NEC and CSH Call Out Planning Department for Pattern of Inaccurate Characterizations of CEQA's Standards and Requirements

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(*Eureka, CA*) In response to what they see as an ongoing pattern of inaccurate statements about the standards and requirements of the California Environmental Quality Act (CEQA) in regards to permitting projects in Humboldt County, the Northcoast Environmental Center (NEC) and Citizens for a Sustainable Humboldt (CSH) have submitted a letter (see attached) to the Board of Supervisors and Planning Department seeking to set the record straight and foster improved adherence to environmental regulations. The letter comes in response to the County repeatedly issuing Mitigated Negative Declarations (MNDs) for proposed projects rather than requiring project applicants to go through the more rigorous and public process of a full Environmental Impact Report (EIR). The NEC and CSH have filed a lawsuit against the County challenging the approval of one such project, the Rolling Meadow Ranch Cannabis project near McCann.

As stated in the letter, "Over the course of several recent Planning Commission and Board of Supervisor meetings, where proposed large development projects have been considered for approval, NEC and CSH members have observed repeated inaccurate characterizations of CEQA's standards and requirements." These include downplaying the important procedural and substantive differences between an EIR and an MND; portraying the "fair argument" test under CEQA (which establishes the low threshold for requiring an EIR) as a higher burden of proof for project challengers than it actually is under the statute and controlling case law; advancing a double standard, where County planning staff and project applicants are permitted to present absolute conclusions dismissing the potential for significant environmental impacts that are nothing more than unsubstantiated opinion while at the same time staff and applicants criticize substantiated comments from the public, other agencies, and County planners concerning potentially significant impacts that may be caused by proposed projects as lacking sufficient evidence and expert support; and implying that County decision-makers have discretion to decide to prepare an MND instead of an EIR based on practical considerations, such as

whether more in-depth environmental impact analysis would change the outcome, rather than on the required factual and legal basis.

One example the groups point to is Planning Director John Ford repeatedly falsely equating an MND with an EIR, saying at one point that they “do very much the same thing” and that the level of study is “very similar.” Preparation of an EIR is a multi-step process of studies and reviews which the public and other agencies are able to review and comment on and the lead agency (in this case, the County) is required to respond to public and agency comments and revise the analysis in the final EIR if necessary. With an MND, the lead agency is not required to respond to public and agency comments. The heightened procedural and substantive requirements for an EIR result in a more robust analysis of a proposed project's impacts and the ways in which those impacts can be minimized and avoided through mitigation and alternative designs.

The letter also addresses the inaccurate characterization of CEQA's "fair argument" test for determining whether an EIR is required as opposed to an MND stating that,

> “pursuant to the mandatory language of the CEQA statute and CEQA Guidelines, an MND is only allowed when the Initial Study demonstrates with substantial evidence that, after incorporating mitigation measures, a proposed project will “clearly” not cause “any significant effect on the environment.” In contrast, an EIR is required when there is a fair argument, based on substantial evidence, that a project “may” cause one or more potentially significant impacts. In other words, when an MND is prepared, the burden is on the lead agency (here the County) to demonstrate with supporting evidence and transparent analysis that, with incorporated mitigation measures and project design changes, there is no possibility that the proposed project may cause significant impacts. If commenters present any substantial evidence supporting a fair argument that the project may cause significant impacts, then an EIR is required – even if there is also substantial evidence that the project may not cause significant impacts.”

When project applicants have mis-characterized the “fair argument” test to shift the burden of proof to opponents by stating they must present proof that a project “will” have a significant environmental impact (rather than the lead agency having to prepare an EIR to prove that it won’t), County staff have failed to correct them.

Recognizing that these issues may arise out of a fundamental misunderstanding of the CEQA statute and guidelines and how they apply to discretionary project approvals, NEC and CSH have submitted these comments to help the Board of Supervisors and County staff “foster improved public participation and help ensure decisions with major long-term implications for the environment are based on an accurate understanding of these important legal concepts.”

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