

SAN BERNARDINO COUNTY — Only just adopted on March 13 by the Board of Supervisors, San Bernardino County's updated general plan is already under attack for alleged violations of the California Environmental Quality Act (CEQA). Two independent lawsuits have been filed against the county. One is a collaborative suit brought by environmental and conservation groups: **the Center for Biological Diversity**, the Sierra Club and the San Bernardino Valley Audubon Society. The other one was filed on April 13 by the State Attorney General's office.

Terms of engagement

CEQA statutes require public agencies to produce an environmental impact report (EIR) for any project undertaken which has potential to harm the environment. A municipality's general plan is identified as such a project since it is, as described in the Attorney General's petition, "the template for growth and development in San Bernardino County for the next 25 years."

The EIR shall, according to CEQA specifications, identify, analyze and fully disclose effects on the environment that can be reasonably attributed to the project. Furthermore, conditions must be placed on the project for feasible and effective mitigation of any impacts identified in the EIR.

Plaintiffs in the case argue that despite the county's own description of impacts in its EIR that are attributable to the growth and development goals in its general plan, the identification and analysis of baseline and projected environmental impacts — especially to air quality and to increases in greenhouse gas emissions — are absent or, where present, incomplete. The need to assess and account for greenhouse gas emissions as a step in the EIR process was certified with Governor Schwarzenegger's September 2006 signature on Assembly Bill 32, the California Global Warming Solutions Act.

More development,

less warming

Crying foul, the county objected in a press release to the accusations against its general plan and EIR. Leading with an assertion that, "the county has effectively dealt with the issue (of greenhouse gas emissions and global warming) by initiating economic development programs that attract good jobs to the region," the county's objection argue that this approach effectively reduces vehicle impacts by reducing the need for long-distance commuting to jobs out of the area.

Whereas this "good jobs" strategy may be having the result claimed, plaintiffs in their suits are calling for more proof of it than the county's mere say-so. They want to see the evidence the county bases its assertions on and, moreover, want to see what evidence the county has that other elements in its plan for future growth have been adequately evaluated and conditioned for the environmental outcomes that are specified in the law.

With respect to the county plan's affect on long-distance commuting in particular, the Attorney General's petition states: "The large size of the County, coupled with the rates at which its residents drive, guarantee that increased population will bring major increases in driving, and concomitant increases in emissions of air pollutants."

Pointing out in their petition that the EIR identifies an accommodation for growth in the general plan of 620,000 new residents over the next 25 years, the conservation groups charge that the EIR, "should have, but did not, analyze the impact of greenhouse gas emissions from the energy use during construction and operation of the development allowed by the project..."

Unavoidable

consequences

Second District Supervisor and Board Chair Paul Biane protested in the county's press release: "We incorporated measures to reduce greenhouse gas emissions in the new plan because we wanted to take the lead in protecting our environment." The press release enumerated a number of examples in support of Biane's statement, including but not limited to the county's development of mixed residence and business districts to help reduce need for vehicle use, directing development toward existing transit corridors, and support, though unspecified, for accessible alternative fuel stations.

Boasting a "strong record on fighting greenhouse emissions," the press release went on to further highlight the county's commitment to wise planning with mention of its partnership in development of a hybrid power plant in Victorville, its purchase of a fleet of hybrid vehicles, incentives for employee carpooling and its replacement of gas and diesel powered portable highway message boards with solar powered models.

In their court petition, the three conservation groups charge that despite the EIR's identification of "impacts to aesthetics, agricultural resources, air quality, biological resources, hazards and hazardous materials, and traffic and circulation," the Board of Supervisors approved the EIR and general plan without sufficiently addressing these potential effects.

What the Board did do, was to adopt a Statement of Overriding Considerations (SOC), claiming in the process that all such impacts are "significant unavoidable consequences of the project." The plaintiffs do not find "substantial evidence" in the EIR that the consequences are, in fact, unavoidable, and their lawsuit challenges the county to defend its conclusion.

Addressing this in its own suit, the Attorney General's office casts doubt on the county's SOC by stating in its petition: "Respondents [county] abused their discretion and failed to act in the manner prescribed by law in that the [SOC] does not comply with CEQA's mandate that agencies not approve projects that will have significant adverse effects on the environment unless all feasible mitigation measures are incorporated in the project...."

All petitioning parties, including the Attorney General's office, participated in review of the county's EIR in its draft stages, and all of them made extensive comment on what they variously identified as deficiencies, errors and oversights in the document's data, reasoning and conclusions. They all allege the county ignored practical suggestions for impact mitigations that called for any caution in growth activities, and insist that if the municipality intends to pursue the putative gains of sprawl at the expense of long-term sustainability, it must at least defend its choice within terms of the law.