

*Las Lomas Land Co. v. City of Los Angeles* (2009) 177 Cal.App. 4<sup>th</sup> 837

After several years of review of preliminary applications, including draft environmental studies, in 2007 Las Lomas submitted to the City a Master Land Use Permit Application for a specific plan, development agreement, rezoning, and development entitlements for development of a 555-acre site located north of the city limits and south of the neighboring City of Santa Clarita. The project included over 5,500 residential units, 2.3 million square feet of office space, 250,000 square feet of retail, a 300-room hotel, and open space. Before an EIR was completed for the proposal, the City Council voted to cease all work on the proposal, not pre-zone the site, not process an EIR, and return all materials to the applicant. In effect, the City denied the project.

Las Lomas sued the City, contending that the City had a mandatory duty to complete and consider an EIR before denying the project. Las Lomas also claimed violations of its due process rights and equal protection under the Constitution. The Court of Appeal cited Public Resources Code Section 21080, subdivisions (a) and (b)(5) as clearly providing that CEQA applies only to projects that a public agency intends to carry out or approve, not projects that the agency rejects. “To require a public agency to prepare and circulate a draft EIR and prepare a final EIR including responses to comments, before rejecting a project would impose a substantial burden on the agency, other agencies, organizations, and individuals commenting on the proposal, and the project applicant. Such a requirement would not produce any discernible environmental benefit and would not further the goal of environmental protection.”

Furthermore, the Court concluded that “if an agency at any time decides not to proceed with a project, CEQA is inapplicable from that time forward.” In other words, an agency may reject a project at the stage of preliminary review, as well as after substantial review, without having to prepare a CEQA document. Las Lomas argued that *Sunset Drive Corp. v. City of Redlands* (1999) 73 Cal.App.4<sup>th</sup> 215 (City ordered to complete an EIR within the one-year period established by statute) stood for the proposition that an agency must complete an EIR once it has begun. The Court disagreed, noting that the *Sunset Drive* decision was not on point because Redlands had not acted to deny that project.

The Court also dismissed Las Lomas’ due process and equal protection claims. On the issue of procedural due process, the Court stated that:

“A person seeking a benefit provided by the government has a property interest in the benefit for purposes of procedural due process only if the person has “a legitimate claim of entitlement to it.” [citation] A benefit is not a protected property interest under the due process clause if the decision maker has the discretion to grant or deny the benefit. [citation] Whether such discretion exists is determined by reference to state and local law.”

Ownership of the property is not sufficient to trigger due process protection where the City had the discretion to deny development proposals.

“Las Lomas proposed the annexation of the site and approval of a development

agreement, a specific plan, and development entitlements for the project. The city's decisions whether to seek to annex the site, enter into a development agreement, and adopt the proposed specific plan were discretionary decisions. Las Lomas can assert no claim of entitlement to the annexation, development agreement, specific plan, and development entitlements that it seeks. The city's denial of those benefits and decision not to proceed with the project therefore was not a deprivation of property for purposes of procedural due process under the Fourteenth Amendment. [citation]"