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April 05, 2023

Project with Potentially Significant Greenhouse Gas Emissions Improperly Approved Based on an EIR Addendum



The City of Irvine violated CEQA by approving a development project based on an addendum to a program EIR containing insufficient information regarding the project's greenhouse gas emissions and by relying on CEQA's Class 32 infill exemption, which was inapplicable due to unusual circumstances. *IBC Business Owners for Sensible Development v. City of Irvine*, 88 Cal. App. 5th 100 (2023).

In 2010, the City adopted a plan to guide development of the Irvine Business Complex (IBC) and prepared and approved a Program EIR, studying the effects of the development plan under CEQA. Nine years later, a developer proposed a project to redevelop a 4.95-acre parcel in the IBC. The proposed project would demolish an existing building and parking lots to construct a 275,000-square-foot office complex, consisting of a five-story office building, a six-story office building, and a seven-story parking structure.

City staff prepared an addendum to the EIR and the City Council approved the project, finding that all environmental effects of the proposed project had been adequately studied in the 2010 EIR.

The Fourth Appellate District held there was insufficient evidence that the project's greenhouse gas emissions were within the scope of the 2010 EIR and that no categorical exemption applied because the project could cause significant environmental effects due to unusual circumstances.

### **Addendum to EIR**

The City argued that the addendum was proper because the project's greenhouse gas emissions would be less than significant for two reasons. First, the project's emissions would be consistent with the 2010 EIR and second, its emissions would comply with the thresholds drafted by the South Coast Air Quality Management District.

The court found there was insufficient evidence to support the City's first conclusion. The City relied on the flawed understanding that the project was consistent with the EIR by assuming that the project incorporated all the mitigation efforts to achieve the EIR's target of net zero emissions. The court explained that the incorporation of the mitigation measures alone did not constitute substantial evidence that the project was consistent with the target of net zero emissions. Moreover, even with all applicable measures in place, the large-scale nature of the project could cause it to emit a disproportionate level of greenhouse gases and that the addendum did not examine those emissions. The court explained that to demonstrate the project's compliance with the EIR's emissions plan, the City needed to analyze the project's emissions within the context of present and future development in the IBC and demonstrate that its emissions would not prevent the IBC from achieving its goal of net zero emissions at full buildout.

The court also found the City's conclusion that project's emissions would comply with Air District thresholds to be legally incorrect. While the addendum did not discuss total emissions, draft documents indicated that the project would emit 5,563 metric tons of greenhouse gases per year. This was four times the applicable Tier 3 screening level of allowed emissions for commercial land uses established by the Air District. The addendum instead relied on the Air District's Tier 1 threshold for projects exempt from CEQA based on the erroneous assumption that the project qualified for a categorical exemption.

### **CEQA's Class 32 infill exemption**

The City argued that any deficiencies in the addendum were inconsequential because the proposed project was categorically exempt from CEQA and thus the City was not obligated to perform any environmental review. The City relied on the Class 32 infill exemption applicable to projects characterized as in-fill development. However, the court concluded that the project did not qualify for the exemption because there was a reasonable possibility that it would have a significant effect on the environment due to unusual circumstances. The proposed project was not a standalone project but part of a plan to guide development in the IBC. The project would demolish an

existing building and replace it with substantially larger buildings with more than double the office space originally allocated to the site that could have more substantial greenhouse gas emissions. The transfer of development rights required for this project would also be the largest ever approved in the history of the IBC development plan.

Thus, the size of the project, the scale of the transfer of development rights required to make it possible, the resulting density and the project's estimated greenhouse gas emissions exceeding the Tier 3 threshold, constituted unusual circumstances that could result in a significant effect on the environment, making the City's reliance on the Class 32 infill exemption improper.

## **Topics**

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