

County's Application for State Funding Does Not Trigger CEQA

In December 2011, the Orange County Board of Supervisors passed a resolution authorizing the County to submit an application for \$100 million in state funding to expand the James A. Musick Jail Facility to add over 500 beds. The City of Irvine, which sits adjacent to the jail, filed a lawsuit alleging that the County failed to comply with CEQA before submitting the application. The court of appeal rejected the City's challenge, ruling that the County's application did not constitute an "approval" of a project under CEQA. [City of Irvine v. County of Orange](#), No. G047895 (4th Dist., Nov. 22, 2013).

Using the test established by the Supreme Court in *Save Tara v. City of West Hollywood*, 45 Cal. 4th 116, 127 (2008), the court of appeal concluded that the state funding application did not effectively commit the County to proceed with the expansion. Emphasizing the distinction between "advocating or proposing a project and committing to it," the court explained that a commitment that triggers CEQA must preclude or foreclose alternatives or mitigation measures that CEQA otherwise would require the agency to consider.

Here, the court found, the County retained all of its discretion under CEQA to consider alternatives and mitigation measures. Based on a review of the legal provisions governing the state prison funding program, the court determined that the submission of an application "was merely a preliminary step" in the process. In particular, the court explained that the state's initial approval of an application was only a "conditional award," which did not guarantee any funding and only meant the applicant was qualified to move forward to the next phase of the process. The state program expressly required a number of additional steps, following issuance of a conditional award, to secure the funding, including CEQA review. The court therefore concluded that the application "committed the County to nothing."

In reaching this conclusion, the court rejected the City's claim that the County's application triggered CEQA due to its high level of detail. The court stated: "The amount of detail or the advanced stage of the project's design, however, covers only part of the analysis for determining whether an agency's action constitutes an approval under CEQA. An approval under CEQA requires both a definite course of action and a commitment to that definite course of action." Because there was no commitment here, there was no approval and thus no requirement yet for CEQA review.

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