

## CEQA and Land Use Bills -- An Update

**[SB 731 \(Steinberg\)](#) CEQA Modernization Act of 2013.** *(Last amended May 24, 2013. Passed to Assembly May 30, 2013)*

- **Aesthetic Impacts in Transit Priority Areas Not Significant.** Bill would provide that aesthetic impacts of a residential, mixed-use residential, or employment center project, as defined, within a "transit priority area," shall not be considered significant impacts on the environment.
- **Significance Thresholds in Transit Priority Areas.** Bill would require revisions to CEQA guidelines establishing significance thresholds for noise, and transportation and parking impacts of residential, mixed-use residential, or employment center projects within transit priority areas. Agencies could, however, adopt more stringent thresholds.
- **Lead Agencies Required to Make Draft Findings Available to Public.** The bill would require the lead agency to make findings available to the public at least 15 days prior to approval of the proposed project and to provide specified notice of the availability of the findings for public review.
- **Concurrent Preparation of Record of Proceedings.** The bill would require the lead agency, at the request of a project applicant for specified projects, or with the consent of the lead agency for any project, to prepare a record of proceedings concurrently with the preparation of CEQA documents. A project applicant taking advantage of this procedure would not be entitled to recover costs of compliance from a litigant that unsuccessfully challenged the project.
- **Tolling Agreements Expressly Authorized.** The bill would authorize tolling agreements to extend the time period in which a person is required to bring a CEQA lawsuit.
- **Online Mitigation and Monitoring Plans.** Bill would require the lead agency, as a part of the mitigation and monitoring plan, to prepare an annual report on project compliance with the required mitigation measures that is publicly available online.
- **Identifying Certain Events that Shall Not Invalidate CEQA Exemptions Based on Projects' Implementation of Specific Plan.** This bill would specify that new information consisting solely of argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are caused by, physical impacts on the environment, would not disqualify a residential project implementing a Specific Plan from taking advantage of the CEQA exemption for such projects.
- **Courts' Issuance of Peremptory Writs of Mandate.** Where a court finds a public agency has violated CEQA, this bill would require the court to issue a peremptory writ of mandate specifying actions that a public agency needs to take to comply with CEQA. The bill would require the writ to specify the time by which the public agency is to file an initial return to a writ containing specified information.
- **Funds to Implement Sustainable Communities Strategy.** This bill would state the intent of the Legislature to appropriate \$30,000,000 annually to provide competitive grants to local agencies for planning activities for the implementation of the sustainable communities strategy.
- **Governor's Advisor on Renewable Energy Facilities.** Bill would establish position of Advisor on Renewable Energy Facilities in the Governor's Office (until January 1, 2017).
- **Reimbursement Not Required for Certain State Mandates.** Of the state mandates that would be imposed on local agencies and school districts by this bill, some would not be reimbursed and others would be reimbursed if the Commission on State Mandates determines that the bill contains costs mandated by the state.

**[SB 633 \(Pavley\)](#) New Categorical Exemption and Revision to "New Information" Standard.** *(Last amended May 3, 2013. Passed to Assembly May 30, 2013)*

- The bill would authorize a new categorical exemption for a class of projects involving minor temporary uses of land and public gatherings.
- In addition, CEQA prohibits a lead agency or responsible agency from requiring a subsequent or supplemental EIR unless one or more specified events occurs, including that new information, which was not known and could not have been known at the time the EIR was certified as complete, becomes available and shows that the project would have new or substantially more severe environmental impacts than were previously identified.

This bill would specifically require that the new information that becomes available was not known and could not have been known "by the lead agency or any responsible agency" at the time the EIR was certified as complete. **[AB 37 \(Perea\)](#) Requiring Lead Agencies to Prepare Record of Proceedings Concurrently with Preparation of Environmental Documents for Certain Projects.** *(Last amended March 18, 2013. Passed to Senate May 28, 2013. Referred to Com. on E.Q. June 6, 2013)* Until January 1, 2017, this bill would require that at the request of a project applicant for certain types of projects, or with the consent of the lead agency for any project, the lead agency prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents. This bill is similar but not identical to the concurrent record preparation provisions of proposed SB 731. **[AB 543 \(Campos\)](#) Requiring Translation of CEQA Documents.** *(Last amended May 24, 2013. Passed to Senate May 31, 2013. To Com. on RLS for assignment June 3, 2013)* "SECTION 1. Section 21097 is added to the Public Resources Code, to read: 21097. (a) When a group of non-English-speaking people comprises at least 25 percent of the population within a lead agency's jurisdiction, and a project is proposed to be located at or near an area where the group of non-English-speaking people comprises at least 25 percent of the residents of that area, a lead agency shall translate each of the following into the language spoken by that group of non-English-speaking people: (1) Any notice required pursuant to Section 21083.9, 21092, 21152, 21161 or any notice authorized pursuant of subdivision (b) of section 21108 or subdivision (b) of Section 21152. (2) A summary of any negative declaration, mitigated negative declaration, or environmental impact report. (b) For the purposes of this section, 'group of non-English-speaking people' means a group whose members either do not speak English or who are unable to effectively communicate in English because it is not their native language. SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code." **[SB 436 \(Jackson\)](#) Requiring Public Scoping Meeting and More Extensive Public Notice for Certain Projects.** *(Last amended April 3, 2013. Passed to Assembly May 25, 2013. Held at Desk May 29, 2013)*

- The bill would require a lead agency to conduct at least one public scoping meeting for a project that may affect highways or other facilities under the jurisdiction of the Department of Transportation, or for a project of statewide, regional, or areawide significance, and to provide notice to specified entities of at least one public scoping meeting.
- CEQA section 21092 requires any lead agency that is preparing an EIR or a negative declaration or making a determination under CEQA section 21157.1(c) to provide public notice within a reasonable period of time prior to certifying the EIR, adopting the negative declaration or making the determination.

The bill would increase notice requirements to require that notice be given to a list of specified parties, including the State Clearinghouse and project applicants, and by at least one of the several listed procedures. **[AB 380 \(Dickinson\)](#) CEQA: notice requirements. Increasing Public Noticing and Posting Requirements for Agencies, County Clerks and OPR.** *(Last amended May 24, 2013. Passed to Senate May 29, 2013; to Com. on RLS)*

- This bill would require that certain notices currently required to be filed with either the Office of Planning and Research or the county clerk be filed with both. The bill would require the county clerk to post the notices within one business day, as defined, of receipt and post the notices for at least 30 days. The bill would require the Office of Planning and Research to post the notices on a publicly available online database established and maintained by the office and would require the notices to be posted for at least 30 days. The bill would specify that a time period or limitation periods specified by CEQA does not commence until the notice is posted on the online data base. Unlike the other notices addressed by the bill, a notice of exemption would be authorized, but not required, to be filed both at OPR and with the county clerk.

The bill would require notices to be filed solely by the lead agency. **[SB 359 \(Corbett\)](#) Minor Text Changes.** (*Last amended April 1, 2013. Passed to Assembly May 28, 2013*) The bill would make non-substantive grammatical changes to Public Resources Code Section 21092.2 (CEQA notice provisions). **[AB 1060 \(Fox\)](#)**

**Fee Exemptions for CEQA Projects Carried Out or Implemented by a Branch of the US Armed Forces.** (*No amendments as of May 29, 2013. Passed to Senate May 29, 2013. In committee. Hearing postponed by committee June 10, 2013*)

This bill would amend Section 711.4 of the Fish and Game Code by exempting from CEQA filing fees a project being carried out or implemented by a branch of the United States Armed Forces. Proposed amendment states: "(2) Notwithstanding paragraph (1), a filing fee shall not be paid pursuant to this section if any of the following conditions exist: [ . . . ] (E) The project is being carried out or implemented by a branch of the United States Armed Forces." **[AB 667 \(Hernández\)](#) Requiring Adoption of Economic Impact Report for Projects Permitting Construction of a Superstore Retailer.** (*Last amended May 20, 2013. Passed to Senate May 28, 2013. Referred to Com. on Gov. & F. June 6, 2013*)

- The bill would require a city, county, or city and county, including a charter city, prior to approving or disapproving a proposed development project that would permit the construction of a superstore in an economic assistance area, or where a superstore would be the recipient of over \$100,000 in financial assistance, to cause an economic impact report to be prepared at the project applicant's expense.
- The bill would allow permitting of such a superstore only if the legislative body makes a finding that the superstore will not materially adversely affect the economic welfare of the impact area.

The bill would also require the governing body to provide an opportunity for public comment on the economic impact report. **[AB 1267 \(Hall\)](#) Exempting Certain Tribal Gaming Projects from CEQA.** (*Chaptered by Secretary of State May 30, 2013*) Bill ratifies the amendment to the tribal-state gaming compact entered into between the State of California and the Shingle Springs Band of Miwok Indians, executed on November 15, 2012. The bill provides that, in deference to tribal sovereignty, certain actions may not be deemed projects for purposes of CEQA.

## Authors



**[Julie Jones](#)**

Partner

[JJones@perkinscoie.com](mailto:JJones@perkinscoie.com) [415.344.7108](tel:415.344.7108)

Blog series

## **California Land Use & Development Law Report**

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. [View posts by topic](#). [Subscribe ?](#)

[View the blog](#)