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CEQA Challenges to EIR's Biological and Emergency Evacuation Analyses Rejected

A court of appeal has denied CEQA challenges to the EIR for an apartment project, holding that analysis of biological impacts need not be based on surveys conducted in the same year the city issued its notice of preparation of the EIR. *Save North Petaluma River and Wetlands v. City of Petaluma*, 86 Cal.App.5th 207 (2022). The court also upheld the EIR's analysis of potential impacts to emergency evacuation during flood or wildfire.



The apartment project, first proposed in 2003 at 312 units, underwent numerous revisions before the city approved it at 180 units in 2020. The revisions reduced the project's footprint, increased its setback from the Petaluma River, and preserved additional wetlands and trees.

Plaintiffs asserted that an EIR must describe site conditions as they existed in the year of the notice of preparation of the EIR. Here, the City issued the NOP in 2007, but the EIR's analysis cited a 2004 Special Status Species Report that in turn cited a 2001 site survey. Plaintiffs challenged the EIR's baseline for analysis of impacts to biological resources because no study had been conducted in 2007.

The court rejected this claim, citing case law holding that CEQA does not mandate a uniform, inflexible rule for determination of the existing conditions baseline. Here, the EIR's description of existing biological conditions

was drawn from site visits, studies, and habitat evaluations that took place both before and after 2007. And nothing in either the record or in plaintiffs' briefs suggested that on-site biological conditions had changed over the years.

Plaintiffs also argued that the project would cause a significant public safety impact by interfering with evacuation during a flood or a wildfire. The court upheld the EIR's analysis of this issue as based on substantial evidence, which included the project's siting of both buildings and evacuation routes outside the floodplain, the project's location outside the city's high fire hazard severity zone, and the fire department's confirmation that it did not have significant flood or fire access/egress concerns with development above the 100-year floodplain. The plaintiffs' late submission of an expert's one-page memorandum requesting additional study did not entitle the court to reweigh the allegedly conflicting evidence.

It is fairly common for expert surveys and studies of existing environmental conditions to be prepared either before or after the NOP is issued. So long as the EIR's description is supported by substantial evidence, the *Save North Petaluma* case confirms that nothing in CEQA requires such surveys and studies to be conducted in the year of the NOP.

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