

TO: Legislative Program Committee, County of Santa Barbara

FROM: Cliff Berg, Legislative Advocate
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RE: CEQA Update

DATE: May 17, 2013

CEQA Update

At our last Legislative Committee meeting, we discussed some of the CEQA bills; we were requested to provide a snapshot of all of the measures that were moving through the legislature related to CEQA reform so the Board could have a better understanding of what is being discussed in Sacramento. Below are all of those bills, what they are attempting to do and their status.

AB 37 by Assembly Member Henry Perea (D-Fresno) would allow project applicants and lead agencies to anticipate and prepare for CEQA litigation. The need for the bill sights legislative deliberations on (AB 900 and SB 292); all stakeholders agreed that the opportunity to have the administrative record prepared earlier than current law required would expedite the judicial process. In fact, some parties believe that preparation of the record delays judicial review more than any other factor. According to the author, litigants, especially project applicants who know or have good reason to believe that their proposed developments may be challenged in court, would primarily benefit from having a record of proceedings prepared concurrently with the administrative process. Having a record ready and available upon the filing of a CEQA lawsuit would allow a court to set a case for hearing at the soonest possible time. This could reduce uncertainty and costs. This bill is currently sitting on the Assembly Appropriations suspense file.

AB 52 by Assembly Member Mike Gatto (D-Glendale) would provide a statutory process for Native American tribes to engage in the California Environmental Quality Act (CEQA) review process to avoid significant effects on tribal resources. The bill requires the Office of Planning and Research (OPR) to prepare, and the Secretary of the Natural Resources Agency (NRA) to certify and adopt revisions to the CEQA guidelines that establish a process to clarify tribal government involvement including the timing for tribal participation and the preparation of documents other information. The bill also requires a public agency to find that a project may have a significant effect on the environment if a proposed project may have a significant effect on a tribal cultural resource pursuant to the CEQA guidelines. Requires the lead agency to consult with the appropriate Native American tribes in making a determination of significant effect. Finally, the bill also requires the lead agency to use the most current and up-to-date technology and information, including tribal, local, state and national registers and other

specified available information. The bill is currently sitting on the Assembly Appropriations suspense file.

AB 277 by Assembly Member Isadore Hall (D-Los Angeles) this bill is the ratification of the two compacts (North Fork and Wiyot), and includes the usual CEQA exemption language contained in all compact ratification bills. Tribes are exempted under CEQA because: a) they are on sovereign lands, and b) the compacts establish a parallel process called the Tribal Environmental Impact Report (TIER). The TIER governs all tribal related activities including: It specifies that this CEQA exemption does not apply to a city, county, or city and county, or the Department of Transportation. The bill is sitting on the Senate floor awaiting a vote, the bill has a lot of opposition, and other tribes stated that this is reservation shopping at its worst.

AB 380 by Assembly Member Roger Dickenson (D-Sacramento) would establish uniform procedures for electronic posting of California Environmental Quality Act (CEQA) documents by county clerks and the Office of Planning and Research (OPR). This bill also clarifies that scoping meetings, required to be held by lead agencies for certain highway projects and other projects or statewide, regional, or area wide significance, are public. The bill is currently sitting on the Assembly Appropriations Suspense file.

AB 417 by Assembly Member Jim Frazier (D-Oakley) would create an exemption to the California Environmental Quality Act (CEQA) for the approval of urban bicycle transportation plans. Prior to determining if the plan is exempt under CEQA, this bill specifically requires the lead agency approving the plan to do the following: Hold noticed public hearings in areas affected by the bicycle transportation plan to hear and respond to public comments; include measures in the bicycle transportation plan to mitigate potential vehicular traffic impacts; Include measures in the bicycle transportation plan to mitigate potential bicycle and pedestrian safety impacts. This bill also requires the local agency granting the CEQA exemption to file a notice of determination with the Office of Planning and Research (OPR) and the clerk of the county in which the project is located. Additionally, this bill is a pilot program and is scheduled to sunset January 1, 2018.

AB 543 by Assembly Member Nora Campos (D-San Jose) would require a lead agency to translate certain notices and summaries of a negative declaration, mitigated negative declaration, or environmental impact report (EIR) required under the California Environmental Quality Act (CEQA) when the community impacted by the proposed project has a substantial number of non-English-speaking people. The bill is going to the Assembly Appropriations committee but has not been scheduled yet.

AB 953 by Assembly Member Tom Ammiano (D-San Francisco) would requires a lead agency preparing an environmental impact report (EIR) pursuant to the California Environmental Quality Act (CEQA) to analyze significant environmental effects resulting from locating a proposed project near, or attracting people to, areas with substantial existing or reasonably foreseeable natural hazards or adverse environmental

conditions. The bill is currently sitting on the Assembly Floor waiting to be taken up for a vote.

AB 1060 by Assembly Member Steve Fox (D-Palmdale) would exempt U.S. military projects from filing fees required to be paid to the Department of Fish and Wildlife (DFW) for the cost of managing and protecting fish and wildlife trust resources in connection with CEQA review requirements. This bill is on consent and is sitting in Senate Rules committee awaiting a committee assignment.

SB 731 is a comprehensive reform measure to strengthen CEQA's protection of the state's environment and residents while modernizing the law to aid California's economic growth. We are told that the bill is the result of months of discussion and negotiation with key representatives from the business, environmental, and organized labor communities. These changes were key issues identified by a CEQA working group of experts brought together by Senator Steinberg this past fall. The intent of SB 731 is to help reduce litigation and delays from CEQA while protecting the legitimate uses of the statute. The bill passed out of the Senate Environmental Quality Committee with a vote of 8-0. The bill will be heard in the Senate Appropriations Committee at the end of May.

SB 359 by Senator Ellen Corbett (D-Hayward) revises the residential infill exemption by increasing the amount of allowable neighborhood-serving goods, services, or retail uses from 15% to 25% of the building square footage. Over the last decade, smart growth planning principles have continued to encourage the integration of residents' day-to-day needs within close proximity of those same residences. This type of design encourages lower vehicle miles traveled (VMT) due to local residents' ability to access these services by walking or biking instead of traveling by car. Lowering VMT improves air quality, reduces greenhouse gas emissions, lessens the need for new roads and extends the life of existing roads. One method pursued by many local jurisdictions to implement these VMT-reducing policies in an urbanized setting is to encourage building design that incorporates ground-floor neighborhood-servicing uses on the bottom floor, with residential housing on the floors above. This means that for projects using this design, the current 15% limit for neighborhood-serving uses confines the use of this exemption to only those projects that are at least seven stories tall. This is much taller than many jurisdictions allow, even though the project would otherwise meet all other infill and environmental review requirements. An increase to 25% of the total building square footage would allow for a four-story project of this type to meet the exemption requirements. This measure is currently sitting on the Senate Floor waiting to be taken up for a vote.

SB 436 by Senator Hannah-Beth Jackson (D-Santa Barbara) attempts to address concerns regarding late comments on environmental documents under CEQA by increasing and clarifying those parties and entities that must receive public notice regarding the period to comment on an environmental document and the date, time, and place of any public hearings on a proposed project. This measure is currently sitting on the Senate Floor waiting to be taken up for a vote.

SB 617 by Senator Noreen Evans (D-Santa Rosa) is intended to improve and strengthen CEQA by updating various outdated procedural requirements, clarifying that project reviews must examine the impacts of the physical environment on the project, and deleting obsolete provisions. This measure is currently sitting on the Senate Appropriations Suspense file.

SB 633 by Senator Fran Pavley (D-Agoura Hills) this bill was introduced in response to some local governments and sponsors of local events such as nonprofit groups, charities, schools, businesses, farmers' markets, tourism boards, and others have become concerned that litigation in 2010 may require many temporary local events fully to comply with [CEQA]. This concern exists even though several categorical exemptions within the CEQA Guidelines would already seem to apply to these events, especially Section 15304 that exempts minor alterations to land or water including temporary use of land having negligible or not permanent effects on the environment, including carnivals, sales of Christmas trees, etc. Thus, although the concern may be exaggerated, it is one that the Legislature may help resolve. On an unrelated point, the bill also clarifies the need for supplemental [EIRs]. Current law says that a supplemental EIR has to be done when new information is available at the time the [EIR] was certified. This bill would limit that to new information known to the lead agency or a responsible agency. This bill passed out of the Senate Environmental Quality Committee on April 24th, the bill has now moved Senate Appropriations Committee and will be heard at the end of May.

SB 659 by Senator Loni Hancock (D-Oakland) attempts to address a problem of under qualified archaeologists practicing cultural resource management for the purposes of CEQA due to a lack of standards for people/organizations/agencies trying to find a qualified archaeological consultant. More specifically, we are trying to address the problem that local governments and lead agencies have when trying to find a qualified consultant for CEQA mandated archaeology. In many situations they do not know what a qualified archaeologist looks like and can end up hiring under qualified archaeologists. This can result in under qualified archaeologists practicing archaeology that harms cultural and historical sites. Additionally, Indian Tribes have observed that the use of under qualified archaeological consultants has resulted in the loss of significant Native American cultural sites as a result of their failure to locate or report those sites during the environmental review process. This bill passed out of the Senate Environmental Quality Committee on April 24th, the bill has now moved Senate Appropriations Committee and will be heard at the end of May.

SB 754 by Senator Noreen Evans (D-Santa Rosa) this bill attempts to promote independence and neutrality in environmental review by prohibiting lead agencies from delegating oversight of review to developers. This bill would allow more flexibility in designing mitigation measures for impacts to archaeological and Native American cultural resources by removing an arbitrary cap on mitigation. It would promote current and relevant environmental reviews by limiting the shelf-life of older environmental impact reviews to seven years. Finally, since mitigation is the heart of CEQA success, this bill creates a more coherent process for mitigation enforcement, providing notice and time for developers and lead agencies to implement mitigation before legal action may be

taken to enforce mitigation. This bill passed out of the Senate Environmental Quality Committee on April 24th, the bill has now moved Senate Appropriations Committee and will be heard at the end of May.

SB 787 by Senator Tom Berryhill (R- Modesto) seeks to clarify that when enacting CEQA and subsequent amendments, the Legislature declared its intent to ensure that all public agencies provide substantial consideration to preventing environmental damage while allowing for a satisfying and livable place for every Californian. This bill seeks to further the purposes of CEQA by better integrating applicable planning laws and regulations that did not exist when CEQA was first passed, while avoiding conflicting and duplicative ad hoc environmental review that is often required by CEQA. This bill appeals to local control and broader environmental law. It also provides for an environmental document in an electronic format, fostering the public's accessibility to full review of the project's impacts. This bill did not have the necessary votes to move out of the Senate Environmental Quality Committee so it will be a two-year bill.

Again, these are all the significant CEQA reform bills that are currently moving through the legislative process. As the County reviews these for a possible position, please let me know if you have any questions or would like additional details.