

IN SIGNIFICANT NEW CEQA DECISION, COURT OF APPEAL ISSUES FIRST RULING ON ANALYSIS OF ENERGY IMPACTS

Tracy First v. City of Tracy is a significant decision important to developers, public agencies, and other participants in the CEQA process. Perhaps most notably, this is the first published case law regarding the evaluation of energy impacts in an EIR. The decision also provides helpful interpretation of the California Supreme Court's 2006 decision in *City of Marina v. Board of Trustees of California State University* regarding mitigation of extra-territorial impacts, and guidance on the question of what constitutes a reasonable range of alternatives. Finally, the decision confirms that a city council is not required to remand an EIR back to a planning commission when the council adds supplemental information to the EIR.

In *Tracy First*, the Court of Appeal upheld an EIR prepared for a large grocery store in the City of Tracy. In rejecting Petitioner's appeal the Court found as follows:

Energy: The Court ruled that it was appropriate for the EIR to rely upon the California Building Energy Efficiency Standards, which are part of the State's Title 24 Building Code, to determine that the project's energy impacts would be less than significant. The Court also held that CEQA does not require that an EIR discuss "every possible energy impact or conservation measure" listed in Appendix F of the CEQA Guidelines.

Further, the Court rejected Petitioner's claim that the EIR improperly piecemealed its analysis of energy impacts. The EIR included a detailed analysis of energy usage for the proposed grocery store, and a less detailed analysis of energy use at a separate northern parcel that was part of the project, but not the subject of a development application. The Court found that the difference in the level of analysis was appropriate based on the different status of development plans for the two parcels.

Extra-Territorial Impacts: The Court found that it was proper for the City to find traffic impacts at two County intersections to be significant and unavoidable. The EIR reflected that the County had no plan to mitigate congestion at either intersection, so the City found that it was infeasible to mitigate the impacts. Petitioners argued that, based on the Supreme Court's *City of Marina* decision, the City was required to mitigate the extra-territorial impacts. The Court rejected this claim, finding that the City lacked jurisdiction to implement mitigation outside its boundaries. The Court also held that there was no basis in CEQA for the argument that the city must develop and impose on the County a plan for improvement of the county intersections.

Alternatives: The Court ruled that the EIR was not required to consider a smaller store alternative where there was no evidence that such an alternative would avoid any significant impact of the proposed project. The Court distinguished *Preservation Action Council v. City of San Jose*, where the smaller sized project alternative would have preserved a historic building, and thus avoided a significant impact.

Planning Commission Review: The Court held that the fact that the City Council requested that City staff include supplemental information to a Final EIR did not require the Council to remand the EIR to the Planning Commission for review. The Court held that CEQA only requires a Planning Commission to consider either draft or final EIR.

Cox, Castle & Nicholson's Andrew Sabey and Sarah Owsowitz represented the developer in this litigation.

If you have any questions regarding this client alert, please contact:

Andrew Sabey at 415.262.5103 or asabey@coxcastle.com

Michael H. Zischke at 415.262.5109 or mzischke@coxcastle.com

Sarah Owsowitz at 415.262.5122 or sowsowitz@coxcastle.com

© 2009 Cox, Castle & Nicholson LLP is a full service law firm offering comprehensive legal services to the business community and specialized services for the real estate industry. Reproduction is prohibited without written permission of the publisher. The publisher is not engaged in rendering legal, investment or insurance advice through this publication. No statement is to be construed as legal, business or insurance advice.