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### RELIANCE ON STATUTORY REQUIREMENTS TO MITIGATE ENVIRONMENTAL IMPACTS PROPER UNDER CEQA

*Oakland Heritage Alliance v. City of Oakland* (May 19, 2011, A126558) \_\_ Cal.App.4th \_\_

By [Maria Pracher](#) and [Robyn Christo](#)

In this case, the Court of Appeal for the First Appellate District rejected all of petitioner's arguments regarding the adequacy of the seismic impact analysis and mitigation measures in a revised Environmental Impact Report ("EIR") prepared for a project that proposed to convert 64 acres of maritime and industrial land along Oakland's waterfront into residential, retail/commercial, open space and marina uses ("Project").

Petitioner first argued that the EIR failed to properly evaluate the risk of seismic damage to structures as a Project impact. Specifically, petitioner contended that the EIR failed to analyze damage to structures and provide mitigation that would allow for immediate re-occupancy of buildings following an earthquake. Instead, the EIR focused on whether the Project structures could be designed to a life safety standard that would protect against the substantial risk of loss, injury or death. The court rejected petitioner's argument, stating: "[w]e do not accept the premise . . . that under CEQA, as a matter of law, seismic impacts are significant unless buildings could be repaired and ready for occupancy after a major earthquake. Nothing in CEQA, the cases interpreting it, or common sense compels such a conclusion. A less than significant impact does not necessarily mean no impact at all."

Petitioner next argued that the City did not have substantial evidence to support findings that mitigation measures requiring compliance with state and local code requirements reduced seismic impacts to a less-than-significant level. The court, in rejecting this argument, noted that the EIR included an extensive discussion of state and local code requirements aimed at mitigating seismic hazards and relied on a preliminary geotechnical investigation of the Project site, which determined that the site could be developed with accepted and proven engineering practices to overcome unacceptable soil conditions. The court found that “compliance with the Building Code, and other regulatory provisions, in conjunction with the detailed [g]eotechnical [i]nvestigation, provided substantial evidence that the mitigation measures would reduce seismic impacts to a less than significant level.” Pointing to its decision in *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912 (upholding energy impact mitigation measures that required compliance with the California Building Energy Efficiency Standards – a statutory scheme designed to promote energy efficiency), the court held that compliance with statutory provisions designed to mitigate the very impact addressed in the EIR (in this case, seismic safety) provide substantial evidence that such impacts would be reduced to a less than significant level.

Finally, the court rejected petitioner's claim that the City improperly deferred mitigation of the Project's seismic impacts. The court summarized the cases discussing when an agency may defer the details of mitigation implementation pending future study. In situations where impacts for "which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process..., the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval. Where future action to carry a project forward is contingent on devising means to satisfy such criteria, the agency should be able to rely on its commitment as evidence that significant impacts will in fact be mitigated." (*Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029.) In light of the EIR's discussion of the applicable statutes and regulations and the preliminary geotechnical investigation, the court

determined that the mitigation measures for seismic impacts, fashioned in accordance with a regulatory scheme designed to ensure seismic safety, were proper. The court noted “[a]lthough final design of the structures, including seismic safety design, [was] deferred until a later date, the [ ] EIR gives adequate assurance that seismic impacts will be mitigated through engineering methods known to be feasible and effective.” Thus, the EIR did not impermissibly defer mitigation of seismic impacts.

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