

CLIENT NEWS BRIEF

Lay Opinions May Trigger The Need For An Environmental Impact Report

A California appellate court has ruled that lay public opinions on nontechnical issues concerning a project's size and general appearance can provide substantial evidence of environmental impact, triggering the need to prepare an environmental impact report (EIR) under the California Environmental Quality Act (CEQA).

The California Environmental Quality Act

CEQA generally requires public agencies to identify potentially significant impacts of projects they carry out or approve, and mitigate those impacts where feasible. Unless a project is exempt from CEQA, the public agency must prepare one of three types of documents. A negative declaration (ND) can be prepared where there is no substantial evidence that the project may have a significant effect on the environment, and a mitigated negative declaration (MND) can be prepared where the project has potentially significant environmental effects, but these effects will be reduced to insignificance by mitigation measures. An EIR, however, is required whenever substantial evidence in the record supports a "fair argument" that the project may produce significant impacts or effects. An EIR generally involves more time and often more cost than an ND or MND.

Georgetown Preservation Society v. County of El Dorado

The Third District Court of Appeal filed its decision in *Georgetown Preservation Society v. County of El Dorado* (2018) 30 Cal.App5th 358, on December 17, 2018, affirming the trial court's writ setting aside El Dorado County's (County) approval of a project based on an MND. The County had prepared an initial study to analyze the environmental impacts of a proposed Dollar General chain discount store (Project) and found that there was no basis to require an EIR. Local residents acting through plaintiff Georgetown Preservation Society (Society) objected, claiming that the Project would impair the aesthetic character of their town. The Project was located in a historic center and several lay opinions were submitted by the local community, which commented that the Project was too big and too boxy and would damage the look and feel of the town, and would therefore have significant and negative effects related to aesthetics. The County slightly modified the project and ultimately adopted the MND. In part, it found that the project complied with local zoning because the area was zoned for commercial retail, that the Project's design, architectural treatments, and associated improvements substantially conform to the County's Historic Design Guide and, that the Project would not substantially detract from the town's historic commercial district.

The Society filed a lawsuit seeking to require the County to prepare an EIR. The trial court applied prior case law and found that the Society's evidence supported a fair argument that the Project may have a significant aesthetic effect on the environment. Accordingly, the trial court issued a writ of mandate compelling the County to prepare an EIR.

February 2019
Number 12



Kelly M. Rem
Partner
Walnut Creek Office
krem@lozanosmith.com



Jose Montoya
Associate
Los Angeles Office
vmiller@lozanosmith.com



As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.

CLIENT NEWS BRIEF

February 2019

Number 12

On appeal, the County relied on the fact that it had applied its Historical Design Guide principles when it found the project met aesthetic standards. In the County's view, the ensuing finding of compliance with its Historical Design Guide principles could not be disputed by lay opinion evidence. A key issue addressed by the Court of Appeal was whether non-expert factual evidence or lay opinion evidence proffered by area residents can support a "fair argument" that the Project may have a significant aesthetic impact on the environment. In reaching its decision, the Court of Appeal followed the rationale in *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, and held that (1) consistency with local design guidelines could not be used to insulate a project from CEQA review; (2) lay opinions can provide substantial evidence to support a "fair argument" that a project may have a significant aesthetic impact on the environment, triggering the need to prepare an EIR; and (3) since the County made no credibility determinations, it could not categorically disregard the public's comments.

Takeaways

Georgetown Preservation Society serves as a reminder of the impact public opinion may have on projects approved or carried out by public agencies, and that lead agencies should not disregard public opinion in non-technical areas like aesthetics. Previous court decisions have also considered lay opinions in other impact areas such as noise, traffic safety, and parking. Therefore, lead agencies should not solely rely on its industry experts when evaluating the environmental impacts of a project. If the community members' opinions on these issues are not properly taken into consideration, project delays and increases costs can result.

If you have any questions about *the appellate court's decision in Georgetown Preservation Society and its impact on CEQA compliance*, or about the CEQA in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. For this reason, this News Brief does not constitute legal advice. We recommend that you consult with your counsel prior to acting on the information contained herein.