance of the new SAA were not discretionary approvals but, rather, were simply steps in implementing the project that it had already approved in 2014. Because the City's actions with respect to the new SAA in 2018 were not discretionary approvals, no supplemental environmental review was required. The court explained that the petitioner's position was inconsistent with the language and purposes of Public Resources Code section 21166 and CEQA Guidelines section 15162, which were intended to promote finality and efficiency by limiting the circumstances under which environmental review is required following project approval: "If every action [in connection with a project] had to be considered an 'approval,' each and every step that the City took toward *implementing* an approved project would necessarily constitute another 'approval on' the project, thereby endlessly reopening the City's long-final consideration of the project's environmental impacts." The court also noted that CDFW's approval of the SAA in 2018 was a discretionary approval, but the petitioner had not challenged that decision in the lawsuit.

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