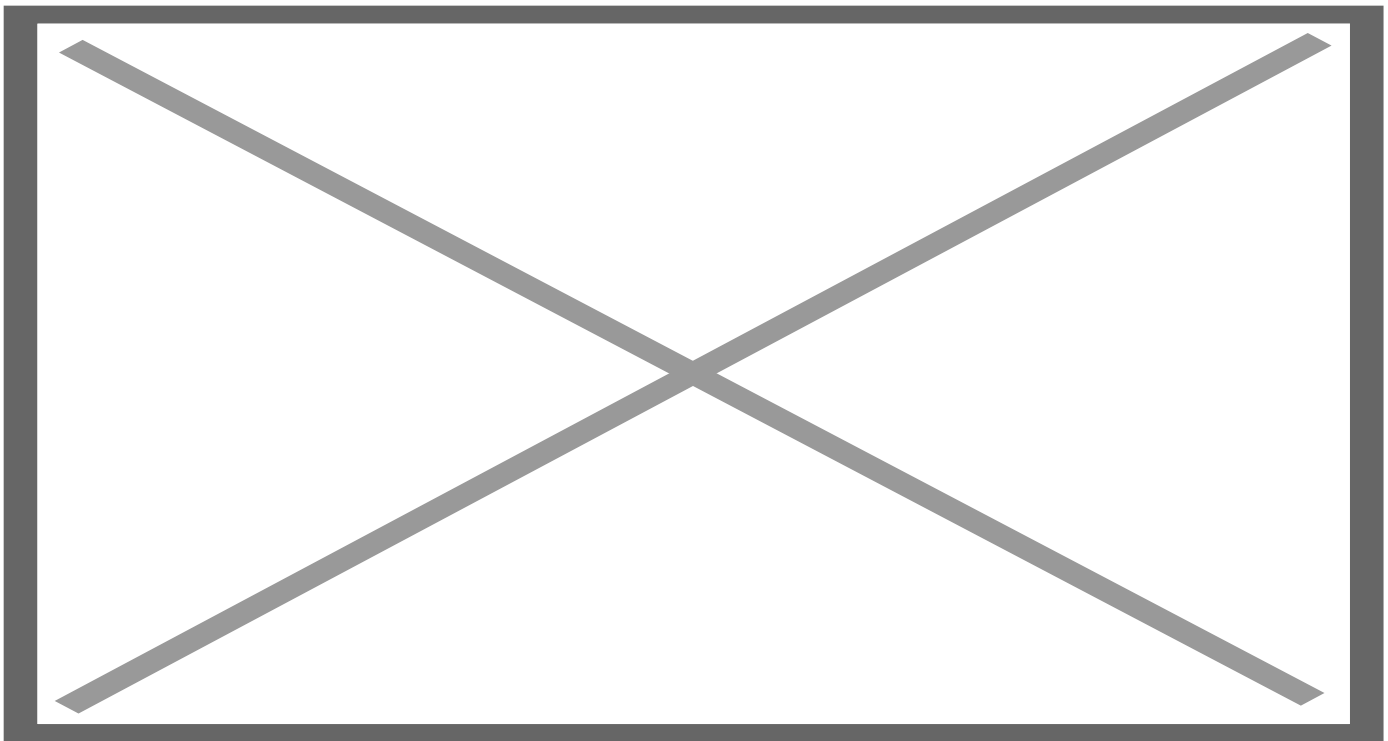


Negative Declaration Survives Challenge Based on Non-Expert Opinion About Noise Impacts

Claims of significant noise impact unsupported by expert opinion, fact, or reasonable inference did not provide grounds for challenging a negative declaration, the court of appeal held in *Jensen v. City of Santa Rosa*, 23 Cal. App. 5th 877 (2018). The project, called the Dream Center, would provide emergency shelter for homeless youth and transitional housing for young adults, as well as counseling, health, education, and job placement services. The center would also provide outdoor recreational activities for residents, including a basketball area, pottery throwing area, and garden. The center would occupy a vacant building formerly used as a hospital. A wooden fence and landscaping separated the rear parking lot from an adjacent residential neighborhood. The City of Santa Rosa adopted a negative declaration and approved a rezoning and conditional use permit for the project. Conditions of approval limited parking in the rear lot to employees during normal operating hours. The city's negative declaration relied on a noise study prepared by an engineering firm. The noise study concluded that noise impacts would be less than significant because noise would not exceed standards in the city's general plan or noise ordinance, and would not increase noise levels more than 5 dBA Ldn above existing conditions. (Ldn is the average day/night noise level.) The petitioners, who lived near the project, asserted there was a fair argument the project would cause significant noise impacts from vehicles in the rear parking lot and from outdoor recreation activities. The petitioners based their main arguments on their own calculations using data taken from a noise study for a different project in the city called Tower Market, a 24-hour convenience store and gas station.



The court held that no substantial evidence supported the petitioners' claims. First, the court found that the petitioners misused noise data from the Tower Market study. The petitioners took the Tower Market study's noise level estimates for passing vehicles, and argued that these estimates exceeded maximum noise levels that they had calculated. The court explained that the petitioners' calculations showed very little about noise impacts because they did not predict the average noise level over a period of time. Further, the court noted, this

methodology was not backed up by any expert opinion. Second, the court concluded that the petitioners' argument regarding parking lot noise was grounded on speculation and hypothesis rather than fact, expert opinion, or reasonable inference. The petitioners asserted that cars and trucks could drive through the rear parking lot at all hours of the day and night. The court explained that this claim was "most improbable and not a fair inference from the evidence," particularly in light of the project characteristics and the conditions of approval. The court also noted that it was "obvious" that Tower Market and the Dream Center were not similar projects: The rear parking lot at the Dream Center would have much less frequent car traffic (especially at night, when employees would not be allowed to park in the rear parking lot) and would have minimal or non-existent truck traffic, as compared to a 24-hour market and gas station. Third, the court rejected the petitioners' interpretation of the city's noise ordinance. The city's noise ordinance set forth base ambient noise levels based on a property's zoning and time of day. The petitioners treated these noise levels as thresholds of significance. The noise ordinance, however, specified that the base noise levels were intended to be used for comparative purposes, and noise level is one of twelve factors to be considered in determining whether a noise impact violates the noise ordinance. Finally, the court rejected the petitioners' arguments that the noise from outdoor recreation activities (basketball, pottery, and gardening) would be significant. The court held that the petitioners' methodology was "vague and hard-to-grasp," was not a "legitimate factual or scientific basis for finding a significant impact," and was "not supported by expert opinion." In this case, the petitioners' only evidence of significant noise impacts was their own calculations and lay opinion. The court held that this was not enough to support a fair argument of significant impact. The court's decision in *Jensen* indicates that petitioners challenging a negative declaration based on noise impacts or other technical issues will need to support their arguments with expert opinion.

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)