MEMORANDUM OF LAW

DATE: October 13, 1986

TO: Diana Dugan, Deputy Director, Planning Department

FROM: City Attorney

SUBJECT: Compliance with the California Environmental Quality Act for Extension of Time

In a recent memorandum to this office you asked whether the Environmental Quality Division's practice of not requiring the decision-maker to review and consider the environmental impact report ("EIR") for an extension of time, when there is no change in the project, no change in the circumstances, and no change in the conditions of approval, is in compliance with the California Environmental Quality Act ("CEQA").

We have researched CEQA, the CEQA Guidelines and California caselaw and have been unable to find any authority which addresses the specific question you asked. However, we feel that the overall scheme of CEQA suggests that given the circumstances that you have described, further review and consideration of the EIR is not a necessary prerequisite to granting or denying an extension of time.

Our reasoning is as follows. In certain situations a subsequent or a supplemental EIR must be prepared to satisfy CEQA; i.e., when substantial changes are proposed in the project or occur with respect to circumstances of the project, or new information becomes available; Public Resources Code, Section 21166. Both a subsequent EIR and a supplement to an EIR must be circulated and reviewed in the same manner as the original EIR; 14 California Administrative Code, Sections 15162 and 15163.

However, your question is framed so that it is assumed no changes in the project, circumstances, or conditions of approval have taken place. Therefore, no subsequent or supplemental EIR would be required. Because circulation and review are specifically required for subsequent and supplemental EIRs, we feel it is reasonable to conclude that in their absence

circulation or review would be unnecessary (i.e., after the initial EIR has been fully reviewed and the project approved).

Although not exactly on point, the case of City of National City v. State of California, 140 Cal.App.3d 598 (1983), would seem to support this conclusion.

In National City, the State, through its Transportation Commission ("CTC"), rescinded its plans to build a freeway

several years after the project had been approved. At the time of the route rescission all of the rights-of-way for the project had been purchased and a substantial portion of the freeway had been constructed. At the time the CTC rescinded the route location, it also authorized the disposal of the already acquired rights-of-way without the benefit of additional environmental documentation and presumably without reviewing or considering the previously prepared environmental documents.

When this action was challenged by National City in the legal action, CTC, inter alia, contended that its action in rescinding the route was part of the project which was already evaluated in its original and final environmental documents in the no project alternative. Thus, because the original environmental documents adequately addressed the no project alternative, further environmental review was not required by CEQA.

The court supported this contention made by CTC and at page 603 the court stated, "a further environmental evaluation of CTC's rescission action would be a redundancy and not within the contemplation and purpose of CEQA."

Thus, in light of the foregoing reasoning, we feel we can support the Environmental Quality Division's current practice respecting extension of time.

JOHN W. WITT, City Attorney
By
Thomas F. Steinke
Deputy City Attorney

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