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### THE DEVIL'S IN THE DETAILS: SUPREME COURT EXPANDS JUDICIAL SCRUTINY OF EIRS

The California Supreme Court has unanimously held that, to satisfy CEQA, an Environmental Impact Report (EIR) must include sufficient detail to enable the public to truly understand the environmental consequences of a proposed project. (*Sierra Club v. County of Fresno (Friant Ranch LP)* (Dec. 24, 2018, No. S219783) \_\_\_ Cal.5th \_\_\_\_ [2018 Cal. LEXIS 9831] (*Friant Ranch*)) The Court held that the Friant Ranch EIR was inadequate because it did not connect the project's air quality impacts to likely health consequences. In a thorough analysis, the Court detailed the correct standard of judicial review in CEQA cases—and opened the door to closer judicial scrutiny of, and less agency deference for, an EIR's discussion of potentially significant environmental effects.

#### 1. CASE FACTS

The Friant Ranch project is the first proposed master-planned "pedestrian-friendly" community in the Central Valley. The project calls for the construction of 2,500 age-restricted single- and multi-family residential units for "active adults" age 55 and older, other units, parks, open space, a recreation center, and a neighborhood electric vehicle network. After lengthy environmental review, the Fresno County Board of Supervisors certified the Final EIR and issued a Statement of Overriding Considerations, stating that the project's significant environmental effects had been identified, avoided or mitigated to the extent feasible, and the unmitigated effects were outweighed by the project's benefits.

Opponents of the project (Revive the San Joaquin, the Sierra Club, and the League of

Women Voters of Fresno) filed a lawsuit challenging the environmental review of the project. The trial court rejected the challenge, holding that it could not exercise its independent judgment but could only determine whether the project approval was supported by substantial evidence. Plaintiffs appealed, arguing that the EIR's description of the air quality impacts of the project was inadequate because it did not correlate expected emissions with impacts on human health, and further, that the proposed air quality mitigation measures were too vague.

The Supreme Court granted review to decide three issues: (1) the standard of review applicable to a judicial challenge to an EIR's discussion of adverse environmental impacts and mitigation measures; (2) whether CEQA requires that an EIR connect a project's air quality impacts to specific health consequences; and (3) whether a lead agency may defer mitigation measures by retaining the discretion to substitute later-adopted mitigations in place of those proposed in the EIR.

#### 2. THE SUPREME COURT'S HOLDING

The Supreme Court held: (1) to satisfy CEQA, an EIR must include sufficient detail to enable those who had nothing to do with the EIR's preparation to understand and meaningfully consider the project's environmental effects; (2) an EIR must make a reasonable effort to connect air quality impacts to likely health consequences; and (3) a lead agency may leave open the possibility of employing better mitigation measures in the future. The Supreme Court thoroughly analyzed the

judicial standard of review in CEQA cases, starting with CEQA's guiding principle, that the Act must be interpreted to afford the fullest protection to the environment possible. The Court noted that the standard of review in CEQA lawsuits is abuse of discretion, but held that the abuse of discretion standard applies to the question of whether factual conclusions were supported by substantial evidence. In contrast, the court exercises independent judgment when deciding whether the agency employed correct procedures under CEQA.

The Court decided that an "adequacy of discussion" claim is an issue that warrants de novo review, not substantial evidence review, and that "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient—and that inquiry is not solely a matter of discerning whether substantial evidence supported the agency's conclusions." If a possible impact is not discussed, "substantial evidence" is not relevant because no evidence is in the record regarding that impact.

The Court then closely scrutinized the EIR's air quality discussion and agreed with the Court of Appeal that the discussion was too general. Although the EIR went into some detail about the health effects of ozone exposure—it stated that increased ozone resulting from the project could alter lung functions by increasing respiratory rates and pulmonary resistance, impair respiratory mechanics, and cause throat dryness, chest tightness, headaches and nausea—the Court criticized the ozone analysis because it contained no evidence about whether ozone emissions from the project would in fact increase the levels of ozone in the vicinity of the project to levels (in anticipated parts per million of ozone) necessary to trigger adverse health effects. Although the briefs filed in the case stated that it was not possible to make

this determination, the Court held that these limitations should have been discussed in the EIR, not in response to the litigation.

Finally, the Court rejected the plaintiffs' argument that the County violated CEQA by approving the project even though the proposed mitigation measures would not reduce significant environmental impacts to less than significant levels. The Court held that CEQA allows a project to continue even if there are significant, and unmitigated, environmental effects, if the agency finds that specific benefits of the project outweigh the effects on the environment.

### 3. IMPLICATIONS FOR EIR PREPARERS

In *Friant Ranch*, the California Supreme Court has instructed lower courts to use independent judgment in determining whether an EIR has adequately discussed a potential impact: in this case, whether the pollutant emissions will themselves have specific effects on human health. This signals an expansion of the courts' role in determining the adequacy of an EIR. To withstand a judicial challenge, public agencies must do more than merely demonstrate not only that substantial evidence exists to support conclusions about a proposed project's impacts, but also that there was an "adequate" examination of those impacts. If a court, using its independent judgment, determines that the discussion is inadequate, it will likely remand the matter back to the agency for further environmental review.

For more information on this case or any of the issues discussed above, please contact Dolores Bastian Dalton, Barbara E. Kautz, Eric S. Phillips, or any other attorney at Goldfarb & Lipman LLP at 510-836-6336.

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