



Governor's Veto Said CEQA Is Enough, No Need For Law Requiring "Economic Impact Report" For Superstores

November 23rd, 2011

Written by: Nadia Costa and Arthur Coon

Like the Sherlock Holmes story featuring the "dog that didn't bark," sometimes proposed legislation that *doesn't* pass can nonetheless provide fundamental insights. A case in point: Senate Bill 469 (Vargas), the Small & Neighborhood Business Protection Act, which *would* have required a lead agency to prepare an "economic impact report" before acting on *any* request to construct or convert to a "superstore retailer," but which was vetoed by Governor Brown.

The failed bill first serves as a reminder of what CEQA isn't. Under CEQA it is fundamental that *economic* or *social* impacts of a project need *not* be analyzed, *except* to the extent they are part of a chain of "cause and effect" leading directly or indirectly to adverse *physical* changes in the environment. Where substantial evidence of such effect is shown, an urban decay analysis — evaluating the potential physical environmental impacts of blight that result from the construction of a "superstore" in a particular area — is often required in connection with the entitlement process for a "superstore." Even so, the case law rejects the notion that an EIR must contain an urban decay analysis in the case of *every* "supercenter" approval. (*Melom v. City of Madera* (2010) 183 Cal.App.4th 41.)

SB 469's "economic impact report", by contrast, would have been required in every case and, further, would have been a distinct analysis from the "urban decay" evaluation typically prepared under CEQA, such that applicants seeking approval to construct or convert a "superstore" would often have been required to prepare *both* reports. The SB 469 report would also have been more onerous than the typical "urban decay" report, as it would have mandated detailed assessments of purely economic considerations, in addition to land use policy, traffic and housing impacts. Among other things, SB 469 would have required an assessment of:

- The extent to which the superstore would capture a share of retail sales in the market area and how it would affect the market area's supply and demand for retail space;
- Whether housing, including affordable housing, would be demolished, or park/green space lost;
- How employment in the market area would be affected; and
- The impact on average total vehicle miles traveled by retail customers in the market area.

SB 469's practical implications would have been even more far-reaching since the requirement to prepare the economic impact report would have been imposed on both discretionary and *ministerial actions*, such as *issuance of a building permit*. By contrast, another "first principle" of CEQA is that its environmental review requirements do *not* extend to purely ministerial actions; in such cases the



information obtained would obviously be useless absent the discretionary ability to modify or condition the project to address environmental concerns.

In explaining his decision to veto SB 469, Governor Brown highlighted the concerns raised by opponents, including the significant additional costs and layers of complexity that would have been imposed on the entitlement process, with the concomitant negative impact on job creation and competitive advantage. In addition, he emphasized there are “plenty of laws are already on the books that enable and in some cases require cities and counties to carefully assess whether these projects are in a community’s best interests.”