

Highway 101 EIR Felled by Redwoods

Caltrans's analysis of impacts to redwoods from realignment of a one-mile stretch of Highway 101 has been rejected. The court of appeal ruled that the project EIR both failed to identify any significance threshold for impacts to redwoods and impermissibly labeled mitigation measures as project features. [*Lotus v. Department of Transportation*](#), No. A137315 (First Dist., Jan. 30, 2014). Caltrans proposed to adjust the alignment of Highway 101 to allow industry-standard trucks to use the roadway and to improve its safety. Excavation, fill and/or new pavement would occur in the structural root zones of approximately 74 redwood trees. The EIR identified extensive measures that had been "incorporated into the project to avoid and minimize impacts as well as to mitigate expected impacts." Because it deemed these measures part of the project as proposed, the EIR concluded that the project would cause no significant environmental impacts. The appellate court found the EIR's analysis of impacts to the trees' root zones inadequate for two reasons. First, although the EIR provided detailed descriptions of the extent and depth of the project's excavation, fill and pavement in the trees' root zones, it did not "include any information that enables the reader to evaluate the significance of these impacts," such as standards for determining whether trees would survive. In fact, the court found, "the EIR fails to identify any standard of significance, much less to apply one to an analysis of predictable impacts from the project." Second, the court found that the "avoidance, minimization and/or mitigation measures" described in the EIR were not truly part of the project. Instead, they were mitigation measures, and the EIR was required first to identify impacts without these measures, *then* to identify, and discuss the efficacy of, the mitigation measures. The court held: "By compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA." The court conceded that the "distinction between elements of a project and measures designed to mitigate impacts of the project may not always be clear," but then found that the use of special paving material to avoid impacts to root zones clearly was *not* a mitigation measure while the use of special construction equipment for the same purpose plainly *was* a mitigation measure. (The opinion did not explain this distinction). In addition, the court did not defer to two expert opinions cited in the EIR, both of whom concluded that the project would have no significant impact on the root health of the redwoods, because those opinions failed "to discuss the significance of the environmental impacts apart from the proposed 'avoidance, minimization and/or mitigation measures' and thus failed to consider whether other possible mitigation measures would be more effective." The *Lotus* court's distinction between impact avoidance measures that may properly be included in a project description and mitigation measures that must be applied later will prove difficult, if not impossible, to apply. Had the EIR identified a significance threshold for impacts to redwoods, perhaps the court would have viewed the "avoidance, minimization and/or mitigation measures" differently, because the EIR would have provided a context for them. This case highlights the importance of thinking beyond customary, checklist-based significance thresholds, particularly for projects involving impacts to trees. Although the CEQA Guidelines Appendix G checklist addresses tree ordinances, habitats, "forest land" and "timberland," courts have been far more focused on impacts to individual trees. A CEQA document that can be seen as giving short shrift to these impacts is a document in potential peril.

Authors



Julie Jones

Partner

JJones@perkinscoie.com [415.344.7108](tel:415.344.7108)

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)