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EIR's Energy Impacts Analysis Fails To Satisfy CEQA's Requirements ??

Background

In *Ukiah Citizens for Safety First v. City of Ukiah*, 248 Cal.App.4th 256 (2016) the First District Court of Appeal concluded that the City of Ukiah's EIR for a proposed Costco failed to satisfy CEQA's requirements for evaluating energy impacts.

The project involved the construction of a new Costco store and gas station. The city certified the EIR and adopted a statement of overriding considerations and adopted legislation to approve the project entitlements several weeks later. Ukiah Citizens for Safety First filed a petition for a writ of mandate challenging the EIR and the project approvals on a number of grounds, including that the EIR failed to properly evaluate the project's energy impacts.

The City's Energy Impacts Analysis

CEQA provides guidance on energy impacts that only recently has come into focus. Public Resources Code section 21000(b)(3) provides that an EIR must incorporate a statement regarding "mitigation measures proposed to minimize significant effects on the environment, including, but not limited to, measures to reduce the wasteful, inefficient, and unnecessary consumption of energy." Section 15126.4(a)(1)(C) of the Guidelines provides that: "energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant." And Appendix F of the Guidelines provides a list of possible energy impacts and potential conservation measures that are intended to assist the lead agency in preparation of an EIR.

In this case, the EIR did not contain a separate discussion of energy impacts, but instead mentioned energy impacts at various points throughout the environmental analysis. For example, the EIR determined that the project could result in a potential increase in electrical and natural gas usage, and it discussed the effects of energy usage with respect to the project's potential impacts on air quality and greenhouse gas emissions. The EIR concluded that the project "would not exceed existing gas and electric supply or result in wasteful, inefficient, or unnecessary consumption of energy." In support of this conclusion, the EIR noted that the project would conform to Building Code energy conservation standards, and that the project's design incorporated several sustainable features.

Ukiah Citizens for Safety First claimed that the EIR failed to provide sufficient information regarding the project's energy consumption, and generally failed to satisfy Appendix F. The city, Citizens contended, was required to calculate the project's energy use attributable to project-generated vehicle trips, and to also calculate the project's energy consumption during construction and operational phases.

The court sided with Citizens and found the EIR's energy impacts deficient: The analysis failed to calculate the energy impacts of project-related vehicle trips, and relied on compliance with the building code standards to mitigate the project's construction and operational energy impacts instead of providing a complete evaluation under Appendix F. The court further noted that the city's reliance on mitigation measures designed to reduce greenhouse gas emissions was insufficient with respect to energy impacts.

The Addendum

The court then considered the effect of an addendum to the EIR the city had prepared to "clarify" its energy impacts analysis in response to a recent appellate court decision. The court found that the addendum was not part of the administrative record because it was not before the city when the EIR was certified and the project

was approved; thus, the addendum could not be considered by the trial court in its consideration of Citizens' petition. Because the EIR was deficient when it was certified and the city approved the project, the addendum could not retroactively fix the EIR so as to negate Citizens' claim that the city abused its discretion in approving the project.

Implications

The takeaway from Ukiah Citizens for Safety First is this: sizable development projects, and particularly those that may generate significant vehicle trips, should not gloss over Appendix F when discussing potential energy impacts. Failure to identify energy impacts associated with project vehicle trips may be a red flag to project opponents, as would reliance on building or construction standards as mitigation. Project applicants and lead agencies would be well served by evaluating (or at least distinguishing) the potential energy impacts and mitigation measures listed in Appendix F.

Authors