

Minor Problems In Environmental Impact Report Are Not Prejudicial Defects

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A recent appellate case addressed the issue of minor problems and deficiencies in an Environmental Impact Report (“EIR”) and whether they were prejudicial errors that amounted to defects in the approval process required for a project under the California Environmental Quality Act (CEQA). [*Mount Shasta Bioregional Ecology Center v. County of Siskiyou*, 3rd District Court of Appeal (9/26/12, published 10/18/12)]

Specifically, the case involved a private party who bought a wood products manufacturing facility, converted it, then sought approval for a biomass-fueled cogeneration power plant so that heat generated in the facility’s boiler could be used for both manufacturing and the generation of electricity for resale.

The local planning commission certified the EIR filed by the facility and approved the project. But the plaintiffs filed suit, seeking a reversal, arguing that “. . . the EIR for the Project failed to include an adequate analysis of alternatives and failed to fully disclose, analyze and mitigate air quality, noise and water impacts of the Project.”

The Court of Appeal, in a holding consistent with the general principle that minor deficiencies or inaccuracies do not prejudice the environmental review process, held that there was “no prejudicial defect in the EIR or the CEQA review”, disposing of the plaintiffs’ specific claims as neatly summarized by a recent [article](#):

Baseline Emissions - A difference of seven percent (7%) between actual and approximate emissions did not preclude an informed decision or informed public participation

Water Quality Impacts - Possible understatement of overall water usage in the Draft EIR did not preclude an informed decision or informed public participation. Increased usage of water would not have a significant environmental impact.

Alternative Analysis – Plaintiffs failed to prove how a “missing” alternative would have met the project goals and substantially lessened significant environmental effects. An EIR need not consider every conceivable alternative to the project. CEQA requires the analysis of feasible alternatives.

Noise Impacts - There was insufficient evidence about noise impacts and mitigation efforts, or the claims put forth were invalidly based on “a difference of opinion on the facts”.

Recirculation Of The EIR – Noise studies in the Draft EIR omitted from the final EIR did not require recirculation of the EIR for approval because they did not contain new information requiring such, and merely amplified and clarified or “made insignificant modifications in an adequate EIR”.

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