

PEP Status; New CEQA Case; Partial EIR Certification
12/07/2017

I wanted to update you on the status of the PEP cases after this past Tuesday's case management conferences.

UWT PEP Case

Craig Sherman has dismissed the Fifth Cause of Action for Writ of Mandate which now leaves two civil claims for declaratory and injunctive relief related to the use of Measure RR funds for the PEP project. As a result, the case has been reassigned from the writs department (Judge Mary Strobel) to a civil department (Judge Holly Kendig). The next case management conference is April 10, 2018. Mr. Sherman has not filed the threatened motion to amend the complaint to add the individual trustees as defendants. He could still file the motion, but I think that is unlikely at this point as it would further delay the case, which does not work to UWT's advantage. In addition, I surmise Mr. Sherman is not presently interested in filing a motion for preliminary injunction to enjoin the use of Measure RR funds given the recent dismissal of the Fifth Cause of Action and reassignment of the case to Judge Kendig.

City of Walnut PEP Case

You will recall there are two separate City of Walnut PEP cases, one challenging the 2015 SEIR in Judge Torribio's department and one challenging the 2017 SEIR in Judge Strobel's department. The City Attorney has advised the court that the two PEP cases should be consolidated decided by Judge Torribio. The City Attorney has also agreed to dismiss all of the PEP contractors who were named as real parties in interest.

Having the two cases in front of Judge Torribio is a positive development in my opinion. I have attached a published Second District Court of Appeal decision where Judge Torribio's decision to partially certify an EIR was affirmed on appeal. The issue on appeal was whether Judge Torribio had the authority under CEQA to partially decertify an EIR where two environmental impacts were found to have been improperly evaluated, and to leave in place project approvals as to the EIR impacts that were valid. The plaintiff argued Judge Torribio had no such authority once he found the EIR improperly evaluated two impacts. This case indicates that Judge Torribio is likely to take a practical and pragmatic view of the PEP challenge, both as to the City of Walnut's CEQA and land use challenges. (As an aside, since this published opinion will prove helpful if a CEQA challenge is filed to the WPS 2017 SEIR.)

Consolidating the two PEP cases in Judge Torribio's department will take several weeks and it is unlikely we will have a case management conference with Judge Torribio until February or March of next year. The City Attorney did not mention seeking any ex parte or preliminary injunctive relief related to the PEP grading work and stop notices.

Let me know if you have any questions.

Sean B. Absher
<http://www.sycr.com/>