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### Court Overturns County's Decision to Require an EIR For Lack of Substantial Evidence



The County of San Diego planning staff found a project qualified for a CEQA exemption under Guideline 15183, which applies to projects consistent with a general plan for which an EIR had been prepared.

On appeal, the Board of Supervisors reversed staff's decision, finding an EIR was required due to environmental impacts peculiar to the project. The court overturned the Board's decision, concluding there was no substantial evidence supporting the Board's conclusion that impacts would not be mitigated by application of uniform policies and procedures, which meant they were no "peculiar" impacts that would prevent application of Guideline 15183. [Hilltop Group, Inc. v. County of San Diego](#), No. D081124 (4th Dist., Feb., 16, 2024).

The Hilltop Group proposed to develop a facility that would recycle inert materials from construction projects. The project was consistent with the general plan designation and zoning the County had applied in connection with its most recent general plan update, for which it had certified a Program EIR. The County's review of the recycling project was convoluted. First, the County prepared an initial study finding potentially significant impacts and issued a notice of preparation of an EIR. Second, after the applicant submitted numerous studies and a proposed draft EIR, the County reversed its position. The zoning administrator found the project exempt under Guideline 15183, and the County's Planning and Development Services approved the project's site plan. Third, several parties appealed, and the Board of Supervisors reversed staff's decision. The Board found the project would result in peculiar environmental effects that would not be mitigated by uniform policies and procedures, and that an EIR was required.

The Hilltop Group sued. The court overturned the Board's decision, finding the project exempt. It addressed several aspects of Guideline 15183.

*Relevant Provisions of Guideline 15183.* Guideline 15183 implements Public Resources Code section 21083.3. Subdivision 15183(a) provides that projects consistent with zoning or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether

there are project-specific significant effects peculiar to the project or its site. Subdivision (b) limits review of such projects to impacts that (1) are peculiar to the project or the parcel, (2) were not analyzed as significant effects in the prior EIR, (3) are potentially significant off-site impacts and cumulative impacts not discussed in the prior EIR, or (4) were previously identified significant effects but substantial new information shows the impacts will be more severe. Subdivision (f) provides that impacts shall not be considered "peculiar" if uniformly applied development policies or standards were adopted with a finding that they will substantially mitigate the environmental effect, unless substantial new information shows that the uniform policies or standards will not do so.

*Substantial Evidence Standard Applies to a Guideline 15183 Determination.* The court first confirmed that the substantial evidence standard governs a court's review of CEQA exemptions, including that of Guideline 15183. The County argued that the fair argument standard should apply because a project's eligibility for the 15183 exemption depends on whether the project will have a significant impact. The court disagreed, noting that the agency also must determine whether the impacts were analyzed as significant impacts in the prior EIR.

*Guideline 15183 Can Provide a Partial Exemption By Narrowing the Scope of Subsequent Review.* The court rejected the County's argument that a project otherwise eligible for the 15183 exemption is entirely ineligible if there are any impacts peculiar to the project or its site. Rather, the court ruled, Guideline 15183 can provide a partial exemption that limits the scope of a project-level EIR to significant impacts that were not covered in the prior general plan EIR. While an agency has discretion to choose which streamlining procedure it will use, it is required to limit environmental review of a project when a program EIR has been certified for a general plan and a later project is consistent with the general plan. Here, the County chose Guideline 15183, which precludes additional review except as might be necessary to examine whether there are project-specific significant effects peculiar to the project or its site. Accordingly, the issue before the court was the extent to which the process was streamlined and what further review was required based on substantial evidence of the project's peculiar environmental impacts.

*Prior Initial Study Did Not Preclude Later Use of 15183 Exemption.* The court rejected the County's argument that the initial study it had prepared at the outset precluded later use of the 15183 exemption. It explained that the original initial study merely indicated that more evidence and analysis was required. Distinguishing several cases decided outside the Guideline 15183 context, the court concluded that "to unequivocally require the preparation of an EIR based on the initial study, even in the face of County staff's later findings that the project qualified for an exemption, would elevate form over substance."

*The Board's Finding that Impacts Peculiar to the Project Would Not Be Mitigated by Uniform Policies Was Unsupported in the Record.* The Board found the project would have impacts that would not be mitigated by uniformly applied policies and procedures. The court overturned this conclusion, finding no substantial evidence in the record to support it. Numerous studies and the proposed draft EIR submitted by the applicant established that there were no such impacts. In contrast, the Board's finding was conclusory and did not identify with specificity either the impacts peculiar to the project or what effect uniform policies and standards would have. The County claimed its finding was supported by public comments and staff communications expressing concerns that the project may have significant impacts. The court found these statements were largely speculative and, in any event, failed to address whether the purported project-specific impacts would be substantially mitigated by uniform policies.

*Board's Decision Was Prejudicial Even Though the Project Was Not Denied.* The County argued that merely subjecting a project to further environmental review was not prejudicial. The court noted that this position could lead to an indefinite review process without judicial recourse so long as the project application was not formally denied. It also noted that under Public Resources Code section 21168.5, a prejudicial abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination is not supported

by substantial evidence. Such a prejudicial abuse of discretion was demonstrated here.

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