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Public Law Update: Court of Appeal Rules That A Mixed-Use Development May Not Rely On State's Cap-And-Trade Program To Offset Project's Greenhouse Gases Impacts

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Takeaways from the case

1. A land use project may not rely on cap-and-trade compliance by upstream energy providers to offset its GHG emissions impacts. Reliance on cap-and-trade compliance by covered entities double counts the offsets, and is thus prejudicially misleading regarding the true impact of a project's emissions.
2. Carbon emission offsets (outside of cap-and-trade) can be used for mitigation under CEQA, but they are subject to an additionality requirement: offsets must be beyond what would have happened anyway without the required mitigation. The offsets must be truly additional and represent a net environmental benefit, and not actions that were already going to occur due to existing regulations, financial incentives, or common practices.
3. If mitigation is based on an improper GHG emissions analysis, it is also prejudicially misleading. Finally, a Statement of Overriding Considerations based on misleading GHG emissions impacts and mitigation is improperly adopted, regardless of whether the governing body would ultimately adopt such a Statement.
4. The analysis of specific impacts must provide enough detail for the public to be able to meaningfully consider the issues raised by the proposed project. This can include cross-references to information found elsewhere in the document, relevant studies, and explanation of how mitigation measures to offset a related impact will extend to the impact under discussion.

In a partially published opinion, the Court of Appeal recently decided the case of *Center for Biological Diversity et al. v. County of Los Angeles, et al.*, 2025 WL 1766368 (2d Dist., June 26, 2025). In sum, the Court concluded that Los Angeles County's certification of the Environmental Impact Report for a mixed use project violated the California Environmental Quality Act due to improper reliance on state cap-and-trade regulations for greenhouse gas emissions, and for failure to sufficiently discuss wildfire impacts beyond the project site. The Court ordered the County to decertify the Environmental Impact

Report, and set aside the project approvals.

This case involves the Centennial Specific Plan, a development proposed on over 12,000 acres in the Antelope Valley (the Centennial project), approved by Los Angeles County (County) in 2019, proposed by developers Tejon Ranch Company, Centennial Founders LLC, and Tejon Ranchcorp (collectively, Tejon or Developer). The Centennial project consists of 19,333 residential units on 40% of the site, business, commercial and industrial uses on another 15%, leaving 45% of the site as open space.

Before approving the Centennial project, the County Board of Supervisors certified an environmental impact report (EIR) and adopted the necessary California Environmental Quality Act (CEQA) findings and a Statement of Overriding Considerations, pursuant to Public Resource Code section 21081(a) and (b). The EIR was challenged in two petitions for writ of mandate by environmental groups, one by the Center for Biological Diversity with the California Native Plant Society (collectively, the Center), and the other by Climate Resolve.

Both environmental groups' petitions alleged that the EIR violated CEQA by (1) improperly relying on state cap-and-trade regulations to offset the estimated unmitigated greenhouse gas emissions of the project, and (2) failing to analyze wildfire impacts beyond the project site. The Center also separately alleged the EIR violated CEQA by failing to (1) adequately discuss the project's impacts on wildlife movement and habitat connectivity; (2) disclose or mitigate the project's harm to native vegetation; and (3) analyze any alternatives that would substantially lessen the project's adverse impacts.

Reliance on upstream energy providers' compliance with the cap-and-trade to offset a land use project's GHG emissions is improper and misleading.

The published portion of the opinion addresses the EIR's use of the state cap-and-trade program and its application to the Centennial project.

The purpose of the cap-and-trade program is to reduce GHG emissions from traditionally high-emission industries by applying a GHG allowance in the aggregate across covered entities, and providing a trading mechanism for compliance. Covered entities include large industrial facilities such as refineries, electricity-generating facilities, and other specified industrial facilities, as well as suppliers of fuels such as natural gas and transportation of fuels. The covered entities can purchase GHG reductions that other covered entities achieve, called offsets, and they can bank or sell unused emission allowances to other covered entities that need them. The program has an additionality requirement, which means that GHG emissions reductions can only qualify as offsets if they occur in addition to any reductions required by law or regulation, and in addition to any other GHG emissions reductions that would otherwise occur.

The Centennial project EIR represented that approximately 96% of the project's estimated 157,642 metric tons of carbon dioxide per year in unmitigated GHG emissions were covered by the cap-and-trade program of upstream energy providers, implying that these emissions would be offset by upstream fuel and energy suppliers' compliance with the program. The EIR's Updated GHG Report Table 3 showed net "Remaining Emissions After Cap-and-Trade-Offsets" at zero for categories deemed subject to the cap-and-trade program, such as electrical power, natural gas, and transportation fuels.

The Court held that the County failed to proceed in a manner required by law by applying the cap-and-trade program to the Centennial project's estimated unmitigated emissions because the Centennial project is not a "covered entity" under the cap-and-trade program, which only applies to specific categories of industrial facilities and fuel suppliers, and not to land-use projects like Centennial. CEQA does allow offsite measures to mitigate GHG emissions, but here, too, any offsets must be those that are not otherwise required by law or regulation. The application of the cap-and-trade offsets by upstream energy providers constitutes impermissible double counting: "Under Guidelines section 15126.4, subdivision (c)(3), an offset cannot be credited both to the covered entities' regulatory compliance and to the Centennial project's emissions because cap-and-trade offsets are offsets already "otherwise required" for that program—they provide no additional emissions reductions for the project."

"The EIR thus based its significance determination on the reduced emissions figure resulting from the erroneous application of the cap-and-trade program. Whether utilized as a quantified mitigation measure in the first instance or as a mitigation measure projected to "further reduce" the remaining unmitigated emissions, applying the cap-and-trade program in this way to the Centennial project was misleading and violates CEQA."

The Court also concluded that the EIR's GHG emissions mitigation did not comply with CEQA. Mitigation measures are subject to the rough proportionality requirement, meaning that each project should not shoulder more mitigation than is proportional to its impact. The EIR's mitigation discussion, which relied on the application of the cap-and-trade program, therefore erroneously concluded that imposing additional mitigation on the project would exceed the Centennial project's "fair share," and thus was also flawed.

Therefore, the Court further held, because of the unavoidable prejudice of applying the cap-and-trade program to offset the project's

GHG emissions, the County's Statement of Overriding Considerations was improperly adopted.

The Court rejected Tejon's argument that the EIR's misleading analysis could be excused because of the County's ultimate finding of overriding considerations, has the process backwards. A "statement of overriding considerations supported by a legally flawed analysis, or legally flawed assessment of the potential environmental harm, is not able to accurately show that the Project's significant environmental effects have been identified, and avoided or mitigated, or that unmitigated effects will be outweighed by the Project's benefits."

In order to be adequate, environmental analysis must provide enough detail for the public to meaningfully consider the proposed project's impacts.

In the unpublished portion of the opinion, the Court of Appeal tackled the remaining appeal grounds, which centered around the adequacy of analysis and discussion relating to the Centennial project's wildfire impacts beyond the project site, impacts on wildlife movement and habitat connectivity, the harm to native vegetation, and alternatives that would substantially lessen the project's adverse impacts. The Center also brought some procedural challenges to the appeal, which are not discussed here.

First, the offsite wildfire impacts. The Centennial project is located within a Very High Fire Hazard Severity Zone. The EIR adopted two thresholds for wildfire impacts: one for impacts on-site and one for impacts beyond the site. The analysis of the threshold criteria for wildfire risk on the project's site (not at issue in the appeal) is four pages long; the analysis of the threshold criteria for wildfire impacts beyond the site is one short paragraph. The discussion provides only a determination of adequate access and water pressure and flow, and seems to suggest that the on-site mitigation measures would extend off-site. But the EIR provided no analytical link between the determination of access and water pressure and flow to explain how on-site mitigation extends off-site, and included no cross-references to information contained elsewhere in the EIR. The Court noted that the issue of the adequacy of the analysis or discussion of an environmental impact is distinct from the issue of whether the agency is correct in its assessment of the impact, and concluded that "the EIR's patently inadequate one-paragraph discussion does not contain sufficient detail to enable those of us who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises."

The Court came to the opposite conclusion regarding the sufficiency of the EIR's discussion of wildlife and native plants. The EIR discussed wildlife movement over more than a dozen pages, and referenced a number of relevant studies. Further, the EIR discussed in detail the impacts on native perennial grassland and wildflower fields, adopting a threshold for analysis and providing analysis in two sections of the EIR. The EIR relied on “numerous biological surveys and vegetation mapping of the Centennial site,” grassland field studies from 2003 to 2011, and identified over 9,100 acres of grassland on- and off-site that would be impacted. The Court again found that the EIR adequately discussed the impacts on native plants.

Finally, the Center argued that the EIR failed to analyze any alternatives that would lessen the impact of the project. But the EIR evaluated six alternatives to the Centennial project, including no project, a previously submitted version of the project with a larger footprint, a project with additional drainage avoidance, a project with infrastructure relocation, a project with density clustering, and a central opportunity area development. The Court concluded that the alternatives did not need to include a project with a substantially smaller footprint to be adequate, as argued by the Center: the “rule of reason requires an EIR to set forth only those alternatives necessary to permit a reasoned choice.”

Burke, Williams & Sorensen, LLP regularly advises clients on legal matters relating to land use and CEQA.
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