December 22, 2014
California Land Use & Development Law Report

Conservation Easements Not Required As Mitigation For Permanent Loss Of Farmland

In Friends of the Kings River v. County of Fresno, the California Fifth District Court of Appeal upheld the County of Fresno's adoption of an Environmental Impact Report for a mining operation that will result in a permanent loss of 600 acres of farmland. Most notably, the Court held that a County is not required to adopt an agricultural conservation easement as a mitigation measure for a project causing direct loss of farmland, even where agricultural conservation easements are economically feasible.

The subject of the appeal was the Carmelita Mine and Reclamation Project, a proposed aggregate mine and related processing plant in the Sierra Nevada Foothills, about 15 miles east of the City of Fresno. The 1,500-acre site has significant mineral deposits, and is currently used for growing row crops and stone fruit trees.

The petitioners, Friends of the Kings River, challenged the project's Environmental Impact Report under the California Environmental Quality Act, and the project's reclamation plan under the Surface Mining and Reclamation Act of 1975

Friends first appealed approval of the project with the State Mining and Geology Board, who granted the appeal and remanded the reclamation plan to the County for reconsideration. The County approved a revised reclamation plan, and Friends appealed to State Mining and Geology Board again. The Board denied the second appeal.

While the first appeal was pending, Friends petitioned for a writ of mandate, alleging abuse of discretion under CEQA. The trial court denied the petition, and Friends appealed. On appeal, Friends argued that the trial court erred by ruling on the petition before it was ripe for review, and that the EIR was inadequate under CEQA for a plethora of reasons.

The Fifth District dismissed Friends' ripeness claim by finding that the State Mining and Geology Board's grant of Friends' first appeal did not affect the validity of the reclamation plan. Thus, the remand of the reclamation plan to the County did not affect the trial court's ability to issue a ruling on the merits, or the County's certification of the EIR and approval of the project.

The Court then addressed Friends' contention that the County failed to require mitigation for the conversion of farmland in violation of CEQA. The Court rejected Friends' argument, noting that the EIR recommended three mitigation measures, which the Count upheld. The Court also rejected the contention that the County was required to establish agricultural conservation easements to mitigate the permanent loss of 600 acres of farmland. The Court held that while a County must consider using agricultural conservation easements as a mitigation measure for direct loss of farmland, it is not required to adopt an agricultural conservation easement as a mitigation measure, even where such an easement is financially feasible.

Friends asserted a number of additional CEQA challenges, but those too failed, as the Court found that there was substantial evidence to support the County's findings.

Fortunately for project proponents, this decision maintains the variety of mitigation alternatives available when a project causes loss of farmland. Project proponents whose project directly leads to farmland loss will not necessarily be required to mitigate with an agricultural conservation easement, but will still need to analyze adoption of such an easement, in order to comply with CEQA.

Friends of Kings River v County of Fresno, F068818 (5th District 12/8/2014)

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