



California Supreme Court Rejects ‘New Project’ Test; State Agencies to Determine If Additional Environmental Review Needed

October 17, 2016 ([link to story](#))

The California Supreme Court has unanimously [ruled](#) that subsequent changes to a development project which has already been subject to review under the California Environmental Quality Act (CEQA) is not subject to an independent “new project” threshold test.

Rather, a lead agency’s decision that no environmental impact report (EIR) is required for such changes is subject to the deferential “substantial evidence” test. Accordingly, under this new ruling in *Friends of the College of San Mateo Gardens v. San Mateo County Community College District*, when a project applicant proposes changes to a previously reviewed project, the lead agency will be afforded deference in analyzing the factual circumstances in determining whether those changes should trigger an entirely new round of environmental review.

Background

In this case, the San Mateo Community College District approved a district-wide facilities improvement plan that called for demolishing certain buildings and renovating others. In compliance with CEQA, the District prepared and adopted a mitigated negative declaration (MND) to address the environmental impacts of the plan. Years later, the district proposed changes to the plan by electing to demolish one building that had been set for renovation and to renovate two buildings that had been set for demolition.

The District approved the changes after evaluating the possible environmental impacts under Public Resources Code Section 21166 and CEQA Guidelines Section 15162, which govern subsequent environmental review of previously approved projects. The District concluded that the changes were not so extensive as to require a subsequent EIR; instead, the District prepared an addendum to address the changes.

The project opponents challenged the District’s determination in court, arguing that the changes constituted a “new project” under CEQA and therefore required an entirely new environmental document. The trial court ruled in favor of the project opponents, and on appeal, the First District Court of Appeal affirmed, holding that the question of whether a project is a “new” project is a question of law reviewed by the courts without any deference to the lead agency’s review of the factual circumstances of the particular project. The Court of Appeal went on to find that the changes proposed by the District here constituted a “new project altogether” as a matter of law.

Supreme Court Opinion

The Supreme Court concluded that the Court of Appeal erred in its application of this new project test. In the ruling, the Supreme Court made two important clarifications regarding the issue of subsequent environmental review under CEQA.

First, the Supreme Court rejected the notion that there was even such thing as a separate “new project test.” Instead, the determination regarding whether subsequent environmental review is required should focus on the “effect” of the change and not “abstract” characterizations of the projects by courts. According to the Supreme Court, “[w]hen an agency proposes changes to a previously approved project, CEQA does not authorize courts to invalidate the agency’s action based solely on their own abstract evaluation of whether the agency’s proposal is a new project, rather than a modified version of an old one.”

Rather, the Supreme Court noted that “[a]n agency that proposes project changes thus must determine whether the previous environmental document retains any relevance in light of the proposed changes and, if so, whether major revisions to the previous environmental document are nevertheless required due to the involvement of new, previously unstudied significant environmental impacts. These are determinations for the agency to make in the first instance, subject to judicial review for substantial evidence.”

Second, the Supreme Court addressed the appropriate standard of review that should be applied once lead agencies determine that changes fall within the subsequent environmental review provisions in Public Resources Code Section 21166 and CEQA Guidelines Section 15162. The opponents argued that because the initial project was approved using an MND, the low-threshold “fair argument” standard should apply to the District’s subsequent determination. The Supreme Court rejected that view, adopting the deferential “substantial evidence” standard for such determinations. Specifically, the Court noted that MNDs, like EIRs, are “entitled to a presumption of finality” once adopted and it would be “absurd” to require an entirely new round of environmental review every time there is a change to a project.

Significance of Decision

The California Supreme Court’s decision in *Friends of the College of San Mateo Gardens* stands for a rather simple, but nonetheless significant proposition: If changes are proposed to a previously approved project, those changes shall be evaluated by the lead agency—not the courts—and shall be done so with deference under the “substantial evidence” standard.

The decision is a useful one for project developers, as it will avoid needless delay and expense by ensuring that subsequent project modifications will not always be subject to an entirely new round of environmental review.

A copy of the Supreme Court’s decision can be found at www.courts.ca.gov.

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