

CLIENT NEWS BRIEF

Public Entities Must Proceed with Caution When Preparing an Addendum to a Negative Declaration

A California appellate court has held that a public entity violated the California Environmental Quality Act (CEQA) by preparing an addendum to a mitigated negative declaration. In *Friends of the College of San Mateo Gardens v. San Mateo County Community College District* (2017) 11 Cal.App.5th 596, the court found that proposed changes to the District's original facilities project might have a significant effect on the environment, requiring further analysis, rather than use of an addendum.

The California Environmental Quality Act

Under CEQA, a public agency generally conducts an initial study to determine if a project may have a significant effect on the environment unless an exemption applies. If the initial study shows that there is no substantial evidence that the project may have a significant effect on the environment, CEQA requires the agency to prepare a negative declaration. Alternatively, if the project has potentially significant environmental effects but these effects will be reduced to insignificance by mitigation measures, CEQA requires the agency to prepare a mitigated negative declaration. Projects where the environmental effect cannot be reduced to insignificance by mitigation measures require an environmental impact report (EIR).

In the event an agency modifies a project after a negative or mitigated negative declaration has been adopted, CEQA outlines subsequent review provisions that apply so long as the original declaration is relevant. These provisions require the agency to prepare a subsequent negative or mitigated declaration or subsequent EIR depending on certain circumstances. The guidelines also allow the agency to prepare an "addendum," rather than a subsequent negative or mitigated negative declaration, if there are only "minor technical changes or additions." Such addenda have more limited analysis and do not reopen public comment opportunities. Alternatively, if the modifications are such that the original negative or mitigated declaration is no longer relevant, the public entity must start over by conducting a new initial study.

Background

The San Mateo County Community College District (District) adopted a facilities master plan proposing nearly \$1 billion in new construction and facilities renovations that involved demolition of certain buildings and renovation of others. In order to comply with CEQA, the District published an initial study and mitigated negative declaration analyzing the physical environmental effects of implementing the plan's proposed improvements in 2006. However, after the District failed to obtain adequate funding for its original plan, it added one building to its demolition list and removed two others. As a result of these changes, the District prepared an addendum to the 2006 mitigated negative declaration.

The proposed changes to the plan prompted complaints by a number of

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students and faculty which ultimately led to a lawsuit challenging the addendum. (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (Sept. 26, 2013, No. A135892) [nonpub. opn.].) The community members expressed concern that the proposed changes would eliminate a portion of an existing garden making up one-third of one percent of the total landscaped and open space on campus. The court concluded that the proposed changes constituted a “new” project, meaning that new CEQA review was required. However, the California Supreme Court disagreed and remanded the case with additional instructions. (*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937.)

On remand, the appellate court found that substantial evidence supporting the District's original mitigated negative declaration was still relevant and agreed with the District's determination that CEQA's somewhat more limited subsequent review provisions were applicable. However, the court concluded that the District did not properly comply with its obligations under those provisions. The court considered testimony from community members regarding the project's aesthetic value to be substantial evidence that the project might have a significant environmental effect, rendering the proposed changes more than “minor technical changes or additions,” and therefore requiring more than the adoption of an addendum.

Takeaway

The lesson from this case is that, when modifying a project after a negative or mitigated negative declaration has been adopted, public entities should be very cautious when deciding whether to prepare an addendum or adopt a subsequent or supplemental negative declaration or EIR. Although courts give public entities deference when deciding whether to proceed under CEQA's subsequent review provisions so long as there is evidence that the original negative or mitigated declaration remains relevant, the decision to prepare an addendum (rather than a subsequent or supplemental negative declaration or EIR) is reviewed with much more scrutiny. As we learn from *San Mateo Gardens*, even complaints about aesthetics from community members could be enough evidence for a court to conclude that modifications to a project may have a significant environmental effect, requiring further review. No matter what subsequent review process is selected, it is important to ensure that the rationale is well-documented in the administrative record in order to best defend the public entity's decision.

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