

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF CONTRA COSTA

GREENBELT ALLIANCE
PLAINTIFF

VS

CITY OF OAKLEY
DEFENDANT(S)

Case No. MSN06-0582

DECISION AFTER HEARING

FILED
AUG 01 2007

SUSAN SKINNER

PROCEEDINGS : PETITION FOR WRIT OF MANDATE

Petitioner's Writ is GRANTED. The Court finds that the City failed to proceed in the manner required by law and abused its discretion by its failure to comply with Public Resources Code section 21094(e). Therefore, for purposes of tiering, the City may not rely upon the Oakley 2020 General Plan.

"When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR."

(Guidelines, § 15152, subd. (g); § 21094, subd. (e).)

Gilroy Citizens for Responsible Planning v. City of Gilroy (2006) 140 Cal. App. 4th 911, 929.

Respondent admits that it failed to comply with Pub. Res. Code §21094(e). The City's claim that the remedy for such a failure is not a lawsuit, but a request for clarification is without merit as it incorrectly places the burden on the public. The burden is on the agency preparing the notices not the public. See *Association of Irrigated Residents v. County of Madera (2003) 107 Cal. App. 4th 1383, 1392.* "...CEQA's investigatory and disclosure requirements must be carefully guarded." *Id.*

Air Quality- The Court finds that the City failed to proceed in the manner required by law and that its decision(s) was not supported by substantial evidence and thus the Petitioner's writ is GRANTED as to this issue. Specifically the EIR failed to adequately analyze the potentially significant air quality impacts of the Project's Area Source Emissions. Respondent's reliance on BAAQMD's guidelines may not be used to avoid analysis of other significant impacts. In preparing the EIR the Agency must determine whether any of the possible significant environmental impacts would in fact be significant. See *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. See also *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App 3d 692.

Levees/Flooding- The Court finds that the City of Oakley proceeded in the manner required by law and there is substantial evidence to support its determination thus Petitioner's writ is DENIED as to this issue. The City's decision to adopt the measure of development of an Emergency Response Plan was supported by Substantial evidence as well as permissible under the present circumstances were it would be impracticable to develop a detailed plan at this time.

Generally, it is improper to defer environmental review. *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 307. However, it is permissible where it is known that mitigation is feasible but practical considerations prevent creating measures that will satisfy criteria articulated at the time of project approval. *Defend the Bay v. City of Irvine* (2004) 119 Cal. App. 4th 1261, 1275-6). Specifically, it would be difficult (if not impossible) to determine exact staging & evacuation

routes until the final levee alignment is determined and consultation with other agencies conducted. (5:1240-43). Therefore this is an appropriate case for deferral. See *Defend the Bay supra*.

Swainson's Hawk -

The Court finds that the City proceeded in a manner required by law, and that its decision is supported by substantial evidence and analysis in the EIR. Thus the Petitioner's writ is DENIED as to this issue. See expert Report "Swainson's Hawk Foraging Habitat Analysis for the East Cypress Corridor Specific Plan area..." Dated 5/13/05. (29:9909-9929, 10:3300, 7:1816-1817, 1969-70).

Respondent City of Oakley's Request for Judicial Notice: Excerpts from

Contra Costa County's General Plan 1995-2010; GRANTED

Dated: 8/1/2007



JUDGE OF THE SUPERIOR COURT
DIANA BECTON SMITH

PROOF OF SERVICE BY MAIL

I hereby certify that I am a citizen of the United States, over the age of 18 years and not a party to the within action. I served a true copy of the foregoing document by placing same in an envelope which was sealed, provided with postage and deposited in the U. S. Mail at Martinez, Ca.

Said envelope was addressed to:

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I declare under penalty of perjury that the foregoing is true and correct.
Executed at Martinez, California, on AUG 1 2007

Clerk of the Court *A. Skinner for*
By G. Henne, Court Clerk