

Lotus v. Department of Transportation (Jan. 30, 2014) 223 Cal.App.4th 645

Caltrans prepared an EIR for its proposed project to “adjust” the alignment of Highway 101 through Richardson Grove State Park to accommodate trucks of federal standard length. The road adjustments included realignment, curve corrections, shoulder widening, culvert replacement, and repaving. This park is centered on a grove of old growth redwoods, and a major concern about the project was its potential to remove or damage redwoods along the Highway 101 alignment. Although no old growth redwoods were proposed to be removed, the EIR found that six smaller redwoods would be taken out and that scores of old growth and smaller redwoods would be affected by excavation and fill activities occurring within their root zones. In keeping with Caltrans’ usual practice, the EIR described “avoidance, minimization, and/or mitigation measures” that had been incorporated into the project to mitigate its impacts on redwoods. The EIR identified nine such measures addressing the methods of excavation in root zones, watering regimes, plant care, fill management, and replanting methods. The EIR concluded that the project would not result in significant effects on redwoods.

Lotus sued Caltrans, alleging that the department had failed to comply with CEQA. The trial court decided in Caltrans’ favor, but noted that Caltrans may not have fully complied with CEQA in using avoidance, minimization, and/or mitigation measures in place of standard mitigation measures. The Court of Appeal rejected most of Lotus’ challenge, but in the published portion of its opinion, held that the EIR had failed to properly evaluate the project’s impacts on the roots of old growth redwoods along the highway alignment. It sent the case back to the trial court for further consideration.

Caltrans included the “avoidance, minimization, and/or mitigation measures” in the project description section of the EIR. The Court found that this improperly left out the analysis and standards of significance that would be in an EIR that followed the analytical process set out in CEQA from project to impact to standard of significance to significance to mitigation. The Court stated that: “fails to make the necessary evaluation and findings concerning the mitigation measures that are proposed. Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered. Should Caltrans determine that a specific tree or group of trees will be significantly impacted by proposed roadwork, that finding would trigger the need to consider a range of specifically targeted mitigation measures, including analysis of whether the project itself could be modified to lessen the impact.”

Caltrans’ EIR was actually a joint CEQA/NEPA document that combined the EIR with an Environmental Assessment/Finding of No Significant Impact under NEPA. After a NEPA-like assessment of the project’s impacts, the document included a CEQA chapter where it concluded that the project would have a less-than-significant impact on the redwood trees and proposed no mitigation measures. While there is nothing inherently wrong with this approach to organizing a joint document, as done here it apparently made it difficult for the reader to understand how the level of significance was determined and how mitigation was developed.

The failure of the EIR to separately identify and analyze the significance of the impacts to the root zones of old growth redwood trees before proposing mitigation measures is not merely a harmless procedural failing. Contrary to the trial court's conclusion, this short-cutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decision-making and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences. The deficiency cannot be considered harmless. For this reason, we must reverse the denial of the petition for a writ of mandate and remand the case for issuance of a writ directing Caltrans to set aside its certification of the final EIR pending modification of those portions of the EIR discussing impacts on old growth redwood trees and proposed mitigation measures in compliance with CEQA. (Pub. Resources Code, § 21168.9)