

## **EIR's Project Description For Municipal Park Properly Excluded Proposed Development On Adjacent Property Claimed to Be a Related Project**

In rejecting the claim that the City of Newport Beach improperly "piecemealed" its environmental review of a municipal park project, the court upheld the city's decision to exclude from the EIR's project description a pending proposal to build residential and commercial uses on an adjacent property. The court based its ruling on the principle that two projects may properly undergo separate environmental review, where "the projects have different proponents, serve different purposes, or can be implemented independently." [Banning Ranch Conservancy v. City of Newport Beach](#) (4th Dist. Case No. G045622, Dec. 12, 2012).

The court recognized the mixed-used development was reasonably foreseeable at the time the EIR for the park was being prepared. The court also recognized that development likely would benefit from the roadway improvements needed to serve the park project.

However, the court found the mixed-use development was not a "consequence" of the park. Therefore, the project description for the park did not need to include the mixed-use development. The court emphasized that while the roadway improvements needed to provide access to the park could be "reasonably seen as easing the way" for the mixed-use development, the improvements were "only a baby step" toward that development, which would require an "enormous undertaking" regardless of whether the park was constructed. The court concluded the two proposals were separate actions and did not need to be analyzed together as one project under CEQA.

Although the result may seem unsurprising, claims that projects expected to benefit from major infrastructure improvements are related, and therefore should be studied in a single EIR, are not uncommon. The court's incisive analysis provides a particularly useful framework for resolving such claims.

The court also rejected a number of other CEQA challenges to the EIR's discussion of cumulative impacts, growth-inducing impacts, biological mitigation, and coastal issues. The court emphasized the deferential standard of review it uses when evaluating factual and technical disputes about an EIR, and it refused to second-guess the city's environmental analyses and findings. The court repeatedly emphasized in its opinion that the question in reviewing the adequacy of an EIR is whether substantial evidence supports the agency's conclusions, not whether an opposite conclusion is equally or more reasonable.

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