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No Further Environmental Review Needed for Subdivision That Was Consistent with Approved Specific Plan

The Court of Appeal found that a development project that was consistent with a previously approved specific plan was not required to prepare a new EIR because no changes significantly increased impacts on endangered species. *Citizens' Committee to Complete the Refuge v. City of Newark*, 74 Cal.App. 5th 460 (2022) In 2010, the City of Newark certified an environmental impact report for a specific plan covering Area 2 and 4, located next



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In 2019, the

City approved a subdivision map for development of residential lots on a portion of Area 4. The City prepared a checklist comparing the analysis in the EIR with the impacts of the proposed project. The checklist included supporting materials such as plans, letters, expert memos, and technical reports, including an updated analysis of the effects of sea level rise. The City approved the project after finding that it would have no significant impacts. The plaintiffs challenged the map approval and the use of the checklist. The court of appeal held that the subdivision map was exempted from further CEQA review under Government Code section 65457 because it was consistent with the specific plan, which had a certified EIR. Under that circumstance, no further environmental review is required in the absence of substantial changes to the project or the circumstances under which the project will be developed or if new information becomes available. The plaintiffs claimed that there were three aspects of the subdivision map that were significantly different from the specific plan analyzed in the EIR and would have significant new impacts on the salt marsh harvest mouse. However, substantial evidence supported the City's conclusion that none of the changes would significantly increase the impacts on the harvest mouse beyond those addressed in the EIR. The court recognized that there was proposed use of riprap to reduce erosion, which was not mentioned in the EIR, but held that this did not rise to the level of a "[s]ubstantial change[] . . . in the project which will require major revisions of the environmental impact report." While

plaintiffs argued that use of riprap deserved further study because it would substantially increase the severity of rat predation of the harvest mouse, they failed to offer any substantial evidence to support this claim. Plaintiffs also contended that the project risked exacerbating the effects of sea level rise on the environment because of the interaction of the project with wetlands in the area. The court found that, even if plaintiffs' theory was correct, these dynamics were not new in relation to this project, so the City did not need to address them in reviewing the project—the time to address them, if at all, was in relation to the original EIR. The court likewise rejected plaintiffs' argument that a hydrology report's reliance on adaptive management to address flooding of the project from sea-level rise (such as by creating levees or floodwalls) amounted to improper deferral of mitigation measures. The court reasoned that because sea level rise was not an impact on the environment caused by the project, neither the EIR nor the checklist needed to discuss this impact. For the same reason, the adaptive responses to sea level rise discussed in the hydrology report were not mitigation measures governed by the rules concerning deferred mitigation.

Authors