

THE AGC ALERT

an update on legal developments

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RECENT CEQA CASES PROVIDE FURTHER GUIDANCE ON LEAD AGENCY POWERS

A duo of important opinions were recently issued by the California Court of Appeal which elaborate on two key issues concerning the California Environmental Quality Act ("CEQA"): (1) can CEQA be by-passed when a proposed project is rejected by the lead agency?; and (2) can a lead agency base its determination concerning "infeasible" project alternatives based on public policy considerations? In rulings that are helpful to cities, counties, and other public entities which serve as lead agencies under CEQA, the California Court of Appeal held that CEQA may indeed be by-passed when the project is rejected by the lead agency, and that lead agencies may base findings of "infeasible alternatives" upon policy grounds. These decisions will likely prove helpful to cities, counties, other public entities engaged in CEQA review; but may pose unique challenges to developers, project advocates, and others involved in CEQA advocacy.

The first case, *Las Lomas Land Co., LLC v. City of Los Angeles*,¹ involved a project for development of 555 acres in Los Angeles County, the land use application for which was filed by a developer in 2002. Although preparation of a Draft Environmental Impact Report ("EIR") was in process, in 2008 direction was given by a City Council member to cease further work on the EIR, and in March 2008 the City Council voted to reject the project without considering any Draft or Final EIR. In upholding the City's action, the court noted that CEQA generally requires lead agencies to consider the environmental impact of proposed projects, but that Public Resources Code Section 21080 exempts such environmental review if the project is rejected or disapproved. The court held that the developer's proposed project fell within this exemption, and the project could therefore be rejected without the City Council having reviewed any Draft or Final EIR.

The second case, *California Native Plant Society v. City of Santa Cruz*,² involved the City of Santa Cruz's approval of a land use master plan that was contested by the California Native Plant Society ("CNPS"). The Final EIR for the project identified four alternatives to the proposed project, but rejected them on the ground that they were "infeasible." CNPS sued, asserting numerous challenges, including claims that the project alternatives were improperly rejected. The court disagreed, noting that CEQA requires agencies to consider a broad range of "policy factors" when determining whether proposed alternatives are "feasible." Such factors, including "economic, environmental, social and technological factors," form an adequate legal basis upon which to reject alternatives as "infeasible." Because the City's rejection of alternatives in this case was based on those factors, the court held that Final EIR was sufficient and no CEQA violation occurred.



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In light of these cases, cities, counties, and other public entities serving as lead agency under CEQA should understand the unique circumstances under which CEQA exceptions apply. Developers, land owners, project advocates, businesses, and others should likewise be aware of the enhanced authority which lead agencies have over certain aspects of projects undergoing CEQA review, and should be prepared to advance their projects in ways that will overcome these challenges.

The attorneys at Alvarez-Glasman & Colvin possess extensive experience in the fields of CEQA law, environmental review and compliance, redevelopment, litigation, land use, and municipal law. For more information regarding these cases or other CEQA issues, please contact **Matthew M. Gorman** by phone at **707.542.4833**, or by e-mail at **mgorman@agclawfirm.com**.

Legal Authorities:

¹ *Las Lomas Land Co. LLC v. City of Los Angeles* (2nd Dist. September 17, 2009, Case No. B213637).

² *California Native Plant Society v. City of Santa Cruz* (6th Dist. September 18, 2009, Case No. H032502).

