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LAWYERS

CEQA Reform – A Popularity Contest

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In addition to SB 731, which we covered in a previous *Aviation Alert* (February 27, 2013), **26 additional CEQA-related bills** were introduced into the California Legislature. At present, about one-third of the bills are noteworthy, although that percentage is likely to change as bills are amended through the course of this legislative session. Indeed, some of the bills are described as "spot" bills because they were submitted only to meet the deadline for introduction of proposed legislation and are likely to be fleshed out with substantive provisions in the coming months. Further, only time will tell what bills prove to have traction, and receive attention from California's legislators.

The following discussion summarizes all 27 CEQA-related bills introduced for consideration during the 2013-2014 legislative session. The summaries are intended to provide a general overview; for those bills of specific interest, please review the actual text of the proposed bill.

AB 37: This bill would require:

- The lead agency, at the request of an applicant and for specified projects only, to prepare a record of proceedings concurrently with preparation of the environmental review documents;
    - Projects subject to the bill are: projects determined to be of statewide, regional, or areawide environmental significance; infill projects; or, any other project for which the lead agency consents to prepare the record;
- The lead agency to respond to an applicant request to prepare the record concurrently within 10 business days from the date the request is received, which time may be extended by mutual agreement, and the request is deemed denied if the lead agency fails to respond within the designated period;
- The lead agency to certify the record within 30 days after filing the NOD;
- The applicant to reimburse the lead agency for the costs incurred in compliance with the section, and a plaintiff or petitioner, if any, is not required to pay these costs, and the costs of compliance are not recoverable costs;
- All documents and other materials placed in the record to be posted on, and be downloadable from, a web site maintained by the lead agency commencing with the date of release of the draft environmental document;
- The lead agency to make available to the public, in a readily accessible electronic format, the draft environmental document and all other documents submitted to, cited by, or relied on by, the lead agency in the preparation of the draft environmental document;
- A document prepared by the lead agency or submitted by the applicant after the date of release of the draft document that is part of the record to be made available to the public in a readily accessible electronic format within 5 business days after the document is released or received by the lead agency;
- The lead agency to encourage written comments to be submitted in a readily accessible electronic format, and make any comment available to the public in a readily accessible electronic format within 5 days of its receipt;
- The lead agency to convert any comment that is not in an electronic format into a readily accessible electronic format and make it available to the public in that format within 7 business days after the receipt;

(The section would remain in effect only until January 1, 2017, and is repealed, unless a later enacted statute deletes or extends that date.)

AB 253: Would exempt from CEQA the conversion of an existing rental floating home marina to a resident initiated subdivision, cooperative, or condominium for floating homes if the conversion will not result in an expansion of or change in existing use of the property.

AB 380: Would require that specified CEQA notices be filed with both OPR and the county clerk, and posted for at least 30 days; OPR also is to post the notices on a publicly available online database established and maintained by the office. The bill also would provide that any time or limitations period specified by CEQA does not commence until the notices are actually posted for public review and available in the online database, whichever posting date is later.

AB 417: Would exempt from CEQA, until January 1, 2018, a bicycle transportation plan for an urbanized area, and also require the agency making such determination to hold noticed public hearings in the affected areas, and include measures in the plan to mitigate potential vehicular traffic impacts and bicycle and pedestrian safety impacts.

AB 515: Would establish at least two CEQA compliance court districts. Each district would consist of at least three judges, appointed by the Governor, "based upon their expertise in CEQA and related land use and environmental laws, so that those judges will be able to hear and quickly resolve those actions or proceedings." No more than three judges shall participate in a hearing or decision, and the concurrence of two judges is necessary to render the decision in every case. The court shall have jurisdiction over actions involving CEQA and joined matters involving related land use and environmental laws, and the decision of the court may be appealed only to the Supreme Court.

AB 543: Would require a lead agency to translate "any notice, document, or executive summary" required by CEQA when the impacted community has a substantial number of non-English speaking people.

AB 628: Would include a project to develop or implement an energy management plan among those types of projects covered by the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, which established specified judicial review procedures for EIRs and related approvals granted for leadership projects.

AB 756: As introduced, the bill makes technical, non-substantive changes to CEQA. As such, it is a "spot" bill, intended only as a placeholder for subsequent text.

AB 794: Would exempt from CEQA: (1) a project that takes landfill materials or organic waste and converts them into renewable green energy, if the lead agency finds the project would result in a net reduction in greenhouse gas emissions; and (2) a project that uses natural biological processes to convert organic waste streams into non-chemical soil fertility products that support renewable and reusable cultivation and viability.

AB 823: Would require a lead agency, for a project that converts agricultural lands to non-agricultural uses, to require mitigation measures consisting "at a minimum, of providing replacement acreage through a grant, in perpetuity, of an agricultural or farmland conservation easement, a deed restriction, or other conservation mechanism on the replacement acreage to ensure the availability of agricultural production capacity by limiting non-agricultural development that is inconsistent with agricultural uses and related activities for the benefit of a qualified entity."

AB 930: Similar to AB 628, discussed above.

AB 953: Would revise the definitions of "environment" and "significant effect on the environment" to include "exposure of people, either directly or indirectly, to a substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment." The bill also would require the lead agency to include in an EIR a detailed statement on "any significant effects that may result from locating the proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions." This bill effectively seeks to

reverse the *Ballona Wetlands Land Trust v. City of Los Angeles* decision (2011), which held that the purpose of CEQA is to study the effects of projects on the environment (not the effects of the environment on projects).

AB 1060: Would exempt from Department of Fish and Wildlife filing fees those projects being carried out or implemented by a branch of the United States Armed Forces.

AB 1079: Similar to AB 628, discussed above.

AB 1267: Would ratify an amendment to a tribal-state gaming compact, and provide that, in deference to tribal sovereignty, certain actions carried out by the Shingle Springs Band of Miwok Indians may not be deemed "projects" for purposes of CEQA.

AB 1323: Would reduce the time and expense associated with environmental review of qualifying wind energy projects.

SB 123: Would require the presiding judge of each superior court to establish an environmental and land-use division within the court to process civil proceedings brought pursuant to CEQA or in specified subject areas, including air quality, biological resources, climate change, hazards and hazardous materials, land use planning, and water quality.

SB 167: As introduced, the bill makes only technical, non-substantive changes to CEQA, and is a "spot" bill.

SB 359: As introduced, the bill makes only technical, non-substantive changes to CEQA, and is a "spot" bill.

SB 436: Would require/clarify a lead agency to conduct at least one *public* scoping meeting for either: (1) a project that may affect facilities under the jurisdiction of Caltrans, if the meeting is requested by Caltrans; or (2) a project of statewide, regional, or areawide significance. The bill also would amend the notice requirements relating to NOPs to require that notice be given to *all* of the following: (1) the last known name and address of all organizations and individuals who have previously requested notice; (2) by mail to the owners and occupants of contiguous property; (3) by mail or e-mail to responsible and trustee agencies; (4) by mail or e-mail to the project applicant; and (5) the State Clearinghouse. The bill also would require that state agency NODs be posted by OPR on its web site within one business day after its filing, and remain on the site for not less than 12 months, and that local agency NODs be posted within 24 hours of receipt with the county clerk and on the lead agency's website, and with OPR within one business day after its filing.

SB 525: Would provide that a project by the San Joaquin County Regional Rail Commission and the High-Speed Rail Authority to improve the existing tracks, structure, bridges, signaling systems, and associated appurtenances located on the existing railroad right-of-way used by the Altamont Commuter Express service qualifies for a statutory exemption.

SB 617: This bill is the Senate companion bill to AB 37 [regarding concurrent preparation of the record of proceedings]; AB 380 [regarding county clerk and OPR posting of notices]; and AB 953 [regarding revisions to "significant effect on the environment" and the related required analysis]. (See above summaries for detail.)

SB 633: Would amend the "new information" provisions regarding preparation of a supplemental or subsequent EIR to clarify that the information was not known by the lead agency or responsible agency. As introduced, this bill appears to be a "spot" bill.

SB 731: Currently an "outline" that addresses renewable energy projects; significance thresholds; streamlined master planning; judicial remedies; and, late hits and data dumps. (Please see the February 27, 2013 *Aviation Alert* for further information.)

SB 739: As introduced, the bill makes only technical, non-substantive changes to CEQA, and is a "spot" bill.

SB 754: As introduced, the bill makes only technical, non-substantive changes to CEQA, and is a "spot" bill.

SB 787: This bill resurrects the approach taken in SB 317, which was submitted at the end of last year's legislative session. In short, it allows an EIR to rely on analysis conducted in connection with prior compliance with other environmental laws, and precludes lawsuits if the cause of action relates to that environmental analysis. The intent is "to further the purposes of CEQA by integrating environmental and planning laws and regulations …, while avoiding the sometimes conflicting and often duplicative ad hoc environmental review and mitigation requirements under CEQA." SB 787 provides, *inter alia*, that an environmental document prepared pursuant to CEQA that discloses an applicable environmental law, the compliance requirements of that law, and compliance with the standards for impacts that occur or might occur as a result of approval of the project "shall be the exclusive means of evaluating and mitigating environmental impacts under CEQA regarding the subject of the law." The bill provides that a cause of action for non-compliance with CEQA relating to such analysis shall not be commenced.

SB 787 also would: (1) eliminate the requirement to evaluate aesthetics, except for projects with potentially significant impacts on an official state scenic highway; (2) retain the obligation to evaluate potential effects on Native American resources; (3) apply only to projects for which the lead agency or applicant agrees to provide to the public in a readily accessible electronic format an annual compliance report prepared pursuant to CEQA's mitigation monitoring and reporting program requirements; (4) not preclude any state, regional, local agency or any political subdivision from requiring information or analysis of the project, or imposing conditions of approval under laws and regulations other than CEQA; and (5) require that an environmental document be required to consider only the Appendix G topics and only to the extent they are relevant to the project.

We will be monitoring all CEQA reform legislative action and will provide further updates, as appropriate.