

EIR Required for Oak Woodland Management Plan

Public agencies generally prefer not to prepare EIRs – at least for their own plans and projects – unless they have to. And CEQA attempts to avoid redundancy by encouraging reliance, to the extent possible, on a previously certified EIR to support the approval of a subsequent action. So, in 2008, when El Dorado County adopted its long-awaited countywide oak woodland management plan, the County didn't prepare an EIR, but instead relied on its 2004 General Plan EIR. Not so fast, said the Third District Court of Appeal, in *Center for Sierra Nevada Conservation v. County of El Dorado*, 202 Cal. App. 4th 1156 (2012). The court held that although the General Plan EIR anticipated the development of the oak woodland management plan, it didn't analyze key provisions of the plan the County ultimately adopted, so the plan had to be analyzed in a new tiered EIR. El Dorado County's 2004 general plan allowed development that would cause significant and unavoidable impacts on oak woodland habitat and its dependent wildlife. The general plan created two options for mitigating this impact. Under Option A, a project applicant would adhere to tree canopy retention standards and would replace removed woodland habitat onsite. Under Option B – added late in the general plan process due to objections to Option A -- an applicant would not be required to retain oak woodlands onsite but would instead pay a fee to a new conservation fund. The general plan required further action by the County – an "integrated plan" that would identify important habitat in the County and establish a program for effective habitat preservation and management. In 2008, the County adopted the oak woodland management plan, which was intended to be the first component of the integrated plan. The plan included an Option B fee program allowing developers to pay 40% of the value of the land under any oak canopies to be removed. The County adopted the oak woodland management plan based on a negative declaration, finding that there would be no significant environmental effects that had not previously been examined in the general plan EIR. **EIR required for oak woodland mitigation plan.** The Court of Appeal agreed with the Center for Sierra Nevada Conservation that an EIR was required. The County's primary argument was that the oak woodland management plan fit within the 2004 EIR as "a mitigation measure under the General Plan." The court, however, identified five discretionary decisions in the new plan that had not been previously addressed. According to the court, the general plan EIR: 1) analyzed only Option A, not Option B; 2) treated all oak species as important, whereas the new plan prioritized only valley oaks; 3) did not select a measurement metric for "oak woodlands," whereas the new plan selected the narrowest definition; 4) did not set a fee rate or identify land acquisition options, as the new plan did; and 5) stated that priority in the use of fees collected would be "given to parcels that would preserve natural wildlife movement corridors," such as crossings under Highway 50, whereas the new plan deferred consideration of corridors and excluded the Highway 50 corridor from the mitigation to be funded through Option B. The court required the County to analyze all of these new discretionary decisions in a new EIR. **EIR couldn't await integrated plan.** The court also rejected arguments that an EIR could await adoption of the County's full "integrated plan," because approval of the oak woodland management plan alone "had the effect of allowing developers to pay a mitigation fee instead of preserving a substantial population of trees on site." **General Plan EIR's conclusion that impacts would be significant and unavoidable did not immunize subsequent plan from EIR requirement.** Finally, the County argued that no EIR was required for the mitigation plan because the General Plan EIR had recognized that development would have a significant unavoidable impact on oak woodlands. The court rejected this argument as well, holding that the "County may not shield all subsequent projects affecting the environment on the basis of its prior recognition that development and increased population will have an adverse effect on the region's oak woodlands." Because the General Plan EIR did not adequately cover the Option B mitigation fee program, the EIR's acknowledgement of a significant unavoidable impact was of no assistance to the County; a new EIR was required to consider the effects of the oak woodland

management plan and Option B fee program "on the environment as it existed with only Option A available to developers in El Dorado County."

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