

Under the Brown Act, a Planning Commission's Adoption of a CEQA Document is a Distinct Item of Business that Must be Expressly Disclosed on the Agenda

The Ralph M. Brown Act requires a legislative body of a local agency to post, at least 72 hours before a regular meeting, an agenda containing a "brief general description of each item of business to be transacted or discussed at the meeting." A recent appellate court decision clarifies that a local agency seeking to approve a project and adopt a CEQA document for the project must disclose *both* items on the agenda. [*San Joaquin Raptor Rescue Center v. County of Merced*](#), F064930 (5th District May 31, 2013) the county timely posted an agenda for a planning commission meeting listing as a single item of business the commission's consideration of a subdivision application. The agenda stated, "The action requested is to approve, disapprove or modify the application," but did not mention the commission would also be considering adoption of a mitigated negative declaration for the project. At the meeting, the commission approved the application, and, by a separate motion, adopted the mitigated negative declaration.

The petitioners sent the commission a letter alleging it violated the Brown Act agenda requirement and demanding that the commission "cure and correct" the violation by rescinding both actions. Simultaneously, petitioners appealed the commission's actions to the board of supervisors. After the commission denied petitioners' request, petitioners filed suit. While the case was pending, without conceding a Brown Act violation, the board of supervisors granted the appeal and directed the commission to rescind the project approval and adoption of the mitigated negative declaration. The commission did so, and then properly re-noticed the agenda, re-approved the project, and re-adopted the mitigated negative declaration.

The trial court found a Brown Act violation and awarded attorneys' fees to the petitioner. Hoping to avoid the fee award, the county appealed, but the court of appeal upheld the Brown Act ruling. The court concluded adoption of the mitigated negative declaration was "plainly a distinct item of business, and not a mere component of project approval," because it involved a separate action by the commission and concerned discrete issues of CEQA compliance. The Brown Act's purposes of facilitating public participation would be "impaired" if a public agency could refuse to disclose it would be considering approval of a CEQA document.

The court also rejected the county's assertion the public would have "implicitly understood" that CEQA documents would "likely be considered" at the time of project approval, noting that even if a person might have speculated from what appeared in the agenda that adoption of a mitigated negative declaration might possibly be considered at the meeting, that would not make the agenda legally adequate; the Brown Act "mandates that *each* item of business be *described* on the agenda, not left to speculation or surmise." The commission could have easily complied with this requirement "by simply adding a few words, such as 'and consider adoption of a mitigated negative declaration' regarding the project."

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