



City Fails to Adequately Mitigate "Urban Decay" and Energy Impacts of Big Box Retail Project

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SUMMARY

In the latest decision addressing challenges to "big box" projects under the California Environmental Quality Act ("CEQA"), on February 28, 2014, the California Court of Appeal invalidated the approval of a retail project in the City of Woodland, holding that the City failed to adequately mitigate the urban decay impacts on competing downtown retail areas and failed to justify the rejection of a mixed-use alternative. (*Cal. Clean Energy Committee v. City of Woodland* (No. C072033 Feb. 28, 2014).)

While the Superior Court upheld the City's approval, the Court of Appeal reversed, finding that: (i) four out of the five urban decay mitigation measures were too speculative, vague, or noncommittal to comply with CEQA; (ii) the final Environmental Impact Report ("EIR") failed to properly assess the merits of the mixed-use alternative; and (iii) the City's reliance on California Building Standards and California Green Building Standards did not suffice to address issues of transportation, construction, and operations energy impacts.

The Court's decision highlights the following important CEQA compliance issues: (1) mitigation measures should be specific, enforceable, and directly address the impacts at issue; (2) the California Building Code and Green Building Standards may not sufficiently mitigate a project's energy impacts; and (3) the lead agency should document the reasons for rejecting an alternative as infeasible.

FACTS

In 2007, the developer filed an application with the City for a regional commercial center that consisted of over 1,000,000 square feet of retail, office and commercial space. While the EIR concluded that the project

would likely have a deleterious impact on the health and physical integrity of the City's Downtown, it also identified five urban decay mitigation measures and concluded that, with implementation of the mitigation measures, the project would not result in a significant impact. The EIR also concluded that a mixed use alternative was economically infeasible, and the project would have a less-than-significant impact regarding the consumption of energy because the project would comply with or exceed the requirements in the California Building Standards Code and California Green Building Standards Code.

INADEQUATE MITIGATION FOR URBAN DECAY

The latest in a series of cases holding that local land use agencies are required to evaluate and address potential urban decay impacts of "big box" and other retail centers outside of the town center, in this case the Court of Appeal found fault with the City's mitigation of the urban decay impacts on downtown Woodland.

The Court of Appeal concluded that the following urban decay mitigation measures were deficient: (1) requiring the applicant to submit a market study and urban decay analysis at the time of future applications for site-specific development; (2) requiring the applicant to contribute funds toward the development of a Retail Strategic Plan prior to the issuance of building permits; (3) requiring the applicant to contribute funds toward the preparation of an Implementation Strategy for the Downtown Specific Plan prior to the issuance of building permits; and (4) requiring the City to coordinate with the current owner of the County Fair Mall to prepare a strategic land use plan for the Mall to analyze potential viable land uses for the site.

The Court of Appeal found that the market study mitigation measure failed to comply with CEQA, because it improperly ceded responsibility for studying an environmental impact to the developer, and it failed to require any specific mitigation actions to alleviate urban decay. As to the second point, the Court of Appeal explained that "the questions of whether mitigation measures will be required, of what they might consist, and how effective they will be are left unanswered."

The Court of Appeal next found that the contribution requirements failed to comply with CEQA, as they did not obligate the City to undertake any actual mitigation of urban decay. The Court explained that under the two contribution mitigation measures the City was only required to prepare plans. "[T]he City does not estimate how much the mitigation measures or strategies called for in these plans will cost or how they might be implemented. Consequently, these are the sort of speculative mitigation measures that do not comply with CEQA."

Lastly, the Court of Appeal found that the coordination requirement failed to comply with CEQA, as it did not require an actual study of urban decay, or require any action by the City to mitigate for any urban decay it may discover.

IMPROPER REJECTION OF MIXED-USE ALTERNATIVE

The Court of Appeal also found that the City violated CEQA because it changed its rationale for rejecting the mixed-use alternative from the reasoning in the EIR. By switching from a rationale of economic infeasibility in the EIR to environmental inferiority in the resolution of approval, the City failed to satisfy CEQA's requirement of disclosing the analytical route the agency traveled from evidence to action.

INAPPROPRIATE RELIANCE ON BUILDING CODES

Under CEQA, an EIR must include a detailed statement setting forth the mitigation measures proposed to reduce wasteful, inefficient, and unnecessary consumption of energy. The Court of Appeal found that by merely requiring the project to comply with the energy conservation requirements of the California Building Standards Code and California Green Building Standards Code, the City failed to comply with CEQA.

After finding that the City failed to analyze or mitigate for the transportation energy impacts of the project, a flaw acknowledged by the City, the Court of Appeal found that the City failed to analyze or mitigate for the project's construction and operation energy impacts. The City had concluded in the EIR that as a result of requiring the developer to comply with California Building Standards and California Green Building Standards, although the project would result in an increased demand for energy, the project impacts would be less-than-significant. The Court rejected this conclusion, however, explaining that because the Building Codes do not address "whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope," the requirement that the project "comply with the Building Codes does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project." Finally, the Court of Appeal found that the City violated CEQA because the EIR did "not indicate any investigation into renewable energy options that might be available for the project."