

Recirculation Required for New GHG Estimate

We Advocate, etc. v. County of Siskiyou
2022 Cal. App. Unpub. LEXIS 2349

CEQA requires an EIR to be recirculated for public review if “significant new information” is added between the time that a draft EIR is released to the public and the time that the lead agency certifies it. (CEQA Guidelines, 15088.5.) Applying this rule, California’s Third Appellate District required recirculation of a final EIR that increased the amount of greenhouse gas (“GHG”) emissions estimated in the draft EIR, but did not alter the draft EIR’s initial characterization of the impact as “significant and unavoidable.”

The draft EIR, for a water bottling facility, initially calculated that the project would generate 35,000 metric tons of carbon dioxide equivalent per year. The draft EIR considered that level of emissions to be “significant and unavoidable” because it exceeded the county’s threshold of significance of 10,000 metric tons per year. In the final EIR, however, the county revised its estimate of annual emissions upwards to 61,000 tons. The county asserted that recirculation was not required because the revised estimate did not change the impact’s level of significance.

The appellate court disagreed, based upon the scale of the increase. The court emphasized that the degree of the increase (approximately 26,000 metric tons) was itself greater than the 10,000-ton threshold of significance. According to the court, that alone precluded the county from deeming the change insignificant: “[c]onsidering the County’s own standard for determining significance, however, we hold that this finding is not supported by substantial evidence.”

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