

CLIENT NEWS BRIEF

Agendas for Legislative Body Meetings Must Include Each Individual Item of Business in Clear and Unambiguous Terms

In the recent case of *San Joaquin Raptor Rescue Center v. County of Merced* (May 31, 2013 __Cal.App.4th__ (2013 WL 2378584)), the Court of Appeal held that the Merced County Planning Commission (Commission) violated California's open meeting laws (the Brown Act) when it discussed and took action on an item that did not clearly and unambiguously appear on its meeting agenda.

The Brown Act requires a legislative body of a local agency to post, at least 72 hours before a regular meeting, "an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting." The Brown Act prohibits a local agency from taking action or discussing any item not appearing on the posted agenda. In *San Joaquin*, the Commission posted an agenda including an item regarding the potential approval of an application to subdivide approximately 380 acres of agricultural land. During its meeting, the Commission discussed and approved a California Environmental Quality Act (CEQA) document known as a "mitigated negative declaration" (MND) in connection with the subdivision project. However, the Commission failed to include this item of business in the meeting agenda.

The Commission argued that it was not required to place the discussion and possible approval of the MND on the meeting agenda because the MND was part of the overall subdivision project, which was an item on the agenda. The Court rejected this argument based on the Brown Act's requirement that an agenda must include a description of "each item of business to be transacted or discussed." The Court found that the discussion and adoption of the MND was not merely a component of the subdivision project approval, but rather a clearly distinct item of business because it: (1) involved a separate action or determination by the Commission, and (2) concerned discrete significant issues of CEQA compliance and the subdivision project's environmental impact. Therefore, the Commission was required to disclose this individual item of business on the agenda, and because discussion and action was taken on this item without doing so, the Commission violated the Brown Act.

The Court observed that one of the purposes of the Brown Act is "ensuring that the public is adequately notified of what will be addressed at a meeting in order to facilitate public participation and avoid secret legislation or decision making." Each item of business should "not be left to speculation or surmise." In *San Joaquin*, the Court found the Brown Act violation particularly egregious because it involved CEQA, and decisions to adopt CEQA documents are "always a matter of at least *potential* public interest since it would concern the local environmental effects of a proposed project." Further, because CEQA documents are not necessarily considered at the same meeting as consideration of the project, the Court found that the overall effect of leaving the MND off the agenda misled the public as opposed to informing them of items of business to be considered at the meeting.

This case serves as a reminder to local government agencies that, while agenda items only require brief descriptions, each item of business must be

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specified and the item must be identified in a clear and unambiguous manner. While the *San Joaquin* Court did not address whether an agency may combine more than one related item of business as part of the same agenda item, to help ensure compliance with the Brown Act, listing the items not only clearly but also separately may be advisable in certain instances.

To assist with Brown Act compliance, Lozano Smith makes available to clients its Brown Act Handbook, which is updated on an annual basis. A copy of the Handbook is available on our website.

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