



## **Third District Declines To Reach CEQA Exemption Claim In Reversing On Other Grounds Judgment Upholding State Department of Public Health’s Approval of Santa Cruz County Needle Exchange Program But Notes New Statutory CEQA Exemption Now Exists**

By [Arthur F. Coon](#) on August 17, 2023

In a published opinion filed August 14, 2023, the Third District Court of Appeal reversed a judgment that denied a petition for writ of mandate challenging the State Department of Public Health’s (Department) approval of Real Party in Interest Harm Reduction Coalition of Santa Cruz County’s (real party) needle exchange program. *Grant Park Neighborhood Association Advocates v. Department of Public Health, et al.* (2023) \_\_\_ Cal.App.5th \_\_\_. In ordering a writ to issue to set aside the approval, the Court of Appeal agreed with petitioner and appellant Grant Park’s first three arguments based on the Department’s prejudicial violations of Health and Safety Code § 121349’s required procedures; it declined to reach appellant’s separate CEQA argument seeking the same relief, however, since it had already granted all requested relief under the other statutory provisions. However – and as most relevant to this blog – the Court also noted that following the trial court’s judgment the Legislature enacted a 2021 statutory amendment exempting the Department’s approval of needle exchange operations from CEQA.

While the opinion is thus of limited significance in the CEQA realm, land use practitioners may find of interest its discussion of the significant distinction in this context between the statutory requirement to “confer” with other agencies regarding a proposed project and the distinct statutory requirements to provide notice and a public comment period before acting. Relatedly, the Court’s discussion of situational deference to agency interpretations of law is illuminating; it distinguishes the high level of deference owed to a local agency’s interpretation of its own land use policies from the lesser level of deference owed to state agencies (such as the Department) in their interpretations of statutory laws like the Health and Safety Code provision at issue.



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