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### California Supreme Court Holds City EIR Must Identify and Analyze Potential Environmentally Sensitive Habitat Areas Under the Coastal Act

A local agency's environmental impact report must identify any areas on a project site that might qualify as "Environmentally Sensitive Habitat Areas" under the California Coastal Act, and must account for those areas in the EIR's analysis of project alternatives and mitigation measures. [\*Banning Ranch Conservancy v. City of Newport Beach\*](#), California Supreme Court Case No. S227473 (March 30, 2017). Even where the Coastal Commission, and not the local agency, will make the final ESHA identifications, and only the Coastal Commission can issue a coastal development permit, the CEQA lead agency must address ESHA questions and cannot defer those questions to a subsequent Coastal Commission permitting process. The CEQA statute and Guidelines require lead agencies to integrate, to the maximum extent feasible, their CEQA review with planning and environmental review procedures required by other laws. In addition, CEQA requires lead agencies to consider related environmental regulations and matters of regional significance when weighing project alternatives. Citing these provisions, the Court concluded that the City of Newport Beach erred in declining to attempt to identify ESHA on the 400-acre Banning Ranch project site, where some ESHA were already known to exist. Although the city had no authority to designate ESHA on the property, the Court explained that the city was not required to make "legal" ESHA determinations in its EIR. Instead, the city was required to "discuss potential ESHA and their ramifications for mitigation measures and alternatives when there is credible evidence that ESHA might be present on a project site." The Court also rejected the argument that the city's attempt to analyze ESHA impacts would be speculative. Precision was not required, the Court said, adding that the city had routinely evaluated ESHA impacts for other locations that, unlike the Banning Ranch site, were covered by the city's coastal land use plan. The fact that the Coastal Commission would later consider ESHA during its permitting process did not help the city's position because "[t]he City's approach, if generally adopted, would permit lead agencies to perform truncated and siloed environmental review, leaving it to other responsible agencies to address related concerns seriatim." The Court noted that an agency's failure to integrate its CEQA review with other environmental review procedures "to the maximum extent feasible" would not always call for reversal of a project approval. Here, however, the Court concluded that the city's omission resulted in inadequate evaluation of project alternatives and mitigation measures; suppression of information highly relevant to the Coastal Commission's permitting function; and failure to provide the public with a full understanding of the environmental issues raised by the project proposal. Accordingly, the Court determined that reversal was required. This case may change many CEQA lead agencies' approaches to regulatory topics that are the subject of permitting by other agencies under statutory schemes other than CEQA. EIRs that defer discussion of such topics to other agencies' subsequent processes will be vulnerable to legal challenge.

## Authors