

No. A158723

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE**

STOP SYAR EXPANSION

Petitioner and Appellant,

v.

COUNTY OF NAPA,

Defendant and Respondent.

SYAR INDUSTRIES, INC.,

Real Party in Interest and Respondent.

Appeal from The Superior Court of California,

County of Napa

Case No. 16CV001070,

Hon. Victoria Wood

REQUEST FOR PUBLICATION (OPINION FILED MARCH 25, 2021)

*NAVI SINGH DHILLON (SBN 279537)

CHRISTOPHER J. CARR (SBN 184076)

PAUL HASTINGS LLP

101 California Street, 48th Floor

San Francisco, California 94111

Telephone: 415.856.7000

E-mail: NaviDhillon@paulhastings.com

Attorneys for Real Party in Interest and Respondent

SYAR INDUSTRIES, INC.

Document received by the CA 1st District Court of Appeal.

On behalf of the California State Association of Counties, the League of California Cities, Napa County, and our client Syar Industries, Inc., we respectfully ask that the Court certify for publication its Opinion entered in this case on March 25, 2021. The Opinion addresses important issues under the California Environmental Quality Act (Pub. Resources Code § 21000 *et seq.*) (CEQA) in a manner that meets the standards set forth in California Rule of Court 8.1105(c)(2), (3) and (4), as discussed below.

STATEMENT OF INTEREST

The California State Association of Counties (CSAC) is a non-profit corporation. The membership consists of the 58 California counties. CSAC sponsors a Litigation Coordination Program, which is administered by the County Counsels' Association of California and is overseen by the Association's Litigation Overview Committee, comprised of county counsels throughout the State. The Litigation Overview Committee monitors litigation of concern to counties statewide and has determined that this case is a matter affecting all counties.

The League of California Cities (Cal Cities) is an association of 476 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities is advised by its Legal Advocacy Committee, comprised of 24 city attorneys from all regions of the State. The Committee monitors litigation of concern to municipalities, and identifies those cases that have statewide or nationwide significance. The Committee has identified this case as having such significance.

Respondent Napa County (County) approved the project challenged in this matter.

Real Party in Interest Syar Industries, Inc. (Syar) is the owner and operator of the Napa Quarry, which has been in operation since the 1920s. From 1986 to the present, Syar has supplied asphalt and aggregate materials

for local, state and federal projects. Syar also played an important role during the 2014 Napa earthquake by supplying vital materials to local municipalities and residents to rebuild roads, homes and sidewalks.

In this case, Syar filed an application in 2008 with the County for a new Surface Mining Permit. Eight years later, after years of environmental review and numerous hearings, the County approved Syar's application. Another five years after that, Syar has finally come out on the other side of litigation challenging issuance of its Surface Mining Permit.

As shown by its long record of operations in the County, Syar is and intends to remain an integral part of the local and regional economy. Given the environmental complexities involved in mining and aggregate processing, and notwithstanding the critical role the resulting products play in infrastructure development and rehabilitation, Syar is likely to face challenges whenever it attempts to modify its operations at its various facilities in Northern California, and particularly in Napa County. Accordingly, Syar has an interest in seeing the Opinion published because it wishes to avoid having to litigate the same or similar issues, which in turn will help promote efficiency and economy.

REASONS FOR PUBLICATION

California Rule of Court 8.1105(c) provides that an opinion "should be certified for publication" if it meets any one of nine criteria. This Court's Opinion here should be certified for publication because it meets three of the nine criteria, namely: "(2) Applies an existing rule of law to a set of facts significantly different from those stated in published opinions; (3) Modifies, explains, or criticizes with reasons given, an existing rule of law; [and] (4) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule"

A. The Opinion applies an existing rule of law to a set of facts significantly different from those stated in published opinions.

The Opinion uniquely addresses the sufficiency of a CEQA analysis regarding the impacts of particulate emissions, traffic emissions, water use and mitigation, and water quality, as well as the consistency with land use policies, all in the context of large-scale and complex aggregate mining operations. Because few published cases address the application of CEQA to such mining operations, publication of the Opinion would help guide the analysis and review of such projects under CEQA in the future.

B. The Opinion modifies, explains, or criticizes with reasons given, an existing rule of law.

The Opinion elaborates on the existing rule that the substance of an “agency’s decisions regarding project consistency with a general plan are reviewed by ordinary mandamus.” (*The Highway 68 Coalition v. County of Monterey* (2017) 14 Cal.App.5th 883, 894 (*Highway 68*) [quoting *San Francisco Tomorrow v. City and County of San Francisco* (2014) 229 Cal.App.4th 498, 515].) More broadly, the Opinion explains that litigants cannot directly challenge general plan consistency determinations and avoid the deferential standard of review applicable to such claims under the guise of alleged CEQA violations. (See *A Local & Regional Monitor v. City of Los Angeles* (1993) 16 Cal.App.4th 630, 648.)

C. The Opinion advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule.

The Opinion interprets, for the first time, the administrative process set forth in the County’s ordinance for an appeal of actions by the Planning Commission to the County Board of Supervisors. In particular, the Opinion holds that anyone seeking to challenge in court the Board of Supervisors’ decision on an appeal must, for exhaustion purposes, specifically identify in the appeal the grounds it raises in a later lawsuit. Although the Opinion does

not set forth a dramatically different interpretation of the exhaustion doctrine, its application of cases holding that some local ordinances require a great degree of specificity, while others do not, clarifies the law. (Compare *Tahoe Vista Concerned Citizens v. County of Placer* (2000) 81 Cal.App.4th 577, 589 (*Tahoe Vista*) with *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865.) In addition, the Opinion advances a new and helpful interpretation of the County's exhaustion requirement for future projects to follow by interpreting the County's ordinance to be "like the appeal process at issue in *Tahoe Vista*" and recognizing that a petitioner must raise in its own administrative appeal any issues it might include in a future lawsuit following the appeal. (Opinion at pp. 13, 70-71.)

The Court's opinion is clear, well-written, and provides important guidance on several issues of continuing importance to cities, counties, and other parties. Its publication would affect public agencies, other litigants, and the public by providing direction in areas that would benefit from clarity.

We respectfully ask that the Court order that the Opinion be certified for publication in the Official Reports.

Respectfully submitted,

Dated: April 13, 2021

PAUL HASTINGS LLP

By: /s/ Navi Singh Dhillon

Attorney for Real Party in Interest
and Respondent Syar Industries,
Inc.

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PROOF OF SERVICE

The undersigned declares under penalty of perjury that he served an electronic copy of the foregoing Request for Publication (Opinion Filed March 25, 2021) via TrueFiling on all registered parties.

Dated: April 13, 2021

By: /s/ Navi Singh Dhillon

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