

[Blogs](#)

June 27, 2021

Evidence About Existing Wildfire Hazards Near a Project Does Not Require an EIR



ect does
nce
[ation](#)

The case

involved the replacement of a bridge over South Fork Weber Creek in El Dorado County. The county would acquire a temporary easement over a property near the existing bridge to build a temporary evacuation route during project construction. The county prepared a mitigated negative declaration for the project. The MND determined that the project's hazards impacts would be less-than-significant. In particular, the MND concluded that the project would not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan, and would not expose people or structures to a new or increased significant risk of loss, injury, or death involving wildland fires. An organization representing local residents and the owner of the property with the temporary evacuation route filed a petition for writ of mandate, alleging that the county should have prepared an EIR, contending that substantial evidence in the form of testimony by residents and former firefighters supported a fair argument that the proposed project would have significant impacts on resident safety and emergency evacuations in the event of wildfires. The trial court ruled in favor of the county, and the petitioners appealed. The court determined that the written and oral comments cited by petitioner did not constitute substantial evidence supporting a fair argument that the project may have a significant effect on the environment or may exacerbate existing environmental hazards:

- Comments from residents discussing their past experiences with wildfires in the area (including difficulties evacuating during prior wildfires) and the area's susceptibility to future wildfires related to how existing wildfire hazards might impact residents during project construction, but did not support a fair argument that *the project* may have a significant effect on the environment or may exacerbate existing environmental hazards.
- Comments asserting that many residents would be trapped if a wildfire occurred during project construction lacked a factual foundation and were mere speculation. The court noted that agencies with

expertise in emergencies and evacuations (the County Sheriff's Office of Emergency Services and the County Fire Protection District) had been consulted and were comfortable with the project plans. The court explained that "lay testimony may constitute substantial evidence when the personal observations and experiences relate to and inform on the impact of the project under consideration." Here, however, "the comments lacked factual foundation and failed to contradict the conclusions by agencies with expertise in wildfire evacuations with *specific* facts calling into question the underlying assumptions of their opinions as it pertained to the project's potential environmental impacts."

- Comments from two aerial firefighters expressing concerns about emergency evacuations were speculative lay opinion because the petitioners did not establish that the firefighters had experience or expertise in determining, directing, or effecting ground evacuations.

The court's opinion provides important clarification in its application of the fair argument standard to lay testimony.