

## **Court May Seek Clarification from Agency Regarding Issue in Pending Litigation**

The Sixth District Court of Appeal held that a trial court in a mandamus action had the inherent power to remand to the Board of Supervisors for clarification regarding an ambiguous general plan consistency finding. [\*The Highway 68 Coalition v. Co. of Monterey\*](#), No. H042891 (6th Dist., Aug. 24, 2017) The case involved a petition for writ of mandate challenging the Board's approval of a shopping center project on, among other grounds, inconsistency with the general plan. The Monterey General Plan required a "specific finding and supporting evidence of a *long-term sustainable water supply*." In approving the project, however, the Board found only that "The project has an *adequate long-term water supply*." Because the Board's finding did not comply with the express requirement of the General Plan, the trial court concluded that the Board had abused its discretion by approving the project. However, rather than invalidating the decision, the court issued an interlocutory remand to the Board to determine specifically whether the project complied with the General Plan policy as articulated. The Court of Appeal held that the trial court did not err in issuing an interlocutory remand. The court relied on the California Supreme Court's holding in *Voices of the Wetlands v. State Water Resources Control Board*, 52 Cal. 4th 499 (2011), that courts have inherent power to issue an interlocutory remand in an administrative mandamus action to resolve ambiguities and seek clarification regarding a specific issue. Here, the discrepancy between the Board's findings and the General Plan's requirement essentially turned on the word "sustainable." The Board had found only that the Project had an "adequate water supply," as opposed to a "sustainable water supply." Because this was a single, discrete issue, the appellate court held that that the lower court had the authority to issue an interlocutory remand prior to final judgment consistent with *Voices of the Wetlands*.

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