

# Changing Protected Status of Land Requires CEQA Compliance

Article By:

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[Paulek v. Western Riverside County Regional Conservation Authority](#) (Anheuser-Busch, LLC, Real Party in Interest) (6/19/2015, 4th Civil No. B253935)

In ***Paulek v. Western Riverside County Regional Conservation Authority***, the California Court of Appeals, Fourth District, held that removal of the protected status from a parcel of land still needs to comply with the environmental review requirement of the California Environmental Quality Act (CEQA). In doing so, the court concluded that the Western Riverside County Regional Conservation Authority's ("Conservation Authority") re-classification of land was a fundamental land use decision, akin to a change in zoning laws or a municipal general plan.

Riverside County had begun a campaign in 2003 to preserve open land for biological diversity, resulting in the planned acquisition of over 100,000 acres of land. Pursuant to this plan, the Conservation Authority in 2011 agreed to purchase 964.21 acres owned by Anheuser-Busch over the course of the next nine years.

As part of the Purchase and Sale Agreement, the Conservation Authority agreed to immediately remove the protected designation from 200 acres, known as the Phase 9 land, which would be the last property sold to the County. That way, if the Conservation Authority failed to purchase the Phase 9 land by year 9, Anheuser could then develop that land unimpeded. To mitigate the potential loss of this parcel, the Conservation Authority proposed the acquisition for preservation of two other parcels of land, totaling 1,064 acres.

The petitioner, Albert Paulek, challenged this land reclassification as failing to comply with CEQA.<sup>[1]</sup>

## ***Court's Findings***

The court ultimately vacated the re-classification order due to lack of CEQA compliance. CEQA requires that non-exempt governmental projects must have an initial environmental study to determine the potential environmental impact. Because removing protection from the Phase 9 land might affect the physical environment, the court found that the re-classification was a "project" under CEQA.

The Conservation Authority's claims of Category 7 (maintenance of natural resources) and Category 8 (maintenance of the environment) exemptions were denied since there was sufficient evidence of a potential environmental impact. Categories 7 and 8 exemptions only apply if there is a showing of environmental restoration and not one of significant adverse impact.

Although the Conservation Authority argued that the proposed new sites would provide offsetting environmental benefits, the court noted that the mitigating measures' benefits had little relevance to whether the Phase 9 land itself would be impacted. This determination was bolstered by evidence that certain birds used the Phase 9 land as well as evidence that adjacent protected land might be negatively impacted by Phase 9 development. The court also followed this reasoning to deny the County's common-sense exception defense.

The court emphasized that it was not blocking the re-classification but only requiring compliance with CEQA first.

***Daniel Fong*** is the author of this article.

[1] Although the County was involved in the negotiations with Anheuser-Busch, the County was not listed as a defendant by Paulek. The court found this absence permissible since the case stemmed from the Purchase & Sale Agreement, which only involved the Conservation Authority and Anheuser-

Busch.

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