

# Local Legislative Bodies Must Expressly Agendize CEQA Documents

## Legal Alert

County Planning Commission Failed to Include Project-Related CEQA Item on Agenda

JUNE 5, 2013

**Overview:** The California Court of Appeal recently held that the state's open meeting law (the Brown Act) requires that, if a document under the California Environmental Quality Act (CEQA) must be approved by a local legislative body in connection with the approval of another item on the body's agenda, that agenda must expressly disclose that approval of the CEQA document will be considered at the meeting. The court emphasized that the agenda item for the legislative body's consideration of a subdivision application did not implicitly include the legislative body's consideration of a CEQA document known as a mitigated negative declaration (MND). Thus, the Court held that the legislative body's approval of the CEQA document, where it had not been mentioned on its agenda, violated the agenda requirements of the Brown Act.

**Practical Points:** The Court concluded that any local legislative body that intends to consider a CEQA document in connection with the consideration of a project at a meeting must expressly disclose on its agenda that it intends to consider the CEQA document at the meeting. The mention of the CEQA document in the agenda does not have to be lengthy. The Court of Appeal indicated that the planning commission "could have easily complied with the agenda requirement by simply adding a few words, such as 'and consider adoption of a mitigated negative declaration' regarding the project." Of course, local agencies remain free to include more detailed language than that noted by the Court. The Court ultimately held that the failure to mention the CEQA document on the agenda may result in the approval of the CEQA document being set aside.

**Summary Analysis:** The Brown Act requires a local legislative body, before holding a regular meeting, to post an agenda containing a brief general

Attorneys

**Michael M. Mullins**  
Of Counsel  
(213) 787-2564

**Charity B. Schiller**  
Partner  
(951) 826-8223

Related Practice

Brown Act  
CEQA - Climate Change and  
Energy Supply  
Education Law  
Environmental Law & Natural  
Resources  
Municipal Law  
Special Districts

description of each item of business to be transacted or discussed at the meeting. The Brown Act also provides that no action or discussion may be undertaken on any item not appearing on the posted agenda. In *San Joaquin Raptor Rescue Center v. County of Merced*, the Court of Appeal recently held that a county planning commission had violated the Brown Act when it posted an agenda that included as an item of business the potential approval of a subdivision application but failed to mention that the planning commission would also be considering the adoption of an MND connected with the subdivision application. The Court of Appeal held that the planning commission had violated the Brown Act by not expressly including the consideration of the MND on its agenda. The Court noted that CEQA documents like an MND are of sufficient public interest that the public needs to be expressly advised of their consideration. The Court found that the agenda item for the subdivision application was insufficient to give the public sufficient notice that a CEQA document might possibly be considered in connection with the application.

**Follow-up contact:** If you have any questions about this decision or its effect on your organization, please contact [Michael Mullins](#) in the firm's Municipal Law practice group, [Charity Schiller](#) in the firm's [Environmental Law and Natural Resources practice group](#) or your [BB&K attorney](#).

*Disclaimer: BB&K legal alerts are not intended as legal advice. Additional facts or future developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information in this communiqué.*