Blogs
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California Land Use & Development Law Report

# EIR Comments Should Improve The Environmental Review Process, Not Derail It

CEQA guidelines require only that a lead agency give detailed responses to comments that identify an important new matter not discussed in the draft environmental impact report or raise questions about a significant environmental issue, the Fourth District Court of Appeal ruled, allowing Orange County to proceed with a long-considered expansion of a county jail. *City of Irvine v. County of Orange*, No. G049527 (4th Dist. 3rd Div., July 6, 2015). The decision in *City of Irvine* resolved the third unsuccessful attempt to stop Orange County's proposed expansion of the Musick Jail facility. Orange County first prepared an EIR for the project in 1996. The plans stalled because the county did not have sufficient funding, but the project was revived in 2012. The county certified a supplemental EIR that reflected changes to the project since the original EIR had been prepared. Irvine filed a petition for writ of mandate, asserting, among other claims, that the county's responses to its comments on the draft supplemental EIR were inadequate. The court of appeal held that the county's responses to Irvine's comments were legally adequate and, to the extent any of them might be viewed as lacking in some respect, Irvine did not demonstrate any prejudice. The court explained that the CEQA comment process can produce a better EIR by raising issues that the lead agency may have overlooked when it prepared the draft EIR. The court warned, however, that project opponents could abuse the comment process if they use it to wear down a lead agency by making onerous demands for information with the intent of delaying or derailing the project. An agency must confront comments that raise a significant environmental issue or that bring a new issue not previously addressed to the table; on the other hand, an agency need only provide brief responses to comments that are merely objections to the project itself, and a response can be sufficient if it refers to the discussion in the draft EIR of the environmental concerns raised by the comment. Based on these principles, the court concluded that the county adequately responded to Irvine's comments. The court also rejected Irvine's argument that the county should have prepared a new EIR rather than a supplemental EIR. The court explained that the lead agency has discretion to choose whether to prepare a supplemental EIR or an entirely new EIR and that "the appropriate judicial approach is to look to the substance of the EIR, not its nominal title." The court held that the county did not abuse its discretion in choosing to prepare a supplemental EIR because many aspects of the project remained the same, and the supplemental EIR (which was several times longer than the original EIR) adequately addressed new issues and changes to the project. Finally, the court rejected two challenges to the substance of the supplemental EIR. The court held that it was sufficient for the county to evaluate traffic impacts at the beginning and end of the project, without studying interim traffic impacts during construction. The court also held that the county properly concluded that three mitigation measures for the loss of agricultural land—purchasing agricultural conservation easements, creating a transfer-of-development-rights program, and enacting a right-to-farm ordinance—were impractical because of the "astronomical" property values and lack of agricultural land in Orange County. *Irvine* demonstrates the substantial discretion that a lead agency has in preparing an EIR and the heavy burden on plaintiffs to demonstrate a prejudicial abuse of that discretion in order to successfully challenge an EIR.

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