PACIFIC LEGAL
FOUNDATION

April 25, 1984

Mr. William J. Zisk
205 Thomas Street
Roseville, CA 95678

Dear Mr. Zisk:

Thank you for your materials and visit of April 17, 1984. I regret that it appears that there is little that is appropriate for the Foundation to do concerning your claims against your former attorneys or the City of Roseville. We sympathize with the hardship you have undergone, but have discovered no avenue of relief that would be appropriate for PLF to pursue.

At the present time it appears that you have three distinct difficulties. The first and foremost are the claims against you by your former attorneys for their fees. However, Pacific Legal Foundation does not have sufficient experience in attorney fee recovery suits to lend you able assistance in this matter. Similarly, we will be unable to assist you in your cross-claim for malpractice. In order to diligently defend your position and prosecute your counterclaim to protect whatever rights you may have I again urge you to obtain the assistance of legal counsel if that is at all possible.

The second problem you have is the allegedly inaccurate zoning of your remaining six acres of land as flood plain. Because the title to these six acres may ultimately depend on the litigation surrounding your attorneys' fees, we have decided that it is premature for Pacific Legal Foundation to become involved in this matter.

Your third and final difficulty is the finality of the condemnation of the disputed six acres to which the City of Roseville now has title. You suggested two potential avenues by which the condemnation might be overturned. First, you have advanced the idea that the city's failure to file an environmental impact report on the bicycle path pursuant to Public Resources Code § 21167 is grounds to set aside the condemnation judgment. Because of the unusual nature of this claim, and because it

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revolves around several unique facts that may not have a broad based applicability we must decline from becoming involved. As I stated when you visited it is not at all clear when a government "project" has reached the threshold where an environmental impact report is required. The statutory and case law is not clear whether or not an environmental impact report must be filed when there is a consolidated condemnation and inverse condemnation action precipitated by a municipality's refusal to permit an owner to construct a home when that denial is in response to a tentative but as yet unformulated plan for a bicycle path. In addition, Section 21167 states that any action to set aside a government action on these grounds must be filed within 180 days after commencement of the project. It is unclear whether the commencement of the project began when the city initiated a condemnation action, when the Superior Court signed the final order in condemnation on April 19, 1982, when the last appeal in this action was turned down on May 12, 1983, or when the City of Roseville made the final payment into the court on the condemnation award on December 19, 1983. It is only with the last mentioned possibility that you have a chance not to be excluded by the statute of limitations. Therefore, in order to protect whatever legal rights you may have, you must act quickly in order to maintain those rights.

You have also suggested that the condemnation action may be overturned because of the allegedly fraudulent behavior of the Roseville Planning Department in labeling your property as being within a 100 year flood plain. Once again, the unique factors involved in this situation render it impossible for Pacific Legal Foundation to become involved. If you are to be successful in this matter you must be able to convince the court that there was indeed fraud on the part of the city planning department rather than mere poor judgment, and that this alleged fraud caused a significant interference with the fact finding process in the condemnation trial. You must also be able to come within any statutory time period; because the alleged fraud occurred in the early 1970s and you were aware of the alleged fraud by at least the late 1970s you should move quickly and consult with a private attorney to determine whether or not whatever legal rights you may have are barred by any statute of limitations.

It is unfortunate that we shall be unable to render you assistance in these matters. PLF receives many more requests for assistance than it is able to accept. Due to our limited resources, only a small fraction of those cases presented to

the Foundation can be accepted. PLF attempts, through its case evaluation process, to select for its participation those cases which have broad based applicability or have a precedent setting potential. Regrettably, many matters which are presented for our review are, of necessity, rejected in our case selection process because they involve issues which have only limited applicability and therefore are more appropriately handled by private counsel. Our review of your request has been limited to a determination of whether our Foundation should undertake the matter. Nothing we have said should be taken as a review for the purposes of determining your rights or remedies or of influencing in any way your course of action.

Thank you again for your interest in the Foundation and for bringing this matter to our attention.

Sincerely,

James S. Burling

JAMES S. BURLING
Fellow, College of
Public Interest Law

A disclosure need not be made beyond that required within the medical community when a doctor can prove by a preponderance of the evidence he relied upon facts which would demonstrate to a reasonable man the disclosure would have so seriously upset the patient that the patient would not have been able to dispassionately weigh the risks of refusing to undergo the recommended treatment. (E.g., see discussion of informing the dying patient: Hagman, *The Medical Patient's Right to Know, supra*, 17 U.C.L.A. L.Rev. 758, 778.) Any defense, of course, must be consistent with what has been termed the "fiducial qualities" of the physician-patient relationship. (*Emmett* v. *Eastern Dispensary and Casualty Hospital* (1967) 396 F.2d 931, 935 [130 App.D.C. 50].)

The judgment is reversed.

Sullivan, Acting C. J., McComb, J., Peters, J., Tobriner, J., and Burke, J., concurred.

[Sac. No. 7924. In Bank. Sept. 21, 1972.]

FRIENDS OF MAMMOTH et al., Plaintiffs and Appellants, v. BOARD OF SUPERVISORS OF MONO COUNTY et al., Defendants and Respondents; INTERNATIONAL RECREATION, LTD., Real Party in Interest and Respondent.

SUMMARY

The trial court denied a petition in administrative mandamus by an unincorporated property owner's association and an individual seeking to set aside a county planning commission's issuance of conditional use and building permits to a private corporation for the construction of condominiums, and the county board of supervisor's affirmance of such action. Two of the members of the class represented by the individual plaintiff had appealed the matter to the board of supervisors. The question presented was whether the California Environmental Quality Act applies to private activities for which a permit or other entitlement is required so as to make mandatory the filing of an environmental impact report pursuant to Pub. Resources Code, § 21151, stating that local government agencies (such as the county involved) shall make such a report "on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency." (Superior Court of Mono County, No. 4637, Walter R. Evans, Judge.)

The Supreme Court reversed the order of the trial court with directions to grant a peremptory writ ordering the conditional use and building permits set aside. The court found a legislative intent to include private activities within the purview of the act in Pub. Resources Code, §§ 21000, 21001, captioned "Legislative intent" and "Additional legislative intent" as well as in other parts of the act. The intent sections, it was pointed out, referred to regulation of private activities as well as to private interests in the context of public decisions. On the question whether the intent was effectuated, the court turned for guidance to the National Environmental

Policy Act on which the state act apparently had been patterned. It noted, among other matters, that "project" as defined in the guidelines adopted for the federal act included those involving a lease, permit, license, certificate, or other entitlement for use. The phrase "they intend to carry out" following the word "project" in the state act was construed to mean only that before an environmental impact report becomes required the government must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity. That the statute in question provided for the filing of the impact report as a part of another report required only with respect to direct activities of a public agency was regarded as directory only and not meant to limit the breadth of the section. The matter of whether the particular activity in question might have a significant effect on the environment within the meaning of the act was left for determination in future proceedings. It was noted that the reach of the phrase "significant effect" is not immediately clear but that the language would be fleshed out by interpretation in the normal process of case-by-case adjudication. In that connection the court observed that abuse of the "significant effect" qualification would not be countenanced as a subterfuge to excuse the making of impact reports otherwise required, but it reasoned that most of the private projects for which a government permit or similar entitlement is necessary are minor in scope, having, in the absence of unusual circumstances, little or no effect on the public environment, and that they would therefore be subject to approval exactly as before passage of the act. The court declined either to make its determination prospective only or to stay the effective date of the decision. Various procedural contentions were found to be without merit. (Opinion by Mosk, J., with Wright, C. J., McComb, Peters, Tobriner and Burke, JJ., concurring. Separate dissenting opinion by Sullivan, J.)

HEADNOTES

Classified to McKinney's Digest

(1a, 1b) **Zoning § 4—Variances and Nonconforming Uses—Conditions—Environmental Quality Act.**—In enacting the Environmental Quality Act, the Legislature intended to include private activities for which a government permit or other entitlement is necessary within the requirement of Pub. Resources Code, § 21151, that "local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment." In addition to other indications in the act,

Pub. Resources Code, § 21000, captioned "Legislative intent" refers in subd. (g) to regulation of activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, and in subd. (f) to systematic and concerted efforts by public and private interests to enhance environmental quality, while Pub. Resources Code, § 21001, captioned "Additional legislative intent" provides in subd. (d) that insuring long-term protection of the environment shall be the guiding criterion in public decisions.

(2) **Statutes § 114—Construction and Interpretation—Giving Effect to Intent of Legislature.**—Absent a single meaning apparent on the face of a statute, courts are required to give it an interpretation based upon the legislative intent with which it was passed.

(3a-3c) **Zoning § 4—Variances and Nonconforming Uses—Conditions—Environmental Quality Act.**—Pub. Resources Code, § 21151, requiring governmental agencies to "make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment" is sufficiently flexible to effectuate the broad legislative intent that private activities requiring a governmental permit or other entitlement be brought within the ambit of the California Environmental Quality Act of which the section in question is a part. It appears that the state act was patterned on the National Environmental Policy Act and the guidelines adopted for that act provide that "action" as used therein in place of "project" as used in the state act includes "projects . . . involving a federal lease, permit, license, certificate or other entitlement for use," and the phrase "they intend to carry out" following the word "project" in the state act must be construed to mean only that before an environmental impact report becomes required the government must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity.

[See **Cal.Jur.2d,** Zoning, § 176.]

(4) **Statutes § 129 — Construction and Interpretation — Departure From Literal Meaning—To Give Effect to Legislative Intent.**—Once a particular legislative intent has been ascertained, it must be given effect even though it may not be consistent with the strict letter of the statute.

(5) **Statutes § 129 — Construction and Interpretation — Departure From Literal Meaning—To Give Effect to Legislative Intent.**—The mere

literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the Legislature apparent by the statute, and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.

(6) **Statutes § 157—Construction and Interpretation—Interpretation of Words and Phrases—Meaning of Particular Words—"Project."**—In analyzing the legislative use of the word "project" the objectives sought to be achieved by the statute in which the word is used as well as the evil to be prevented is of prime consideration. Where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is enlarged or restricted and especially in order to avoid absurdity or to prevent injustice.

(7) **Administrative Law § 125—Judicial Review and Control—Exhaustion of Administrative Remedies.**—A proceeding in administrative mandamus challenging a county planning commission's granting of a conditional use permit for the construction of condominiums could not be defeated on a theory that plaintiffs had not exhausted their administrative remedies, where, though neither of the named plaintiffs had appealed to the county board of supervisors as provided by ordinance, two members of the class represented by one of the plaintiffs had so appealed. Thus the board had had the opportunity to hear arguments of interested property owners and had had its opportunity to act and to render litigation unnecessary, had it chosen to do so.

(8a, 8b) **Zoning § 8—Appeal and Review.**—Plaintiffs in an administrative mandamus proceeding in the superior court challenging a decision of a county board of supervisors giving final approval of a conditional use permit to construct condominiums complied with a provision of a county ordinance requiring that court review be sought within 30 days, where, though the superior court action was not filed until 35 days after the board's decision became final, plaintiffs had filed an identical petition in the Court of Appeal within the 30-day period, which petition was denied without prejudice to the filing of proceedings in the superior court, and where plaintiffs thereafter promptly refiled in the superior court.

(9) **Mandamus § 100—Trial and Judgment—Hearing and Determination.**—A denial by the Supreme Court or an appellate court of an application for a writ of mandamus without opinion is not res judicata of the legal issues presented by the application unless the sole possible ground of the denial was that the court acted on the merits, or unless it affirmatively appears that such denial was intended to be on the merits.

(10) **Zoning § 4 — Variances and Nonconforming Uses — Conditions — Findings.**—Where a county planning commission is required to file an environmental impact report as to a proposed private development in connection with its consideration of an application for a conditional use permit, no further written findings are required to comply with an ordinance providing that "use permits may be granted . . . only when it is found that . . . ." The impact report requires a written statement of the supportive facts on which an agency has made its decision and it thus affords the same benefits that would be achieved by written findings pursuant to the ordinance.

[See **Cal.Jur.2d,** Zoning, § 177.]

(11) **Zoning § 4—Variances and Nonconforming Uses—Conditions—Environmental Quality Act.**—In view of the clearly expressed intent of the California Environmental Quality Act to preserve and enhance the quality of the environment, the courts will not countenance abuse of the term "significant effect," as used in the requirement that an environmental impact report be filed when a project may have such an effect, as a subterfuge to excuse the making of impact reports otherwise required by the act. From a commonsense standpoint, however, it appears that most private projects for which a government permit or similar entitlement is necessary such as construction, improvement, or operation of an individual dwelling or small business are minor in scope, having, in the absence of unusual circumstances, little or no effect on the public environment, and that they will, therefore, be subject to approval exactly as before passage of the act.

COUNSEL

John C. McCarthy and Young, Henrie & McCarthy for Plaintiffs and Appellants.

Evelle J. Younger, Attorney General, Louise H. Renne and Nicholas C. Yost, Deputy Attorneys General, Carlyle W. Hall, Jr., John R. Phillips,

Frederic P. Sutherland, Beatrice Chalfiss Laws, J. Edd Steppe and Sandy English as Amici Curiae on behalf of Plaintiffs and Appellants.

N. Edward Denton, District Attorney, David M. Kennedy, Assistant District Attorney, Kronick, Moskovitz, Tiedemann & Girard, Adolph Moskovitz, Robert E. Murphy and Clifford W. Schulz for Defendants and Respondents.

Gray, Cary, Ames & Frye, R. Reaves Elledge, Jr., and Browning E. Marean III for Real Party in Interest and Respondent.

OPINION

MOSK, J.—This case affords us the first opportunity to construe provisions of the California Environmental Quality Act of 1970 (EQA). (Pub. Resources Code, §§ 21000-21151.)[1] As the express legislative intent forthrightly declares, the EQA was designed to be a milestone in the campaign for "maintenance of a quality environment for the people of this state now and in the future . . . ." (§ 21000, subd. (a).) The specific question presented here is whether a municipal body is required to submit an environmental impact report (see § 21100) pursuant to section 21151 of the code before it issues a conditional use or building permit.

Real party in interest, International Recreation, Ltd. (International) filed an application for a conditional use permit on April 20, 1971, with defendant Mono County Planning Commission (Commission). The application described the proposed use as follows: "Two multi-story structures housing 64 1, 2, 3, 4 bedroom condominiums plus 120 studio-type condominiums, a proposed restaurant and specialty shops. All for sale. With ample parking and recreational facilities." The use permit report refers to a parcel of 5.5 acres, approximately 135 feet by 1,775 feet. It appears from the record that some six buildings are eventually contemplated each with a height of from six to eight stories. Thus a long and relatively narrow structure or series of structures in close proximity is proposed.

The Commission approved the use permit on May 6, 1971. Thereupon on May 21, Frederick Schaeffer and Richard Young, both members of the class represented by plaintiff Charles E. Griffin II, along with two other individuals, appealed the Commission's decision to defendant Mono County Board of Supervisors (Board). On June 14, 1971, the Board affirmed the issuance of the use permit.

[1]All code references are to the Public Resources Code unless otherwise indicated.

On July 12 plaintiffs Friends of Mammoth[2] and Griffin filed a petition for a writ of administrative mandamus with the Court of Appeal attacking the validity of the permit. On July 15, the court denied the writ without prejudice to the filing of proceedings in the superior court. On July 19, plaintiffs filed an identical petition with the Mono County Superior Court. The writ was denied and plaintiffs appeal. We stayed the activities of International for which the conditional use permit and subsequent building permit were issued pending our disposition of the matter.

I

Mono County is situated in eastern California and is bordered on the east by the State of Nevada. The boundary on the west generally follows the crest of the Sierra Nevada mountain range. The county is primarily mountainous and open range land, almost all above 5,000 feet. It is California's third smallest county in population with 4,016 people. Although historically a county oriented to the economy of cattle and sheep ranching, nature's bountiful gifts of majestic mountains, lakes, streams, trees and wildlife have produced in the area one of the nation's most spectacularly beautiful and comparatively unspoiled treasures.

Mammoth Lakes, the section of Mono County immediately involved in this action, consists of some 2,100 acres of land surrounded by the Inyo National Forest. Plaintiffs assert that acute water and sewage problems will be created if International is permitted to construct its proposed condominium complex. Additional matters of concern include snow removal, police protection and the diminution of open space in general. Documents filed with defendant Commission prior to its decision indicate that the Commission may have considered in general the effect of the construction on the character and value of surrounding property, traffic, water and sewage facilities, snow removal, and fire and police protection.

The principal legal question that arises is whether the EQA applies to private activities for which a permit or other similar entitlement is required. This issue has been ventilated, not only by the named parties but also by the Attorney General and the Sierra Club as amici curiae. Defendants and International contend that even if their interpretation of the EQA does not prevail, plaintiffs should be denied relief for other reasons. Plaintiffs likewise assert additional grounds for setting aside the use and building permits. In view of the impact inherent in the initial judicial consideration of the EQA, we turn first to that issue.

[2]Friends of Mammoth is described as "an unincorporated association of hundreds of resident and nonresident owners of lots or mountain residences at Mammoth Lakes, Mono County, California."

II

Though recognition of the problem in and out of government is more pervasive today, concern over violation of our environment is not entirely a contemporary phenomenon. Four decades ago Justice Holmes described a river as "more than an amenity, it is a treasure. It offers a necessity of life that must be rationed among those who have power over it." (*New Jersey* v. *New York* (1931) 283 U.S. 336, 342 [75 L.Ed. 1104, 1106, 51 S.Ct. 478].) Five years ago Justice Douglas spoke for the high court in admonishing the Federal Power Commission that the issue is not "whether the project will be beneficial to the licensee . . . . The test is whether the project will be in the public interest . . . in preserving reaches of wild rivers and wilderness areas . . . and the protection of wildlife." (*Udall* v. *FPC* (1967) 387 U.S. 428, 450 [18 L.Ed.2d 869, 883, 87 S.Ct. 1712].) More recently, a circuit court discussed statutes attesting "to the commitment of the Government to control, at long last, the destructive engine of material 'progress.' " The duty of the judiciary, it held, is to assure that important environment purposes, heralded in legislative halls, are not lost or misdirected in the vast hallways of administrative bureaucracy. (*Calvert Cliffs' Coord. Com.* v. *United States A. E. Com'n* (1971) 449 F.2d 1109, 1111 [146 App.D.C. 33].) The public interest involved in a challenge to administrative action need not be economic. (*Environmental Defense Fund, Incorporated* v. *Hardin* (1970) 428 F.2d 1093, 1097 [138 App.D.C. 391].)

The most recent declaration on the ecology ethic was the Supreme Court decision in *Sierra Club* v. *Morton* (1972) 405 U.S. 727 [31 L.Ed.2d 636, 92 S.Ct. 1361]. Though decided on an issue of standing to maintain the action, majority and dissenting opinions agreed on environmental protection principles. Justice Stewart wrote for the majority: "Aesthetic and environmental well-being, like economic well-being, are important ingredients of the quality of life in our society, and the fact that particular environmental interests are shared by the many rather than the few does not make them less deserving of legal protection through the judicial process." (405 U.S. at p. 734 [31 L.Ed.2d at p. 643, 92 S.Ct. at p. 1366].) In dissenting Justice Blackmun decried rigidity of the law that prevented reaching issues involving "significant aspects of a wide, growing, and disturbing problem, that is, the Nation's and the world's deteriorating environment with its resulting ecological disurbances." (405 U.S. at p. 755 [31 L.Ed.2d at p. 654, 92 S.Ct. at p. 1376].)

California's Environmental Quality Act of 1970 requires various state and local governmental entities to submit environmental impact reports before undertaking specified activity. These reports compel state and local agencies to consider the possible adverse consequences to the environ-

ment of the proposed activity and to record such impact in writing. In an era of commercial and industrial expansion in which the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society, the significance of this legislative act cannot be understated. As section 21001, subdivision (g), clearly sets forth, the EQA requires "governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs and to consider alternatives to proposed actions affecting the environment."

Pursuant to section 21100, the environmental impact reports required by the act must set forth the following information:

"(a) The environmental impact of the proposed action.

"(b) Any adverse environmental effects which cannot be avoided if the proposal is implemented.

"(c) Mitigation measures proposed to minimize the impact.

"(d) Alternatives to the proposed action.

"(e) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

"(f) Any irreversible environmental changes which would be involved in the proposed action should it be implemented."

Under section 21100, the reports are required of "state agencies, boards and commissions"; section 21101 requires similar information with regard to federal projects "on which the state officially comments"; section 21102 requires an impact report before a state agency requests certain funds; section 21105 provides that a state official must include a report as part of "the regular project report used in the existing review and budgetary process." Finally sections 21150 and 21151 require local governmental entities to submit environmental impact reports prior to receiving certain state or federal funds or engaging in various activities.

Section 21151, the specific provision involved in the case at hand, states: "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may have a significant effect on the environment, is in accord with the conservation element of the general plan. All other local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment and shall submit it to the appropriate local planning agency as part of the report required by Section 65402 of the Government Code."

(1a) Mono County does not yet have a conservation element of a general plan. Thus, the first sentence of section 21151 does not apply. Only if the second provision covers the issuance of a permit does the mandate of the act govern here. This determination necessarily turns on whether the term "project" as used in section 21151 includes private activity for which a government permit is necessary.

We begin our inquiry by noting that nowhere in the act is "project" defined. (Compare The Ventura-Los Angeles Mountain and Coastal Study Commission Act, Pub. Resources Code, § 22000 et seq., enacted at the same time as the Environmental Quality Act, ch. 2 of which sets forth definitions of terms used therein.) **(2)** Because of the failure of the Legislature to expressly delineate the meaning of "project," we must rely on a cardinal principle of statutory construction: that absent "a single meaning of the statute apparent on its face, we are required to give it an interpretation based upon the legislative intent with which it was passed." (*Benor* v. *Board of Medical Examiners* (1970) 8 Cal.App.3d 542, 546-547 [87 Cal. Rptr. 415] (hg. den.).)

(1b) In this instance our task has been considerably simplified because the Legislature has expressly set forth its intent in sections 21000 and 21001 of the act. These two provisions, captioned "Legislative intent" and "Additional legislative intent," contain no less than 14 references to the concern of the Legislature with the current deterioration of the environment. (See §§ 21000, subds. (a)–(g); 21001, subds. (a)–(g).) An analytical reading of these sections leads to the ineluctable conclusion that the Legislature intended to include within the panoply of the act's provisions private activities for which a permit, lease or other entitlement is necessary.

The clearest manifestation of this intent can be found in section 21000, subdivision (g), which provides: "It is the intent of the Legislature that all agencies of the state government which *regulate* activities of private individuals, corporations, and public agencies which are found to affect the quality of the environment, shall *regulate* such activities so that major consideration is given to preventing environmental damage." (Italics added.) It is significant that *regulate* is the verb employed in this subdivision. (See also § 21107.) Its use demonstrates that the concern of the Legislature was not limited solely to activities which the government performs in a proprietary capacity. Instead the Legislature apparently desired to ensure that governmental entities in their *regulatory* function would determine that private individuals were not forsaking ecological cognizance in pursuit of economic advantage. One of the most common means by which a government agency regulates private activity is through the granting or denial of a permit.

The Legislature also evidenced strong concern for the promulgation of standards by which environmental needs could be regularly included in the decision-making process. (See § 21001, subds. (f) and (g).) Because of the regular involvement of public entities in the issuance of permits it would appear that requiring "governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality" (§ 21001, subd. (f)) necessarily includes not only situations in which the government itself engages in construction, acquisition or other development, but also those instances in which the state regulates private activity.

Other provisions in the EQA likewise support the conclusion that the Legislature intended to include the permit-issuing process as a governmental activity for which an environmental impact report is required. For example, section 21000, subdivision (e), states: "*Every citizen* has a responsibility to contribute to the preservation and enhancement of the environment." (Italics added.) Such responsibility may never be exercised if the EQA is to apply only to activities in which the government is directly engaged. "Every citizen" is an unmistakable reference to private individuals as distinguished from government officials. Subdivision (f) of the same section provides: "The interrelationship of policies and practices in the management of natural resources and waste disposal requires systematic and concerted efforts by *public and private interests* to enhance environmental quality and to control environmental pollution." (Italics added.) Finally, section 21001, subdivision (d), provides: "Ensure that the long-term protection of the environment shall be the guiding criterion in *public decisions*." (Italics added.) The reference in section 21000, subdivision (f), to "private interests" coupled with the "public decisions" phrase of section 21001, subdivision (d), contemplates as within the act the decision of a public agency to grant or deny private interests the opportunity to engage in enumerated activities.

In view of what appears to be a clear legislative mandate that the EQA be given a broad construction and that it apply to private actions for which a permit is necessary, we note parenthetically that the principal author of the EQA, Assemblyman John T. Knox, is on record as supporting such an interpretation. The legislator, in a sworn declaration, states that in authoring the bill and guiding it through the Legislature it "was my intent that the requirement of an environmental impact report extend to the situation where a state or local public agency by lease, permit, funding or comparable entitlement for use was authorizing or facilitating a private undertaking as long as there was a significant impact upon the environ-

ment. This includes situations such as zoning changes, conditional use permits and building permits. I communicated this intent to other legislators in the course of the legislative process . . . ." (Declaration by John T. Knox, Feb. 1972, plaintiffs' opening brief, appendix C.)

Defendants and International seek to rebut the significance of the Knox declaration by offering a declaration of Assemblyman Carley V. Porter in which he opines that the act does not apply to private activities for which a permit was necessary. (Declaration of Carley V. Porter, Apr. 11, 1972, appendix to defendants' answer to briefs of amici curiae; also see Interim Guidelines for the Preparation and Evaluation of Environmental Impact Statements Under the California Environmental Quality Act of 1970, Office of the Secretary for Resources (draft of Apr. 28, 1972).)

That two legislators report contradictory legislative intent fortifies judicial reticence to rely on statements made by individual members of the Legislature as an expression of the intent of the entire body. (See *Ballard* v. *Anderson* (1971) 4 Cal.3d 873, 881 [95 Cal.Rptr. 1, 484 P.2d 1345]; *Rich* v. *State Board of Optometry* (1965) 235 Cal.App.2d 591, 603 [45 Cal.Rptr. 512] (hg. den.).) Other extrinsic aids to determine legislative intent are generally more persuasive.

Defendants and International also submit a statement by a former consultant to the Assembly Select Committee on Environmental Quality. The consultant, Robert L. Jones, conceded that it was only his "impression" that the EQA was limited to activities undertaken directly by governmental bodies. (Testimony of Robert L. Jones before Senate Committee on Natural Resources and Wildlife, on the Administration of the Environmental Quality Act of 1970 and Related Acts, Dec. 16, 1970, at pp. 3-5.)[3] More significant, perhaps, is the preface to his remarks in which he defers for an authoritative interpretation of the act to "the Legislative [Counsel] or the Attorney General." (*Id.* at p. 2.) To compound the conflict of extrajudicial opinions, the Attorney General has taken the position that the act does apply to private activity (Attorney General of the State of California, In re Proposed Guidelines for the Preparation and Evaluation of Environmental Impact Statements under the California Environmental Quality

[3]In a subsequent letter Jones first indicated that it was his view that the EQA "probably" did not apply to private activities. He further stated, however, "In the policy section of AB 2045 [the act's bill number], there are however, two sections that certainly indicate legislative policy on application of environmental impact studies on private land. The first is Section 21000(g) and the second is Section 21107. Considering these two sections together, I believe it can be inferred that all state agencies, boards and commissions who regulate private activities are responsible for insuring environmental protection when these activities are carried out." (Letter from Robert L. Jones to Hon. Peter F. Schabarum and Carley V. Porter, Nov. 15, 1971.)

Act of 1970, at p. 9; amicus curiae brief of the State of California filed herein, at pp. 15-26) whereas the Legislative Counsel has concluded that it does not (letter from George H. Murphy, Legislative Counsel, to Hon. Carley V. Porter, Nov. 23, 1971, appendix to defendants' answer to briefs of amici curiae, exh. 3). We observe, however, that the cursory three-page letter of the Legislative Counsel was not designed to be an in-depth analysis of the type included in the Attorney General's petition and brief which together number some 60 pages.

In resolving the conflict on intent, as we must, we conclude that the Legislature intended the EQA to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. We also conclude that to achieve that maximum protection the Legislature necessarily intended to include within the operation of the act, private activities for which a government permit or other entitlement for use is necessary.

III

(3a) Defendants and International contend that notwithstanding the broad language of the act, the Legislature did not effectuate this avowed intent in section 21151. They point to the use of the word "project" and the clause that follows it—"they [i.e., local governmental agencies] intend to carry out." Defendants and International maintain that in this context "project" is coterminous with "public works."

As noted previously, the EQA does not attempt to define "project." Because the legislative intent provisions dictate that we give a broad interpretation to the act's operative language, we begin from that vantage point. **(4)** Once a particular legislative intent has been ascertained, it must be given effect " 'even though it may not be consistent with the strict letter of the statute.' " (*Dickey* v. *Raisin Proration Zone No. 1* (1944) 24 Cal.2d 796, 802 [151 P.2d 505, 157 A.L.R. 324].) **(5)** As we stated nearly a half century ago in *In re Haines* (1925) 195 Cal. 605, 613 [234 P. 883]: " 'The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature apparent by the statute; and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' "

(3b) Our task then is to determine whether the word "project" is "sufficiently flexible" so as to effectuate the broad legislative intent that private activities should be brought within the ambit of the act. We may not, of course, give an unreasonable construction to the statute. (See *Cedars*

of Lebanon Hosp. v. *County of L. A.* (1950) 35 Cal.2d 729, 735 [221 P.2d 31]; *Dept. of Motor Vehicles* v. *Ind. Acc. Com.* (1948) 83 Cal. App.2d 671, 677 [189 P.2d 730].)

In interpreting "project" our task has been made difficult both by the dictionary definition of the word and the use of "project" and similar terms in the act itself. Webster defines project as a "plan or design . . . scheme . . . proposal . . . ." (Webster's New Internat. Dict. (3d ed. 1961) p. 1813.) Such synonyms provide little interpretative aid. Furthermore the act itself refers to "projects" in some instances (see, e.g., §§ 21100, 21150, 21151) and to "actions" and "proposals" in other instances (see, e.g., § 21100, subds. (a), (b), (d), (f)), devising no neat categories in which to place the several similar terms.

(6) With this in mind, we resort to the rule declared in *People* ex rel. *S. F. Bay etc. Com.* v. *Town of Emeryville* (1968) 69 Cal.2d 533, 543-544 [72 Cal.Rptr. 790, 446 P.2d 790]: A principle "which must be applied in analyzing the legislative usage of the word 'project,' is that 'the objective sought to be achieved by a statute as well as the evil to be prevented is of prime consideration in [the word's] interpretation, and where a word of common usage has more than one meaning, the one which will best attain the purposes of the statute should be adopted, even though the ordinary meaning of the word is enlarged or restricted and especially in order to avoid absurdity or to prevent injustice.'" **(3c)** Since neither the dictionary definition nor the EQA itself provides us with a tool to use in interpreting "project" we turn to the National Environmental Policy Act (42 U.S.C. § 4321 et seq.) for guidance.

The National Environmental Policy Act (NEPA) was signed into law January 1, 1970. Interim guidelines written by the President's Council on Environmental Quality were promulgated on April 30, 1970. (35 Fed.Reg. 7390.) (They were superseded by the final federal guidelines on April 23, 1971 (36 Fed.Reg. 7724).) The EQA was passed by the Legislature on August 21, 1970 (Assembly Final Calendar (1970 Reg. Sess.) at p. 637), and was signed by the Governor on September 18, 1970 (*id.*). Not only does the timing and the titles of the two acts tend to indicate that the EQA was patterned on the federal act, the key provision of the two acts, the environmental impact report, is the same. (Compare 42 U.S.C. § 4332, subd. (2)(C) with Pub. Resources Code, § 21100; see also Pub. Resources Code, §§ 21101, 21102, 21105, 21150, 21151.) Indeed, much of the phraseology of the EQA is either adopted verbatim from or is clearly patterned upon the federal act.[1] As one commentator has observed, the EQA is "much like the Federal NEPA." (Powell, *The Courts as Protectors of the Environment* (1972) 47 L.A. Bar Bull. 215, 218.)

[1]Compare Pub. Resources Code, § 21100, subd. (a), and 42 U.S.C. § 4332 (2)(C)(i); Pub. Resources Code, § 21100, subd. (b), and 42 U.S.C. § 4332 (2)(C)(ii); Pub. Resources Code, § 21100, subd. (d), and 42 U.S.C. § 4332(2)(C)(iii); Pub. Resources Code, § 21100, subd. (e), and 42 U.S.C. § 4332(2)(C)(iv); Pub. Resources Code, § 21100, subd. (f), and 42 U.S.C. § 4332(2)(C)(v); Pub. Resources Code, § 21000, subd. (c), and 42 U.S.C. § 4331(c); Pub. Resources Code, § 21001, subd. (e), and 42 U.S.C. § 4321; Pub. Resources Code, § 21001, subds. (f) and (g), and 42 U.S.C. § 4332(2)(B) and (2)(D); Pub. Resources Code, §§ 21104 and 21105 and 42 U.S.C. § 4332(2)(C); Pub. Resources Code, § 21107 and 42 U.S.C. § 4333.

Accordingly, in construing "project" in the EQA, the definition of that word in the federal act and regulations becomes relevant. It is significant to note, in this regard, the Court of Appeals for the District of Columbia has emphasized that in construing the federal act the judicial role is active and that the NEPA must be interpreted broadly. (See *Calvert Cliffs' Coord. Com.* v. *United States A. E. Com'n, supra,* 449 F.2d 1109, 1111.) This is consonant with the mandate of the California Legislature that the EQA be given a liberal construction.

Section 102 of the NEPA, the act's principal substantive provision, uses the word "action" as opposed to "project." (42 U.S.C. § 4332, subd. (2)(C).) The Council on Environmental Quality first defined "action" in the interim guidelines it issued some four months prior to the enactment of the EQA. In view of the similarity between the federal and state acts, the Legislature obviously was aware of the federal definitions when the EQA was passed. (Cf. § 98, Assem. Bill 681, a bill which would add § 21109 to the Pub. Resources Code, introduced Mar. 2, 1972.) Accordingly, the definitions promulgated by the Council on Environmental Quality are helpful to an understanding of the subsequent California use of the word "project." The interim guidelines, ultimately adopted without significant change insofar as relevant here in the final guidelines, provide the following:

"5. *Actions included.* . . .

"(a) 'Actions' include but not limited to:

"(i) Recommendations or reports relating to legislation and appropriations;

"(ii) Projects and continuing activities:

"— Directly undertaken by Federal agencies;

"— Supported in whole or in part through Federal contracts, grants, subsidies, loans or other forms of funding assistance;

"— Involving a Federal lease, permit, license, certificate or other entitlement for use:

"(iii) Policy—and procedure-making." (35 Fed.Reg. 7390, 7391; see also 36 Fed.Reg. 7724, 7725.)

Arguably "actions" is broader than "projects," even though the EQA tends to use the two words interchangeably in section 21100.[5] However, it is crucial that "actions," under the federal guidelines, is divided into three categories, one of which is "projects." It is under "projects" as a subclass of "actions" that "lease, permit, license, certificate, or other entitlement for use" is included.[6]

In view of the relationship between the two acts and the fact that both are subject to a broad judicial interpretation, it is manifest that the word "project" as used in section 21151 and other provisions of the EQA includes the issuance of permits, leases and other entitlements. Accordingly, we hold that in the case at bar defendants were required to consider whether the proposed condominium construction "may have a significant effect on the environment" (§ 21151; see fn. 9, *infra*) and, if so, to prepare an environmental impact report *prior to* the decision to grant the conditional use and building permits. (Cf. *Greene County Planning Board* v. *Federal Power Com'n* (2d Cir. 1972) 455 F.2d 412, 418-421.)

IV

Defendants and International contend that since "project" is followed by the phrase "they intend to carry out," section 21151 can only be interpreted as referring to a public works type project "to be carried out," i.e., constructed, acquired or developed, by the government. However, having interpreted the word "project" broadly to include private activity for which a permit is necessary, certainly the granting or denying of a permit is an act which a governmental authority "carries out."[7] Accordingly, we construe the phrase following "project" to mean only that before an environmental impact report becomes required the government must

[5]Section 21100 requires that the following shall be included "in any report on any *project* they propose to carry out . . .: (a) The environmental impact of the proposed *action*. . . . [¶] (d) Alternatives to the proposed *action*. . . . [¶] (f) Any irreversible environmental changes which would be involved in the proposed *action* should it be implemented." (Italics added.) (See also § 21001, subd. (g).)

[6]We note that the second category is actually titled "projects and continuing activities." The former would appear to apply to activities the duration of which is relatively settled, whereas the latter appears to cover those activities which might continue for some unknown period of time. The differences between the two subcategories do not involve any distinction between public and private activities.

have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity.[7]

Moreover, to limit the operation of the EQA solely to what are essentially public works projects would frustrate the effectiveness of the act. It is undisputed that the Legislature intended that environmental considerations play a significant role in governmental decision-making (see §§ 21000, 21001) and that such an intent was not to be effectuated by vague or illusory assurances by state and local entities that the effect of a project on the environment had been "taken into consideration."[8] To read "project they intend to carry out"—the cornerstone of many of the act's provisions—as limited to public works projects would render meaningless much of the legislative intent sections that contemplate regulation of private activity, for none of the act's other substantive provisions more clearly relate to private actions. And to exclude all private activity from being covered by the act would be inconsistent with the broad legislative intent appearing therein. More specifically, if private activities for which a permit

[7]Regulation of private activity by a public agency can be more vividly seen as a project which the agency intends to "carry out" in those instances in which the agency maintains regulatory control over the project throughout its lifetime. (Cf. *Orange County Air Pollution Control Dist.* v. *Public Util. Com.* (1971) 4 Cal.3d 945, 948 [95 Cal.Rptr. 17, 484 P.2d 1361].)

[8]The fact that defendants in the instant action allegedly considered the effect of the proposed construction on the character and value of surrounding property, traffic, water and sewage facilities, fire and police protection, snow removal and the ecology in general, does not, in any sense of the term, "substantially comply" with the environmental impact report requirements. Whether on different facts the requirements of this act can be satisfied by substantial rather than literal compliance is a question we do not here reach.

The impact report must be specially prepared in written form before the governmental entity makes its decision. This will give members of the public and other concerned parties an opportunity to provide input both in the making of the report and in the ultimate governmental decision based, in part, on that report.

The report, of course, must satisfy the elements set forth in section 21100. For example, subdivision (b) requires that "[a]ny adverse environmental effects which cannot be avoided if the proposal is implemented" be included in the report. There is no requirement that these adverse effects be considered "significant" before they are to be listed. Subdivisions (c) and (d) require that mitigation measures and alternatives to the proposed action be considered. Obviously if the adverse consequences to the environment can be mitigated, or if feasible alternatives are available, the proposed activity, such as the issuance of a permit, should not be approved. In making these determinations concrete concepts, not mere aphorisms or generalities, must be considered. Finally, subdivision (f) requires the entity to include in the report "[a]ny irreversible environmental changes which would be involved in the proposed action should it be implemented." As in subdivision (b), there is no requirement that these changes be assessed as "significant" before they are to be included in the report.

The report, therefore, is to contain substantially greater analysis of the effect of the proposed activity on the environment and the possible mitigation devices and alternatives than can be achieved simply through testimony followed by a naked conclusion that the environment will not be harmed by the project.

is required were exempted from the operation of the act, projects with admittedly deleterious ecological consequences would be covered only if construction, acquisition or other development were undertaken by the governmental authority but not if the same authority allowed private enterprise to engage in the identical activity. The incongruity of such interpretation would be most vivid in the less populous counties, such as Mono, which because of limited economic capabilities might never engage in massive public works projects significantly affecting the environment, but could achieve the same result by permitting, licensing, or partially funding private activities.

To further demonstrate the paradoxical position advanced by defendants and International, generally the sparsely populated counties in which massive public works projects are less likely because of the financial burden are the counties with significant natural resources and wildlife most in need of protection. While the act applies to large and small counties, and to urban and rural areas alike, certainly the protection afforded by the EQA would be substantially diminished in an area where it may be most needed if the act were to be interpreted to cover only public works projects.

Defendants, nevertheless, assert that the legislative history of the EQA indicates that the word "project" does not apply to the issuance of a permit. They cite the original language of AB 2045, as introduced in the Assembly on April 21, 1970. At that time, section 21151 would have applied to "[a]ll local governmental agencies . . . for any *program* carried out by them." (Italics added.) An amendment on May 26 made the bill more specific, setting up three classifications of local governmental entities: (1) the legislative body of all cities and counties with a conservation element of a general plan; (2) local governmental units without a conservation element; and (3) all other local governmental agencies. The language "for any program carried out by them" was retained for all three categories except for minor grammatical changes.

A subsequent amendment introduced in the Senate on August 4, 1970, distinguished between the three categories by making the act operative for group one entities for "any *project* or *change in zoning* they intend to carry out"; and for group two entities for "any *project* they intend to carry out"; yet retaining for group three the "any *program* they intend to carry out" wording. (Italics added.) On August 14, the proposed section 21151 was amended once again, this time eliminating altogether the second category; separating the "project" and "change in zoning" provisions of the first category into two sentences instead of one; and changing "program" in the third category to "project." The final amendment, on August

20, deleted the sentence pertaining to "change in zoning" and retained the "project" requirement for the categories designated above as groups one and three. The second category was not reinstituted. It was with this language that the bill became law.

It is possible that these intricate semantic changes enroute to final enactment were not without significance. Defendants insist that the amending process has been a narrowing one. We do not agree. Leaving aside the several intermediate alterations, we note in essence the change was from "program" to "project." It may be fairly said that the former entails more general planning, and policy and procedure-making, similar to that described in the NEPA guidelines. (See 35 Fed.Reg. 7390, 7391, 5(a)(iii); see also 36 Fed.Reg. 7724, 5(a)(iii), both *supra*.) Conversely, "project" appears to emphasize activities culminating in physical changes to the environment, changes which were of paramount interest to the Legislature. (Cf. § 21102.) It appears that the Legislature in its amendments to Assembly Bill 2045 was influenced by the issuance of the interim federal guidelines published subsequent to the introduction of Assembly Bill 2045 but prior to its final passage. Those guidelines used the word "project" rather than "program." Thus the Legislature appears to have intended, in order to prevent confusion, to use the same broad terminology in effect under federal law rather than to adopt an entirely different set of phrases of its own.

International next insists that section 21151 does not apply to private activity because of its clause that requires local agencies to submit an environmental impact report "to the appropriate local planning agency as part of the report required by Section 65402 of the Government Code." Section 65402 provides that counties, cities and local agencies shall submit a report to planning agencies pursuant to proposed acquisition of real property or construction of public buildings and structures so that a determination can be made as to whether the proposal is consistent with their respective general plans. (See Gov. Code, § 65100 et seq., especially §§ 65350-65402.) It is contended that since the Government Code provision applies only to development or acquisition by municipal entities, it would be illogical to require an impact report on private activities to be filed in conjunction with some mythical report on a public works project. Accordingly, they argue, section 21151 must apply only to the type of public works projects contemplated by Government Code section 65402 and not to private activity for which a permit is necessary.

The reading proposed by International elevates what appears to be simply a directory measure to far greater significance than is warranted. We have reviewed the broad legislative intent of the EQA and the close

relationship between that act and the federal NEPA. Both compel the conclusion that private activities involving the issuance of a permit are within the scope of the EQA. The use of these reports by the planning agencies mentioned in Government Code section 65402 is secondary to the principal purpose of section 21151, which is to compel local governments to study and record the environmental implications of proposed activities before they are acted upon. This broad purpose cannot be frustrated by procedural details surrounding filing of the reports.

The NEPA provides that copies of all impact statements prepared by the various federal agencies are to be made available to the Council on Environmental Quality, among others, and must "accompany the proposal through the existing agency review processes." (42 U.S.C. § 4332 (2)(C).) The EQA similarly directs the Office of Planning and Research to "coordinate the development of objectives, criteria, and procedures to assure the orderly preparation and evaluation of environmental impact reports . . . ." (§ 21103.) The act also requires consultation with the various governmental entities (§§ 21103, 21104) and directs the impact reports be included "as a part of the regular project report used in the existing review and budgetary process" (§ 21105).

On the basis of similar directory provisions in the EQA and NEPA, the command in section 21151 that environmental impact reports be submitted with the reports required by section 65402 of the Government Code is not meant to limit the breadth of the section. Instead, it is an attempt to integrate such impact reports into any existing reporting procedure in order to avoid unnecessary duplication, confusion and cost. Accordingly, projects for which a Government Code section 65402 report must be filed must also contain an environmental impact report. Those projects, such as that involved here, for which no section 65402 report is necessary, must nonetheless be preceded by an environmental impact report pursuant to section 21151.[9]

[9]"Statutes," wrote Justice Frankfurter in *United States* v. *Shirey* (1959) 395 U.S. 255, 260 [3 L.Ed.2d 789, 793, 79 S.Ct. 746], "are not inert exercises in literary composition. They are instruments of government, and in construing them 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.' [Citation.] This is so because the purpose of an enactment is embedded in its words even though it is not always pedantically expressed in words." Judge Learned Hand described interpretation of statutes as "the art of proliferating a purpose." (*Brooklyn Nat. Corp.* v. *Commissioner of Int. Rev.* (2d Cir. 1946) 157 F.2d 450, 451.)

We cannot, as respondents would have us do, indulge in an inert exercise, leaning heavily on isolated words and phrases and remaining oblivious to the express legislative intent to protect society against environmental blight. Nor are we impressed with the significance of legislative proposals introduced in March of 1972, long after this permit was issued and the lawsuit instituted, since here the post facto legislative amendments not only express the interpretation of "project" which we have declared, but *expand* the act to apply beyond "projects" to "major actions."

V

Aside from the question of the proper construction of the Environmental Quality Act the parties make several other contentions to which we now turn.

Defendants and International first assert that plaintiffs did not properly exhaust their administrative remedies prior to seeking judicial relief. Section 1209 of the Mono County Zoning Ordinance provides: "B. Any interested person . . . not satisfied with the decision of the Commission on any use permit . . . may, within fifteen (15) days . . ., appeal in writing to the Board [of Supervisors]." Neither plaintiff Friends of Mammoth nor plaintiff Griffin filed an appeal pursuant to section 1209. An appeal was filed by individuals Frederick Schaeffer, Richard Young, Donald J. LaCasse and Robert H. Meyer, all property owners in the Mammoth Lakes area.

(7) Plaintiffs allege that Messrs. Schaeffer and Young are members of the class represented by plaintiff Griffin in this class action. Defendants and International do not controvert this allegation. Instead they argue that Friends of Mammoth and Griffin, and not members of the representative class, must personally exhaust their administrative remedies. Otherwise, they contend, a plaintiff could avoid the exhaustion doctrine simply by including within the class one individual who had pursued his administrative remedies but did not bring judicial action as a named plaintiff.

This assertion proves too much. First of all, the fact that an individual pursued administrative remedies would not, as a matter of course, entitle him to be included in a subsequent class action. Exhaustion of administrative remedies does not necessarily provide the "well defined community of interest in the questions of law and fact involved affecting the parties to be represented" required in class actions. (*Daar* v. *Yellow Cab Co.* (1967) 67 Cal.2d 695, 704 [63 Cal.Rptr. 724, 433 P.2d 732]; see also 3 Witkin, Cal. Procedure (2d ed. 1971) Pleading, § 181, at pp. 1853-1854.) However, in most instances those individuals who have a sufficient interest in the subject matter to seek administrative review will possess the community of interest with others to justify inclusion in the group represented in a subsequent class action. But this conclusion defeats the very argument defendants advance: that the Board is entitled to learn the contentions of interested parties before litigation is instituted. If those unnamed plaintiffs in the class suit have previously sought administrative relief they will have expressed the position of the representative plaintiff in the class suit, and the Board will have had its opportunity to act and to render litigation unnecessary, if it had chosen to do so.

Messrs. Schaeffer and Young apparently desire to be represented by plaintiff Griffin. They have not sought to be excluded from the class. (Cf. *Vasquez* v. *Superior Court* (1971) 4 Cal.3d 800, 821 [94 Cal.Rptr. 796, 484 P.2d 964].) Since two plaintiffs, albeit unnamed plaintiffs, have previously appeared before the Board, the policies of the exhaustion doctrine have been fulfilled. Under these circumstances, the doctrine cannot be employed to bar a suit by a class not organized at the time of the administrative appeal. Defendant Board has had the opportunity to hear arguments of interested property owners Schaeffer and Young, along with two others who also appealed. Now several interested property owners, including Schaeffer and Young, represented here by named plaintiff Griffin, seek a judicial determination of the legality of that decision. Nothing more could effectuate the policy of the exhaustion doctrine. To require plaintiff Griffin to have personally appeared, in addition to the others, or to require Schaeffer and Young to be named plaintiffs (cf. *La Sala* v. *American Sav. & Loan Assn.* (1971) 5 Cal.3d 864, 872 [97 Cal.Rptr. 849, 489 P.2d 1113]) would serve no additional useful purpose.

(8a) Defendants and International next insist that plaintiffs failed to seek timely relief from the decision of defendant Board giving final approval of the permit. Section 1213 of the zoning ordinance provides that decisions of the Board "shall be final for all purposes unless a court review thereof is sought within thirty (30) days after such decisions become final." Defendant Board upheld the decision of defendant Commission on June 14, 1971. On July 12, within the 30-day period, plaintiffs sought a writ of administrative mandamus in the Court of Appeal, Third District. On July 15, the Court of Appeal denied the writ but "without prejudice to the filing of proceedings in the Superior Court." On July 19, 35 days after the decision by the Board, plaintiffs filed an identical petition for a writ of administrative mandamus in superior court. Defendants and International assert that because the period between June 14 and July 19 is greater than the 30-day allotment provided by ordinance, plaintiffs cannot seek judicial review. We reject this contention.

It must be noted at the onset that judicial relief was "sought" (in the words of the ordinance) in the Court of Appeal within 30 days of the Board's decision. Relief was denied there but it was denied "without prejudice." **(9)** This term usually indicates that no decision on the merits has been made: "The rule is well settled that a denial by this or the appellate court of an application for a writ without opinion 'is not res judicata of the legal issues presented by the application unless the *sole possible* ground of the denial was that the court acted on the merits, or unless it affirmatively appears that such denial was intended to be on the merits.' "

(*Hagan* v. *Superior Court* (1962) 57 Cal.2d 767, 770 [22 Cal.Rptr. 206, 371 P.2d 982]; see *Imperial Land Co.* v. *Imperial Irrigation Dist.* (1913) 166 Cal. 491, 492 [137 P. 234].)

(8b) Defendants and International contend that denying the writ without prejudice does not toll or extend the statute of limitations of 30 days. Article VI, section 10, of the state Constitution gives original jurisdiction to the Supreme Court, Courts of Appeal, superior courts, and their judges in "proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition." Rule 56(a) provides: "If the petition might lawfully have been made to a lower court in the first instance, it shall set forth the circumstances which, in the opinion of the petitioner, render it proper that the writ should issue originally from the reviewing court . . . ." In his comments to the rule, Witkin states: "In form this is a rule of *pleading*; in effect, however, it expresses the policy of the Supreme Court and courts of appeal to refuse to exercise their original jurisdiction in the first instance, unless the circumstances are exceptional." (5 Witkin, Cal. Procedure, *supra*, Extraordinary Writs, § 114, at p. 3889; see also *Cohen* v. *Superior Court* (1968) 267 Cal.App.2d 268, 270 [72 Cal.Rptr. 814].)

The foregoing policy seeks to encourage the filing of petitions for extraordinary writs in the superior court. It does not follow, however, when such policy is effectuated by an appellate court order denying relief without prejudice that petitioners should be denied a hearing on the merits by a myopic reading of the abbreviated statute of limitations. An equally strong public interest was formulated by the court in *Morgan* v. *Somervell* (1940) 40 Cal.App.2d 398, 400 [104 P.2d 866]: "It is in furtherance of a policy frequently exemplified in legislative acts to enable a party who, like the plaintiffs in the present proceeding, has seasonably filed a cause of action, to try it upon its merits, notwithstanding defects in the form or substance of pleadings, error in the remedy sought, or *mistake in the tribunal invoked*." *Morgan* involved the *transfer* of a cause of action pursuant to Code of Civil Procedure section 396. Thus it is factually distinguishable from the case at bar. The policy explicated in *Morgan*, however, applies here. Defendants and International, having been put on notice of the litigation, were not prejudiced in any manner by the Court of Appeal's denial of the petition and the subsequent prompt refiling in superior court.

We conclude that plaintiffs complied with the statute of limitations by filing a petition for writ of mandamus in the Court of Appeal within the statute of limitations contained in the Mono County Zoning Ordinance and upon denial without prejudice by refiling promptly in the superior court.

We now turn to two final contentions raised by plaintiffs. Plaintiffs insist that the granting of the permit must be set aside on the following grounds in addition to defendants' failure to comply with the EQA: (1) defendants have not made written findings as required by local ordinance; (2) the evidence did not support the granting of the permits and they must be set aside as a matter of law.

(10) Section 1201 of the Mono County Zoning Ordinance provides, in pertinent part: "USE PERMITS. Use permits may be granted by the Planning Commission only when it is *found* that. . . ." (Italics added.) The question involved here, then, is whether the use of the word "found" requires specific written findings. In *Schumm* v. *Board of Supervisors* (1956) 140 Cal.App.2d 874, 878 [295 P.2d 934], the court was required to interpret an ordinance which provided: " 'In recommending the approval of any use permit the Planning Commission shall find . . . .' " The court held that written findings were not required. (140 Cal.App.2d at pp. 880-881.) However, in *Broadway, Laguna etc. Assn.* v. *Board of Permit Appeals* (1967) 66 Cal.2d 767 [59 Cal.Rptr. 146, 427 P.2d 810], we said that an ordinance which required the zoning administrator to specify "in his findings the facts which establish . . ." (66 Cal.2d at p. 771, fn. 3) necessitated written findings and that the normal presumption of necessary findings "does not apply to agencies which must expressly state their findings and must set forth the relevant supportive facts." (66 Cal.2d at p. 773; cf. *Siller* v. *Board of Supervisors* (1962) 58 Cal.2d 479, 484 [25 Cal.Rptr. 73, 375 P.2d 41].)

The proper interpretation of ordinances using the word "findings" or "found" naturally depends on the intent of the body adopting those ordinances. In light of the statewide concern expressed by the Legislature for written findings in the field of ecology, as evidenced by the EQA's impact *report*, the proper construction of the words "findings" or "found" requires a written statement of the supportive facts on which the agency has made its decision. Since this report involves the assessment of a myriad of elements (see § 21100) it obviously includes all those facts which would be contained in written findings if such findings were required by the ordinance. Accordingly, the written report affords plaintiffs the same benefits that would be achieved by written findings pursuant to the ordinance, and we therefore hold in this case no additional written findings in the orthodox sense are required.

Plaintiffs finally contend that there was insubstantial evidence to support the issuance of the permits and that they must be set aside as a matter of law. In view of our conclusion that the EQA applies to private activity, and the fact that such a holding will necessitate further proceedings by the defendants, we find it unnecessary to analyze the weight of the evidence.

VI

We emphasize that by the terms of the act an environmental impact report is required only for a project "which may have a significant effect on the environment" (§ 21151; see also §§ 21100, 21101, 21102, 21150). In the case at bar the issue whether the proposed project of International might have such an effect was not resolved by either the defendants or the superior court, presumably because it was believed the project was not covered by the act in any event. It would be inappropriate for this court to determine the issue in the first instance, and we therefore leave the matter to the defendants' future proceedings.

We recognize that the reach of the statutory phrase, "significant effect on the environment," is not immediately clear. To some extent this is inevitable in a statute which deals, as the EQA must, with questions of degree. Further legislative or administrative guidance may be forthcoming on this point among others. But the courts, for their part, are limited to discharging their constitutional function of deciding the cases that are brought before them. As with other questions of statutory interpretation, the "significant effect" language of the act will thus be fleshed out by the normal process of case-by-case adjudication.

(11) Two general observations, nevertheless, may be made at this time. On the one hand, in view of the clearly expressed legislative intent to preserve and enhance the quality of the environment (§§ 21000, 21001), the courts will not countenance abuse of the "significant effect" qualification as a subterfuge to excuse the making of impact reports otherwise required by the act. In this connection we stress that the Legislature has mandated an environmental impact report not only when a proposed project *will* have a significant environmental effect, but also when it "may" (§§ 21101,

21150, 21151) or "could" (§§ 21100, 21102) have such an effect. On the other hand, common sense tells us that the majority of private projects for which a government permit or similar entitlement is necessary are minor in scope—e.g., relating only to the construction, improvement, or operation of an individual dwelling or small business—and hence, in the absence of unusual circumstances, have little or no effect on the public environment. Such projects, accordingly, may be approved exactly as before the enactment of the EQA.

In their petition for rehearing respondents and amici curiae assert that in the period between November 23, 1970, when the EQA went into effect, and September 21, 1972, the date of our decision herein, governmental agencies approved private projects, now either in progress or completed, without requiring the preparation of environmental impact reports, in the erroneous but good faith belief that such projects were exempt from the act. To avoid possible hardship to parties who have relied on permits thus issued, we are asked to make our decision prospective only.

We see no need for such a drastic step. In the minority of cases in which impact reports should have been prepared, the appropriate statutes of limitations will govern. As noted herein (p. 268, *ante*), the Mono County Zoning Ordinance declares a 30-day statute of limitations for seeking judicial review of a decision of defendant Board. If this provision is typical of such ordinances, very few if any of the projects approved during the 22-month period in question will still be subject to attack. And if a substantially longer statute of limitations is provided in any case, similar protection may be afforded by invoking the doctrine of laches.

We are also asked to stay the effective date of our decision in order to allow additional time, inter alia, for governmental agencies to draw up guidelines and develop procedures for applying the EQA to private projects as defined herein. Again we perceive no real necessity for such a departure from normal practice. In extraordinary circumstances we have authorized a delay in the effectiveness of a decision of this court when its immediate implementation would have been virtually impossible. (See, e.g., *Young* v. *Gnoss* (1972) 7 Cal.3d 18, 28 [101 Cal.Rptr. 533, 496 P.2d 445]; *Serrano* v. *Priest* (1971) 5 Cal.3d 584, 618-619 [96 Cal.Rptr. 601, 487 P.2d 1241].) For the reasons given above, however, we expect that the majority of the private projects for which governmental approval will be sought in the future will present no risk of significant environmental effect and therefore will not require impact reports in any event. With respect to the remainder, we point out that the EQA has been in effect since November 23, 1970, and many of the questions here raised as to the method of complying

with the act in the case of private projects could also have arisen during the past 22 months in the case of public projects. We must therefore presume that governmental agencies charged with responsibilities under the act have been performing their duties (Civ. Code, § 3548) and can now draw upon their planning and experience in the public sector to aid in solving whatever problems they may have in the private sector. To the extent such planning and experience prove inadequate to the task at hand, we do not doubt that with the good will and cooperation of all concerned appropriate new guidelines and procedures can be promptly devised. And if some delays nevertheless ensue in processing applications for certain private projects which threaten to have a significant effect on the environment, it should be remembered that such delays are implicit in the Legislature's primary decision to require preparation of a written, detailed environmental impact report in precisely those cases.

The order appealed from is reversed, with directions to grant a peremptory writ of mandate ordering defendants to set aside the issuance of the conditional use and building permits.

Wright, C. J., McComb, J., Peters, J., Tobriner, J., and Burke, J., concurred.

SULLIVAN, J.—I dissent. The opinion of the majority, discarding settled principles of statutory construction and distorting the plain meaning of common English words, adopts an interpretation of the pertinent section of the Environmental Quality Act of 1970 (EQA) (Pub. Resources Code, §§ 21000-21151)[1] which in my opinion is not legally supportable. The desired end arrived at by the majority cannot justify such a means. "This court has no power to rewrite the statute so as to make it conform to a *presumed* intention which is not expressed." (*Seaboard Acceptance Corp.* v. *Shay* (1931) 214 Cal. 361, 365 [5 P.2d 882]; italics added.)

The crucial question before us is, of course, whether Mono County must prepare an environmental impact report, pursuant to section 21151, before it grants a conditional use or building permit for International's proposed development at Mammoth Lakes. The answer to this question depends in turn on the resolution of a problem of statutory construction—whether the phrase "any project they intend to carry out" (§ 21151) includes within its scope a *private* development for which a governmental permit is required. As will appear, I conclude that the applicable rules of interpretation compel a negative answer.

Section 21151 provides: "The legislative bodies of all cities and counties which have an officially adopted conservation element of a general plan shall make a finding that any project they intend to carry out, which may

[1]Hereafter, unless otherwise indicated, all section references are to the Public Resources Code.

As we have said, however, the issue before us is limited to whether the State Board acted arbitrarily, capriciously, or without evidentiary support. This standard severely limits the scope of our review. The State Board's finding is supported by evidence that both Yorba Linda and the remaining portion of the Fullerton HSD are presently predominantly white; if we look to the present composition of the districts and dismiss future changes as speculative, we could not classify the State Board's decision as arbitrary or capricious. We therefore uphold the State Board's finding on this issue.

3. *Compliance with the California Environmental Quality Act.*

(9a) Under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21050 et seq.), any public agency directly undertaking a project which may have a significant effect on the environment must first conduct a threshold study of such impact. If the study shows that the project will not have a significant effect, the agency may so declare in a brief negative declaration; if it demonstrates that the project may have a significant effect, the agency must prepare an environment impact report. (*No Oil, Inc.* v. *City of Los Angeles* (1974) 13 Cal.3d 68, 74 [118 Cal.Rptr. 34, 529 P.2d 66].)

(10a) Implementation of the secession Plan in the present case involves the possibility of a significant impact. Secession will likely require the construction of a new high school in Yorba Linda and may result in abandonment of some facilities in the remaining portion of the Fullerton HSD.[13] It will change bus routes and schedules, and affect traffic patterns. Although it is uncertain whether the total impact will be significant enough to require an environmental impact report, it is clear that it is sufficient to require at least an initial study to inquire into the need for such a report.

The State Board, however, ruled that it had no duty to undertake such a study before approving the Plan. Judicial review of its ruling is governed by Public Resources Code section 21168.5, which limits judicial inquiry into "whether there was a prejudicial abuse of discretion," and provides that "[a]buse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence."[14] In the present case, the principal controversy concerns whether

[13]The new district will be required to devise a plan to house students in grades 9-12. It is currently estimated that it will cost in excess of $6 million to construct the necessary facilities. The trial court also relied upon testimony to the effect that the proposed plan would cause a reduction in the number of students in the Fullerton HSD which would necessitate either the inefficient use of the Fullerton HSD facilities or the closing of some of its facilities.

[14]The question here is not merely whether the State Board's determination was arbitrary, capricious or entirely lacking in evidentiary support. (Cf. *Brock* v. *Superior Court*, *supra*, 109 Cal.App.2d 594.) Rather, the standard of review applicable under CEQA is a much more

the State Board's approval of the Plan constitutes a "project" within the purview of CEQA.[15] This is an issue of law which can be decided on undisputed data in the record on appeal; thus the present appeal presents no question of deference to agency discretion or review of substantiality of evidence.

We explained CEQA's concept of a "project" requiring an environmental study in *Bozung* v. *Local Agency Formation Com.* (1975) 13 Cal.3d 263 [118 Cal.Rptr. 249, 529 P.2d 1017]. *Bozung* was concerned with a Local Agency Formation Commission (LAFCO) decision to approve an annexation proposal. The commission argued that although the development of the land following annexation might have an environmental effect, the mere approval of the proposal had no such effect. We explained, however, that "[t]he notion that the project itself must directly have such an effect was effectively scotched in *Friends of Mammoth*. [*Friends of Mammoth* v. *Board of Supervisors* (1972) 8 Cal.3d 247 (104 Cal.Rptr. 761, 502, P.2d 1049).] The granting of a conditional use permit—a piece of paper—does not directly affect the environment any more than an annexation approval—another piece of paper. *Friends of Mammoth*, of course, said that the word "project" appears to emphasize activities *culminating* in physical changes to the environment, . . .' (*Id.*, at p. 265. Italics added.) In response to that concept, the Guidelines refer to 'physical impact on the environment, directly or *ultimately*.' (Cal. Admin. Code, tit. 14, § 15037. Italics added.)" (13 Cal.3d at p. 279.) We then held in *Bozung* that approval of the annexation—a necessary step in a chain of events which would culminate in physical impact on the environment—required an environmental impact report.

The State Board, consequently, cannot argue that its approval of the secession Plan is not a project merely because further decisions must be made before schools are actually constructed, bus routes changed, and pupils reassigned. It does, however, argue that its approval is not a project because it simply submits the issue to the voters, and because the Plan as approved is not sufficiently definite to allow an adequate environmental study.

stringent inquiry as to whether there was a prejudicial abuse of the State Board's discretion. Such an abuse of discretion may be established by showing that the State Board incorrectly assessed, and thus did not comply with, the proper procedure "required by law." (Pub. Resources Code, § 21168.5)

[15]The State Board also argues that the County Committee was the lead agency responsible for preparation of the threshold study, and consequently that Fullerton HSD's suit, because it was not filed within 180 days from the County Committee's action, was barred by the statute of limitations. (See Pub. Resources Code, § 21167.) CEQA defines "lead agency" as "the public agency which has the principal responsibility for carrying out or approving a project." (Pub. Resources Code, § 21067.) Consequently, assuming that the environmental study should take place before the election—an issue discussed later in this opinion—the role of lead agency in our opinion falls on the State Board. Even though the County Committee formulated the Plan, the State Board had the final responsibility to review the Plan, approve it, and submit it to the voters. Since Fullerton HSD brought the present action within 180 days after the State Board's approval, its action was timely.

The State Board first points to California Administative Code, title 14, section 15037, which in subdivision (b) states that "[p]roject does not include . . . (4) The submittal of proposals to a vote of the people of the State or of a particular community."

It is clear, however, that Board's approval of the Plan is not exempt from CEQA merely because that approval must be ratified by the voters. As the court explained in *People* ex rel. *Younger* v. *Local Agency Formation Com.* (1978) 81 Cal.App.3d 464 [146 Cal.Rptr. 400], in holding LAFCO approval of a deannexation proposal was subject to CEQA, "[t]he 'project' here is more than the 'submittal of proposals to a vote of the people.' Rather, it is but the first step required by statute on a deannexation proposal with consequent substantial impact on the physical and human environment." (81 Cal.App.3d at p. 479.)

The State Board also relies on *Simi Valley Recreation & Park Dist.* v. *Local Agency Formation Com.* (1975) 51 Cal.App.3d 648 [124 Cal.Rptr. 635], which concerned LAFCO approval of an election to detach an area from a recreation and park district. Noting that the asserted environmental impact was simply the replacement of one group of managers by others who might hold different views on the future use of the land in question, the court held that under these circumstances the LAFCO approval was not a "project" under CEQA. Distinguishing *Bozung* v. *Local Agency Formation Com., supra*, 13 Cal.3d 263, *Simi Valley* stated that the earlier case "dealt only with the situation where LAFCO approval was a necessary step in the development and in effect constituted an entitlement for use for such development. . . . [¶] The evaluation process contemplated by CEQA relates to the effect of proposed changes in the physical world which a public agency is about to either make, authorize or fund, not to every change of organization or personnel which may affect future determinations relating to the environment." (51 Cal.App.3d at pp. 665-666.)[16]

The distinction set out in *Simi Valley* is not between approval of a proposal which requires an election and approval of a proposal which does not. It is between governmental approval which constitutes an essential step culminating in action which may affect the environment (*Bozung*) and approval of a reorganization which portends no particular action affecting the environment (*Simi Valley*).

[16]The quoted language from *Simi Valley* is not, of course, a test for determining whether governmental action comes under CEQA. The concept of "project" in CEQA encompasses many activities which do not relate to land development, but involve some other environmental impact. (See, e.g., *Edna Valley Assn.* v. *San Luis Obispo County etc. Coordinating Council* (1977) 67 Cal.App.3d 444 [136 Cal.Rptr. 665] [approval of regional transportation plan]; *Shawn* v. *Golden Gate Bridge etc. Dist.* (1976) 60 Cal.App.3d 699 [131 Cal.Rptr. 867] [increase in bridge tolls].)

The decision in *Prentiss* v. *Board of Education* (1980) 111 Cal.App.3d 847 [169 Cal.Rptr. 5], that the closure of a school is not a "project" because the school board had not decided whether to put the land to a different use, is questionable. It may be unlikely that the closure of a single elementary school would have a significant environmental impact apart from its effect on the use of the property—the school board in *Prentiss* filed a negative declaration—but the possibility cannot be rejected categorically.

The present case more closely resembles *Bozung* v. *Local Agency Formation Com., supra*, 13 Cal.3d 263. The anticipated environmental impact here stems from the construction of a new high school in Yorba Linda and consequent changes in the remaining portion of the Fullerton HSD. Although it is conceivable that Fullerton HSD itself could build a high school in Yorba Linda, it is apparent that it does not intend to do so; the future Yorba Linda Unified School District, on the other hand, must construct such a facility. Thus, as a practical matter State Board approval of the secession Plan is an essential step leading to ultimate environmental impact; it is therefore under the reasoning of *Bozung* and *Simi Valley* a "project" within the scope of CEQA. (See *People* ex rel. *Younger* v. *Local Agency Formation Com., supra*, 81 Cal.App.3d 464, 478.)

A closer question is presented by the State Board's contention that an environmental study before the election would be premature. The timing of an environmental study can present a delicate problem. " 'Statements must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process.' " (*No Oil, Inc.* v. *City of Los Angeles, supra*, 13 Cal.3d 68, 77 fn. 5, quoting *Scientists' Inst. for Pub. Info., Inc.* v. *Atomic Energy Com'n.* (D.C.Cir. 1973) 481 F.2d 1079, 1094.)

Specific plans have not yet been formulated for construction of a new high school in Yorba Linda or for changes in the education program in the remaining portion of the Fullerton HSD. Thus delay of an environmental study until after the election might result in a more specific and useful study. The problem with such a delay, however, is that as a practical matter it precludes the alternative of continuing the status quo. Once the voters approve the secession Plan the new Yorba Linda Unified School District will have to build a high school, and Fullerton HSD will have to adjust to the loss of the Yorba Linda students.

(11) The fundamental purpose of CEQA is to ensure "that environmental considerations play a significant role in governmental decision-making" (*Friends of Mammoth* v. *Board of Supervisors* (1972) 8 Cal.3d 247, 263 [104 Cal.Rptr. 761, 502 P.2d 1049]). Consequently, it is desirable that environmental information be furnished the decision-maker "at the earliest possible stage" (*Bozung* v. *Local Agency Formation Com., supra*, 13 Cal.3d 263, 282).

(10b) In the present setting, the State Board and the voters are the decision-makers; they must decide whether to approve the proposed secession, an approval which necessarily entails building a new high school and other actions which may have an environmental effect. In making that decision, the State Board and the voters should have the benefit of relevant environmental data and analysis. (See *People* ex rel. *Younger* v. *Local Agency Formation Com.*, *supra*, 81 Cal.App.3d 464, 481.)[17] We conclude that the initial environmental study of the effect of detaching Yorba Linda from the Fullerton HSD should have been undertaken before the State Board approved the Plan and submitted it to the voters, and that in failing to undertake that study the State board violated the requirements of CEQA.[18]

4. *Limitation of the election to residents of Yorba Linda.*

(12a) Fullerton HSD contends that the decision of the State Board to approve limiting the election to residents of Yorba Linda denies the equal protection of the laws to the other residents of Fullerton HSD.

The first step in evaluating this contention is to determine the applicable level of judicial review.[19] In *Curtis* v. *Board of Supervisors* (1972) 7 Cal.3d 942 [104 Cal.Rptr. 297, 501 P.2d 537], a voting rights case similar in many respects to the present case, we explained that: "[T]his court and the United States Supreme Court apply a two-level test. [Citation.] In the typical equal protection

[17]The decision of the District of Columbia Circuit in *Realty Income Trust* v. *Eckerd* (D.C. Cir. 1977) 564 F.2d 447, presents an analogy to the present case. The court there held that an environmental study must precede submission of a proposal to Congress for construction of a new federal office building even though the exact site and financing would be determined by the General Services Administration following congressional approval. By submitting an environmental impact statement (EIS) with the proposal, the agency would make available environmental information at the "critical juncture" when the relevant congressional committees decide "whether to proceed with these projects at all." (P. 453.)
The court went on to say that "the interest of Congress in making environmentally-informed decisions is not the only interest at stake in the timely filing of an EIS . . . . There is also the interest . . . in seeing that the agency itself has considered the environmental issues in this important stage in the decision-making process. [Citation.] Finally, the availability of an EIS can allow for a more informed and more effective involvement by the public . . . ." (Pp. 453-454.)

[18]We emphasize that we require only an initial threshold study. The result of that study will determine whether an environmental impact report is necessary.

[19]Some decisions speak of an initial constitutional inquiry to determine whether the groups affected are similarly situated with respect to the purpose of the legislation or other state action. (See, e.g., *In re Eric J.* (1979) 25 Cal.3d 522, 531 [159 Cal.Rptr. 317, 601 P.2d 549].) To ask whether two groups are similarly situated in this context, however, is the same as asking whether the distinction between them can be justified under the appropriate test of equal protection. Obvious dissimilarities between groups will not justify a classification which fails strict scrutiny (if that test is applicable) or lacks a rational relationship to the legislative purpose. (See, e.g., *People* v. *Olivas* (1976) 17 Cal.3d 236 [131 Cal.Rptr. 55, 551 P.2d 375] (adults and minors); *Newland* v. *Board of Governors* (1977) 19 Cal.3d 705 [139 Cal.Rptr. 620, 566 P.2d 254] (felons and misdemeanants).)

case the classification need only bear a rational relationship to a conceivable legitimate state purpose; '[on] the other hand, in cases involving "suspect classifications" or touching on "fundamental interest," . . . the court has adopted an attitude of active and critical analysis, subjecting the classification to strict scrutiny. [Citations omitted.] Under the strict standard applied in such cases, the state bears the burden of establishing not only that it has a *compelling* interest which justifies the law but that the distinctions drawn by the law are *necessary* to further its purpose.'" (7 Cal.3d at pp. 951-952, quoting *Westbrook* v. *Mihaly* (1970) 2 Cal.3d 765, 784-785 [87 Cal.Rptr. 839, 471 P.2d 487].)

In *Hawn* v. *County of Ventura* (1977) 73 Cal.App.3d 1009, 1019-1020 [141 Cal.Rptr. 111], the Court of Appeal explained the application of these principles to state action limiting the franchise: "[T]he strict standard of review has long been held to apply to voting legislation which excludes certain potential voters from participation. (*Kramer* v. *Union School District* (1969) 395 U.S. 621 [23 L.Ed.2d 583, 89 S.Ct. 1886]; *Cipriano* v. *City of Houma* (1969) 395 U.S. 701 [23 L.Ed.2d 647, 89 S.Ct. 1897]; *Curtis* v. *Board of Supervisors* [*supra*] 7 Cal.3d 942.) There has been a subsequent refinement of this general principle as it applies to analysis of legislative voting classifications: an exclusion of voters invoking strict constitutional scrutiny has been held to mean an 'identifiable class' of voters (*Weber* v. *City Council* (1973) 9 Cal.3d 950 [109 Cal.Rptr. 553, 513 P.2d 601]; *Gordon* v. *Lance* (1971) 403 U.S. 1 [29 L.Ed.2d 273, 91 S.Ct. 1889]) and, '[a]lthough not every classification created . . . is subject to strict scrutiny, the "compelling interest" measure must be applied if a classification has a "real and appreciable impact" upon the equality, fairness and integrity of the electoral process.' (*Choudhry* v. *Free* (1976) 17 Cal.3d 660, 664 [131 Cal.Rptr. 654, 552 P.2d 438]; see *Bullock* v. *Carter* (1972) 405 U.S. 134, 144 [31 L.Ed.2d 92, 92 S.Ct. 849].) For a legislative classification relating to the elective process to *avoid* the strict scrutiny test of equal protection, it must have 'only minimal, if any, effect on the fundamental right to vote.' (*Gould* [v. *Grubb* (1975)] 14 Cal.3d 661, 670 [122 Cal.Rptr. 377, 536 P.2d 1337].)" It is important to note that it is the impact of the classification on the electoral process that triggers strict scrutiny. That heightened mode of analysis is not limited to cases involving suspect or invidious classifications.

It is clear that the classification in the present case does not involve a mere incidental or marginal effect on a fundamental right (compare *Califano* v. *Jobst* (1977) 434 U.S. 47, 53-54 [54 L.Ed.2d 228, 234-235, 98 S.Ct. 95]; *In re Flodilin* (1979) 25 Cal.3d 561, 568 [159 Cal.Rptr. 327, 601 P.2d 559]); it excludes all residents of Fullerton HSD outside Yorba Linda from voting on the proposed measure, an exclusion which may well affect the outcome of the election. The case is thus analogous to those Supreme Court decisions (*Phoenix* v.

Notes of Decisions

1. In general

The existence of a project for purposes of California Environmental Quality Act cannot depend upon the outcome of the inquiry which the Act contemplates only after the existence of a project is established; the Act was not intended to and cannot reasonably be construed to make a project out of every activity of a public agency, regardless of the nature and objective of the activity. Simi Val. Recreation and Park Dist. v. Local Agency Formation Commission of Ventura County (1975) 124 Cal.Rptr. 635, 51 C.A.3d 648.

Local agency formation commission was governmental agency to which provisions of Environmental Quality Act concerning preparation of environmental impact reports were applicable. Bozung v. Local Agency Formation Commission of Ventura County (1975) 118 Cal.Rptr. 249, 529 P. 2d 1017, 13 C.3d 263.

§ 21064. Negative declaration

"Negative declaration" means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

(Added by Stats.1976, c. 1312, p. —, § 6.)

§ 21065. Project

"Project" means the following:

(a) Activities directly undertaken by any public agency.

(b) Activities undertaken by a person which are supported in whole or in part through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) Activities involving the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(Added by Stats.1972, c. 1154, p. 2271, § 1, eff. Dec. 5, 1972.)

Cross References

Hiring, see Civil Code § 1925 et seq.
Leases between public entity and another or nonprofit corporation, exemption from certain laws, see Civil Code § 1952.6.
Limitation of actions, see § 21167.
Local agency, approval of project, certificate, see § 21152.
Moratorium on application of division to activities described in subd. (c), see § 21171.
State agency, approval of project, certificate, see § 21108.
Validation of project defined in subd. (c), see § 21169.

Law Review Commentaries

Application of California Environmental Quality Act to municipal annexations of land. (1976) 64 C.L.R. 532.

Duty of private parties to file environmental statement. (1973) 61 C.L.R. 559.

Note 1

City of Watsonville (1981) 177 Cal.Rptr. 542, 124 C.A.3d 711.

The "revised final" environmental impact report for construction of tomato paste processing plant should have been circulated for public and agency comment since it contained significant new information. Sutter Sensible Planning, Inc. v. Sutter County Bd. of Sup'rs (1981) 176 Cal.Rptr. 342, 122 C.A.3d 813.

§ 21167. Commencement of actions or proceedings; time

Any action or proceeding to attack, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this division shall be commenced as follows:

(a) An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(b) Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(c) Any action or proceeding alleging that an environmental impact report does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152 by the lead agency.

(d) Any action or proceeding alleging that a public agency has improperly determined that a project is not subject to the provisions of this division pursuant to subdivision (b) of Section 21080 or pursuant to Section 21085 or 21172 shall be commenced within 35 days after the filing by the public agency, or person specified in subdivision (b) or (c) of Section 21065, of the notice authorized by subdivision (b) of Section 21108 or subdivision (b) of Section 21152. If such notice has not been filed, such action or proceeding shall be commenced within 180 days of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days after commencement of the project.

(e) Any action or proceeding alleging that any other act or omission of a public agency does not comply with the provisions of this division shall be commenced within 30 days after the filing of the notice required by subdivision (a) of Section 21108 or subdivision (a) of Section 21152.

(Amended by Stats.1977, c. 1200, p. 4003, § 17.)

1979 Legislation.

Sections 1, 2, 3, 4, 5, of Stats.1979, c. 81, p. 191, urgency, eff. May 24, 1979, provide:

"Sec. 1. The Legislature hereby finds that:

"(a) The Congress of the United States, in enacting the Public Utility Regulatory Policies Act of 1978 (Public Law 95-617), has determined that expeditious federal and state decisions for west-to-east crude oil delivery systems are of the utmost priority.

"(b) In order to achieve expeditious construction and operation of such crude oil delivery systems, the Congress established, in Title V of such statute, special procedures for ensuring expeditious actions on applications for federal permits, licenses, and approvals required for the construction and operation of west-to-east crude oil transportation systems, with specific reference to the Long Beach-Midland project, as defined in Section 503 of such statute.

"Sec. 2. The Legislature hereby declares that it is the policy of the state, consistent with the federal policy established by Title V of the Public Utility Regulatory Policies Act of 1978, that all state, regional, and local agencies in California expedite, to the maximum possible extent, final decisions with respect to any lease, permit, license, certificate, or other entitlement for use required for the construction or operation of the Long Beach-Midland project.

"Sec. 3. (a) In furtherance of the policy stated in Section 2 of this act, any action or proceeding to attack, review, set aside, void, or annul a determination, finding, or decision in connection with, or to in any way challenge, the issuance of, a lease, permit, license, certificate, or other entitlement for use required for the construction or operation of the Long Beach-Midland project shall be commenced in the appropriate superior court within 30 days after the effective date of this act or within 30 days after the issuance of such lease, permit, license, certificate, or other entitlement for use, whichever time period is longer. The provisions of this subdivision shall apply notwithstanding any other provision of law which may be inconsistent therewith.

"(b) If no such action or proceeding is filed during the time period provided in subdivision (a), the issuance of such lease, permit, license, certificate, or other entitlement for use shall be conclusively presumed to comply with all requirements of law for such lease, permit, license, certificate, or other entitlement for use.

"Sec. 4. (a) In furtherance of the policy stated in Section 2 of this act, any action or proceeding specified in subdivision (a) of Section 3 of this act, including the hearing of any such action or proceeding on appeal from the decision of a lower court, shall be given preference over all other civil actions or proceedings in any court, in the matter of setting such action or proceeding for hearing or trial, and in hearing the same, to the extent that all such actions or proceedings shall be quickly heard and

and engineering company for preparation of such a report; therefore, judgment dismissing, without leave to amend, contractor's breach of contract complaint against engineering company would be reversed and cause remanded to permit contractor to file amended complaint. COAC, Inc. v. Kennedy Engineers (1977) 136 Cal.Rptr. 890, 67 C.A.3d 916.

§ 21151. Local agencies; preparation and completion of impact report; submission as part of general plan report; significant effect

All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment. When a report is required by Section 65402 of the Government Code, the environmental impact report may be submitted as a part of that report.

For purposes of this section, any significant effect on the environment shall be limited to substantial, or potentially substantial, adverse changes in physical conditions which exist within the area as defined in Section 21060.5.

(Amended by Stats.1981, c. 264, p. ——, § 2.)

Administrative Code References

Project evaluations by state water resources control board, see 23 Cal.Adm. Code 2720.

Law Review Commentaries

When does a private construction project require an environmental impact report. Kevin P. Kane (1976) 52 Los Angeles Bar J. 142.

Notes of Decisions

Accuracy of report 6.4
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Sufficiency of report 6.6
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½. Validity

California Environmental Quality Act, in requiring the local agency formation commission of San Diego county to file an environmental impact report preliminary to the exercise of its discretion to approve or disapprove a proposed deannexation of territory currently part of the city of San Diego, does not unconstitutionally infringe upon the First Amendment rights of the deannexation proponents, nor is the fee to be charged them in connection with the preparation of an environmental impact report an unconstitutional burden on their First Amendment rights or an unreasonable impediment on their right to petition for redress of grievances. People ex rel. Younger v. Local Agency Formation Commission of San Diego County (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

1. In general

If there is substantial evidence that proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of environmental impact report and adopt a negative declaration; therefore, if trial court perceives substantial evidence that project might have such an impact, but agency failed to secure preparation of required environmental impact report, agency's action is to be set aside because the agency abused its discretion by failing to proceed in the manner required by law. Friends of "B" St. v. City of Hayward (1980) 165 Cal.Rptr. 514, 106 C.A.3d 988.

In respect to proposed deannexation of 25 square miles of territory currently part of the city of San Diego, the local agency formation commission of San Diego county was properly adjudged the "lead agency" in preparation of an environmental impact report. People ex rel. Younger v. Local Agency Formation Commission of San Diego County (1978) 146 Cal.Rptr. 400, 81 C.A.3d 464.

If after an initial study a public agency determines that a proposed project which could possibly have significant effect on environment will, in fact, not have a significant effect, agency may so declare in negative declaration and no environmental impact report is required. Pacific Water Conditioning Ass'n v. City Council of Riverside (1977) 140 Cal.Rptr. 812, 73 C.A.3d 546.

Board of county supervisors' statement that approval of tentative maps for subdivision required that the final maps comply with specific plan for the entire future development of the area in question and that the board recognized that development should not be considered and evaluated in a vacuum was insufficient to show required consideration, for environmental impact report purposes, of the overall impact of the project. People v. Kern County (1976) 133 Cal.Rptr. 389, 62 C.A.3d 761.

3. Report

Admissions by mining company that vehicular traffic would increase and noise levels would be slightly elevated, that there would be change in amount of dust in vicinity and mine would alter contours and character of area did not constitute substantial evidence of significant environmental effects, and were not at all inconsistent with finding by the board of supervisors of county that conditions attached to negative declaration mitigated any potentially significant environmental impact associated with project and, thus, no environmental impact report was mandated. Perley v. Calaveras County (1982) 187 Cal.Rptr. 53, 137 C.A.3d 424.

Regional transportation plan adopted by county and cities area planning coordination council was not exempt from requirement that environmental impact report be prepared on ground that it was mere legislative proposal which was intended for incorporation into California transportation plan which, in turn, was to be adopted by state transportation board following appropriate legislative declaration of state wide transportation goals, objectives and policies. Edna Valley Ass'n v. San Luis Obispo

[Civ. No. 44715. Second Dist., Div. Three. Sept. 25, 1975.]

SIMI VALLEY RECREATION AND PARK DISTRICT et al., Plaintiffs and Appellants, v. LOCAL AGENCY FORMATION COMMISSION OF VENTURA COUNTY et al., Defendants and Respondents.

SUMMARY

The trial court entered judgment of dismissal after sustaining demurrers without leave to amend to all causes of action of a petition for a writ of mandate by which a recreation and park district and two residents and property owners within the district sought to nullify the determinations of the county local agency formation commission and the county board of supervisors approving and carrying out the detachment of some 10,000 acres of undeveloped land from the territory encompassed within the district. The detachment proposal was a part of an extensive planning effort by agencies in the county relating to the future development of a new community. After following procedures outlined by statute, the commission directed the recreation and park district to initiate proceedings to effect the detachment, but the district directors refused to consent thereto. The commission certified the district's refusal, pursuant to Gov. Code, § 56293, to the county board of supervisors for purposes of allowing it to initiate, conduct and complete detachment proceedings consistent with the commission's resolution. (Superior Court of Ventura County, No. SP 47284, Jerome H. Berenson, Judge.)

The Court of Appeal affirmed, rejecting the contention that the detachment was a "project" requiring the filing of an environmental impact report. The court held that the Environmental Quality Act was totally inapplicable under the circumstances. It pointed out that the district had failed to attack the commission's determination within the time provided by statute, and that the action of the board of supervisors was purely ministerial and thus exempt from the requirements of the act.

Delegation of legislative power to local agency formation commissions by the District Reorganization Act (Gov. Code, §§ 56000-56550) was held constitutional, and the court further held that the commission could constitutionally order the detachment without a vote of the residents of the remainder of the district. In conclusion the court held that the determinations of the commission and the board of supervisors were, as provided by Gov. Code, § 56006, reviewable only to determine if they were supported by substantial evidence. It was pointed out that the determinations were legislative rather than judicial, and that they did not substantially affect any fundamental vested right. (Opinion by Potter, J., with Cobey, Acting P. J., and Allport, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports, 3d Series

(1) **Pollution and Conservation Laws § 9—Environmental Quality Act—Applicability to Actions by Local Agency Formation Commissions.**—Determinations of a county local agency formation commission and the county board of supervisors approving and carrying out the detachment of an undeveloped area from the territory encompassed by a recreation and park district were not invalidated by failure of the commission and the board to prepare an environmental impact report, where detachment made no change whatsoever in the uses to which the detached land might be put. Moreover, no action attacking the validity of the detachment on the basis of the Environmental Quality Act was brought within 180 days as required by Pub. Resources Code, § 21167, and, in any event, the board's action in initiating detachment proceedings pursuant to the commission's certification was mandatory under Gov. Code, § 56274, and therefore fell within Pub. Resources Code, § 21080, exempting ministerial acts from the requirements of the Environmental Quality Act.

(2) **Counties § 3—Delegation of Legislative Power to Local Agency Formation Commissions.**—The delegation of legislative power to local agency formation commissions by the District Reorganization Act (Gov. Code, §§ 56000-56550) is not unconstitutional. The discretion of a local commission is limited by Gov. Code, § 54774,

which requires that it be exercised "for planning and shaping the logical and orderly development and coordination of local government agencies so as to advantageously provide for the present and future needs of the county and its communities," and Gov. Code, § 56006, subjects commission determinations to court review for abuse of discretion.

[See **Cal.Jur.2d,** Counties, § 12; **Am.Jur.2d,** Municipal Corporations, Counties and Other Political Subdivisions, §§ 190, 191.]

(3) **Counties § 3—Delegation of Legislative Power to Local Agency Formation Commissions.**—The delegation of legislative power to local agency formation commissions by the District Reorganization Act (Gov. Code, §§ 56000-56550) does not violate Cal.Const.art. XI, § 11, which prohibits delegation of county or municipal powers to "a private person or body." Local agency formation commissions are governmental agencies.

(4) **Counties § 3—Local Agency Formation Commissions—Powers—Elections.**—Detachment by a county local agency formation commission and the county board of supervisors, of an undeveloped area from the territory encompassed by a recreation and park district without permitting the residents and property owners of the remainder of the district to participate in an election to confirm the detachment did not constitute a denial of equal protection of the laws, where no facilities of any kind had been provided by the district in the detached area, where the property contained therein remained subject to liability to pay the existing obligations of the district, where detachment would not infringe on any interest of the district except as it related to its tax base, while the property owners in the detached area had at stake the availability of that territory for integration into a planned community, and where there was a significant, even compelling, state interest in providing a method of adjusting special district boundaries in the context of a regional and nonself-interest perspective.

(5) **Counties § 3—Local Agency Formation Commissions—Powers—Detachment of Territory From Recreation and Park District.**—A recreation and park district could not successfully contend that it had the power and discretion to disapprove and prevent a detachment of its territory which had been approved by the county local

agency formation commission. Except where a "majority protest" is received requiring that the proposal be abandoned pursuant to Gov. Code, § 56316, the conducting agency has no power to make any determination other than to adopt a resolution ordering the territory detached, either with or without an election. The consent requirement expressed in Gov. Code, § 56004, is expressly limited in its application to annexation of territory of one district by another district formed under the same principal act.

(6a, 6b) **Counties § 3—Local Agency Formation Commissions—Judicial Review of Determinations.**—Determinations of a county local agency formation commission and the county Board of Supervisors approving and carrying out the detachment of an undeveloped area from the territory encompassed by a recreation and park district were judicially reviewable only to determine if they were supported by substantial evidence as provided by Gov. Code, § 56006. Since the agencies were not exercising judicial powers and the decision did not substantially affect any fundamental vested right, the judicially announced independent judgment on the evidence test was inapplicable.

(7) **Appellate Review § 163—Reversal—Correct Ruling Based on Wrong Reason.**—A ruling or decision, itself correct in law, will not be disturbed on appeal merely because given for a wrong reason. If right upon any theory of the law applicable to the case, it must be sustained regardless of the considerations which may have moved the trial court to its conclusion.

COUNSEL

Files, McMurchie, Foley & Brandenburger, Donald W. McMurchie and Gordon R. Lindeen, for Plaintiffs and Appellants.

Dorothy L. Schechter, County Counsel, and James L. McBride, Chief Assistant County Counsel, for Defendants and Respondents.

OPINION

POTTER, J.—This is an appeal from a judgment of dismissal after demurrers were sustained (without leave to amend) to all 14 causes of action of a petition for writ of mandate. Petitioners Simi Valley Recreation and Park District (hereinafter "District"), and Marietta R. Spotts and John K. Hubbell, residents and property owners within the district, sought by their petition to nullify the determinations of respondents Local Agency Formation Commission of Ventura County (hereinafter "LAFCO") and Board of Supervisors of Ventura County (hereinafter "Board") approving and carrying out the detachment of some 10,000 acres of undeveloped land from the territory encompassed within the District.

Each of the 14 causes of action included in the petition as amended asserted a different theory for the claimed invalidity of the action taken. The demurrer was made "generally to the Petition on file herein and to each separate cause of action therein on the grounds that neither the Petition nor any of the individual causes of action therein allege facts sufficient to state a cause of action against respondents." The seventh cause of action was demurred to on the ground that it was on its face barred by the statute of limitations embodied in section 21167 of the Public Resources Code. In addition to filing the demurrer respondents answered the petition, denying the allegations upon which the claims of invalidity were based.

An order to show cause setting the matter for hearing on June 14, 1974, was issued; the demurrers were set for hearing the same date, but such combined hearing was postponed until June 28, 1974. At that time, pursuant to an agreement between counsel, the legal issues posed by the demurrers were submitted first, with the understanding that "[i]f the court rulings on the Demurrer are such that factual issues become material, then the matter will be set for hearing at a later time for the submission of factual evidence."[1] It appears, however, that the allegations of the petition were treated by both parties as including matters not directly alleged therein but brought to the court's attention in appendices to the memoranda of points and authorities filed in support of and in opposition to the demurrers. The briefs of the parties on appeal likewise treat these matters[2] as though they are incorporated in the petition. Though no formal order was made deeming these materials to be incorporated in the petition, no meaningful consideration of the issues argued by the parties can occur without reference to them, in view of the highly conclusional nature of many of the allegations of the petition.[3] Little purpose would be served by affirming the order sustaining the demurrers on the basis of the inadequacy of these conclusional allegations of the petition. If such were the basis for sustaining the demurrers, leave to amend would clearly have been required. Accordingly, we will deem the petition augmented by facts stated in, but not contentions and conclusions advanced in, the appendices referred to in footnote 2.

In its memorandum of ruling the court noted "the respective positions of the parties having to do with the extent and scope of the review." Those positions bore upon the demurrer to the eleventh cause of action, challenging the determinations of respondent LAFCO and respondent Board for abuse of discretion in that they "are not supported by the weight of the evidence." The court referred to petitioners' position as urging "the independent judgment test" made applicable in *Strumsky* v. *San Diego County Employees Retirement Assn.*, 11 Cal.3d 28 [112 Cal.Rptr. 805, 520 P.2d 29], and respondents' position as advancing the "substantial evidence rule." The court did not, however, resolve this issue, saying in this connection: "The transcript of the hearings involved herein has not been attached to the petition or incorporated therein. Manifestly, on demurrer, I am not, therefore, concerned with matters of evidence nor whether the decisions of LAFCO or actions taken by the BOARD are supported by the weight of evidence. (See *Faulkner* v. *Cal. Toll Bridge Authority* (1953) 40 Cal.2d 317, 328 [253 P.2d 659].) The

[1]This version of the stipulation was set forth in a letter from counsel for petitioners attached as exhibit A to the memorandum of points and authorities in support of a notice of motion for permission to file transcripts of the various proceedings conducted by respondents and by petitioner District. It is not questioned by respondents and it is apparent that the court proceeded upon the basis that it was "limited to a determination of the sufficiency of the complaint as a matter of law" and was obliged to "treat the demurrer as admitting all allegations of material facts" (as stated in the memorandum of ruling).

[2]Included in this category are exhibits A through D attached to the petition, appendices A and B to petitioners' memorandum, and appendices A through E to respondents' memorandum.

[3]For example, the sixth and eighth causes of action based upon the California Environmental Quality Act (Pub. Resources Code, §§ 21050-21174) state no facts supporting the conclusion that an environmental impact report was "required." It is only by reference to exhibit D to the petition, which is incorporated by reference solely to set forth "[s]pecific procedural errors made in the preparation and approval of a Negative Declaration" by respondent Board, that the factual matters relied upon by petitioners can be found.

resolution of the question whether the independent judgment test or substantial evidence rule would here apply is not required at this stage of the proceedings."

The trial court apparently sustained the demurrer to the eleventh cause of action on the basis of the statement in *Faulkner* v. *Cal. Toll Bridge Authority*, 40 Cal.2d 317, 330-331 [253 P.2d 659], "that to plead a cause of action . . . the plaintiff must either attach to the complaint a complete transcript of all the evidence upon which the authority acted . . . or, at the minimum, must allege the substance of all of the evidence which the authority did receive . . . ."

Petitioners attempted to deal with this ruling by making a motion to permit filing transcripts of the proceedings. In that motion it was urged that the stipulation avoided the effect of *Faulkner* and called for resolution of the legal issue as to the scope of review on the basis of the conclusional allegations in the petition. The memorandum in support of the motion stated: "If the court had ruled on Demurrer that the Strumsky test was not applicable, then the transcripts would not be relevant." Petitioners further discussed what they might plead if given leave to amend. They said in this connection: "It also seems clear that Petitioners should be permitted to amend their pleadings to incorporate the transcripts and thereby properly raise the Strumsky issue. The sustaining of a Demurrer without leave to amend under these circumstances is improper." Petitioners did not at any time in the trial court claim or allege, or seek leave to amend so as to allege, that the determinations of respondent LAFCO and of respondent Board were not supported by substantial evidence. The motion was denied, leaving in effect the order sustaining all the demurrers without leave to amend, upon which judgment was entered.

Final action completing the detachment has been stayed by successive orders of the trial court, and of this court, pending disposition of this appeal.

Facts

The facts pleaded are for the most part undisputed. Petitioner District is a recreation and park district existing under the terms and provisions of chapter 4, Division 5 of the Public Resources Code. (Pub. Resources Code, § 5780 et seq.) It has authority to organize, promote, conduct and

advertise programs of community recreation, to establish systems of recreation and recreation centers including parks and parkways, and to acquire, construct, improve, maintain and operate recreation centers within or without its territorial limits. The area encompassed by District is located in southeastern Ventura County. It includes the City of Simi Valley, the balance of the Simi Valley, and surrounding territory. The 10,000-acre parcel involved in the proposed detachment is a portion (comprising a small fraction of its total area) of the District lying westerly of Simi Valley, and geographically separated from it by a mountain ridge. For the most part, the detachment is mountainous. All of it is undeveloped, there being only one dwelling unit with five persons living there. A large section of it, some 4,200 acres, is now included in a state park, and the remainder is in open space or agriculture. No park or other facilities of petitioner District are located in the detachment.

The detachment was initiated by joint action of respondent Board and of Moreland Investment Company, a large owner of property in the area involved. The Board, by resolution of application of April 6, 1973, requested LAFCO approval of the proposed detachment. Moreland Investment Company previously requested such action by letter of March 21, 1973. The Moreland Investment Company letter cited the action of LAFCO taken on March 14, 1973, "to create a new sphere of influence line between Simi Valley and Moorpark" as the basis for its request. It was followed by a formal application for detachment on April 4, 1973, attaching a LAFCO detachment questionnaire. In response to the question, "What is the present use of the land?" the Company stated, "Cattle grazing—with proposal residential development."

The detachment proposal was an aspect and outgrowth of an extensive planning effort undertaken by respondent Board, the Ventura County Planning Department, and the Ventura County Executive Office relating to the future development of the community of Moorpark. Moorpark is an unincorporated area of Ventura County lying to the west of Simi Valley. This effort, which started in 1971 and which involved broad participation by local citizens groups recognized that urbanization of the Moorpark area was imminent, that uncontrolled growth could result in sprawling urbanization, and sought to develop a future plan in advance of the expected population influx. These efforts culminated in the production of "The Moorpark Community Plan" which, with an addendum of April 1972, was adopted by respondent Board as the Moorpark General Plan. This comprehensive plan included a land use

map indicating the areas in which commercial, industrial and various densities of residential use would be permitted. It also included a "Green Belt Park and Recreation System" which provided for several community parks interconnected by "pedestrian greenbelts, bikeways, and riding trails." As planned, the recreation element would include neighborhood and community parks in the combined ratio of 5 acres for each 1,000 of population. The report noted the absence of an "appropriate vehicle for accepting, improving or maintaining park and recreation land," and referred to the pendency of county action to adopt a Quimby Act (Gov. Code, § 66477 et seq.) ordinance to implement acquisition of the required park and recreation land for transfer to a future Moorpark Park and Recreation District, to a future incorporated City of Moorpark, or for development by the county as the general purpose governmental entity.

Respondent LAFCO held a series of hearings upon the application of respondent Board and Moreland Investment Company, and on August 8, 1973, approved the detachment by resolution of that date. This resolution recited that the commission had "considered all oral and written testimony for and against the said proposed detachment including, inter alia, consideration of the Moorpark General Plan prepared by the Ventura County Planning Department, the study of Special Districts in Ventura County prepared by the Ventura County Executive's Office, the Moorpark and City of Simi Valley Sphere of Influence Plans and discussions of the County open space ordinance." The LAFCO resolution further determined (1) that the detachment was "uninhabited," (2) as authorized by Government Code section 56252[4] that any election called upon the question of confirming such detachment be conducted "only within the territory ordered to be detached" and (3) that the detached area "shall not be subject to any future bond obligations by the Simi Valley Recreation and Park District." The resolution made no reference to existing obligations. (See Gov. Code, § 56470.) Consequently, as provided by section 56492 of the Government Code, the detached property would remain liable for outstanding obligations of the District.

[4]Section 56252 provides as follows: "In any order approving a proposal for an annexation or detachment, the commission may determine that any election called upon the question of confirming an order for any such annexation or detachment shall be called, held and conducted upon such question either:

"(a) Only within the territory ordered to be annexed or detached; or

"(b) Both within the territory ordered to be annexed or detached and within all or such part of said district as is outside of such territory."

Pursuant to section 56291 of the Government Code,[5] respondent LAFCO directed petitioner District to initiate proceedings to effect the detachment. The District gave notice and held hearings as required by Government Code sections 56311-56314. No protests were received by the District from any owners of land in the detachment. There was, therefore, no "majority protest" requiring abandonment of the detachment pursuant to section 56316 of the Government Code. But the District, through its Board of Directors, found that the detachment was "not to the best interests of the District or to the residents of the District residing outside of the territory proposed to be detached" and by resolution of January 9, 1974, refused to consent to the proposed detachment. The District further found that "[n]o detachment should occur unless it is approved by a majority vote of those residing in this District outside of the territory proposed to be detached." In view of the resolution of respondent LAFCO limiting any election to one "only within the territory ordered to be detached," the Board of the District did not order an election.

On February 27, 1974, LAFCO adopted a resolution determining that the District had "failed and refused to conduct or complete proceedings for the detachment" and certified such refusal, pursuant to section 56293[6] of the Government Code, "to the Board of Supervisors of the County of Ventura for purposes of allowing that body to initiate, conduct and complete detachment proceedings consistent with this Commission's resolution . . . ."

Jurisdiction to initiate, conduct and complete the proceedings was assumed by respondent Board on March 5, 1974, pursuant to the

[5]Section 56291 provides as follows: "A district whose boundaries would be changed as a result of a proposed annexation, detachment or minor boundary change shall be the conducting district and proceedings for any such annexation, detachment or minor boundary change shall be taken by the board of directors of such district. The board of supervisors of the principal county shall take proceedings for all other changes of organization and any reorganization, including a reorganization providing, among other things, for any annexation, detachment or minor boundary changes."

[6]Section 56293 of the Government Code provides in pertinent part:

"After the expiration of 35 days from the date of adoption of the commission's resolution making determinations, the commission may by resolution certify to the board of supervisors of the principal county:

". . . . . .

"(b) That the board of directors of a conducting district has failed or refused to initiate, conduct or complete proceedings for the change of organization in compliance with the commission's resolution making determinations or has failed to comply with any terms or conditions thereof."

provisions of section 56294[7] of the Government Code. Respondent Board noticed hearings to receive written and oral testimony on the proposed detachment. At a public hearing on April 2, 1974, the hearing was continued in order to permit processing of environmental documents. The Planning Department of the County of Ventura was assigned the job of preparation of environmental documents, though respondent Board took the position that its action was purely "ministerial" and therefore not within the California Environmental Quality Act (Pub. Resources Code, § 21050 et seq., hereinafter "CEQA"). On April 11, 1974, petitioner District requested that it be furnished data by "the department preparing the report . . . at the earliest possible date." The first communication received by the District in response to this request was a negative declaration approved by the planning director on April 24, 1974. At the continued hearing before respondent Board on April 30, 1974, the District objected to the procedure followed in preparing the negative declaration, specifying the absence of an initial study in accordance with title 14, California Administrative Code, sections 15080 and 15083, lack of consultation with "all responsible agencies" pursuant to section 15066 and insufficient time for public response between the time the negative declaration was made available and approval of the project, as mandated by title 14, California Administrative Code, section 15083. The hearing was continued to May 21, 1974, to permit the District to appeal the negative declaration to the environmental report review committee of the planning department.

Petitioner District filed such an appeal on May 24, 1974, with the environmental quality advisory committee. In that appeal the District reasserted the above stated procedural objections and added its further objection based on the asserted lack of compliance with county guidelines[8] for processing environmental documents adopted in com-

[7]Section 56294 of the Government Code provides:

"At any time after the adoption of a resolution of certification pursuant to Section 56293, the board of supervisors may assume jurisdiction to initiate, conduct and complete any proceedings for the change of organization and to enforce compliance with any terms or conditions thereto referred to in such resolution. Upon the assumption of such jurisdiction, said board of supervisors and the clerk and other officers of the county shall have exclusive jurisdiction with respect thereto and may exercise all powers and duties vested in the board of directors of a conducting district and the clerk or other officers of such district. Any jurisdiction assumed and exercised by the board of supervisors and the clerk or other officers of the county pursuant to this section shall be given the same force and effect as if taken by the board of directors, if any, of a conducting district and the clerk or officers thereof."

[8]The matters cited included those specified in respect of the state guidelines and in addition an alleged lack of compliance with the requirement that an environmental assessment questionnaire be completed.

pliance with section 21082 of the Public Resources Code mandating the adoption of such guidelines. The District's appeal also presented its claims with respect to the applicability of CEQA to the detachment proceeding. It asserted that an environmental impact report was required because of impending development. The owner's alleged proposal to convert the property to agricultural use (planting to citrus) rather than the indicated residential development was characterized as one that could "be withdrawn at any point." The appeal adverted to the property as "prime developable property with good accessibility and adjacent to existing development and a college," and forecast that economic factors "will force the owner to maximize use of the property." The gravamen of the District's argument that the detachment would have a substantial environmental impact, however, can be summarized by the following quotation of one paragraph of its presentation:

"AESTHETIC, NATURAL AND SCENIC QUALITIES could be drastically affected inasmuch as there does not exist an agency with local recreation and open space policies comparable to those of the District. The District has the capability to acquire not only recreational lands but also open space and parkways. It has historically demonstrated its interest and concern through active programs of acquisition and maintenance."

In support of its argument, the District pointed out factors purportedly establishing its superiority over any other agency as an instrumentality to provide for park and recreational service in the area. Reference was made to the District's record of past accomplishments as compared to the unproven capabilities of a county service area in the Moorpark sphere or the anticipated future City of Moorpark. The recreation element of the Moorpark plan itself was criticized on the basis that it "calls for 5 acres of park land per 1,000 people in comparison to the District's 3.5 acres per 1,000 which will obviously increase significantly acquisition, development, maintenance and programming costs."

Alternatively, the District argued that provision for a substitute agency, such as "the establishment of a county service area, formation of an independent recreation and park district or incorporation as a City prior to approval of this project" was required, and asserted that

"[f]ailure to select one of these alternatives would unnecessarily create an adverse situation with respect to environmental protection and enhancement as there would be no agency in that area with a demonstrated capability of administering, maintaining, developing, and acquiring local park and recreational facilities as well as open space lands."

The District's appeal resulted in a hearing before the Environmental Report Review Committee but in no change to the negative declaration. The negative declaration pointed out that "[t]his action relates only to what jurisdiction will provide services to the area and will thus have negligible environmental impact." It added that "[t]he District has no general planning or zoning powers, nor does the District have a Quimby Act ordinance. These powers are reserved to Cities and Counties." It concluded that "[t]he detachment project will have no significant adverse environmental effects . . . ." A further hearing before the Board of Supervisors occurred on May 28, 1974, at which the District was represented. At the conclusion of that hearing the respondent Board adopted its resolution of that date ordering the detachment. The resolution found that there was no majority protest which would terminate the proceedings. It restated the Board's position that action by the Board was purely ministerial but noted that "a negative declaration has nonetheless been filed and this Board accepts and approves that negative declaration as a correct statement of the environmental consequences of the proposed detachment." The resolution stated various reasons for the Board's action. It noted that the detachment "is consistent with the Moorpark and Simi spheres of influence as established by LAFCO and the general plan of Moorpark and is consistent with this Board's efforts to create a well-balanced, well-planned and viable community in the Moorpark area." It asserted that "Ventura County has the capability to ensure adequate park and recreation facilities and detachment will allow a general purpose governmental entity, either the County or the future City of Moorpark, to provide coordinated governmental services to the Moorpark sphere of influence without fragmentation between several single purpose governmental agencies." The resolution further found "[t]here is no present development planned for the detached area."

The filing of the petition for writ of mandamus followed immediately after the adoption of the detachment resolution by respondent Board on May 28, 1974.

Contentions

With two exceptions,[9] all of the contentions urged in petitioner's 14 causes of action are still asserted as bases for nullifying the detachment proceedings. These contentions are:

1. The detachment proceedings are invalid due to the failure of respondent LAFCO and of respondent Board to comply with the requirements of CEQA for the preparation and consideration of an environmental impact report (hereinafter "EIR") or, in any event, a negative declaration, in accordance with state and local guidelines.

2. The District Reorganization Act (hereinafter "DRA") is an unconstitutional delegation of legislative power to LAFCOs.

3. DRA violates the provisions of section 11 of article XI of the California Constitution prohibiting the delegation to a private person or body power over municipal functions.

4. The residents of the remainder of the District cannot constitutionally be deprived of the right to vote on the detachment.

5. DRA prohibits LAFCO from mandating detachment of territory from the District without its consent and in disregard of its resolution disapproving detachment.

6. DRA prohibits LAFCO from mandating detachment of territory from the District without a vote of the residents when the District disapproves detachment.

[9]These are:
(a) Petitioners' assertion (seventh cause of action) that it was an abuse of discretion per se for respondents LAFCO and Board to order detachment at a time when development was expected to take place without making detachment conditional upon formation of another public agency authorized to provide park and recreation services in the detached territory. This assertion is restated in appellants' opening brief, but no argument is made in support of it. We, therefore, deem it abandoned.
(b) Petitioners' claim (10th cause of action) that the detachment was invalid because it did not provide for continued liability for outstanding indebtedness. This issue has been eliminated by petitioners' acceptance of the representation made in respondents' brief that any statement filed with respect to the change effected by the detachment, pursuant to sections 54900-54902 of the Government Code, will specify that the detached area remains obligated for the existing indebtedness of the District.

7. LAFCO's failure to establish and consider spheres of influence for the District and the adjacent governmental agencies invalidates its determination.

8. The decisions of LAFCO and of the Board are reviewable for abuse of discretion and subject to nullification because they are not supported by the weight of the evidence.

The issues posed by the above contentions, and respondents' contentions to the contrary, will be discussed herein in the order in which the contentions are above numbered. The issues posed with respect to the applicability of CEQA involve a threshold requirement which, if applicable and not complied with, renders any action of a public agency void. The three constitutional issues are next in order because no action of a LAFCO can be upheld if the powers granted to it are not constitutionally exercised. The next four issues involve interpretation of the DRA provisions delegating power to LAFCOs and to districts subject to their determinations. The eighth issue relates only to whether petitioners are entitled to have an independent review of the particular determination made in this case.

CEQA Is Inapplicable to the Challenged Determinations

(1) Numerous subissues are presented by the parties' various contentions concerning the applicability of CEQA and the sufficiency of the action taken in purported compliance therewith by respondent Board. Respondent LAFCO made no pretext of compliance. Its hearings were conducted and its determination made without the preparation of either a negative declaration or an EIR. It relies upon petitioners' failure to file any action challenging such determination within 180 days as required by Public Resources Code section 21167. Respondent Board, on the other hand, argues that its action carrying out the detachment after assumption of jurisdiction upon certification by respondent LAFCO was purely ministerial, and not a "discretionary" project subject to CEQA. Alternatively, respondent Board claims that it complied with CEQA by adopting and approving a negative declaration prepared by the county planning department. Petitioners, in turn, claim that the statute of limitations set forth in section 21167 of the Public Resources Code did not commence to run until respondent LAFCO's determination was implemented by the action of respondent Board and that the negative declaration was prepared in disregard of the requirements for the preparation thereof as set forth in the state and county guidelines.

None of the above subissues, however, is relevant unless the LAFCO determination directing initiation of the detachment proceedings or respondent Board's implementation of it constituted "projects proposed to be carried out or approved by public agencies," as defined in Public Resources Code section 21080. If there was no "project," there was no occasion to prepare either a negative declaration or an EIR.

Petitioners argue that "[a]ny governmental activity which results in some direct or ultimate physical impact on the environment is considered to be a project for purposes of CEQA." We disagree. The existence of a project cannot depend upon the outcome of the inquiry which the act contemplates only after the existence of a project is established. This court is not unmindful of the requirement that CEQA "be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language" (see our opinion in *People* ex rel. *Dept. Pub. Wks.* v. *Bosio*, 47 Cal.App.3d 495, 515 [121 Cal.Rptr. 375]), and "[i]t is, of course, too late to argue for a grudging, miserly reading of CEQA." (*Bozung* v. *Local Agency Formation Com.*, 13 Cal.3d 263, 274 [118 Cal.Rptr. 249, 529 P.2d 1017].) It is not, however, too late to recognize that CEQA was not intended to and cannot reasonably be construed to make a project of every activity of a public agency, regardless of the nature and objective of such activity. Such a construction would invoke the expensive and time-consuming procedures[10] required to complete at least a negative declaration in respect of virtually every action of a public agency. It is difficult to conceive of any such action which could not have "a potential for significant environmental effect" (the state guideline standard for determining when a project requires a negative declaration or an EIR).

The correct definition of a "project" under CEQA can be found in the two decisions of our Supreme Court which have discussed it. The first is *Friends of Mammoth* v. *Board of Supervisors*, 8 Cal.3d 247 [104 Cal.Rptr. 761, 502 P.2d 1049]. The argument that projects included "only situations in which the government itself engages in construction, acquisition or other development" (8 Cal.3d at p. 257) was rejected, the court holding: "[I]t is manifest that the word 'project' as used in section 21151 and other provisions of the EQA includes the issuance of permits, leases and other entitlements." (8 Cal.3d at p. 262.) In stating its conclusion as to the meaning of the words "they intend to carry out" in Public Resources

[10] See the state guidelines, 14 California Administrative Code section 15083.

Code section 21151, the court said: "Defendants and International contend that since 'project' is followed by the phrase 'they intend to carry out,' section 21151 can only be interpreted as referring to a public works type project 'to be carried out,' i.e., constructed, acquired or developed, by the government. However, having interpreted the word 'project' broadly to include private activity for which a permit is necessary, certainly the granting or denying of a permit is an act which a governmental authority 'carries out.' Accordingly, we construe the phrase following 'project' to mean only that *before an environmental impact report becomes required the government must have some minimal link with the activity, either by direct proprietary interest or by permitting, regulating, or funding private activity.* [Fn. omitted.]" (8 Cal.3d at pp. 262-263.) (Italics added.)

The court thus defined "projects" as "public works type" projects to be "constructed, acquired or developed, by the government" and like projects of private parties with which the government has the required "minimal link." Except in cases where the government itself is engaged in a "public works type project," the required "minimal link with the activity" is that a government agency take action (in the nature of the issuance of a permit, the making or changing of a regulation, or the provision of funding) *necessary to the carrying out* of some private project involving a physical change in the environment.

In *Bozung* v. *Local Agency Formation Com., supra,* 13 Cal.3d 263, our Supreme Court considered the application of CEQA to a LAFCO approval of annexation of property located in an unincorporated area of Ventura County by the City of Camarillo. As in this case, demurrers were sustained without leave to amend to a petition for writ of mandate. The petition sought to require LAFCO to certify an environmental impact report before approving the City's annexation. The allegations of the complaint as described by the court included not only the fact that the annexed area "would be used 'for residential, commercial and recreational uses,' and that such development was 'anticipated . . . in the near future,' " (13 Cal.3d at pp. 269-270), but as well the fact that such development depended upon approval of and completion of the annexation. The court said in this respect: "No one makes any bones about the fact that the impetus for the Bell Ranch annexation is Kaiser's desire to subdivide 677 acres of agricultural land, a project apparently *destined to go nowhere in the near future as long as the ranch remains under county jurisdiction.* The city's and Kaiser's application to LAFCO

shows that this agricultural land is proposed to be used for 'residential, commercial and recreational' purposes. Planning was completed, preliminary conferences with city agencies had progressed 'sufficiently' and development in the near future was anticipated. In answer to the question whether the proposed annexation would result in urban growth, the city answered: 'Urban growth will take place in designated areas and only within the annexation.'[23]" (Italics added.)(13 Cal.3d at p. 281.)

The court held that the LAFCO approval of the annexation was a project undertaken by LAFCO which constituted an entitlement for use requiring preparation of an EIR because it might have a significant effect on the environment. It made clear, however, that it was dealing only with the "activity under examination in this case" (13 Cal.3d at p. 277), and added: "First and foremost, we point out that we are not dealing with an abstract problem. Again, this case does not involve—as the tone of some of defendants' arguments suggest—the question whether any LAFCO approval of any annexation to any city may have a significant effect on the environment. This is not the case of a rancher who feels that his cattle would chew their cuds more contentedly in an incorporated pasture." (13 Cal.3d at p. 281.)

The decision, therefore, does not make every LAFCO approval a project subject to CEQA; nor does it make every LAFCO approval of local agency boundary changes, the timing of which may coincide with intended development, such a project. It dealt only with the situation where LAFCO approval was a necessary step in the development and in effect constituted an entitlement for use for such development.

The detachment proceedings in this case constituted activities of both LAFCO and of respondent Board. However, no facts alleged or otherwise shown suggest that the availability of the property in the detached area for development in any respect depends upon the detachment. Petitioners have merely claimed that the action was taken "just as development is starting to take place or can be expected to take place in the area proposed for detachment." This allegation, however, is

[23]"It would be entirely wrong to infer that there is anything underhanded or illegal in this pre-annexation cooperation between Kaiser and Camarillo. Government Code section 65859 specifically provides for the prezoning of unincorporated territory adjoining a city 'for the purpose of determining the zoning that will apply to such property in the event of subsequent annexation . . . .' Nor do we mean to imply that Camarillo has somehow bargained away its responsibilities with respect to such decisions as must be made before Kaiser's plans can become a reality."

far from an allegation that the proposed development was dependent upon the detachment; it is clear that the contrary was true. Unlike the situation in *Bozung* (where the annexation removed the property from the zoning authority of the county which blocked development into the City of Camarillo which had prezoned it so as to permit the development), detachment in this case did not make any change whatever in the uses to which the land might be put. The property was within the zoning jurisdiction of the county, both before and after the detachment, and the land use therein permitted by the county was "open space or agriculture." Moreover, petitioner District had no authority over the use of the land in the detached area by virtue of its inclusion in such district, its powers being limited to those enumerated in Public Resources Code section 5782.2.

The evaluation process contemplated by CEQA relates to the effect of proposed changes in the physical world which a public agency is about to either make, authorize or fund, not to every change of organization or personnel which may affect future determinations relating to the environment. The determinations of respondent LAFCO and of respondent Board were in the latter category and were not "projects" which they proposed to carry out. There was, therefore, no need for a negative declaration or an EIR since neither requirement is applicable if there is no project subject to CEQA. We may, therefore, summarily dispose of the subissues relating to CEQA set forth above.

Petitioners' challenge to the determination of respondent LAFCO is in any event barred by the statute of limitations embodied in section 21167 of the Public Resources Code which requires that any action attacking the validity of the action of any public agency based upon CEQA be brought within 180 days from the time said action is taken. The petition herein was not filed until more than eight months after the LAFCO resolution approving the detachment. Petitioners' argument that the cause of action did not arise until LAFCO's decision was implemented by respondent Board is disposed of by the decision in *Bozung* holding that a LAFCO determination which is subject to CEQA is itself a project subject to nullification by writ of mandate. The cause of action clearly arose when the determination was made.

Petitioners' reliance upon CEQA to nullify the action of respondent Board is misplaced for still another reason. Respondent Board is correct in its assertion that its action was purely ministerial and therefore exempt

from CEQA requirements,[11] even if it otherwise qualified as a project. Government Code section 56274 makes it "mandatory for the board of directors of the conducting district or the board of supervisors, as the case may be, to take proceedings for the change of organization" approved by LAFCO. In the case of a detachment, such proceedings can only result in a resolution ordering the territory detached if there is no majority protest (Gov. Code, § 56319), though disapproval is permitted in respect of annexations (Gov. Code, § 56319.1). Consequently, the provisions of section 56294 of the Government Code, stating that, "[a]t any time after the adoption of a resolution of certification . . . the board of supervisors may assume jurisdiction . . ." do not make such action discretionary. It must be construed merely as specifying that such assumption may occur "at any time" after adoption of such resolution of certification.

The negative declaration prepared for and adopted by respondent Board does not, however, aid respondents' case. If the respective future capabilities of petitioner District and of alternative agencies to provide recreational facilities were required to be considered under CEQA, we would not be prepared to say that the petition failed to show there was a question which could be "fairly argued," in view of "the existence of serious public controversy." (*No Oil, Inc.* v. *City of Los Angeles*, 13 Cal.3d 68, 75, 85 [118 Cal.Rptr. 34, 529 P.2d 66].) A negative statement would, therefore, not suffice.

Finally, if a negative statement were appropriate, the allegations supporting petitioners' numerous objections to the procedure employed appear to have sufficient substance to preclude sustaining a demurrer without leave to amend.[12]

Our conclusion, therefore, that the demurrer was properly sustained as to the causes of action based upon CEQA is based upon (1) the total inapplicability of CEQA to the detachment proceedings under the circumstances alleged, (2) the statute of limitations applicable to any challenge to the determination of respondent LAFCO, and (3) the ministerial character of the action taken by respondent Board.

[11]Public Resources Code section 21080 provides in subdivision (a), "this division shall apply to discretionary projects" and in subdivision (b), "This division shall not apply to ministerial projects proposed to be carried out or approved by public agencies."

[12]It was alleged, for example, that in violation of the state guidelines there was no consultation with other agencies, such as, for example, respondent LAFCO in respect of the preparation of the negative declaration.