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Appellate court upholds approval of master-planned community against multiple CEQA challenges

The court of appeal upheld the County of Riverside's decision to approve development of a master-planned community, rejecting claims that the County violated CEQA by (1) filing an inadequate notice of determination; (2) failing to recirculate the final EIR after the project was modified; and (3) failing to consider and adopt feasible air quality mitigation measures. *Residents Against Specific Plan 380 v. County of Riverside*, No. E063292 (4th Dist., March 15, 2017). The project proposed the development of residential, mixed-use, commercial, and open space components on 200 acres of land. The EIR, determined that the project would result in significant air quality and noise impacts. The final EIR responded to comments made by the South Coast Air Quality Management District (SCAQMD) and the City of Temecula and explained the County's rationale for declining to adopt suggested mitigation measures.

San Bernardino Riverside Interstate 10 west highway sign with sunrise sky. **The Notice of Determination Was Adequate** Plaintiff contended NOD was inadequate because it described the project as proposed, and failed to reflect changes to the project approved by the Board of Supervisors. The court noted the errors, but found they did not justify unwinding the approval because the notice substantially complied with the informational requirements of CEQA, and the project description was close enough to the project as approved that it "provided the public with the information it needed to weigh the environmental consequences of the County's determination, seek additional information if necessary, and intelligently decide whether to bring a legal challenge to the approval[.]" **Recirculation of the EIR Was Not Necessary** The court also dismissed plaintiff's argument that the County was required to recirculate the final EIR after changes were made to the project. The court addressed the project changes and observed that the differences between the plan described in the final EIR and the project as approved had to do with details of the allocation and arrangement of uses within the project site, not the permitted uses themselves or overall extent or density of the proposed development. It noted that "[t]he footprint of the project remains the same...the project as approved permits the same amount of retail development in the same planning areas, the same amount of commercial office development, and the same number of residential units as the version of the plan analyzed in the final EIR." The court found that concerns raised by the plaintiff regarding the project changes were adequately addressed by the County's environmental consultant, which provided the County with an adequate factual basis for concluding the changes did not result in new significant impacts requiring recirculation. **The EIR Adequately Considered Agency Suggestions for Mitigating Air Quality Impacts** The court also rejected plaintiff's contention that the County failed to adequately respond to SCAQMD's and the City of Temecula's comments regarding air quality impacts. SCAQMD had recommended a more stringent air quality mitigation measure that would require use of Tier 3 and 4 construction equipment rather than the Tier 2 equipment provided in the final EIR. The City of Temecula had also requested compliance with the 2010 CA Energy Code (rather than the 2008 Code) and the 2010 CA Green Building Code. In response to SCAQMD's comment, the County explained that the mitigation measure in the final EIR reflected the construction equipment that was anticipated to be reasonably available at the time of project construction and that it did not anticipate the reasonable availability of equipment meeting the more stringent requirements proposed. The County's response to the City of Temecula explained the rationale for rejecting the proposed measures, noting that the County's existing mitigation measures already required compliance with any legally mandated increase in the standard. The court found these responses sufficiently detailed to support the County's determination that the more stringent standards proposed were not feasible and provided adequate support for the County's decision not to adopt the recommended mitigation measures.