A174642

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

MARK BAKER
Petitioner and Appellant
v.
BAY AREA TOLL AUTHORITY
Respondent,

ILLUMINATE
Real Party in Interest

APPELLATE CASE NO. A174642
Appeal From a Judgment Entered in Favor of Respondents
San Francisco County Superior Court Case No. CPF-25-519079
Honorable Judge Jeffrey S. Ross

APPELLANT'S OPENING BRIEF

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Petitioner/Appellant
In Pro Per

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CERTIFICATE OF INTERESTED PARTIES

MARK BAKER
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Plaintiff/Appellant
In Pro Per

CERTIFICATE OF INTERESTED PARTIES

I, MARK BAKER, Appellant in Pro Per, certify as follows:

1. I am an unrepresented party (in propria persona) in this appeal. I am a party to this appeal, and the party I represent has no interest in the outcome of this appeal beyond what has already been disclosed. There are no corporate entities or persons with a financial interest in the outcome of this appeal that must be disclosed under Rule 8.208(e).
2. I certify that the information provided in this certificate is true and accurate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 3, 2025.

Mark Baker

By: Mark Baker
Appellant
In Pro Per

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I. INTRODUCTION

This case is about a public agency that skipped the law to fast-track a massive, environmentally disruptive project. The Bay Area Toll Authority ("BATA") attempted to greenlight the Bay Lights 360 project—a 1.8-mile-long installation of 48,000 animated LED lights on the San Francisco-Oakland Bay Bridge—without any environmental review. BATA did this by filing a one-page Notice of Exemption ("NOE"), claiming the project was categorically exempt from the California Environmental Quality Act ("CEQA").

The trial court never reached the merits of this glaring CEQA violation. Instead, it dismissed the case on a demurrer, accepting BATA's procedural defenses at face value. The court erred in two critical ways:

1. **Statute of Limitations:** The court held the challenge was time-barred by the 35-day deadline for challenging an NOE. This was error because BATA's NOE was **void from the start**. The administrative record contains no evidence of the required two preconditions: (a) a formal determination that the project was exempt, and (b) a formal project approval. An NOE filed without these prerequisites is a legal nullity and cannot trigger the 35-day clock.
2. **Collateral Estoppel:** The court held a prior, similar case precluded this one. This was in error because the prior case was also dismissed on a demurrer without reviewing the administrative record. The core issues—whether the project was properly exempted and approved—were **never actually litigated** on their merits.

The trial court's refusal to look beyond BATA's pleadings and into the administrative record allowed a fundamental due process and CEQA

violation to stand. This Court should reverse and remand with instructions to review the record and determine that BATA's actions were unlawful.

II. STATEMENT OF THE CASE

Petitioner Mark Baker challenges BATA's attempt to exempt the Bay Lights 360 project ("Project") from CEQA. The Project involves mounting tens of thousands of high-intensity, blue-rich LED lights on the Bay Bridge, operating from dusk to dawn. Approximately half of these lights would shine directly into drivers' eyes, creating a potential safety hazard and widespread light pollution known to disrupt ecosystems and human health.

Despite these obvious environmental concerns, BATA never made a formal determination that the project was exempt. It never formally approved the project by resolution or other definitive action. Yet, on August 15, 2023, it filed an NOE. When Petitioner sued, BATA repeatedly delayed certifying the administrative record. The trial court then dismissed the case on demurrer, holding Petitioner missed the 35-day deadline and was barred by a prior, non-merits dismissal. This was prejudicial error.

III. STATEMENT OF FACTS

A. Environmental Setting and Project

The Project proposes the installation of 48,000 animated, blue-rich LED lights across the San Francisco-Oakland Bay Bridge. (1 AA 0113.) These lights are intended to operate from "dusk to dawn" every night of the year. (1 AA 0113.) Approximately half of the lights will be mounted on support wires and aimed directly at drivers' eyes, creating a potential hazard for bridge users. (1 AA 0105; 2 AA 0588.) (See Figure 1.)

Figure 1 - Proposed Bay Lights 360 (1 AA 0272)

The California Department of Transportation ("Caltrans") Art Department prohibits kinesthetic elements in public art projects (2 AA 0588); however, the Project animates the LED lights to convey motion. (1 AA 0113.) As vehicles travel across the bridge, the inward-facing lights may produce a strobe effect, which may impact drivers and passengers. (1 AA 0242.)

The Project's blue-rich LEDs will generate widespread light pollution throughout the Bay Area. (1 AA 0252.) Blue-rich light at night has recognized environmental and health impacts, including potential carcinogenic effects (1 AA 0153.) A Caltrans-commissioned study, published in April 2023, found that light pollution adversely affects

terrestrial wildlife. (2 AA 0593.)[1] Individuals with disabilities are particularly vulnerable to the strobe and flashing effects of LED lighting.

On October 29, 2024, Caltrans issued an encroachment permit, significantly altering the Project's scope. (2 AA 0702-0709.) Caltrans expressed concern that inward-facing lights may pose a public safety risk, and required BATA to "revalidate" the claimed CEQA exemption — which BATA has not done. (2 AA 0744.) The permit also necessitated involvement from the Federal Highway Administration ("FHWA") and the California Highway Patrol. (2 AA 0705.)

The Caltrans encroachment permit mandates that BATA conduct a safety study to evaluate the effects of inward-facing lights on driver safety. (2 AA 0705.) The proposed methodology — installing the lights, turning them on, and recording vehicle crashes — does not account for other potential adverse effects, such as seizures, migraines, or neurological reactions caused by the strobing effect. (2 AA 0705.)

The intensity of a directly viewed light source is measured by the metric luminance (candela per square meter, or nits), which is critical for evaluating impacts on vision and neurological response. The Project documentation, however, does not specify the luminance values of the proposed LED lights.

B. Environmental Review and Project Approval

On January 11, 2023, the Bay Area Toll Authority ("BATA") Oversight Committee received a presentation on the Proposed Bay Lights 360 project, as documented in the BATA Oversight Committee meeting minutes. (1 AA 0113.) No subsequent references to the Project appear in later meeting minutes.

[1] Full Report: (https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/final-reports/ca23-3696-finalreport.pdf)

On August 15, 2023, BATA filed a Notice of Exemption ("NOE") for the Project with the San Francisco City Clerk. (1 AA 0105.) At that point in time, there was no requirement to file the NOE with the state. The NOE shows that Deputy Executive Director Alix Bockelman signed the NOE on July 21, 2023. (1 AA 0105.) However, there is no documentation showing that Ms. Bockelman was authorized by any BATA body to sign or file the NOE.

During the first case, BATA asserted that the Project was approved as a result of the January 11, 2023, BATA Oversight Committee meeting (1 AA 0362:4.) However, during oral arguments at the trial court's Case Management Conference for the second case, BATA offered a different theory and asserted that the Project was approved "upon filing" of the one-page NOE and that the Project was approved concurrent with the filing of the NOE. (2 AA 0806:24.)

According to the January 11, 2023, Oversight Committee Agenda, the BATA Oversight Committee—not staff—approves CEQA-related projects via a Resolution (1 AA 0109), and thus Ms. Bockelman's July 21, 2023, signing of the NOE was outside established BATA procedures and in violation of the Ralph M. Brown Act. There is no evidence that the Committee delegated authority to Ms. Bockelman to approve the Project or sign the NOE. Approval of a project without a BATA Oversight Committee Resolution would deviate from standard operating procedures. (1 AA 0109.)

IV. PROCEDURAL HISTORY OF THE LITIGATION

Pre-Litigation Events

On January 11, 2023, the BATA Oversight Committee heard a presentation about the proposed Bay Lights 360 Project and BATA began preliminary environmental review. (1 AA 0107-0111.)

On March 4, 2023, Mark Baker notified Illuminate and the city of San Francisco that LED lights are harmful for public health and the environment and that the light pollution impacts of the Bay Lights 360 project should be investigated. (RJN Exhibit A.)

On March 31, 2023, Caltrans published the study "Effects of LED Lighting on Terrestrial Wildlife" which showed that light pollution has a significant impact on wildlife. (2 AA 0593.)[1]

On July 21, 2023, BATA Deputy Executive Director Alix Bockelman signed a Notice of Exemption for the Project. (1 AA 0105.)

On August 15, 2023, BATA filed the Notice of Exemption with the San Francisco City Clerk despite the lack of a Determination by BATA that the Project was exempt from CEQA and despite the lack of a Project Approval document. (1 AA 0105.)

On January 2, 2024, BATA notified Mark Baker that an amendment to the Memorandum of Understanding between BATA, Caltrans, and Illuminate is under discussion. (1 AA 0116.)

On March 27, 2024, Mark Baker notified Caltrans that a CEQA report is needed for the Bay Lights 360 project. (RJN Exhibit B.)

On April 9, 2024, Caltrans notified Mark Baker that the Project is going through the review process and that Mark Baker's comments will be considered as part of the approval process. (RJN Exhibit C.)

On April 29, 2024, Caltrans notified Mark Baker that the Project is going through the review process and that Mark Baker's comments will be considered as part of the approval process. (RJN Exhibit D.)

[1] Full Report: (https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/final-reports/ca23-3696-finalreport.pdf)

On September 24, 2024, Caltrans notified Mark Baker that the Bay Lights 360 project was currently going through the review and approval process. (RJN Exhibit E.)

On October 29, 2024, Caltrans issued an Encroachment Permit to BATA with significant new project requirements. The existence of this encroachment permit was not known to the Petitioner during the first case. (2 AA 0702.)

On December 9, 2024, BATA and Caltrans commenced construction on the Bay Lights 360 project without project approval. (RJN Exhibit F.)

On December 12, 2024, BATA notified the Petitioner that BATA defers to Caltrans for approval of the Project. (RJN Exhibit G.)

First Case Events (Case CPF-24-518814)

On December 16, 2024, Mark Baker filed the first claim against BATA, et al. (1 AA 0010.)

On February 19, 2025, Caltrans halted construction. (RJN Exhibit H.)

On March 21, 2025, the trial court granted the first extension to BATA for preparation of the Administrative Record to May 20, 2025. (1 AA 0290:7.)

On April 7, 2025, due to unreasonable delay by BATA, Petitioner filed a NOTICE OF PREPARATION OF RECORD OF PROCEEDINGS with the Court. (1 AA 0294.)

On April 7, 2025, Petitioner filed an ADMINISTRATIVE RECORD PREPARED BY PETITIONER (UNCERTIFIED) with the Court.

On April 25, 2025, the trial court issued the ORDER RE: RESPONDENTS BAY AREA TOLL AUTHORITY, METROPOLITAN TRANSPORTATION COMMISSIONS, AND CALIFORNIA DEPARTMENT OF TRANSPORTATION'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF. (1 AA 0351.)

Second Case Events (Case CPF-25-519079)

On May 1, 2025, Mark Baker filed the second claim against BATA. (2 AA 0408.)

On July 11, 2025, the trial court granted a second extension to BATA for preparation of the Administrative Record to August 27, 2025. (2 AA 0644.)

On August 15, 2025, the trial court granted a third extension to BATA for preparation of the Administrative Record to September 29, 2025. (2 AA 0773.)

On September 10, 2025, the trial court issued the ORDER WITHOUT LEAVE TO AMEND RESPONDENT BAY AREA TOLL AUTHORITY'S DEMURRER TO PETITION FOR WRIT OF MANDATE AND COMPLAINT FOR INJUNCTIVE RELIEF. (2 AA 0814.)

V. STATEMENT OF APPEALABILITY

The Order entered by Judge Jeffrey S. Ross in the San Francisco County Superior Court on September 10, 2025, disposes of all issues and is appealable as a final judgment. (Cal. Rule of Court 8.204(a)(2)(B).)

VI. STANDARD OF REVIEW

A. Demurrer

Under Code of Civil Procedure § 430.30(a), a party may raise any ground for objection to a complaint that appears on its face by filing a demurrer. The statute of limitations is a recognized "ground for objection to a complaint" under this provision and may therefore be asserted in a demurrer. *(Cochran v. Cochran* (1998) 65 Cal.App.4th 488, 493*; Coalition for Clean Air v. City of Visalia* (2012)*,* 209 Cal. App. 4th 408, 419.)

In a CEQA proceeding, an order sustaining a demurrer on statute of limitations grounds is reviewed *de novo* on appeal. (*Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2009) 48 Cal.4th 32, 42*; Coalition for Clean Air*, *supra*, at p. 420.)

Similarly, an order sustaining a demurrer on collateral estoppel grounds is also reviewed *de novo*. *(McCall v. PacifiCare of California, Inc.* (2001) 25 Cal.4th 412, 415.)

A case that has been dismissed on demurrer does not satisfy the requirement of being "actually litigated." (*Goddard v. Security Title Ins. & Guar. Co.* (1939), 14 Cal. 2d 47, 52.)

B. CEQA

1. Administrative Record

In CEQA proceedings, the administrative record is the exclusive source of evidence for judicial review. It must contain all documents and materials relevant to the agency's decision on the project.

> "The public agency shall prepare and certify the record of proceedings not later than 60 days from the date that the request specified in subdivision (a) was served upon the public agency." (Pub. Res. Code § 21167.6(b)(1)(A).)

The administrative record contains the facts and merits of a CEQA case. (*Topanga Ass'n for a Scenic Community v. County of Los Angeles*, 214 Cal. App. 3d 1348, 1356.)

The completeness and timely certification of the administrative record is critical because it provides the factual and legal basis for evaluating whether the agency proceeded in a manner required by law, whether its decision is

supported by substantial evidence, and whether its actions were an abuse of discretion. (*Topanga Ass'n for a Scenic Community*, *supra*, at p. 1366 fn4.)

2. Determination of Possible Environmental Impact

Before approving a project, a public agency must determine whether the project may have a significant environmental impact. The California Supreme Court established this principle early on:

> "CEQA requires that an agency determine whether a project may have a significant environmental impact, and thus whether an EIR is required, *before* it approves that project." (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79, fn. 8.) [emphasis included].

This sequencing requirement is fundamental to CEQA: agencies must conduct environmental review at the earliest feasible stage, when alternatives and mitigation measures are still genuinely available. Agencies may not delay the determination of whether a project may have a significant impact on the environment until after they have already committed themselves to a project. Potential environmental impact determination as a discrete act must precede project approval. (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 134.)

Once there is a proposed project involving governmental action, the governmental agency conducts a "preliminary review" and determines whether there is any possibility that the activity in question may have a significant effect on the environment. (*San Joaquin Raptor/Wildlife Rescue Center. v. County. of Stanislaus* (1996) 42 Cal.App.4th 608, 614.) This determination is a discrete, documented action.

A public agency may not simply begin working on a project as if the project is approved without first issuing a determination as to whether a project requires CEQA compliance:

> "To implement the above principles, public agencies shall not undertake actions concerning the proposed public project that would have a significant adverse effect or limit the choice of alternatives or mitigation measures, before completion of CEQA compliance. For example, agencies shall not [o]therwise take any action which gives impetus to a planned or foreseeable project in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of that public project." (Pub. Res. Code § 15004(b)(2)(B).)

The Supreme Court reinforced this in *Laurel Heights Improvement Assn. v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 392, holding that the statutory requirement of environmental review before a project is approved cannot be evaded by treating the project approval itself as the CEQA review. In other words, approval must follow environmental determination, not replace it.

3. Project Approval

CEQA Project Approval hinges on whether a public agency has taken definitive action with a definitive date that commits it to a particular project. The statute provides:

> "Approval" means the decision by a public agency which commits the agency to a definite course of action in regard to a project intended to be carried out by any person. The **exact date of approval** of any project is a matter determined by each public agency according to its rules, regulations, and ordinances.

Legislative action in regard to a project often constitutes approval." [emphasis added]. (Pub. Res. Code § 15352(a).)

Similarly, courts have held that the "approval" standard prevents agencies from prematurely insulating projects from CEQA review by taking piecemeal or informal actions. (See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963 [agency approval requires a formal commitment to the project, not merely preliminary discussions or staff actions].)

4. Statute of Limitations - 35-day Limit

The filing of a Notice of Exemption ("NOE") triggers a 35-day limitation period for challenging an agency's determination that a project is exempt from CEQA requirements. However, as the California Court of Appeal explained in *Coalition for Clean Air, supra,* at p. 424, an NOE must be "facially valid and properly filed".

In the present case, there is no dispute that the NOE is facially valid. The legal question is therefore whether the NOE was properly filed.

The filing of an NOE is a three-step process:

1. The agency must issue a determination that the project is categorically exempt from CEQA.
2. The agency must formally declare, for the record, that the project has been approved.
3. The NOE document may then be filed after formal approval.

Filing the NOE before actual project approval is ineffective to trigger the 35-day statute of limitations. As the Court explained:

> "[P]ersons seeking to challenge an agency decision on CEQA grounds may not, for purposes of the statute of limitations, go behind the agency's declaration in an NOE that it has approved a project.

> Instead, they must bring their action within 35 days after the NOE is filed and posted. Nor does this mean that the agency may therefore file an NOE in advance of an actual project approval, then proceed unmolested to approve the project at its leisure, free of environmental challenges." (*Coalition for Clean Air, supra,* at p. 424)

The Court's use of the term **"**actual project approval**"** instead of just "project approval" underscores that there must be a definitive, recorded declaration of approval. A mere conceptual or procedural acknowledgment that the project may move forward does not satisfy CEQA requirements.

Importantly, the NOE itself is not a project approval document. The NOE is only a public notice that the agency has declared the project exempt and approved. Filing the NOE before formal project approval violates CEQA Guidelines § 15062 and renders the filing ineffective. As the Court further clarified:

> "This mandatory language plainly means that a notice of exemption filed before project approval does not comply with Guidelines section 15062. It follows that filing a notice of exemption before project approval does not begin the running of the 35-day limitations period set forth in section 21167, subdivision (d)" ((*Coalition for Clean Air, supra,* at p. 423); see also Guidelines § 15112(c)(2).)

A legal challenge to a project that was materially changed after the issuance of a valid Notice of Exemption is not constrained by the 35-day statute of limitations. (*Committee to Relocate Marilyn v. City of Palm Springs* (2023), 88 Cal.App.5th 607, 631.)

5. Statute of Limitations - 180-day Limit

In addition to the 35-day limitations period triggered by a properly filed NOE, CEQA provides a 180-day statute of limitations for certain circumstances. There are two relevant scenarios:

Scenario 1 – NOE Not Properly Filed

If a Notice of Exemption is not properly filed, the 180-day limitations period applies:

> "The filing of a Notice of Exemption and the posting on the list of notices start a 35-day statute of limitations period on legal challenges to the agency's decision that the project is exempt from CEQA. If a Notice of Exemption is not filed, a 180-day statute of limitations will apply." (Cal. Code Regs. Tit. 14 § 15062(d).)

As clarified in *Coalition for Clean Air*, *supra*, at p. 424, the term **"**filed**"** refers to an NOE that is properly filed. An NOE that is filed prematurely, before actual project approval, is treated as though it were never filed. Accordingly, the 180-day statute begins only after the agency has formally declared the project approved.

Scenario 2 – Project Commenced Without Formal Approval

CEQA also provides that the 180-day statute applies if the project is undertaken without formal agency approval:

> "The statute of limitations periods under CEQA are as follows: … Commencement of the project if the project is undertaken without a formal decision by the public agency." (Cal. Code Regs. Tit. 14 § 15112(c)(5)(B).)

The phrase **"**commencement of the project**"** refers to physical work on the ground, such as demolition or breaking ground for construction. (*Concerned*

Citizens of Palm Desert, Inc. v. Board of Supervisors (1974), 38 Cal. App. 3d 257, 264)

C. Collateral Estoppel

Whether the requirements for collateral estoppel have been met is a question of law that this Court reviews independently. (*Rosse v. DeSoto Cab Co.* (1995) 34 Cal. App. 4th 1047, 1050)

Collateral estoppel is an equitable doctrine grounded in fairness and applies only where the issue was fully and fairly litigated in a prior proceeding. (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932, 941.)

> "[W]here there are extant determinations that are inconsistent on the matter in issue, it is a strong indication that the application of collateral estoppel would work an injustice." (*Sandoval, supra,* at p. 944)

The doctrine requires satisfaction of four threshold elements:

1. The issue sought to be precluded from re-litigation must be identical to that decided in the former proceeding.
2. The issue must have been actually litigated in the former proceeding.
3. The issue must have been necessarily decided in the former proceeding.
4. The decision in the former proceeding must be final and on the merits. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 341.)

A case that has been dismissed on demurrer does not satisfy the requirement of being "actually litigated." (*Goddard*, *supra*, at p. 52.)

D. Res Judicata

The doctrine of *res judicata* describes the preclusive effect of a final judgment on the merits, encompassing both claim preclusion and issue preclusion (collateral estoppel).

The doctrine of claim preclusion requires three elements:

1. The decision in the prior proceeding is final and on the merits;
2. The present proceeding is on the same cause of action as the prior proceeding; and
3. The parties in the present proceeding or parties in privity with them were parties to the prior proceeding. (*Association of Irritated Residents v. Department of Conservation* (2017) 11 Cal. App. 5th 1202, 1219.)

The rule is founded on the sound public policy of preventing a party who has had one fair trial on an issue or cause of action from drawing it again into controversy. (*Id*.)

E. Appellate Review

The appellate court reviews the agency's action, not the trial court's decision. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426–427.)

Thus, the Court must independently examine whether BATA complied with CEQA, properly determined that the Project was exempt from CEQA, and properly approved the Project, rather than deferring to the trial court's interpretation of the statute of limitations, collateral estoppel, or procedural rulings.

VII. ARGUMENT

A. THE TRIAL COURT ERRED IN APPLYING THE 35-DAY STATUTE OF LIMITATIONS BECAUSE BATA'S NOTICE OF EXEMPTION WAS VOID.

A Notice of Exemption (NOE) triggers the California Environmental Quality Act's (CEQA) short 35-day statute of limitations only if it is "properly filed." (*Coalition for Clean Air, supra,* at p. 424.) A proper filing requires two prior, discrete, and documented agency actions: 1) a formal CEQA exemption determination, and 2) a project approval. Both are utterly absent here, rendering BATA's NOE void and the trial court's dismissal on this ground legal error.

CEQA is unequivocal: an NOE must be filed both after the agency determines the project is exempt and after it formally approves the project. (Cal. Code Regs. Tit. 14, §§ 15062(a), 15062(b).)

1. No Formal Project Approval Exists.

"Approval" is defined as the decision that "commits the agency to a definite course of action." (Cal. Code Regs. Tit. 14 § 15352(a).) The record is devoid of any BATA resolution, vote, or executive decision approving the Bay Lights 360 project. BATA's own rules require approval by Resolution (1 AA 0109). The August 15, 2023, filing of the NOE occurred without any prior, dated approval document. A staff member's signature on a notice of filing is not a project approval. Without a definitive, documented approval date, the NOE was filed prematurely and is void. (*Coalition for Clean Air, supra*, at p. 423.)

2. No Formal Exemption Determination Was Made.

An agency must determine whether a project "may have a significant environmental impact... *before* it approves that project." [emphasis added]. (*No Oil, Inc., supra*, at p. 79). The record contains no document, memo, or

minute order reflecting that BATA ever made this legally required threshold determination. Instead, BATA filed the NOE in the middle of ongoing environmental review with other agencies, including Caltrans which was still evaluating environmental concerns through late 2024 (RJN Exhibit D). An exemption cannot be claimed by fiat; it must be founded on a prior, recorded decision, which BATA failed to produce.

B. THE PROJECT'S MATERIAL CHANGE IN SCOPE FURTHER INVALIDATES THE NOTICE OF EXEMPTION.

The project materially changed after BATA filed the NOE, creating an independent ground for reversing the demurrer.

BATA obtained an Encroachment Permit from Caltrans on October 29, 2024 (2 AA 0702), which imposed major new safety and scope requirements that were not part of the project contemplated by the August 15, 2023 NOE. Following the material changes imposed by the Caltrans permit, the original NOE **is void** as to the new revised project. (*Committee to Relocate Marilyn, supra,* at p. 631.) This rule exists because "the public is entitled to a meaningful opportunity to assess the actual project being approved." (*Id.*) The trial court's failure to consider the effect of the Caltrans permit and the resulting scope change was error, as the NOE cannot apply to the project that now exists.

C. THE TRIAL COURT ERRED IN APPLYING COLLATERAL ESTOPPEL BECAUSE THE PRIOR CASE WAS NOT LITIGATED ON THE MERITS.

Collateral estoppel bars relitigation of an issue only if it was "actually litigated" and "necessarily decided" in a prior proceeding. (*Lucido*, *supra*,

at p. 341.) A dismissal on demurrer, as occurred in the first case, meets neither requirement.

1. The CEQA Merits Were Not Actually Litigated.

The first case was dismissed at the pleading stage based on the trial court's erroneous conclusion that the 35-day statute of limitations had run. A demurrer tests the legal sufficiency of the pleadings, not the factual basis for the agency's exemption claim. (*Goddard, supra*, at p. 52.) The fundamental CEQA issues—whether BATA made an exemption determination or formally approved the project—are factual questions requiring examination of the administrative record, which the trial court repeatedly declined to do prior to the demurrer hearing. The lack of review of the administrative record and dismissal at the pleading stage demonstrate that the substantive CEQA issues were not "actually litigated."

2. The Prior Decision Was Not on the Merits.

The prior court dismissed the case based on a finding regarding the procedural timing (the statute of limitations). It did not rule on the substantive merits, such as whether the project was properly exempt, properly approved, or would have no significant environmental impact. A procedural dismissal based on timing is not a decision on the substantive merits of a CEQA claim. (See *Association of Irritated Residents, supra,* at p. 1220.) Applying collateral estoppel here would improperly shield BATA's procedural failures from any court review, subverting the core purpose of CEQA.

D. THE TRIAL COURT ERRED IN APPLYING RES JUDICATA BECAUSE THE JUDGMENT WAS NOT BASED ON THE MERITS.

The trial court raised the issue of *res judicata* in the September 10, 2025, Order. (2 AA 0821:4.)

The essential requirement that the prior judgment be "on the merits" is dispositive here.

"If the prior judgment was not on the merits, then *res judicata* is not applicable and it does not have the effect of barring the subsequent action." (*Assn. of Irritated Residents, supra*, at p. 1219.)

"A judgment is on the merits for purposes of *res judicata* 'if the substance of the claim is tried and determined…This may include a judgment of dismissal following a general demurrer or a dismissal motion if the disposition was plainly reached 'on a ground of substance…It is the nature of the action and the character of the judgment that determines whether it is *res judicata*.'" (*Id.* at p. 1220.)

In this case, the trial court sustained the demurrer based entirely on the misapplication of the 35-day statute of limitations. This decision was not based on a "ground of substance" and was not a ruling on the merits of the underlying CEQA claim. The trial court did not review the Administrative Record, and the issue of whether BATA complied with CEQA requirements was never addressed. Therefore, the first case did not constitute a fair trial on the merits, and the prior dismissal is not a final judgment on a matter of substance.

VIII. CONCLUSION

In conclusion, the Bay Lights 360 project is a substantial light pollution initiative that is not categorically exempt from CEQA and requires the preparation of a full EIR due to its potential for significant environmental effects.

The trial court failed to review the Administrative Record to determine whether BATA had lawfully issued a determination that the Project was exempt from CEQA and whether the Project had been properly approved, constituting clear prejudicial error. Critically, because BATA never produced a Project Approval document with a definitive date, the Notice of Exemption (NOE) was not properly filed. Consequently, the Petitioner is not time-barred from pursuing this case, and the trial court's reliance on the 35-day statute of limitations was misplaced.

Furthermore, the defense of collateral estoppel must fail because the issues in the two cases are not identical, the prior action was never fully or fairly litigated, and the trial court did not make a merits-based determination on the need for an EIR. Accordingly, the doctrine of collateral estoppel cannot apply to bar this second action.

For the foregoing reasons, this Court should **REVERSE** the trial court's order sustaining the demurrer and **DIRECT** the trial court to issue a writ of mandate compelling BATA to commence the legally required CEQA review process by preparing a full Environmental Impact Report.

Dated: November 2, 2025

By: /s/ Mark Baker
Appellant
In Pro Per

A174642

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT

MARK BAKER
Petitioner and Appellant
v.
BAY AREA TOLL AUTHORITY
Respondent,

ILLUMINATE
Real Party in Interest

APPELLATE CASE NO. A174642
Superior Court Case No. CPF-25-519079

CERTIFICATE OF WORD COUNT

MARK BAKER
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Plaintiff/Appellant
In Pro Per

CERTIFICATE OF WORD COUNT

I, MARK BAKER, Appellant in Pro Per, certify as follows:

1. I am the Appellant in the above-entitled appeal and prepared the Appellant's Opening Brief.
2. This brief complies with the typeface requirements of California Rules of Court, rule 8.204(c)(1).
3. Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the Appellant's Opening Brief, excluding the tables of contents and authorities, the caption page, the signature block, and this certificate, contains **4,988** words.
4. The word count was performed using the word processing program **Microsoft Word.**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 3, 2025.

Mark Baker

By: Mark Baker
Appellant
In Pro Per

PROOF OF SERVICE

Mark Baker v. Bay Area Toll Authority

Court of Appeal First Appellate District, Division 1

Case: A174642

Electronic Service in accordance with California Code of Civil Procedure Section § 1010.6.

At the time of service, I was over 18 years of age. My residence or business address is 1520 E. Covell Blvd. Suite 5 - 467, Davis, CA 95616.

On 11/3/2025, I electronically served a true copy of the following documents described as:

1. **CIVIL CASE INFORMATION STATEMENT**
2. **JUDGMENT OF DISMISSAL AFTER SUSTAINING OF DEMURRER TO PLAINTIFF'S COMPLAINT WITHOUT LEAVE TO AMEND**
3. **APPELLANT'S OPENING BRIEF**
4. **MOTION FOR JUDICIAL NOTICE**
5. **DECLARATION OF MARK BAKER IN SUPPORT OF MOTION FOR JUDICIAL NOTICE**
6. **APPELLANT APPENDIX VOLUME 1**
7. **APPELLANT APPENDIX VOLUME 2**

on the parties in this action as follows:

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BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document to be sent from the e-mail address mbaker@softlights.org to the persons at the email addresses listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 11/3/2025

Mark Baker

Mark Baker