CLIENT NEWS BRIEF

Public Agencies Required to Maintain Emails Related to CEQA Determinations

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A recent court ruling reaffirms the expansiveness of administrative records required to be retained under the California Environmental Quality Act (CEQA). The decision in *Golden Door Properties v. Superior Court of San Diego County*, (June 30, 2020, D076605, D076924, D076993) __ Cal.App.5th __ , held that public agencies must retain all writings that are statutorily required to be included in the record of a CEQA challenge, including emails that would otherwise be subject to deletion by the public agency's records retention policy.

The Golden Door Properties Decision

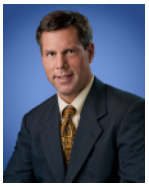
Public Resources Code section 21167.6 prescribes that certain documents must be included in the record of proceedings for an environmental impact report. The documents which must be in the record include "all written evidence or correspondence submitted to, or transferred from" the public agency and "all internal agency communications, including staff notes and memoranda" related to the project.

In *Golden Door Properties*, the County of San Diego, serving as lead agency for the project at issue, had a record retention policy whereby all emails not flagged by County staff as "official records" were automatically deleted after 60 days. The Plaintiff sought to include in the record of proceeding a number of emails pertaining to the project that had not been flagged as "official records" and which the County had deleted pursuant to its policy. The trial court determined the emails included within Section 21167.6 must be in the record for a CEQA challenge, but only to the extent such records still exist and had not been deleted prior to the action. Thus, in the trial court's view, agencies would be allowed to destroy such records per their regular record retention policies, with no special responsibility to retain them.

The Court of Appeals reversed, holding that public agencies must retain all writings included in Section 21167.6 so that they may be included in the record. The court determined that the plain language of Section 21167.6 required "all" identified documents to be included in the record and as such it could not be reasonably interpreted to exclude emails that the lead agency had already destroyed. Moreover, the court observed the importance of the record in not only providing the public information about the government's environmental decision-making, but also to ensure meaningful judicial review. These purposes would be undermined if the lead agency could destroy records, particularly those not favorable to the agency, and thereby prevent their inclusion in the record.

Takeaways

Public agencies serving as lead agencies for CEQA review must take care to ensure all records identified in Public Resources Code section 21167.6 are preserved so that they may be included in the record of proceedings in the event of a CEQA challenge. Importantly, these records must be preserved for CEQA purposes notwithstanding the retention rules that would normally apply pursuant to agency's records retention policies or the various laws affecting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different types of public entities, such as that imposed on school districts by California Code of Regulations, title 5, section 16020 et seq.

If you have any questions regarding the impact of the *Golden Door Properties* decision, or regarding CEQA in general, please contact the authors of this Client News Brief or an attorney at one of our eight offices located statewide. You can also subscribe to our podcast, follow us on Facebook, Twitter and LinkedIn or download our mobile app.