

## **County Did Not Violate Its Duties Under CEQA By Approving a Project at the Density Agreed to in a Stipulated Judgment**

The court held that the County of Marin did not abdicate its duties under CEQA when it approved a specific project pursuant to a stipulated judgment. *Tiburon Open Space Committee v. County of Marin*, 78 Cal. App. 5th 700 (2022).

The dispute in this case surrounded the potential development of a 110-acre parcel on an undeveloped hilltop in Tiburon owned by The Martha Company (Martha). Beginning in 1975, Martha faced opposition to their development plans. This opposition resulted in two stipulated federal court judgments, the latest in 2007, with the most significant result being that the County of Marin agreed to approve Martha for the development of a minimum of 43 residential units on the disputed parcel. In 2017 the County certified the EIR for the conditional approval of Martha's 43-unit development.

The court found no merit in these claims. First, the court found that the County did not abdicate its CEQA duties when agreeing to the stipulated judgments because 1) the stipulated judgment did not excuse the County from complying with CEQA and 2) land use laws - including CEQA - are police powers that cannot be contracted away. EIRs were implicitly or explicitly required in the 1976 and 2007 stipulated judgments and bypassing the CEQA process was not an element of the judgments.



In response to the conditional project approval, the Town of Tiburon and residents of the Town brought suit claiming that by agreeing to comply with the 2007 stipulated judgment, the County had effectively consented to not apply the California Environmental Quality Act or other state laws to prevent the Martha development. Furthermore, the Town and the private plaintiffs contend that the County ignored CEQA when it approved the project despite the environmental impacts shown in the EIR and that it was an abuse of discretion to approve the 43-unit project as opposed to a smaller more environmentally sensitive alternative.

Second, the court found that the County did not, in fact, use the stipulated judgment to bypass the CEQA process. The EIR prepared for project approval was over 800 pages and went through three drafts with extensive revisions. The administrative process for the project included planning commission meetings, public input, public hearings, and consultation with outside agencies (such as the fire department), all before the Board of Supervisors made its required findings and confirmed that it had used independent judgment in approving the project.

The court found that had the Board felt free to ignore CEQA as a result of the stipulated judgment, it would not have gone through such a "protracted charade". The court also found that the County's acknowledgement in the stipulated judgment that "any development alternative, or any proposed mitigation measure, which does not accord Martha all rights to which it is entitled under the 1976 Judgment is legally infeasible" did not change the essence of the County's CEQA responsibilities. Under CEQA, agencies must avoid or mitigate significant environmental impacts in project approvals to the extent feasible, but any mitigation measure that is at odds with a legal obligation is legally infeasible. Relying on caselaw affirming that a state statute can render less dense project alternatives legally infeasible, the court found that "no reason in law or logic prevents a final federal court judgment from having the same impact."

## Authors



### [Lucy Miller](#)

Associate

[LucyMiller@perkinscoie.com](mailto:LucyMiller@perkinscoie.com)

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