

CLIENT NEWS BRIEF

Legislature Clarifies CEQA Lead Agency's Scope of Consideration in Authoring EIR

The California Legislature has amended the California Environmental Quality Act (CEQA) in an effort to clarify a lead agency's ability to consider both the broad benefits of a project and the negative impacts of denying the project when evaluating environmental impacts.

Under existing law, CEQA requires state and local agencies to assess the environmental impacts of projects they undertake. Unless an exception applies, the lead agency on the project must prepare one of three types of environmental review documents: a negative declaration, a mitigated negative declaration, or an environmental impact report (EIR). If the project will not have any significant effects on the environment or those effects can be mitigated to an insignificant level, a negative or mitigated negative declaration can be prepared. However, if the lead agency determines the project will have a significant environmental impact that cannot be mitigated, an EIR must be prepared. In preparing an EIR or mitigated negative declaration, the lead agency must identify each expected environmental impact and identify mitigation measures for those impacts. In addition, the lead agency must analyze and provide reasonable alternatives to the project, including the option of cancelling the project (known as the "no project alternative").

If mitigation is not feasible for a given effect, the project is not necessarily prohibited. The CEQA guidelines provide that mitigation is not necessary if the lead agency determines, with support from substantial evidence in the record, that the "specific economic, legal, social, technological, or other benefits of a proposed project outweigh the unavoidable adverse environmental effects." This is known as a "statement of overriding consideration."

Assembly Bill (AB) 2782 adds a section to existing CEQA statutes that permits a lead agency authoring an EIR to:

"consider specific economic, legal, social, technological, or other benefits, including regionwide or statewide environmental benefits, of a proposed project and the negative impacts of denying the project. Any benefits or negative impacts considered pursuant to this section shall be based on substantial evidence in light of the whole record."

The new language confirms that lead agencies may broadly consider all benefits of a project as well as any negative environmental impacts of denying the project. For example, canceling a bus lane improvement project could represent a missed opportunity to reduce greenhouse gas emissions as commuters drive their cars instead.

Senate and Assembly committee analysis points out that the language of AB 2782 allowing the lead agency to assess the broad benefits of a project is already reflected in the "statement of overriding consideration" section of the current CEQA guidelines. Similarly, the ability to consider the negative impacts of denying the project already exists in the "no project alternative" analysis. Thus, AB 2782 merely re-states and confirms a lead agency's scope of

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Anne L. Collins
Partner and Co-Chair
Facilities & Business Practice Group
Sacramento Office



Jordan R. Fong
Associate
Monterey Office
jfong@lozanosmith.com



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consideration when preparing an EIR.

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