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## **Tentative Approval of Environmental Impact Report Does Not Prohibit Revisions to the Project**

The California Environmental Quality Act (CEQA) and the regulations implementing it embody California's strong public policy of protecting the environment. The basic purposes of CEQA are to (1) Inform governmental decision makers and the public about potential, significant environmental effects of proposed activities; (2) Identify ways that that environmental damage can be avoided or significantly reduced; (3) Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the government agency finds the changes to be feasible; and (4) Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental impacts are involved. The Environmental Impact Report (EIR) is the heart of CEQA, and its purpose is to inform the public and responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government.

In *Residents Against Specific Plan 380 v. County of Riverside* (Case No. E063292), the Court of Appeal for the Fourth Appellate District reviewed a trial court decision denying appellant's application for a writ of mandate challenging the decision of the County of Riverside (County) to approve development of a master-planned community on approximately 200 acres of land in the French Valley region of Riverside County. On appeal, appellant contended that the following actions by the County required reversal of the lower court's ruling: (1) County substantially modified the project after approving it; (2) County approved the project without concurrently adopting findings, a statement of overriding consideration, and a mitigation plan; (3) County failed to recirculate the final EIR after modifying the project; (4) County certified the final EIR despite inadequately analyzing the impacts of the development of certain areas of the project; (5) County issued an erroneous and misleading notice of determination after approving the project; and (6) County failed to adopt all feasible mitigation alternatives proposed in comments on the draft EIR.

On July 28, 2011, the County announced the release of a draft EIR analyzing 320 residential units and 650,000 square feet of office and retail use divided among eight separate "planning areas." After release of the draft EIR for public review and preparation of a final EIR in response to public comments, the project was modified at both the Planning Commission and Board of Supervisors hearings. At the Planning Commission hearing, four planning areas were modified and the scale of the development was reduced. At the Board of Supervisors hearing, the project was further modified to increase the overall scale of development back to the totals analyzed in the final EIR but also shifted development within

planning areas by moving denser development away from neighboring low-density residential areas into the center of the project site.

At both stages, the County's environmental consulting firm analyzed the project modifications and concluded that the modifications would not create new significant environmental impacts or substantially increase the severity of impacts and that the final EIR did not need to be recirculated to the public. Specifically, the environmental consulting firm's conclusion that the Planning Commission's project modifications would not result in any new significant impacts rested on the fact that the scale of development had been reduced. The consulting firm's conclusions that the Board of Supervisor's project modifications would not result in new significant impacts relied on the fact that denser development had been relocated to the center of the site, thereby reducing impacts to the surrounding, existing uses. The County released the final EIR in January 2012. On December 18, 2012, the Board of Supervisors voted tentatively to certify the final EIR and approve the general plan amendment, zone change, and specific plan adoption required for the project. The County planning staff and applicant then spent several months modifying the approval documents to reflect the project modifications. On November 5, 2013, the Board of Supervisors issued final approvals.

The court rejected all of appellant's procedural claims, including the claims that the County substantially modified the project after approving it; approved the project without concurrently adopting findings, a statement of overriding considerations and a mitigation plan; and failed to recirculate the final EIR after modifying the project.

The court's holding that the County did not need to recirculate the final EIR after modifying the project reaffirms a decision-maker's ability to make project modifications after a final EIR has been published, but before it is ultimately approved. Specifically, the appellant argued that the project modifications would increase certain impacts. In each instance, the court held that recirculation was not necessary based on the County environmental consulting firm's analysis that the project modification would not result in any significant new or substantially more severe impacts.

The appellant argued that changing the designation in one planning area from medium density residential to mixed use would increase traffic impacts and change traffic patterns. The court was satisfied with the County environmental consulting firm's conclusion that because the total number of residential units and amount of commercial development did not change from that analyzed in the final EIR, no additional traffic impacts were expected. Additionally, the appellant argued that moving the mixed-use designation next to a conservation area would create additional biological impacts. Again, the court was satisfied by the consulting firm's analysis, in this case, supported by the rationale that because the final EIR had considered impacts related to conservation area adjacency in connection with a different mixed use planning area and given that mitigation measures would address conservation area adjacency issues in general.

Further, while the Notice of Determination contained erroneous information, it incorporated elements of the project description as it existed after the Planning Commission hearing in October 2012 and not the project as it was approved by the Board of Supervisors in November 2013, the court concluded that the errors did not justify overturning the County's approval of the project. The court found that the Notice of Determination still complied with the informational requirements of CEQA. Moreover, the appellant filed its petition for writ of mandate during the 30-day statute of limitations established by the Notice of Determination, so any remedy to extend the statute of limitations would have provided no relief to the appellant.

Finally, the court held that the County adequately considered specific suggestions for mitigating the significant and unavoidable air quality and noise impacts. During the public comment period, certain air quality mitigation measures were suggested by the South Coast Air Quality Management District (SCAQMD) and the neighboring city of Temecula. Specifically, the SCAQMD suggested the requirement of more stringent air pollution control devices on the construction equipment in order to reduce air quality emissions. The court found that the County's rejection of the SCAQMD measures, based on the rationale that the proposed equipment meeting higher emissions standards would not be available at the time of construction, was sufficiently detailed to support its rejection of the measures. The court also upheld the County's rejection of Temecula's suggestion to comply with certain energy code requirements in favor of a performance standard, which would give the applicant flexibility and would reduce enforcement problems with the more prescriptive measure. Finally, the court held that the County did not abuse its discretion by failing to adopt, or even respond to, measures suggested by the appellant to reduce air quality and noise impacts. The appellant's suggestions were submitted the day before the Board of Supervisors' hearing and, as the court noted, more than 14 months after the close of the public comment period.

It is often said that, "It ain't over till it's over." In the CEQA universe, "It ain't over till the approvals have been given." A project that changes in actual, but not significant, ways before the final approvals will not be subject to a reopening and reevaluation of the environmental analysis.