

CEQA (California Environmental Quality Act) Requires Separate Evaluation Of Mitigation Measures And Alternatives Even Where Mitigation Measures Are Incorporated Into Project Design

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In [*Trisha Lee Lotus et al. v Department of Transportation et al.*](#) (1st Dist., Div. 4, 1/30/14 A137315) ____ Cal.App.____, 2014, the court of appeal upheld a claim by the appellants that **Caltrans** failed to comply with CEQA because its EIR did not consider potential mitigation measures aimed at lessening the impact of the underlying highway construction project on old growth redwoods. The court held that failing to separately identify and analyze the significance of impacts to root zones of old growth redwood trees before proposing mitigation measures for such impacts subverted the purpose of CEQA by omitting material necessary to informed decision-making and public participation.

The Project

The project involved what Caltrans described in the EIR as “minor road adjustments including realignments, curve corrects, and shoulder widening” as well as “culvert improvements and repaving the roadway” along a portion of Route 101 near Richardson Grove State Park in Humboldt County, California. As Route 101 passes through the park, it tapers down to a narrow two-lane road which does not meet current design standards. Large vehicles have trouble negotiating the existing roadway without using part of the opposing lane of traffic or traveling on the shoulder. As a result, industry?standard?sized trucks authorized by the Surface Transportation Assistance Act of 1982 (“STAA Trucks”) are prohibited from using this stretch of Route 101. Adjusting the roadway alignment as proposed would permit STAA Trucks to travel along this portion of Route 101, providing a substantial benefit to local businesses in Humboldt County and generally improving safety for all vehicles utilizing Route 101.

Once the public comment period passed, Caltrans certified the final EIR and approved the project. In its final Notice of Determination, Caltrans noted that the project would not have any significant effect on the environment but that mitigation measures had been included in the project as a condition to approval nonetheless.

The CEQA Challenge

Shortly after Caltrans issued its Notice of Determination for the project, appellants filed a petition for writ of mandate and injunctive relief claiming, among other things, that Caltrans violated CEQA by taking into account mitigation measures in making its determination that no significant effect on the environment would result from the project. The trial court held against the appellants, finding that Caltrans had acted appropriately in determining there would be no significant environmental effect if appropriate mitigation measures were adopted. The trial court noted that, where mitigation measures are relied upon to reach a finding of no significant impact, those measures must be treated as though they are requirements of the project and thus must be adequately adopted. After ordering Caltrans to show cause as to whether it had adopted the mitigation measures upon which it relied for its non-significance finding, the trial court determined, largely based on the administrative record, that Caltrans had in fact adopted the relevant mitigation measures and employed a sufficient mitigation monitoring program for the same.

CEQA requires that an EIR include a detailed discussion of all significant effects of the proposed project on the environment. Additionally, for each significant effect noted, the EIR must identify specific mitigation measures. Where there are multiple options for mitigation, the EIR should separately discuss and evaluate each such option. On appeal, the appellants in *Trisha Lee Lotus* contended, among other arguments, that the EIR failed to comply with this requirement of CEQA in that it did not evaluate the significance of the project's impacts on the root systems of old growth redwood trees adjacent to those areas of Route 101 included in the project. Appellants alleged that the proper measure of the significance of the impacts of the project on the root systems of the trees could be found in State Parks Natural Resources Handbook. The latter notes that construction activities and soil disturbance near trees can injure or destroy roots and recommends that no construction activity occur in the structural root zones of any protected tree. The EIR had made no reference to the State Parks Natural Resources Handbook or the possible impacts of construction and soil excavation near the trees noted therein.

The Decision

In reaching its decision, the court noted that the EIR had not only omitted reference to the potential impacts of the project noted in the State Parks Natural Resources Handbook, but had generally failed to identify any standard of significance whatsoever with respect to the project or apply any standard to the analysis of the likely impacts of the project. The court found that Caltrans had exacerbated the foregoing omission by incorporating the proposed mitigation measures into the project description without discussion of alternative mitigation measures and then concluding that there would be no significant effects of the project. The court held that “[b]y compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA.” The court found that by failing to discuss any significant impacts of the project, the EIR had failed to make the necessary evaluation and findings concerning the proposed mitigation measures and thus it was impossible to determine whether mitigation was required or whether more effective mitigation measures should be evaluated.

CEQA Implications

The holding in *Trisha Lee Lotus* is of concern because it potentially calls into question the common practice of developers and agencies throughout California of avoiding a significant impact finding by incorporating features into a project designed to mitigate potential adverse impacts. CEQA Guidelines 15070(b)(1) and 15126.4(a)(1)(A) specifically permit the incorporation of project design features into a project for this purpose. Had the appellate court in *Trisha Lee Lotus* discussed these

specific authorizations and found reason to distinguish them, the holding of this case might have had wider application.

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