

TIERED EIR MUST BE PREPARED WHERE PROGRAM EIR PROVIDES INSUFFICIENT GUIDANCE ON DISCRETIONARY CHOICES

Center for Sierra Nevada Conservation et al. v. County of El Dorado, C064875 (Super. Ct. No. PC20080336) (Cal. Ct. App. 3rd Dist., January 20, 2012)

February 17, 2012 by Katharine J. Mueller

Plaintiffs and Appellants, led by the Center for Sierra Nevada Conservation (Sierra Nevada), challenged the County of El Dorado's adoption of an oak woodland management plan and mitigation fee program (the Woodland Plan) without an environmental impact report. The County had completed a program environmental impact report in 2004 in connection with its general plan to deal with land use issues in the face of a growing population. The Woodland Plan, according to the County, was within the scope of the General Plan EIR, which adequately addressed the environmental impacts of the Woodland Plan. Consequently, asserted the County, the General Plan EIR obviated the need for a separate, or "tiered," EIR before adoption of the Woodland Plan. The Court of the Appeal disagreed and held that the California Environmental Quality Act required the County to prepare a tiered EIR before it adopted the Woodland Plan. The court agreed that the General Plan EIR anticipated the development of the Woodland Plan. However, the General Plan EIR did not provide the County with guidance in making the discretionary choices that served as the basis for the Woodland Plan or adequately address the environmental impacts of the Woodland Plan.

The court pointed specifically to three aspects of the Woodland Plan not addressed in the General Plan EIR: (1) the fee rate that could be paid by land owners as mitigation of destruction of woodlands; (2) how the acreage subject to the fee rate should be measured (i.e., by tree canopy cover or by the total area including the space between canopies); and (3) how the collected fees would be used to mitigate the impact of development on the County's oak woodlands.

The purpose of an EIR is “to inform the public and its responsible officials of the environmental consequences of their decision *before* they are made. Thus, the EIR protects not only the environment but also informed self-government.” [Citations.] Given that the General Plan EIR did not include necessary details with respect to three key aspects of the Woodland Plan, the General Plan EIR did not serve the purpose of an EIR in this case, and a tiered EIR was required under CEQA to inform the County’s exercise of discretion *before* it adopted the Woodland Plan.

Further, the court determined that there was also a fair argument that the Woodland Plan could have significant effects on the environment that were not addressed by the General Plan EIR, and that CEQA therefore did not allow the County to forego a tiered EIR for the Woodland Plan in reliance on the General Plan EIR. The court emphasized that the County needed to consider the impact of the Woodland Plan on the environment, rather than the impact of the Woodland Plan on the General Plan. Fundamentally, “the purpose of CEQA is to protect and maintain California’s environmental quality.” Consistent with this purpose, CEQA required the County to prepare a tiered EIR for the Woodland Plan.