

RESOLUTION 07-02-2017

DIGEST

Environmental Quality Act: Subsequent and Supplemental CEQA Documents

Amends Public Resources Code section 21166 to codify the existing regulatory standards for further environmental review when the prior CEQA review resulted in a negative declaration.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Public Resources Code section 21166 to codify the existing regulatory standards for further environmental review when the prior CEQA review resulted in a negative declaration. This resolution should be approved in principle because it clarifies that negative declarations are within the ambit of documents to which consideration of subsequent or supplemental California Environmental Quality Act review must occur when a project is materially changed.

The California Environmental Quality Act (CEQA), is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. A negative declaration is prepared for a project when there is no substantial evidence that the project or any of its aspects could result in significant adverse impacts. (See, 14 Cal. Code Regs. § 15063, subd. (b)(2).) And, while CEQA sets forth the standards for further environmental review when an environmental impact report (EIR) has previously been certified for a project, the statute is silent as to the standards for further environmental review when the previous CEQA review document was a negative declaration. (See, Pub. Resources Code, § 21166.)

This resolution looks to the CEQA Guidelines (15 Cal. Code Regs., § 15000 et seq.), which extend the statute to apply when a negative declaration was previously adopted for a project. (See, specifically 14 Cal. Code Regs., § 15162.) The CEQA Guideline at section 15162 regulates when an agency *may* require preparation of a further EIR when a negative declaration has been adopted for a project. This resolution makes clear that an agency *shall* require further EIR in these circumstances and prevents a previously rejected project to move forward without the environmental impact being fully considered.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Public Resources Code section 21166 to read as follows:

- 1 § 21166
2 (a) When an environmental impact report or negative declaration has been prepared for a

3 project pursuant to this division, no subsequent or supplemental environmental impact report
4 shall be required by the lead agency or by any responsible agency, unless one or more of the
5 following events occurs:
6 (a~~1~~) Substantial changes are proposed in the project which will require major revisions of
7 the environmental impact report or negative declaration.
8 (b~~2~~) Substantial changes occur with respect to the circumstances under which the project
9 is being undertaken which will require major revisions in the environmental impact report or
10 negative declaration.
11 (c~~3~~) New information, which was not known and could not have been known at the time
12 the environmental impact report was certified as complete or the negative declaration was
13 adopted, becomes available.
14 (b) If changes to a project or its circumstances occur or new information becomes
15 available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR
16 if required under subdivision (a). Otherwise the lead agency shall determine whether to prepare
17 a subsequent negative declaration, an addendum, or no further documentation.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: CEQA sets forth the standards for further environmental review when an environmental impact report (EIR) has previously been certified for a project. (Pub. Resources Code, § 21166.) However, the statute refers only to EIRs and is silent as to the standards for further environmental review when the previous CEQA review document was a negative declaration. The CEQA Guidelines extend the statute to apply when a negative declaration was previously adopted for a project. (Cal. Code Regs., tit. 14, §15162.) Under CEQA Guideline Section 15162, when a negative declaration has been adopted for a project, an agency may not require preparation of a further EIR unless one of the three triggers for preparation of a subsequent or supplemental EIR exists. The courts have upheld this extension of subsequent review standards to previous negative declarations as consistent with the legislative intent behind Public Resources Code section 21166. (*Abatti v. Imperial Irrig. Dist.* (2012) 205 Cal.App.4th 650, 668; *American Canyon Community United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal.App.4th 1062, 1071; *Snarled Traffic Obstructs Progress v. City & County of San Francisco* (1999) 74 Cal.App.4th 793.)

The Solution: This Resolution would amend Public Resources Code section 21166 to clarify that negative declarations are within the ambit of documents to which consideration of subsequent or supplemental CEQA review must occur in the event a project is materially changed.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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