

MEMORANDUM OF LAW

DATE: July 7, 1993

TO: Scott Bernet, Chair, and Members of The City of San Diego's Planning Commission

FROM: City Attorney

SUBJECT: Planning Commission Review of Draft Documents Prepared Pursuant to the California Environmental Quality Act ("CEQA")

Background

At the July 1, 1993, Planning Commission ("Commission") hearing you requested a legal opinion as to whether the Commission could review draft CEQA environmental documents, rather than final CEQA environmental documents, when considering an item. This came up in the context of reviewing staff proposals for Regulatory Relief Day. The Commission's role in Regulatory Relief Day is to review the proposals and make recommendations to the City Council.

Two of the proposals required environmental review under CEQA (codified in California Public Resources Code section 21000 et seq.), as they dealt with land use regulations in the coastal zone. The environmental documents at issue, both Negative Declarations, were going to be in draft form at the time the Commission was to review them.

Issues

Three issues arose when the Commission was informed that they would not have the final CEQA documents for their review. Those were:

1. Is the Commission legally required to review final CEQA documents, not draft documents as initially suggested by staff?
2. May the Commission legally review a draft CEQA document that has not completed the thirty (30) day public review period required by Public Resources Code sections 21092 and 21092.3?
3. Do CEQA documents need to be made available for review at least fourteen (14) days prior to the Commission's hearing in which the Commission will be considering them in its advisory capacity?

The first two questions have a common issue to both and that is whether the Planning Commission can review the draft CEQA documents, pursuant to the California Public Resources Code section 21000 et seq., in order to make their recommendations to the City Council. The third issue deals with the requirements of the City of San Diego's procedures for Implementation of CEQA and the State CEQA Guidelines, which is codified in San Diego Municipal Code section 69.0201 et seq.

CEQA

CEQA Guidelines 15070 to 15075 describe the process in which a Lead Agency (as defined by Public Resources Code section 21067) adopts a Negative Declaration. Essentially, once it is determined that a Negative Declaration would be the appropriate environmental document, the document is prepared and circulated for public review. When the document is submitted to the State Clearinghouse for review by state agencies, as is the case here, that review period must be for a minimum of thirty (30) days. Guideline 15074 then goes on to outline the decision-making process:

- (a) Any advisory body of a public agency making a recommendation to the decision-making body shall consider the proposed Negative Declaration before making its recommendation.
- (b) Prior to approving the project, the decision-making body of the Lead Agency shall consider the proposed Negative Declaration together with any comments received during the public review process. The decision-making body shall approve the Negative Declaration if it finds on the basis of the Initial Study and any comments received that there is no substantial evidence that the project will have a significant effect on the environment.

It appears from this guideline that only the decision-making body of the Lead Agency would be required to wait until the end of the public comment period in order to adopt a Negative

Declaration. An advisory body, such as the Commission, would need to consider a proposed Negative Declaration, but the guidelines do not specify where in the process this consideration would have to take place (other than prior to the consideration by the Lead Agency's decision-making body), as it does for the decision-making body.

San Diego Municipal Code

San Diego Municipal Code section 69.0212 states in pertinent part, "DEP shall make all final environmental reports available at least fourteen (14) calendar days prior to the first public hearing or discretionary action on the Project." Turning to the concern at hand, it does appear that this section would require a final environmental document be circulated before the "first public hearing," which could be before an advisory body such as the Commission. The wording of the statute is such that the final environmental documents would be available before the "first public hearing or discretionary action on the project." Emphasis added.

Conclusion

While the Environmental Quality Act does not legally require advisory bodies to the Lead Agency's decision-maker review final environmental documents, San Diego Municipal Code section 69.0212 requires that a final document be available at least fourteen (14) days prior to the first public hearing.

In this particular instance, since the first public hearing on the staff proposals requiring environmental review is before the Commission, the Commission should have the final environmental documents at least fourteen (14) days prior to the hearing.

JOHN W. WITT, City Attorney

By

Allisyn L. Thomas

Deputy City Attorney

ALT:lc:605x920.10(x043.2)

cc Maureen Stapleton, Assistant City Manager

Ernest Freeman, Planning Director

George Arimes, Assistant Planning Director

Tom Story, Development and Environmental

Planning Division Deputy Director

ML-93-67

TOP

TOP