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Coastal Commission Must Complete Environmental Review Under Its Certified Regulatory Program Before Approving Permit



The court of appeal found that the California Coastal Commission erred by approving a coastal development permit for a residential development before environmental review for the project had been completed. *Friends, Artists and Neighbors of Elkhorn Slough v. California Coastal Commission*, 2021 WL 5905714 (No. H048088, 6th Dist., December 14, 2021).



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Commission's staff report recommended that the permit be denied. The report acknowledged the project would have significant adverse effects on the environment, that certain project modifications and design alternatives were necessary to address environmental issues, and that the project was inconsistent with several Local Coastal Program policies. Nevertheless, at the conclusion of its hearing, the Commission approved the permit. Staff then prepared a second report that analyzed, for the first time, various components of the project, mitigation measures, and conditions of approval. The report also contained a new, more favorable, analysis of oak woodland, water, visual, and traffic impacts, found the project would avoid significant environmental impacts, and took a new position on LCP consistency. The Commission's findings for the permit approval were based on this report. The court explained that the Commission must demonstrate full compliance with the provisions of its certified regulatory program in order to claim an exemption from CEQA's EIR requirement. This includes the requirement that a permit approval be preceded by the preparation of a written report which serves as the substitute for an EIR. That report must contain detailed information on the project's environmental impacts, alternatives, mitigation measures, necessary conditions of approval, and other information required to inform the Commission's decision. The court concluded the staff report for the Commission hearing was insufficient to serve this purpose. It did not contain the complete discussion and analysis of the issues that must be provided *before* the Commission makes its decision. Because that information was not provided until the second report was prepared, *after* the Commission had acted, the court found its decision invalid.

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