

Complex New Requirements for CEQA Analysis of Greenhouse Gas Emissions Set by Supreme Court

Newhall Ranch, a proposed mega-development in Los Angeles County, can't seem to catch a break: besieged by setbacks since Newhall Land first filed an application to develop the land in 1994, the project has been the subject of over twenty-one public hearings and several law suits over its more than twenty year history. In [*Center for Biological Diversity v. California Department of Fish and Wildlife*](#), the California Supreme Court dealt the project yet another blow, finding that the Department of Fish and Wildlife's environmental impact report on two natural resource plans for the development violated CEQA. While the County had already approved the land use plan for the development in 2003, DFW approval of resource plans and permits were still required. DFW and the Army Corps of Engineers prepared a new environmental document, a joint EIS/EIR, for the resource plans. The California Supreme Court invalidated DFW's CEQA review, deciding that standard of significance used in the EIS/EIR's analysis of Greenhouse Gas emissions was not supported by sufficient evidence and that mitigation measures calling for capture and relocation of a fully protected species were invalid. The Court's ruling, especially its treatment of goals for statewide emissions reductions that were developed to implement A.B. 32, the Global Warming Solutions Act of 2006, will likely have a major long-term impact on environmental reviews for proposed projects throughout California. *Analysis of Greenhouse Gas Emissions* DFW analyzed GHG emissions using consistency with A.B. 32 emissions reductions goals as the standard of significance, using the 29 percent below "business as usual" target set out in the Air Board's 2008 Scoping Plan as the measure of consistency. The EIR/EIS concluded that because the development's GHG emissions would be 31 percent below the business as usual estimates for the project, it exceeded the statewide goal set out in the Scoping Plan, and would therefore not result in any significant GHG impacts. The Court approved of DFW's use of consistency with A.B. 32 and the Scoping Plan as a standard of significance. Under the Court's reasoning, agencies may show that a project would have no significant impact on GHG emissions by demonstrating that the project will not interfere with attainment of the Scoping Plan's goal that GHG emissions statewide be reduced by 29 percent from business as usual. The court ruled, however, that the EIR had not adequately established the project's consistency with the Scoping Plan. Disagreeing with the approach that has become standard practice, the Court ruled that that showing a "project-level reduction" that meets or exceeds the Scoping Plan's overall statewide GHG reduction goal is not necessarily sufficient to show that the project's GHG impacts will be adequately mitigated: "the Scoping Plan nowhere related that *statewide* level of reduction effort to the percentage of reduction that would or should be required from *individual projects*, and nothing ... in the administrative record indicates the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy." According to the court, an EIR cannot simply assume that the overall level of effort required to achieve the statewide goal for emissions reductions will suffice for a specific project. The Court indicated that "methods for complying with CEQA do exist" and briefly described a number of "potential options" for compliance. The Court noted, for instance, that an agency *might* be able to determine what level of reduction from business as usual is required for an individual project based on an examination of the data behind the Scoping Plan's model. As another option it noted that agencies *might* resort to numerical thresholds for analysis of the significance of greenhouse gas emissions. The court, however, did not give any guidance on how these and the other options it identified might be implemented, and warned that the "potential pathways to compliance" it referred to may not be "sufficient to satisfy CEQA's demands as to any particular project." As a result, the decision raises many more questions than it answers. *Capture and Relocation Mitigation* DFW adopted numerous biological impact mitigation measures for the project, including measures that provided for collection and relocation of the unarmored threespine stickleback, a fully protected

species. The Court acknowledged that DFW may conduct capture and relocation of the stickleback as a "conservation measure to protect the fish and aid in its recovery," but held that an agency "may not rely in a CEQA document on the prospect of capture and relocation as mitigating a project's adverse impacts." The Court reasoned that Fish and Game Code section 5515 prohibits "taking" a fully protected species, and that actions to capture and relocate must be considered a taking given the statutory language, structure, and history.

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