

Development in the Age of Climate Change

Lawsuit Challenges Housing Plan That Does Not Gauge Fossil Fuel Impacts



Julie Teel, of the Center for Biological Diversity, stands near land slated for development in Riverside County. Teel and her organization are suing to block the development, saying planners did not consider its global warming affects.

By Jason W. Armstrong

Daily Journal Staff Writer

RIVERSIDE - Right now, the wide swath of land at the base of Mt. San Geronio in northwestern Riverside County looks much like it did 100 years ago. Coyotes, rabbits and cattle roam among hardy chaparral, gnarled oak trees and fruit orchards in an area seemingly unaffected by urban sprawl a few miles away.

But a developer has gotten the go-ahead to transform the 1,500-acres of rolling hills and valleys at Banning's eastern fringe into a neighborhood of 1,500 upscale homes.

The so-called "Black Bench" project is now ground zero for an unprecedented legal battle that could toughen restrictions on housing developers statewide. The suit by the Center for Biological Diversity seeks to overturn the Banning City Council's approval of the project, alleging the city's environmental reviews didn't look at affects of greenhouse gas, or carbon dioxide, spawned by the new homes and increased traffic.

Such gas, the complaint says, contributes to global warming, which leads to problems such as diminished snow melt, rising sea levels and health ailments.

The case is believed to be the first to test whether the California Environmental Quality Act requires cities and counties to consider greenhouse gas emissions in deciding whether a development can proceed.

"Other cases have raised global warming, but this is the first case that attempts to apply [the Environmental Quality Act] in this manner in the residential development context," said Julie Teel, a Center for Biological Diversity lawyer handling the case.

The Tucson, Ariz.-based nonprofit center is a group of attorneys and others who fight for environmental protection through lawsuits and political initiatives.

The 36-year-old act requires development projects approved by local governments to "mitigate or avoid the significant effects on the environment."

Teel, who is based in San Diego, said Banning had a duty under the statute to weigh global warming concerns related to greenhouse gas before signing off on the Black Bench project.

Julie Hayward Biggs, the city's lawyer, disagreed.

"We really do think [the environmental review] was more than adequate," Biggs, a Riverside-based partner with Burke Williams & Sorensen, said. "This is a controversial project, but we believe we've done what the law requires."

Biggs also disputed the claim that the Environmental Quality Act mandates greenhouse gas consideration in project approvals.

The statute "doesn't require that," Biggs said.

"The goal of some of these environmental groups is to expand [the law] to encompass that, but it's currently not what the law requires or provides."

Though the statute doesn't specifically mention greenhouse gas, Teel said that doesn't matter.

"The fact that [the Environmental Quality Act] hasn't been used in the past in this way is an easy shield for the project proponents to try to hide under," Teel said. "But an environmental and public health threat this massive must be considered under this law. The fact that it hasn't been a major focus on the city's Environmental Impact Report is a dangerous oversight that we must immediately correct."

The Banning City Council approved the Black Bench project in October after months of public hearings and report reviews.

The proposed neighborhood, to be built over the next decade, has proved particularly controversial in its location on a largely rural fringe of the 30,000-resident town. Neighbors have voiced concerns about increased traffic, because the project is expected to generate 15,000 vehicle trips per day.

According to the suit, Irvine-based SunCal Cos. plans to leave 869 hilly acres as open space while building the homes on flatter areas. The project would include equestrian and bike paths leading to off-site public trails.

A natural park-like strip of land would follow a stream meandering through the property, the developer has said.

Rod Hanway, SunCal's vice president of forward planning, said the developer undertook an aggressive environmental review.

The project's environmental impact report "was prepared by a highly skilled group of independent technical engineers over a number of years," Hanway said in a statement.

But the lawsuit said the neighborhood would produce "considerable emissions of carbon dioxide."

The burning of fossil fuels by cars driving to and from the development, as well as by electricity generators used to heat, cool and light homes, would produce greenhouse gas emissions that would "contribute directly and cumulatively to global warming," the suit says.

SunCal's report outlining the project's environmental impacts failed to "consider measures to mitigate those impacts or alternative designs that would have avoided or lessened those impacts," the suit says.

The lawsuit seeks a stay of the project while the city does a more complete environmental review. *Center for Biological Diversity v. City of Banning*, RIC460967 (Riverside County Super. Ct., filed Nov. 21, 2006).

The litigation comes amid intensifying political and legal wrangling over global warming.

Gov. Arnold Schwarzenegger in September signed a landmark bill aimed at combating the phenomenon. The bill, AB 32, seeks to cut greenhouse gas emissions 25 percent by 2020, capping carbon dioxide released by refineries, power plants and heavy industries.

Also in September, Attorney General Bill Lockyer sued six U.S. and Japanese automakers. He alleged their vehicles have created a public nuisance by emitting greenhouse gases.

Lockyer's suit is the first in the nation try to make manufacturers foot costs of damages caused by greenhouse gases. *People v. General Motors Corp.*, C06-05755.

Other litigation focusing on developments and global warming is pending statewide.

In a Sacramento County Superior Court case, the Natural Resources Defense Council is suing to block state permits for a project that would include up to 11,000 houses and 5 million square feet of commercial space on an island in the Sacramento-San Joaquin Delta.

The council's suit alleges the environmental impact report for the River Islands project failed to look at the effects of global warming-prompted climate change on the Delta and the possibility

that rising water levels could threaten levees protecting the development.

The suit is pending. *Natural Resources Defense Council v. The Reclamation Board of the Resources Agency*, 06CS-01228 (Sacramento County Super. Ct., filed 2006).

Banning's Black Bench project is being challenged on other fronts.

In three other lawsuits, plaintiffs including the Highland Springs Conference and Training Center and the Cherry Valley Environmental Planning Group fault the development's road access and water supply, among other things.

All four cases may be consolidated, Teel said. Court dates have not been set.