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EIR Recirculation Not Required Although Final Version of Approved Project Was Not Specifically Evaluated in EIR



The Second District Court of Appeal held that: (1) despite revisions to a mixed-use development project, the project description in the EIR was "accurate, stable, and finite;" (2) an opportunity for public comment on the finally approved project was not required under CEQA; and (3) because the revised project was not significantly different from alternatives considered, recirculation of the EIR was not required. *Southwest Regional Council of Carpenters v. City of Los Angeles (The Icon at Panorama, LLC)*, 76 Cal. App. 5th 1154 (2022).

The Icon at Panorama, LLC ("Icon") proposed a mixed-use commercial and residential development in Los Angeles. The City circulated two draft EIRs for public review and comment and eventually issued its final EIR for the project in February 2018. In March 2018, City staff recommended approval of a new alternative project ("Revised Project") not set out in the draft or final EIRs. This Revised Project was a smaller version of an alternative previously provided ("Alternative 5"). Compared to Alternative 5, the Revised Project contained fewer residences, but the same amount of commercial area. Petitioners challenged the project approval, contending that: (1) the project description in the EIR was inadequate; (2) the EIR should have been recirculated after being substantially revised; and (3) the revised project description violated CEQA.

The court explained that, per case law and CEQA Guidelines, the EIR must include enough detail to allow others to "understand and to consider meaningfully the issues raised by the proposed project." Here, because the project remained a mixed-use commercial/residential project on a defined project site from proposal to approval, the size and site of the project remained the same, and the only changes involved the "residential to commercial footprint," the City did not violate CEQA's requirement of an "accurate, stable, and finite" project description.

The court acknowledged that the approved project was not included in any EIR circulated and thus, no opportunity for public comment was given, but the court found that CEQA does not appear to require an opportunity for public comment on the final approved project. Recirculation of a revised draft EIR that contains the final approved project and an opportunity for public comment is not required by CEQA either. The court declined to require a further opportunity for the public to comment on the actual project before approval. The court found the City fully compliant with CEQA's information requirements as the City provided ninety-two days for public comment on the draft EIR, and the public was given five months and multiple public hearings to comment on the Revised Project. Further, the court found no record of any "prohibited impediment to informed decision-making."

With respect to recirculation, CEQA requires that a new public comment period be provided if the lead agency adds "significant new information" to the EIR after the public comment period ends but before the final EIR is certified. The court explained that because CEQA requires circulation of the draft EIR, public comment, and

response to such comments before the final EIR is certified, the final EIR will almost always contain information not included in the draft EIR. As such, the addition of new information alone does not mean recirculation is required. Here, the court found that the Revised Project was not "considerably different from other alternatives previously analyzed" in the draft EIR and thus recirculation was not required.

Authors

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