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Does An EIR Have To Be Certified By A City's Decision-Making Body?

Yes, according to a recent decision by a California court of appeal. The court held that CEQA does not allow a city council to delegate certification of an Environmental Impact Report to a planning commission, where the council is the decision-maker on the project. The court further ruled that, where such a delegation occurs, the project opponent is not required to appeal the planning commission's certification to the city council or repeat its comments on the draft EIR when the council later considers certification anew. *California Clean Energy Committee v. City of San Jose*, Case No. H038740 (6th Dist., Oct. 29, 2013). The City of San Jose published a draft EIR on a comprehensive update of its general plan. The plaintiff submitted comments objecting to the environmental analysis. The planning commission certified the final EIR and recommended that the city council approve the general plan update. The plaintiff did not appeal the certification to the city council, though the matter was already slated to go to the council. The council then independently recertified the EIR and approved the general plan update. The plaintiff filed a CEQA lawsuit challenging the EIR, raising the claims it had presented in its comments on the draft EIR. The court of appeal concluded that the plaintiff adequately exhausted its administrative remedies. The court first ruled that CEQA requires that decision-makers on a project independently consider and review the adequacy of the environmental analysis before deciding whether to approve the project. Based on this ruling, the court held that the decision-making body with project approval authority must certify the EIR and may not delegate the certification to a body that lacks this authority. Applying these principles, the court found that San Jose's city council could not delegate certification of the EIR to the planning commission, since the commission lacked the power to approve the general plan update. Having found the delegation to the planning commission improper, the court then ruled that the project opponent was not required to follow the procedures in the city's code for appealing the commission's decision to the city council. Finally, the court ruled that the plaintiff had adequately exhausted its administrative remedies even though it did not repeat the CEQA claims in its comment letter when the matter reached the city council. The court reasoned that the city council, as the ultimate decision-makers on the general plan update, had the plaintiff's comment letter before it when it approved the project, and that the letter adequately apprised the council of the plaintiff's environmental objections. While the rulings in the case are procedural, the decision could have a substantial impact on how cities and counties make their decisions under CEQA and how those decisions may be challenged by project opponents.

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