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CALIFORNIA SUPREME COURT REJECTS EIR FOR FAILURE TO INTEGRATE COASTAL ACT ANALYSIS

A unanimous decision of the California Supreme Court concluded that the City of Newport Beach abused its discretion by approving an environmental impact report for the development of coastal zone land that "omitted any analysis" of the Coastal Act's environmentally sensitive habitat area requirements. The Court emphasized that CEQA analysis, such as an environmental impact report (EIR), is meant to inform the public and decision makers and should provide an "integrated review" acknowledging the regional significance of any impacts in the context of other plans and regulatory limitations. Accordingly, the EIR's failure to discuss important Coastal Act requirements was a fatal flaw.

BACKGROUND

The City of Newport Beach (City) approved a project on privately-owned, unincorporated land within its sphere of influence referred to as Banning Ranch. The City adopted an EIR for the project and found it consistent with the City's general plan. However, the project's location was not included in the City's certified coastal land use plan and so only the Coastal Commission could issue required coastal development permits. The proposed project would consolidate existing oil production facilities, develop nearly a quarter of the total 400-acre tract with hotel, commercial, and residential uses, and preserve the remainder as parks and open space.

The project developer studied potential environmental impacts of the development and found much of the land could be designated as

environmentally sensitive habitat area (ESHA) under the Coastal Act. In preparing an EIR analyzing the proposed project, the City acknowledged that only the Coastal Commission could legally certify land as ESHA and so limited its discussion to biological resources that would potentially be impacted by the project. Despite prior studies, numerous public and agency comments, and a consent order with the Coastal Commission that identified two ESHAs on the project site, the EIR avoided any mention of potential conflicts with the Coastal Act and concluded that impacts of the project on the environment would "be reduced to a less-than significant level or avoided with appropriate measures."

The Banning Ranch Conservancy challenged the adequacy of the EIR and the City's finding that the proposed project complied with the City's general plan. The trial court found the EIR adequate but rejected the consistency finding in light of the unresolved conflict regarding ESHA and the City's land use strategy to "work with appropriate state and federal agencies." The Court of Appeal also found the EIR adequate but approved the consistency finding, noting an obligation to "work with" other agencies was ambiguous and deferring to the City's conclusion that it had "worked with" the Coastal Commission.

THE SUPREME COURT'S DECISION

The California Supreme Court found that the project's EIR was fatally inadequate. The Court emphasized that the purpose of CEQA is to provide information for the public and decision makers, as well as to integrate CEQA analysis with planning and environmental

review procedures required by other statutes, "so that all those procedures, to the maximum feasible extent, run concurrently rather than consecutively." The Court cited a previous Court of Appeal decision stating, "coordination between a lead agency and a permitting agency serves the laudable purpose of minimizing the chance the City will approve the Project, only to have later permits for the Project denied." In criticizing the City's action, the Court noted a City email instructing the EIR consultant on how much time to spend responding to Coastal Commission comments on the Draft EIR: "Very little. After the EIR's certification the work is done. It will be [the developer's] responsibility to get it through [the Coastal Commission]."

The Court acknowledged that the City "provided a detailed biological analysis of project impacts" and agreed that only the Coastal Commission was empowered to define ESHA in the project area. However, the Court noted that two ESHAs were previously identified in the project area through a consent order between the City and the Coastal Commission, and those were not identified in the EIR. There was also an existing study identifying potential ESHA on site, which the City published and then removed from its website. The Court noted that some of this information could be "gleaned from a diligent search of the EIR appendices and other elements of the administrative record," but that "such a fragmented presentation is inadequate." The Court concluded, "given the ample evidence that ESHA are present on Banning Ranch, the decision to forego discussion of these topics cannot be considered reasonable. . . . Rather than sweep disagreements under the rug, the City must fairly present them in its EIR."

Because the EIR was inconsistent with CEQA, the Court did not discuss the City's general plan consistency finding.

IMPLICATIONS FOR FUTURE PRACTICE

The Court characterized the Banning Ranch EIR as an egregious case, where the City's decision to omit any consideration of Coastal Act compliance prevented the EIR from addressing feasible alternatives or mitigation measures, because the failure to integrate CEQA review with other environmental review procedures obscured credible evidence regarding the project's potential impacts. Although the Court noted that, "courts must be careful not to second-guess good faith efforts to coordinate environmental review," when the failure to include relevant information precludes a good faith attempt to analyze project alternatives and mitigation measures, such failure warrants reversal.

To fully comply with CEQA, cities and project developers should flag and address potential conflicts with other environmental, planning, and regulatory provisions and provide substantive responses to major environmental issues raised by comments on draft EIRs. Likewise, EIRs should integrate the review of significant issues and explain any disagreement with the opinions of other agencies, rather than burying such information in order to find that there are no significant impacts. A well-researched environmental analysis finding an unavoidable impact, followed by a finding of overriding considerations supporting approval, may be a more prudent route in some cases.