

## Good News For Calif. Developers

By Sean M. Sherlock

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An increasingly common tactic among opponents of development projects is to demand that the applicant adopt a long, typically boilerplate, list of measures to mitigate the projects' contributions of greenhouse gases. Then in court, they argue that under the California Environmental Quality Act ("CEQA") the city or county must either adopt those measures or prove that each and every one of them is infeasible. On July 26, 2011, a California court of appeal published an opinion rejecting this tactic.

The case is noteworthy in a few respects: (1) the factual history illustrates just how difficult it has become to develop anything in California in the face of public opposition; (2) it provides a road map for adequately analyzing a project's greenhouse gas impacts; and (3) it puts to rest the assertion that a municipality must undertake the extremely onerous task of responding to each and every conceivable mitigation measure that the project opponent throws at it.

*Santa Clarita Organization for Planning the Environment v. City of Santa Clarita*, (California Court of Appeal, 2nd Dist./Div. 2, Case No. B224242)

The project at issue was the City of Santa Clarita's long-range plan to expand an existing hospital and medical office complex from its current 340,000 square feet to 670,000 square feet. By way of background: The Santa Clarita Valley's population has tripled since the hospital was first built in 1975, and although demand for hospital facilities has increased, hospital capacity has decreased over the last 15 years.

Unless the expansion was approved, Santa Clarita Valley residents would soon have to seek medical care outside the valley. Nonetheless, what transpired was four years of environmental impact report ("EIR") preparation, six iterations of EIRs and three

years of litigation (so far, assuming the California Supreme Court does not accept review).

### EIR and Litigation Timeline

- August 2004: The hospital submitted an application to the city to expand its campus.
- November 2004: The city circulated its Notice of Preparation, notifying the public of its intent to prepare an EIR for the project.
- November 2005: The city released a draft EIR.
- September 2006: The city released a revised draft EIR.
- January 2007: The city released a final EIR.
- June 2008: Following planning commission hearings, the city released a further revised draft EIR.
- September 2008: The city released another revised draft EIR.
- November 2008: The city released the final EIR, held hearings and approved the EIR.
- December 2008: The petitioner filed its petition for writ of administrative mandate under the California Environmental Quality Act.
- April 2010: The trial court denied the petition.
- June 2011: Almost seven years after the project application was filed, the court of appeal affirmed.

### The Litigation

The petitioner's primary complaint was the city's failure to explain or support its conclusion that more could not be done to mitigate the project's contribution to global warming — a criticism commonly heard in recent years. First, the court approved the

city's approach to evaluate the project's impact on climate change.

The EIR followed the approach recommended by the Governor's Office of Planning and Research, which was to: (1) identify and quantify the greenhouse gas emissions; (2) assess the significance of the impact on climate change; and (3) if the impact is found to be significant, identify alternatives and/or mitigation measures that would reduce the impact below significance.

Key to the city's approach was that it discussed the various types of greenhouse gases and the applicable environmental and regulatory mandates, it estimated the quantity of greenhouse gas emissions from various sources, and it discussed measures that would mitigate the impacts of the project on climate change.

The city estimated three sources of greenhouse gas emissions — Scope 1: emission sources owned or controlled directly by the project (e.g., on-site natural gas combustion); Scope 2: greenhouse gas emissions resulting from energy consumption (electrical use, water use); and Scope 3: indirect emissions not controlled by the project, such as greenhouse gas emissions from vehicle traffic to/from the project.

The city found Scope 1 and 2 emissions to be insignificant, but concluded that despite the implementation of recommended mitigation measures, Scope 3 emissions would remain significant, and that no further mitigation measures were feasible.

Although the city did not address each of the proposed mitigation measures included on the pe-

tioner's list, the court found that the city's findings were adequately explained and supported in the following respects:

- 1) The city cited a number of traffic and air quality mitigation measures that would reduce the project's impact on climate change.
- 2) The city did, in fact, consider and implement some of the mitigation measures included in the petitioner's list.
- 3) The city incorporated into the project measures for energy efficiency and solid waste reduction.
- 4) The project was required to comply with the city's sustainable development policies, including requirements for construction of bus turnouts, and various pedestrian and cyclist friendly features.

The court expressly rejected the petitioner's contention that the city was required to specifically address each of the 50-plus mitigation measures on petitioner's list, holding that "it is unreasonable to impose on the city an obligation to explore each and every one."

### Conclusion

This case is good news for developers with projects currently in the CEQA pipeline. The greenhouse gas analysis in the Santa Clarita EIR was very similar to that being widely used today, and the court's approval of that analysis should be a relief to the development industry. Equally reassuring is the court's common sense application of CEQA requirements, and its rejection of the hyper-technical, onerous approach urged by the petitioner.



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