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General Plan Sustainability Requirements Doom Wal-Mart Project

Finding a variety of legal errors, including failure to comply with a city policy requiring on-site electricity generation "to the maximum extent feasible," a court of appeal has overturned the City of Victorville's approvals for a Wal-Mart project. [Spring Valley Lake Ass'n v. City of Victorville](#), No. D069442 (4th Dist., June 15, 2016). The court found:

1. The project approvals were inconsistent with the City's general plan;
2. The environmental impact report's analysis of greenhouse gas emissions was inadequate;
3. The city council failed to make findings required by the Subdivision Map Act; and
4. The city was required to recirculate the EIR due to changes in its air quality and hydrology/water quality analyses.

General Plan. The court held the project was inconsistent with two sustainability provisions of the city's general plan. The first was a program requiring "all new commercial or industrial development to generate electricity on-site to the maximum extent feasible." The project did not include any on-site electricity generation; the EIR stated that incorporation of rooftop solar systems would make the project economically infeasible absent significant government credits and incentives, which could not be assured. The court held this explanation did not constitute substantial evidence that solar power generation or other alternatives (such as wind power, which the EIR did not discuss) were completely infeasible. The second general plan requirement was a 15% improvement on 2008 Title 24 standards for all new construction. The EIR showed that the project would "currently" achieve only a 10% improvement, but would comply with new energy efficiency standards at the time of construction, and then would "likely" meet the 15% requirement. The court held that this, too, was inadequate. The court agreed with the city that a project need not conform perfectly with each and every general plan policy, but applied the rule that a project is inconsistent with a general plan "if it conflicts with a general plan policy that is fundamental, mandatory, and clear." The court held that the city's on-site electricity generation requirement constituted such a policy, and therefore the city's finding that the project was consistent with its general plan was not supported by substantial evidence. **EIR Greenhouse Gas Analysis.** The court held the EIR's GHG emissions analysis was inadequate because it relied in part on the conclusion that the project would achieve the 15% improvement in energy efficiency required by the city's general plan, whereas the EIR itself stated that the project might not do so. **Subdivision Map Act.** The Map Act requires a city to deny approval of a parcel map if it makes any of seven findings. These findings are stated in the negative, *e.g.*, "the proposed map is not consistent with applicable general and specific plans...." In approving the Wal-Mart project, the city did not make findings on these seven topics, reasoning that the findings requirement applied only if the city were denying rather than approving the parcel map. Citing a 1975 California Attorney General opinion, which had never been overturned by the Legislature, the court held that the city was required to address the seven findings in its approval of the parcel map. **EIR Recirculation.** The city revised four of the DEIR's analyses in the Final EIR, but determined that the document did not need to be recirculated for further public comment. As to biology and traffic, the court agreed, but it found significant new information regarding air quality and hydrology/water quality that should have led to recirculation. The change in the air quality chapter was the addition of the general plan consistency analysis described above. The court stated that because the analysis did not support the finding that the project was consistent with the general plan requirement, and because the public did not have the opportunity to comment, the EIR should have been recirculated. The hydrology/water quality analysis suffered from a different problem; according to the court, the Final EIR showed a "complete redesign" of the project's stormwater management plan, and 26 pages of EIR text were replaced with 350 pages of technical reports and a conclusion. The court held that these revisions deprived the public of a meaningful opportunity to comment. The *Spring Valley Lake* case illustrates the difficulties cities and counties face as they use their general plans to

promote general sustainability and greenhouse gas reduction goals and later try to implement these in the context of specific development projects. The case falls in line with other recent appellate decisions -- such as those requiring extensive analysis of energy use under CEQA Guidelines Appendix F -- demonstrating increased judicial scrutiny of public agencies' commitments to sustainability.

Authors