

Los Angeles CEQA Appeal

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Issue

The California Environmental Quality Act (CEQA) requires state and local agencies to identify significant environmental impacts of their actions and if feasible, to avoid or mitigate those impacts. Given the extensive public process at the multiple stages of approval the appeal process at the City Council level needs to be completed as expeditiously as possible to give business interests finality so they can focus on their businesses and the jobs (and tax revenue) they create, which the City desperately needs.

Background

The Ordinance currently provides, that the appellant must state “all grounds for the CEQA Appeal” and show “Evidence that each ground for the CEQA Appeal was submitted to the nonelected decision making body before the Environmental Determination was made. The process of developing an Environmental Impact Report (EIR) involves multiple stages of significant public involvement. CEQA law intends for the public to raise issues before and during the EIR development so that a comprehensive analysis addressing each issue can be preformed, and the results of the analysis reported in the Final Environmental Impact Report (FEIR).

Businesses and developers often spend years and make significant monetary investment in the EIR process. By the time a nonelected decision making body (e.g., city commission) has approved an FEIR, it has spent significant time hearing comments, reviewing technical materials, performing economic analyses, developing alternatives and evaluation mitigation measures. If the ordinance allows appellants to raise “new” issues after the FEIR is complete, the applicant and the nonelected decision making body would not have had an opportunity to study the issue and provide information to the Council.

Such a policy may encourage project opponents to withhold comment until the FEIR is complete, necessitating new analysis and lengthy delay. The scope of the appeal should be limited to issues submitted before the nonelected decision making body. CEQA specifies public notice requirements for meeting held throughout development of the EIR.

In fact, the noticed hearing on the FEIR, with opportunity for public comment, will have occurred just prior to commencement of the appeal period. Project opponents have ample opportunity to raise their concerns during the statutorily prescribed process. As with scope, the City policy should encourage all those who have project concerns to raise them with the nonelected body in order for proper analysis of the issue in a timely manner. Appellants should be limited to those who submitted comment during the public comment period provided by CEQA.

The Ordinance calls for filing of the hearing “not later than ten (10) calendar days after the Environmental Determination” and for a Council decision not later than sixty (60) calendar days after the filing of the CEQA Appeal.” Given the extensive public process at the FEIR stage, project opponents can readily convert comments at the FEIR hearing into an appeal to meet the 10 day filing requirement. Yet, granting additional time merely creates additional delay.

The Ordinance provides that if the Council does not ratify the decision of the nonelected body (or grant the appellant's request to withdraw its appeal), the Council may "set aside the Environmental Determination and remand the Environmental Determination to the nonelected decision making body for its reconsideration".

It is appropriate to remand the Environmental Determination to the nonelected decision making body to reconsider concerns raised at Council because the lower body has had more significant involvement with the technical and economic aspects of the project, alternatives and mitigation measures.

Chamber Position

The Chamber supports the establishment of a clear and efficient CEQA appeal process for the Los Angeles City Council. However, the Chamber recommends the Ordinance be clarified to make it clear that after remand, the reconsidered FEIR may again be appealed to the Council.