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Under CEQA's Subsequent Review Provisions, Substantial Evidence Must Support An Agency's Determination That Project Changes Will Require Only Minor Changes.

In 2006, the San Mateo County Community College District ("District") adopted a Facilities Master Plan ("Plan") proposing nearly $1 billion in new construction and facilities renovations at the District's three college campuses. At the College of San Mateo ("College"), the Plan included a proposal to demolish certain buildings and renovate others. The buildings slated for renovation included the College's "Building 20 Complex," which includes a greenhouse, lath house, surrounding garden space, and an interior courtyard.

The District published an initial study and mitigated negative declaration (the "MND") analyzing the physical environmental effects of implementing the Plan's proposed improvements at the College, including the proposed rehabilitation of the Building 20 Complex. The MND stated that, with the implementation of certain mitigation measures, the Plan would not have a significant effect on the environment. Subsequently, the District certified its initial study and adopted the MND.

When the District later failed to obtain funding, it re-evaluated the planned Building 20 Complex renovations. In 2011, the District issued a notice of determination indicating that it would demolish, rather than renovate, the Building 20 Complex and replace it with a parking lot, accessibility, and landscaping improvements. In doing so, the District concluded a subsequent or supplemental environmental impact report ("EIR") was not required. The District addressed the change through an addendum to its initial study and MND, concluding that the project changes "would not result in a new or substantially more severe impact" than the impact disclosed in the MND. The District, therefore, determined that an addendum was the appropriate CEQA documentation.

The newly proposed demolition of the Building 20 Complex, and its associated gardens proved controversial. Members of the public, as well as a number of College students and faculty, vocally criticized the demolition proposal at public hearings. The District nevertheless approved demolition of the Building 20 Complex in accordance with the addendum.

Subsequently, the District rescinded its original addendum and issued a revised addendum. The revised addendum reiterated the original addendum's conclusion but bolstered its analysis. In

August 2011, after public comment and discussion, the revised addendum was adopted and demolition of the Building 20 complex was reapproved.

A group of community college students known as Friends of the College of San Mateo Gardens (hereafter, "Friends") filed a lawsuit under California's Environmental Quality Act ("CEQA") challenging the revised addendum and the District's approval of the demolition. Friends argued the revised addendum was improper and that the District was required to conduct an initial study of the project to determine whether a supplemental EIR was required. The trial court agreed and ordered the District to refrain from taking any further actions adversely affecting the physical environment of the Building 20 Complex pending the District's compliance with CEQA requirements.

The District appealed and the Court of Appeal affirmed the trial court's ruling. The Court of Appeal concluded that the District's proposal was a "new" project not subject to an addendum. According to the Court of Appeal, because the District's proposed demolition was a "new" project, the District could not rest on CEQA's subsequent review provisions and was instead required to conduct an initial study to determine whether a subsequent EIR was appropriate.

The District sought review in the California Supreme Court, which reversed the Court of Appeal's decision. The Supreme Court held that instead of resting on whether a project is new "in the abstract sense," the decision to proceed under CEQA's subsequent review provisions must rest on a determination that the original environmental document retains some relevance to the decision-making process. The Supreme Court also explained that the determination of whether an agency's decision that the subsequent review provisions apply "is only the first step." Once a court determines that substantial evidence supports that decision, the next step is to determine whether the agency has properly determined how to comply with its obligations under those provisions. In particular, where the agency has determined that project changes will not require "major revisions" to its initial environmental document, such that no subsequent or supplemental EIR is required, the reviewing court must proceed to ask whether substantial evidence supports that determination. The Supreme Court sent the case back to the Court of Appeal to determine whether the District satisfied this analytical framework.

On remand, the Court of Appeal concluded that while the District's proposed demolition amounted to a modified project, meaning that CEQA's subsequent review provisions apply, the District's use of an addendum was still improper because there was substantial evidence the proposed demolition called for more than minor technical changes or additions to the project. "[T]here is substantial evidence that the Building 20 demolition project might have a significant environmental effect due to its aesthetic impact on the College campus. . . . What is clear is that the decision to adopt an addendum was improper under CEQA's subsequent review provisions, since an addendum may be prepared only if there are 'minor technical changes or additions' or if none of the circumstances calling for a subsequent EIR or negative declaration have occurred."

Accordingly, the Court of Appeal once again affirmed the trial court's ruling and directed that the District refrain from taking any further actions adversely affecting the physical environment of the Building 20 Complex pending full compliance with CEQA requirements.

Friends of the College of San Mateo Gardens v. San Mateo Community College District (2017) __Cal.App.4th __ [2017 WL 1829176].

This article was written by Hengameh Safaei, Associate, from the Los Angeles office of Liebert Cassidy Whitmore. Hengameh is a member of the firm's Business and Facilities practice group which assists public agency clients in matters including construction, contracts, purchase agreements and real property. Hengameh can be reached at (310) 981-2000 or at hsafaei@lcwlegal.com. For more information regarding the update above or about our firm please visit our website at http://www.lcwlegal.com, or contact one of our offices below.

6033 W. Century Blvd. 5th Floor Los Angeles, CA 90045 (310) 981-2000	135 Main Street 7th Floor San Francisco, CA 94105 (415) 512-3000	5250 North Palm Ave. Suite 310 Fresno, CA 93704 (559) 256-7800	550 West C Street Suite 620 San Diego, CA 92101 (619) 481-5900	400 Capitol Mall Suite 1260 Sacramento, CA 95814 (916) 584-7000