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Court of Appeal Confirms Subdivision is a CEQA Project

In *Rominger v. County of Colusa* (2014) (September 9, 2014, C073815) __ Cal. App.4th __, the Court of Appeal reversed the trial court and held that a tentative subdivision map is a project under the California Environmental Quality Act (CEQA). In doing so, the Court rejected the County of Colusa (County) and project applicants contention that, in the absence of a specific development plan, the division of land alone is not a CEQA project. Ultimately, the appellate court found that the petitioners had submitted sufficient evidence so as to require the preparation of an environmental impact report (EIR) for the subdivision project.

Background

In February of 2012, the County approved a mitigated negative declaration (MND) under CEQA for a tentative subdivision map to divide four parcels of land into 16 parcels. Prior to the approval, Petitioners Elaine and Gerald Rominger (Romingers) requested the County prepare an environmental impact report (EIR) rather than an MND because the subdivision could have environmental impacts in several resource areas, including agriculture, traffic, odor, noise, air quality, and water. Notwithstanding these comments, the County approved the MND and the subdivision map. The Romingers filed a petition for writ of mandate challenging the approval.

The County argued that although it prepared an MND for the subdivision map, the division of property did not require environmental review because it was not a CEQA project. A project for CEQA purposes is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. (Pub. Resources Code, § 21065.) The County argued that the subdivision did not make development on the site of the subdivision more likely and therefore the subdivision would cause no direct or reasonably foreseeable indirect physical environmental changes.

Therefore, the County argued, the subdivision was not a project. The County further argued that even if the activity was a project, it fell within the common sense exemption. The trial court held the activity was not a project and thus no environmental review was required. The Romingers appealed.

Decision

The appellate court first held that the approval of a subdivision map is a project subject to CEQA. Public Resources Code section 21080 provides, [e]xcept as otherwise provided in [CEQA], [CEQA] shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to . . . the approval of tentative subdivision maps unless the project is exempt from this division. The Court explained that by enacting this subdivision, the Legislature determined that certain activities, including the approval of tentative subdivision maps, always have the potential to cause a direct physical change or reasonably foreseeable indirect physical change in the environment. (Emphasis in original.) Therefore, the subdivision was a project.

The Court next held that the so-called common sense exemption did not apply. Under the common sense exemption, where an activity is a project for CEQA purposes, it may nonetheless be exempt from further environmental review [w]here it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. The appellate court held the exemption did not apply because the County had not shown that despite the subdivision of the property into smaller parcels to facilitate lease or sale, there is no possibility that purpose will be achieved and the creation of the smaller parcels will not lead to the development of those parcels and to resulting significant environmental effects. (Emphasis in original.)

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The Romingers further argued that the County provided inadequate public notice because the comment period provided for the MND was less than the required 30 days. The Court found that although the notice was inadequate, there is no presumption that error is prejudicial and the Romingers did not show that the error precluded informed decisionmaking and public participation.

In the environmental resource areas, the Court found that the Romingers had produced evidence that the subdivision may have significant traffic impacts. An agency must prepare an EIR, rather than a negative declaration whenever substantial evidence in the record supports a fair argument that a proposed project may have a significant effect on the environment. The subdivision site is zoned industrial but is used for agriculture and agriculture-related activities. The County based the traffic study on the assumption that existing agriculture/industrial uses on the proposed project will continue. The Romingers presented expert opinion based on the location of the subdivision and nearby land uses that the subdivision will be developed in uses permitted within industrial zoning, resulting in 10 to 15 times more traffic and impacts on nearby intersections. The Court found the expert opinion constitutes substantial, credible evidence that supports a fair argument that such development may occur and that, as a result, the greater traffic generated by such development may have a significant impact on the environment surrounding the project, and therefore an EIR was required.

The Court found that the Romingers did not present substantial evidence of a fair argument in the other impact areas challenged.

Because the subdivision map was a project and the Romingers presented substantial evidence of a fair argument that the project may have environmental impacts, the appellate court reversed the trial court and directed the trial court to enter judgment granting the petition for writ of mandate.

Questions

If you have any questions concerning this Legal

Alert, please contact the following from our office, or the attorney with whom you normally consult.

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