



ASSOCIATION OF
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Memo

November 1, 2011

TO: AEP Membership and Interested Parties

FR: Gene Talmadge, President, Association of Environmental Professionals

RE: **New Laws Affecting the California Environmental Quality Act (CEQA)**

Summary

September 9, 2011 was the deadline for the California Legislature to send bills to Governor Brown in hopes for enactment in 2011. During the course of the year, 37 bills at one time or another, proposed amendments affecting the operation of CEQA. Of these 37 bills, ten with CEQA-related affects reached the Governor's desk. Nine were enacted and one was vetoed.¹

Three Major Bills: SB 292, AB 900 and SB 226

On September 27, 2011 Governor Brown signed two urgency bills, **SB 292** and **AB 900** to take effect immediately. These measures are intended to streamline the judicial review of litigation challenging the adequacy of environmental impact reports for certain types of projects. On October 4, 2011 Governor Brown signed **SB 226**, which amends CEQA in several important respects.

Six additional bills make relatively minor changes to CEQA or the interaction between CEQA and other laws.

These new laws are summarized below. If you have any questions concerning these bills, please contact our lobbyist, Allan Lind at 916-761-1373 or lindallan@yahoo.com

Thank you.

Gene Talmadge



New Laws Affecting CEQA

SB 292 (Padilla, D-Pacoima); expedited judicial review for litigation challenging the adequacy of an EIR for the *Convention Center Modernization and Farmer's Field* project in Los Angeles. (SB 292 takes effect *immediately* as an urgency statute).

SB 292 adds a new section to CEQA (Public Resources Code Section 21168.6.5) to streamline *judicial* review procedure for any action or proceeding to attack, review, set aside, void, or annul certification of an EIR or any subsequent project-related approvals for the Farmer's Field project by imposing limitations on the cause of action resulting in litigation and time allowed for trial motions and argument. A key feature of this new law is to assign original jurisdiction for the actions or proceedings listed above to the Second District Court of Appeal.

In order to facilitate the Farmer's Field judicial review procedure, 21168.6.5 also establishes procedures for the *administrative* review of the Farmer's Field draft and final EIRs, including informational workshops, availability of hearing transcripts, requests for nonbinding mediation, etc.

Section 21168.6.5 further provides that the lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

- a. New issues raised in response to comments by the lead agency,
- b. New information released by the public agency subsequent to the draft EIR,
- c. Changes made to the project after the close of the public comment period,
- d. Proposed conditions for approval, mitigation measures, or proposed findings required by 21081, or a proposed reporting and monitoring program required by 21081.6(a)(1) or
- e. New information that was not reasonably known or would not have been known during the public comment period.

Finally, 21168.6.5 provides that the lead agency shall require the project applicant to achieve and maintain carbon neutrality and a trip ratio standard as prescribed.

More information on SB 292, can be found at: http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_292&sess=CUR&house=B&author=padilla

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AB 900 (Buchanan, D-San Ramon), expedited judicial review for “environmental leadership development projects.” (AB 900 takes effect immediately as an urgency statute).

AB 900 enacts the *Jobs and Economic Improvement Through Environmental Leadership Act of 2011* (“Act”). AB 900 uses SB 292 as a template for streamlining the judicial review of environmental leadership development (ELD) projects, including assignment of original jurisdiction to the Court of Appeal with jurisdiction over an affected project.

ELD projects are defined to include:

- a. Residential, retail, commercial, sports, cultural, entertainment, or recreational use projects that achieve a list of environmentally friendly standards (e.g., LEED silver or better, transportation efficiency, located on an urban infill site, and consistency with certain local land use requirements),
- b. Wind or solar energy projects, and
- c. Clean energy manufacturing projects.

To be eligible for streamlining, a project must be certified by the Governor as an ELD project. ELD project certification is dependent on the Governor finding that a project will:

1. Result in a minimum investment of \$100 million in California,
2. Create skilled jobs paying prevailing wage, and
3. Not result in any net additional emissions of greenhouse gases,

The Governor must also find the applicant:

- a. Has entered into a binding and enforceable agreement that all mitigation measures required pursuant to CEQA shall be conditions of approval of the project and
- b. Agrees to pay court costs and the costs of preparing the administrative record. Prior to certification, the Governor shall make a determination that the conditions of PRC Section 21183 are met. The Governor’s determination is subject to concurrence by the Joint Legislative Budget Committee.

Finally, streamlining authorized by the Act applies only to an ELD project where the project’s EIR has been certified prior to June 1, 2014. The Act sunsets on January 1, 2015.



More information on AB 900, can be found at: http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=ab_900&sess=CUR&house=B&author=buchanan

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SB 226 (Simitian, D-Santa Clara), amends CEQA in several respects and authorizes expedited re-certification of a solar thermal powerplant. (SB 226 takes effect on January 1, 2012).

With respect to CEQA, SB 226 does all of the following:

- a. Creates a statutory exemption for Solar PV projects on commercial and industrial roof tops and certain parking structures;
- b. Allows consolidation of scoping meetings in instances where a planning agency is adopting a general plan and makes a conforming change in the Planning and Zoning Law;
- c. For projects that are covered by a categorical exemption, SB 226 prohibits the project's GHG emissions from trumping the project's cat. ex.;
- d. SB 226 adds a new Section 21094.5 to CEQA intended to streamline CEQA review of urban infill projects. 21094.5 provides that if an EIR was certified for a "planning level decision" then, for an infill project covered by the encompassing EIR, the subsequent CEQA review may be limited to the effects on the environment that are either:
 - 1) Specific to the project or project site, or
 - 2) Address substantial new information that shows the effects of the project will be more significant than described in the prior EIR.

CEQA review of the infill project would, however, not be required if:

- 1) The previous EIR did not consider the effect to be significant, or
- 2) The lead agency makes a finding that uniformly applicable development policies or standards adopted by the lead agency apply to the project and will substantially mitigate the identified effect.

Additionally, the eligible infill project EIR would not need to include analysis of growth-inducing impacts, alternative locations, densities, and building intensities. Finally, OPR is required to prepare CEQA Guidelines



amendments for Resources Agency certification that facilitates implementation of 21094.5.

With respect to an existing solar thermal powerplant, SB 226 authorizes the California Energy Commission to convert a solar thermal technology project certified by the commission to a photovoltaic technology project without the need to file an entirely new application, provided the project proponent petitions the commission prior to 06/30/2012 for the conversion and the commission prepares supplemental environmental review, including public notice and comment. This authority is limited to a project located on BLM land and approved by U.S. DOI before 09/01/2011.

More information on SB 226 can be found at: http://www.leginfo.ca.gov/cgi-bin/postquery?bill_number=sb_226&sess=CUR&house=B&author=simitian

Other CEQA-Related Bills

AB 120 (Assembly Budget Committee), among other things, this omnibus Budget Trailer Bill prohibits operation of vacuum or suction dredge equipment, which is designated by statute a project under CEQA, in any river, stream or lake, until the Department of Fish and Game completes environmental review of its dredge mining regulations. (Note: the operation of vacuum or suction dredge equipment is designated by statute a project under CEQA). (Chapter 133, Statutes of 2011).

AB 209 (Ammiano, D-San Francisco), requires the public notice provided prior to certification of an environmental impact report, adoption of the negative declaration, or other final determination to include how the environmental impact report or negative declaration can be provided to the public in an electronic format. (Chapter 171, Statutes of 2011).

AB 320 (Hill, D-South San Francisco), clarifies, for the purposes of litigation under CEQA, that the only recipients of a project approval that need be named in a lawsuit are those identified by the lead agency in its notice of determination or notice of exemption. (Chapter 570, Statutes of 2011).

AB 1418 (Hall, D-Los Angeles) provides that, in deference to tribal sovereignty, the execution of a specific tribal-state gaming compact, related intergovernmental agreements, the on-reservation impacts of compliance with the terms of the compact, and the sale of compact assets shall not be deemed a project for the purposes of CEQA. (Chapter 412, Statutes of 2011).

SB 792 (Steinberg, D-Sacramento), prior to permitting a project subject to CEQA that would affect the *access* to extraction of minerals in a designated "area of statewide or regional significance," SB 792 requires the lead agency, in conjunction



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with preparing any CEQA document for the proposed project, to prepare a statement specifying its reasons for permitting the proposed project, and shall forward a copy to the State Geologist and the Board of Geology for review. (Chapter 345, Statutes of 2011).

ABx1 13 (V. Perez, D-Cathedral City) expands an existing program to facilitate permitting of solar energy projects in the Desert Renewable Energy Conservation Plan area to include eligible wind and geothermal projects. To be eligible, either the California Energy Commission has determined that a project application for certification is complete by December 31, 2011 or the lead agency for purposes of CEQA has determined the project permit application is complete or has issued a notice of preparation of an EIR by December 31, 2011. (Chapter 10, Statutes of 2011).

¹ The 37 bills: Assembly Bills 31, 83, 120, 209, 320, 598, 603, 605, 644, 783, 880, 890, 900, 931, 963, 1170, 1183, 1185, 1418, and Senate Bills 37, 195, 226, 241, 250, 292, 354, 469, 535, 620, 657, 669, 683, 735, 785, 792, 880, and AB 13 of the First Extraordinary Session of 2011-2012. The nine bills enacted this year are summarized in this memo. SB 469, relating to economic impact reports on “superstores,” was vetoed. *More information on all bills can be found at www.leginfo.ca.gov.*