



San Diego City Attorney Jan I. Goldsmith

NEWS RELEASE

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Court Upholds City's Right to Protect Homes in Emergency

An appellate court today ruled that the City acted legally when it repaired a ruptured storm drain whose outflow was eroding a steep slope and threatening to destabilize the hillside below homes in La Jolla.

The City was sued for violating the California Environmental Quality Act by not conducting an after-the-fact review of the emergency project's environment impacts.

The 4th District Court of Appeal upheld the City's interpretation of CEQA review for emergency repairs.

CEQA exempts projects that involve the need to take immediate action from further environmental review. Engineers had concluded the erosion posed an imminent threat to the homes and to public safety.

The appellate court applied several exemptions to the City's response, including the "common sense" exemption.

City Attorney Jan Goldsmith said the decision reaffirms what we all know: protecting people is the first priority in emergencies.

"This is an important decision because the court recognizes that the City has some flexibility to deal with a threat to public safety," Goldsmith said.

The severity of the problem created by the failed storm drain was apparent in January 2010. The City issued a Notice of Exemption (NOE) under CEQA for emergency storm drain repairs to the hillside below single family homes on Camino Rialto in La Jolla. The City concluded if the erosion continued unabated, it would present an imminent threat to public safety. It issued an emergency permit on January 15, 2010.

No challenge to the NOE or permit was filed and the emergency storm drain repairs were completed in May 2010. Pursuant to the City's Municipal Code, the City filed an application for a regular coastal development permit formalizing the emergency repair and a site development permit to revegetate the impacted slope with native plants.

The La Jolla Community Planning Association recommended approval of the project and an NOE was issued on November 29, 2011. The City concluded that the project was exempt from CEQA because (amongst other exemptions) the only physical change associated with the project was the implementation of the revegetation plan which would not result in a significant effect on the environment. The determination of environmental

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exemption was appealed to the Planning Commission, and the project was later appealed to the City Council. Ultimately a suit was filed in Superior Court, arguing the City violated CEQA by not conducting environmental review for the emergency storm drain repair. The lower court agreed with the plaintiff's interpretation that further CEQA review applied to the emergency storm drain repair and the City appealed.

The Court of Appeal reversed, agreeing with the City that the proper baseline for the project under CEQA was *after* the emergency storm drain repairs were completed. The Court confirmed City's argument that the emergency storm drain repair work required only the original NOE, which no one challenged. The Court of Appeal further noted, the only additional work remaining was the revegetation of the hillside with native plants, which "indisputably would *improve* the site's physical conditions."

The Court provided the City with the necessary clarity going forward when undertaking emergency repair work needed to protect public health and safety, and ordered the City shall recover its costs on appeal.

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