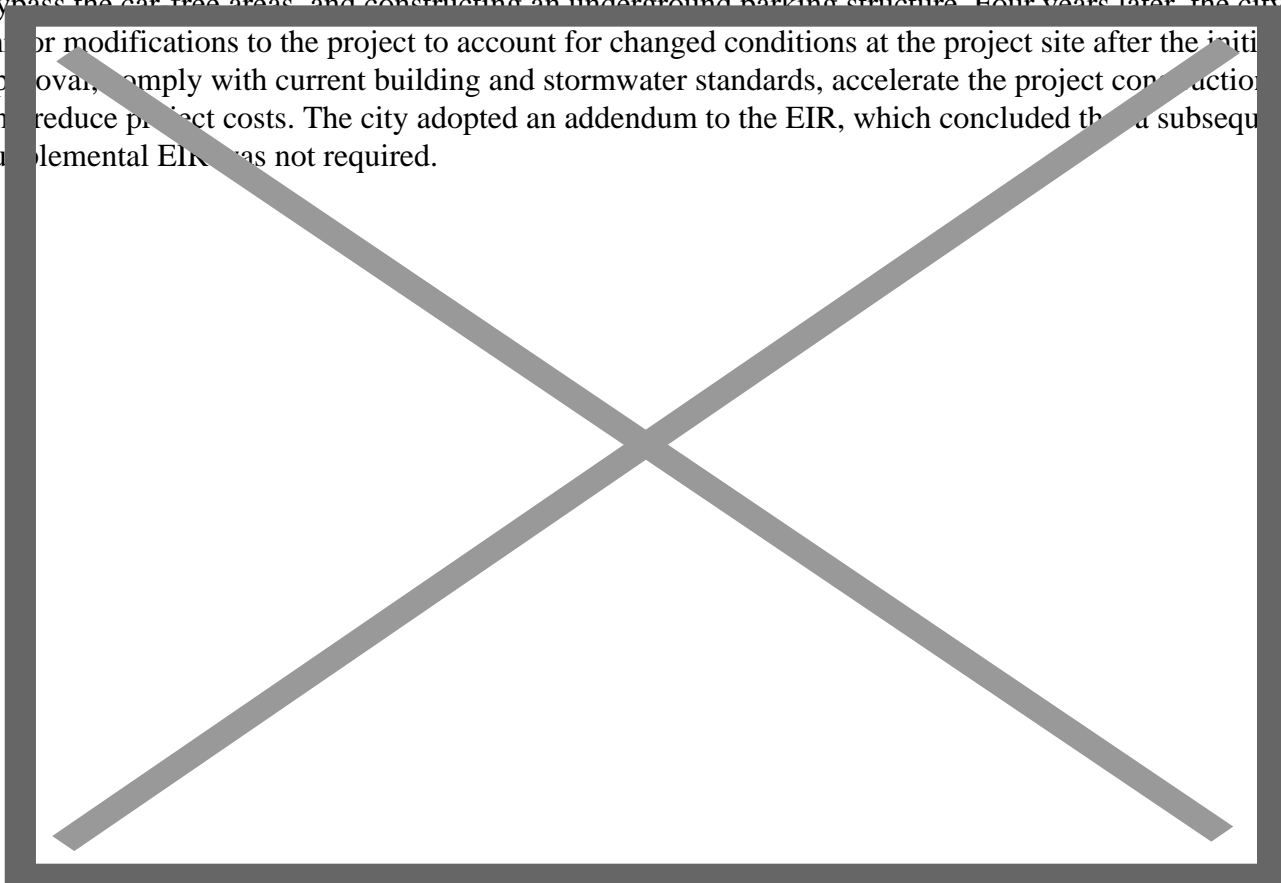


November 27, 2018

EIR Addendum Process Upheld Against Facial Challenge

The California Court of Appeal rejected a facial challenge to the EIR addendum process, and held that an agency is not required to make new findings in connection with approval of an EIR addendum. *Save Our Heritage Organisation v. City of San Diego*, 28 Cal. App. 5th 656 (2018). **Background** In 2012, the City of San Diego certified an EIR and approved a project to revitalize Balboa Park, a large urban park in the city. The project involved restricting vehicles from entering many of the central roadways and plazas, building a new road to bypass the car-free areas, and constructing an underground parking structure. Four years later, the city approved major modifications to the project to account for changed conditions at the project site after the initial project approval, comply with current building and stormwater standards, accelerate the project construction schedule, and reduce project costs. The city adopted an addendum to the EIR, which concluded that a subsequent or supplemental EIR was not required.



Facial

Challenge to Addendum Process Rejected The petitioner claimed the addendum process described in the CEQA Guidelines conflicts with CEQA's public review requirements and is not expressly authorized by the statute. The court rejected both claims. The court began its analysis by noting that the addendum guideline implements CEQA Section 21166, which sets forth conditions when project changes, changed circumstances, or new information requires the agency to prepare a subsequent EIR. The court explained: "the addendum process fills a gap in CEQA for projects with a previously certified EIR requiring revisions that do not warrant the preparation of subsequent EIRs. CEQA authorizes the Resources Agency to fill such gaps in the statutory scheme, so long as it does so in a manner consistent with the statute." The court determined that the addendum process is consistent with and furthers the objectives of CEQA "by requiring an agency to substantiate its reasons for determining why project revisions do not necessitate further environmental review." The court also held that the absence of a public review process for addenda was not inconsistent with CEQA. Rather, it reflected the nature of an addendum as a document describing project revisions too insubstantial to require

subsequent environmental review. Finally, the court noted that the Legislature's failure to modify CEQA to eliminate the addendum process in 35 years was a strong indication that it was consistent with legislative intent. **New Findings On Project's Significant Impacts Not Required** The petitioner also argued that the city was required to make new findings on the project's significant impacts when it approved the addendum. The court rejected this argument as well. The court held that nothing in the statute or Guidelines required new findings when an agency approves changes to a project based on an addendum. The court explained that the purpose of findings is to address new significant effects, but an addendum is only proper where there are no new significant effects; thus, no purpose would be served by requiring new findings to address the same significant effects that had already been addressed when the project was first approved.

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