

City of Santee v. County of San Diego (June 29, 2010) 186 Cal.App.4th 55

The County entered into an agreement with the California Department of Corrections to identify potential locations for a state prison reentry facility in exchange for preference in the award of state financing of county jail facilities. Under the agreement, the County would identify up to three potential sites in the county for placement of a reentry facility that will provide state prisoners assistance as they transition into society. By way of an exhibit to the siting agreement, the county in fact identified two potential sites for the reentry facility: county-owned land in Otay Mesa and state-owned land at the Richard J. Donovan Correctional Facility. The agreement provides that if the Department of Corrections selects one of the sites identified by the County as the location for a reentry facility, the county will be given preferential access to \$100 million in assistance to finance construction of county jail facilities. The agreement obligates the County to cooperate with and assist Corrections in planning, constructing and operating a reentry facility at any location selected by the department. That cooperation includes an agreement to convey any county-owned land at the selected site. Finally, the siting agreement provides that Corrections will conduct an environmental review which complies with CEQA before constructing any reentry facility. The County considered its action to enter into the agreement to be exempt from CEQA.

The City brought suit, arguing that CEQA analysis was required at this point in the process because the agreement committed the City to eventually approving a re-entry site and expanding the County's existing Los Colinas Detention Facility (LCDF), which is located within Santee's city limits. The trial court held for the County and this appeal followed.

The Court of Appeal examined the agreement in light of the California Supreme Court's decision in *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 [development agreement constituted sufficient commitment by the city to warrant CEQA analysis, but analysis is not warranted for all such agreements]. The Court found that the siting agreement's terms do not select any location for the reentry facility and do not reference any expansion of the LCDF. Further, the agreement does not require Corrections to select any of the locations to be identified by the County. As a result, the siting agreement would not foreclose the future consideration of project alternatives or mitigation measures. The Court further noted that CEQA Guidelines Section 15004 will require Corrections to comply with CEQA before it actually acquires any site. It concluded that "the face of the agreement places it squarely in the realm of preliminary agreements needed to explore and formulate projects for which CEQA review would be entirely premature."

The City argued that Corrections had already studied a number of improvements and costs associated with the Otay Mesa site, and prepared a grading plan. Rather than take these actions as a commitment to the site, the Court held that they "represent no more than the Department of Corrections's attempt to determine whether it should proceed with the site, including the preparation of any required environmental document ... environmental review cannot be required where an agency is engaged only in such an exploration and formulation of a potential project."

The City also argued that the County had improperly segmented review of the siting agreement, the reentry facility, and the LCDF expansion, rather than reviewing them as a single project. The Court disagreed. It found that the connection between these three projects was “entirely conditional” and that they were not a single action.