

No Treasure for Challenger on Appeal: Treasure Island EIR Upheld

Three years after the San Francisco Board of Supervisors unanimously approved a major redevelopment project on Treasure Island and Yerba Buena Island, an appellate court affirmed a lower court judgment upholding the project's EIR. [Citizens for a Sustainable Treasure Island v. City and County of San Francisco, A137828 \(First District, July 7, 2014\)](#).

In 2011, the Board approved a comprehensive plan to redevelop a former naval station located in the middle of San Francisco Bay into a mixed-use community with updated infrastructure and amenities. A "project EIR" analyzed all phases of the project at maximum buildout. The EIR was challenged in court, partly on the basis that it contained insufficient detail to constitute a project EIR and, therefore, should have been prepared as a program EIR.

The Court of Appeal disagreed: All CEQA requires is that an EIR contain all requisite elements and a level of specificity sufficient for the particular proposal under consideration, both of which the court found were satisfied. Lead agencies, the court held, have the discretion to determine whether a program or project EIR should be prepared.

The court also rejected the challenger's assertion that the city improperly sought to short-circuit subsequent environmental review by preparing a project EIR, observing that courts apply the same substantial evidence standard to subsequent environmental review whether a project is evaluated in a program EIR or a project EIR.

Other attacks on the EIR also failed, including a claim it should have been recirculated in light of comments submitted by the U.S. Coast Guard about potential effects on regulation of ship traffic. The court concluded there was no significant new information that required recirculation because the parties met to discuss the Coast Guard's concerns, a project document and the EIR were revised in response to the comments, the Coast Guard expressed satisfaction with the changes, and no new significant adverse environmental impacts were shown.

The question of whether an EIR should have been prepared as a program EIR or as a project EIR also was before another court recently in *Citizens Against Airport Pollution v. City of San Jose*. As discussed in [our post on that decision](#), the court declined to reach the issue, concluding that the substance of the environmental analysis was more important than the title placed on the document.

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