

COPY

Case No. S213478

IN THE SUPREME COURT OF CALIFORNIA

CALIFORNIA BUILDING INDUSTRY ASSOCIATION
Plaintiff and Respondent

SUPREME COURT
FILED

JAN 10 2014

vs.

Frank A. McGuire Clerk

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Defendant and Appellant

Deputy

CALIFORNIA BUILDING INDUSTRY ASSOCIATION'S
MOTION FOR JUDICIAL NOTICE;
DECLARATION OF ANDREW B. SABEY & [PROPOSED] ORDER

After a Decision by the Court of Appeal in a Published Opinion
First Appellate District, No. A135335 & A136212

On Appeal from a Judgment
Alameda County Superior Court, No. RG10548693
Honorable Frank Roesch, Judge of the Superior Court

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**BAY AREA AIR QUALITY MANAGEMENT DISTRICT
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Pursuant to California Evidence Code Sections 452 and 453, Plaintiff and Respondent California Building Industry Association (“CBIA”) hereby requests that the Court take judicial notice of the exhibits identified below, offered in support of its Opening Brief. The authenticity of the exhibits is established through the declaration of Andrew B. Sabey, which is attached hereto as Exhibit G.

Exhibits A-E are relevant to the interpretation of the California Environmental Quality Act (CEQA). These documents also evidence that two bills were introduced in the Legislature in 2013, to amend CEQA to require an environmental impact report to include a discussion of “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.” (Assem. Bill No. 953 (2013-2014 Reg. Sess.); Sen. Bill No. 617 (2013-2014 Reg. Sess.)) Neither was adopted.

Exhibit F is relevant because it demonstrates that the Governor’s Office of Planning and Research does not intend to suggest any changes to CEQA Guidelines Section 15126.2 until after this Court rules on the case at issue.

These documents were not presented to the trial court because none existed prior to the trial court’s entry of judgment.

Judicial notice may be taken of the “[o]fficial acts of the legislative, executive, and judicial departments of . . . any state of the United States.”

(Cal. Evid. Code § 452(c).) The Court may judicially notice “[f]acts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.” (Cal. Evid. Code § 452(h).)

CBIA seeks judicial notice of the following five documents:

Exhibit A: A printout from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/asm/ab_0951-1000/ab_953_bill_20130222_introduced.pdf] of Assembly Bill No. 953 (2013-2014 Reg. Sess.). As discussed further below, judicial notice of this bill is appropriate under Evidence Code Section 452, subdivision (c) and (h) because it constitutes an official act of a public agency and is not reasonably subject to dispute.

Exhibit B: A printout from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_bill_20130528_amended_sen_v97.pdf] of Senate Bill No. 617 (2013-2014 Reg. Sess.). As discussed further below, judicial notice of this bill is appropriate under Evidence Code Section 452, subdivision (c) and (h) because it constitutes an official act of a public agency and is not reasonably subject to dispute.

Exhibit C: A printout from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_cfa_20130429_132119_sen_comm.html]

of Senate Committee on Environmental Quality, Analysis of Senate Bill No. 617 (2013-2014 Reg. Sess.). As discussed further below, judicial notice of this document is appropriate under Evidence Code Section 452, subdivision (c) and (h) because it constitutes an official act of a public agency and is not reasonably subject to dispute.

Exhibit D: A printout from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_cfa_20130529_111603__sen_comm.html] of Senate Appropriations Committee, Analysis of Senate Bill No. 617 (2013-2014 Reg. Sess.). As discussed further below, judicial notice of this document is appropriate under Evidence Code Section 452, subdivision (c) and (h) because it constitutes an official act of a public agency and is not reasonably subject to dispute.

Exhibit E: A printout from the Official California Legislative Information official website [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0951-1000/ab_953_cfa_20130412_134944__asm_comm.html] of Assembly Committee on Natural Resources, Analysis of Assembly Bill No. 953 (2013-2014 Reg. Sess.). As discussed further below, judicial notice of this document is appropriate under Evidence Code Section 452, subdivision (c) and (h) because it constitutes an official act of a public agency and is not reasonably subject to dispute.

Exhibit F: A printout from the Office of Planning and Research official website
[<http://opr.ca.gov/docs/PossibleTopics2014CEQAGuidelinesUpdate.pdf>] of Possible Topics to be Addressed in the 2014 CEQA Guidelines Update, Dec. 30, 2013. As discussed further below, judicial notice of this document is appropriate under Evidence Code Section 452, subdivision (c) and (h) because it constitutes an official act of a public agency and is not reasonably subject to dispute.

This request for judicial notice thus includes three types of documents: (1) California legislative bills; (2) official analyses of these bills; and (3) a state agency's document indicating possible topics to be addressed in the 2014 CEQA Guidelines Update. These categories of documents are judicially noticeable under Evidence Code Section 452.

This Court has previously held that a request for judicial notice of bills and committee reports may be unnecessary, and that citation to the material is sufficient. (*Quelimane Co. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 45, fn. 9.) However, in an abundance of caution, we provide the following authority to support granting judicial notice.

Granting judicial notice of the assembly and senate bills (Exhibits A and B) in this case is consistent with this Court's decision in *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062, fn. 5. There, the Court granted judicial notice of the various versions of a bill that the Legislature

considered in adopting legislation. (*Id.*) In taking notice of all versions of the bill, rather than just the bill that was eventually adopted, the Court concluded that these related bills could further interpretation of the adopted bill. (*Id.*) The same is true here, as AB 953 and SB 617 help inform the meaning and requirements of CEQA.

This Court also previously took judicial notice of two assembly bills, one signed into law and one re-referred to committee. (*Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 571, fn.9.) The Court in *Stop Youth Addiction, Inc.* explained that judicial notice was proper because the bills were relevant to understanding the Legislature's rejection of recent proposals to amend a certain existing law. (*Id.*) We request the Court take judicial notice on the same grounds here.

This Court reached a similar conclusion regarding judicial notice of legislative materials relevant to several precursor bills to the Myers-Milias-Brown Act (MMBA). (*County of Los Angeles v. Los Angeles County Employee Relations Com.* (2013) 56 Cal.4th 905, 923, fn. 16.) The Court thus set a clear precedent for noticing bill analyses. Applying this decision here, the bill analyses provided as Exhibits C, D, and E should be judicially noticed.

Further, *County of Los Angeles* continues a long line of cases where such judicial notice has been taken. For example, in *St. John's Well Child & Family Center v. Schwarzenegger* (2010) 50 Cal.4th 960, 967, fn. 5, the

Court applied Evidence Code Section 452 to grant judicial notice of a failed voter initiative ballot pamphlet, initiative text, and analysis.

Specifically relevant here, the Court of Appeals has granted judicial notice of materials similar to Exhibits C, D, and E. In *De Asis v. Department of Motor Vehicles* (2003) 112 Cal.App.4th 593, defendant DMV successfully sought judicial notice of excerpts from the Assembly Daily Journal and the Complete Bill History for AB 60 after plaintiff argued that the Governor's veto of the bill was ineffectual. Therefore, judicial notice of legislative materials may occur regardless of whether a bill is enacted into law. The requested judicial notice should be granted here.

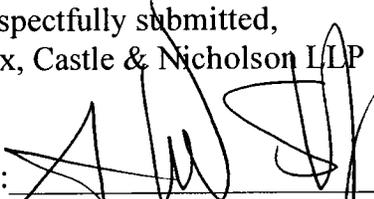
Finally, Exhibit F may be judicially noticed as an official act of an executive department of the California State Government. (Cal. Evid. Code § 452(c); See *Harris v. Alcoholic Beverage Control Appeals Bd.* (1965) 62 Cal.2d 589, 595.) Exhibit F is an official executive department document setting forth official policy for potential changes to the CEQA Guidelines during 2014. The document is also not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy. (Cal. Evid. Code § 452(h).)

Because Evidence Code Section 452 and the clear weight of authority favor granting judicial notice, we request the Court grant this motion.

Dated: January 10, 2014

Respectfully submitted,
Cox, Castle & Nicholson LLP

By:



Andrew B. Sabey
Attorneys for Plaintiff and
Respondent California Building
Industry Association

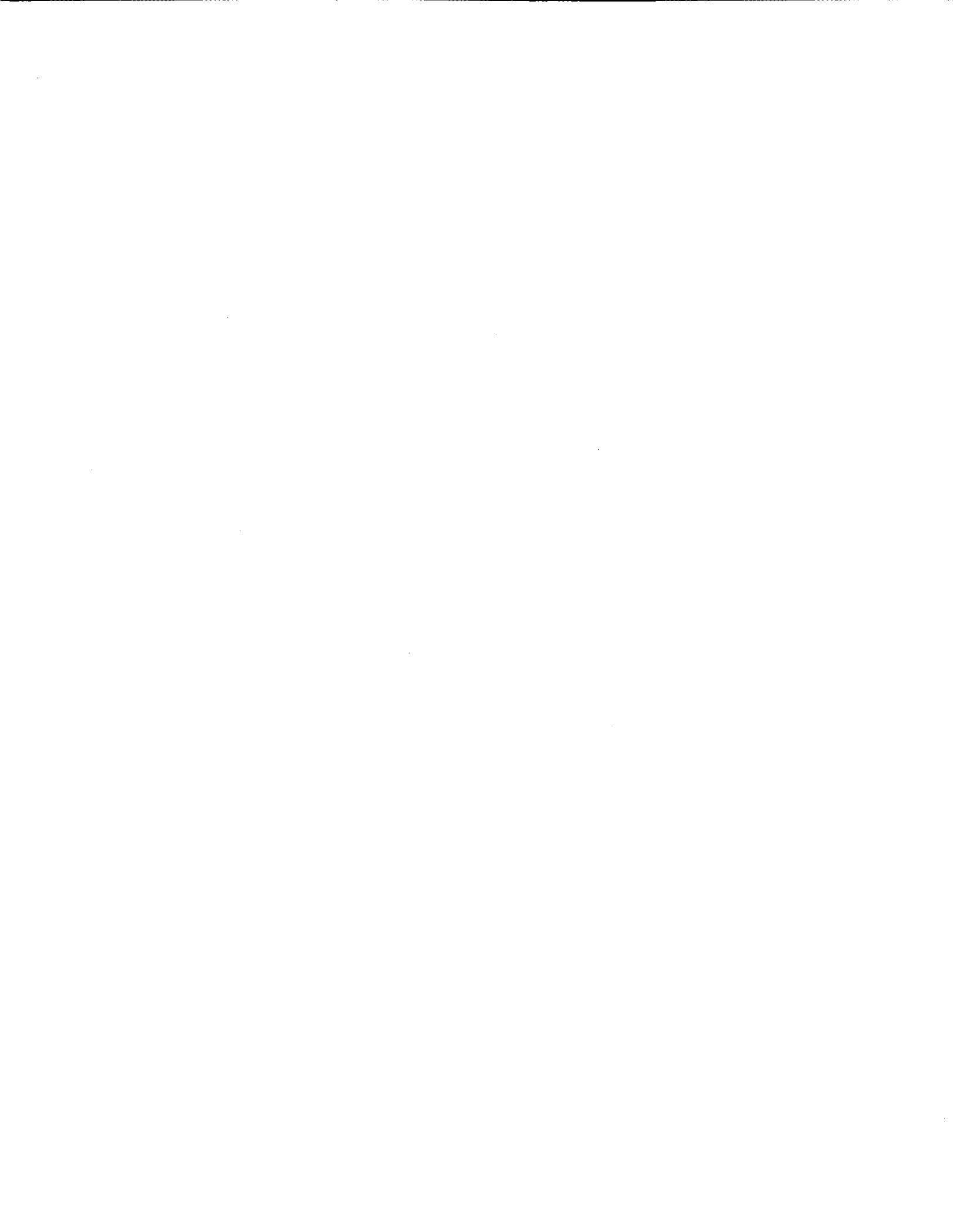


EXHIBIT A

ASSEMBLY BILL

No. 953

Introduced by Assembly Member Ammiano

February 22, 2013

An act to amend Sections 21060.5, 21068, and 21100 of the Public Resources Code, relating to the California Environmental Quality Act.

LEGISLATIVE COUNSEL'S DIGEST

AB 953, as introduced, Ammiano. California Environmental Quality Act.

The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment. CEQA defines "environment" and "significant effect on the environment" for its purposes. CEQA requires the EIR to include a detailed statement setting forth specified facts.

This bill would revise those definitions, as specified. This bill would additionally require the lead agency to include in the 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.

Because the lead agency would be required to undertake this additional consideration, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21060.5 of the Public Resources Code
2 is amended to read:

3 21060.5. "Environment" means the physical conditions ~~which~~
4 ~~that~~ exist within the area ~~which that~~ will be affected by a proposed
5 project, including land, air, water, minerals, flora, fauna, noise,
6 objects of historic or aesthetic significance, *as well as the health*
7 *and safety of people affected by the physical conditions at the*
8 *location of a project.*

9 SEC. 2. Section 21068 of the Public Resources Code is
10 amended to read:

11 21068. "Significant effect on the environment" means a
12 substantial, or potentially substantial, adverse change in the
13 environment. "*Significant effect on the environment*" includes
14 *exposure of people, either directly or indirectly, to a substantial*
15 *existing or reasonably foreseeable natural hazard or adverse*
16 *condition of the environment.*

17 SEC. 3. Section 21100 of the Public Resources Code is
18 amended to read:

19 21100. (a) All lead agencies shall prepare, or cause to be
20 prepared by contract, and certify the completion of, an
21 environmental impact report on any project which they propose
22 to carry out or approve that may have a significant effect on the
23 environment. Whenever feasible, a standard format shall be used
24 for environmental impact reports.

25 (b) The environmental impact report shall include a detailed
26 statement setting forth all of the following:

27 (1) All significant effects on the environment of the proposed
28 project.

1 (2) In a separate section:

2 (A) Any significant effect on the environment that cannot be
3 avoided if the project is implemented.

4 (B) Any significant effect on the environment that would be
5 irreversible if the project is implemented.

6 (3) Mitigation measures proposed to minimize significant effects
7 on the environment, including, but not limited to, measures to
8 reduce the wasteful, inefficient, and unnecessary consumption of
9 energy.

10 (4) Alternatives to the proposed project.

11 (5) The growth-inducing impact of the proposed project.

12 (6) *Any significant effects that may result from locating the*
13 *proposed project near, or attracting people to, existing or*
14 *reasonably foreseeable natural hazards or adverse environmental*
15 *conditions.*

16 (c) The report shall also contain a statement briefly indicating
17 the reasons for determining that various effects on the environment
18 of a project are not significant and consequently have not been
19 discussed in detail in the environmental impact report.

20 (d) For purposes of this section, any significant effect on the
21 environment shall be limited to substantial, or potentially
22 substantial, adverse changes in physical conditions ~~which~~ *that*
23 exist within the area as defined in Section 21060.5.

24 (e) Previously approved land use documents, including, but not
25 limited to, general plans, specific plans, and local coastal plans,
26 may be used in cumulative impact analysis.

27 SEC. 4. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 a local agency or school district has the authority to levy service
30 charges, fees, or assessments sufficient to pay for the program or
31 level of service mandated by this act, within the meaning of Section
32 17556 of the Government Code.

O



EXHIBIT B

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 617

**Introduced by Senator Evans
(Principal coauthor: Senator DeSaulnier)**

February 22, 2013

An act to amend Sections 21060.5, 21068, 21080.5, 21083.9, 21092, 21092.2, 21092.3, 21100, 21108, 21152, and 21161 of, ~~to amend, repeal, and add Section 21167.6 of, to add and repeal Section 21167.6.2 of, and~~ to repeal Sections 21080.01, 21080.02, 21080.03, and 21080.04 of, the Public Resources Code, relating to the California Environmental Quality Act.

LEGISLATIVE COUNSEL'S DIGEST

SB 617, as amended, Evans. California Environmental Quality Act.

(1) The California Environmental Quality Act, referred to as CEQA requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report, referred to as an EIR on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.

CEQA authorizes the Secretary of the Natural Resources Agency to certify a regulatory program that meets specified requirements. CEQA provides that written documentation required by those certified

regulatory programs may be submitted in lieu of an EIR. CEQA requires an administering agency to file with the secretary a notice of decision made pursuant to the certified regulatory program, which is required to be available for public inspection. CEQA requires a lead agency to call a scoping meeting for specified projects and provide a notice of the meeting to specified entities. CEQA requires the lead agency or a project proponent to file a notice of approval or determination with the Office of Planning and Research if the lead agency is a state agency or with the county clerk if the lead agency is a local agency. CEQA requires a public agency that has completed an EIR to file with the Office of Planning and Research a notice of completion.

CEQA requires a lead agency determining that an EIR is required for a project to send a notice of that determination to specified public agencies. CEQA requires a lead agency preparing an EIR, a negative declaration, or making a specified determination regarding a subsequent project to provide a public notice within a reasonable time period before the certification of the EIR, or the adoption of a negative declaration, or making the specified determination. CEQA requires those notices to be posted in the office of the county clerk in each county in which the project is located and requires the notices to remain posted for 30 days. CEQA requires the county clerk to post the notice within 24 hours of receipt.

This bill would additionally require the above mentioned notices to be filed with both the Office of Planning and Research and the county clerk and be posted by the county clerk for public review. The bill would require the county clerk to post the notices within one business day, as defined, of receipt and stamp on the notice the date on which the notices were actually posted. By expanding the services provided by the lead agency and the county clerk, this bill would impose a state-mandated local program. The bill would require the county clerk to 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. The bill would require the office to stamp the notices with the date on which the notices were actually posted for online review and would require the notices to be posted for at least 30 days. The bill would authorize the office to charge an administrative fee not to exceed \$10 per notice filed. The bill would specify that a time period or limitation period specified by CEQA does not commence until the notice is actually posted for public review by the county clerk or is available in the online database, whichever is

later. The bill would require the notice of determination to be filed solely by the lead agency.

(2) CEQA authorizes, for a project that is determined by a state agency to be exempted from the requirements of CEQA, a state agency or a project proponent to file a notice of determination with the Office of Planning and Research. CEQA authorizes, for a project that is determined by a local agency to be exempted from the requirements of CEQA, a local agency or a project proponent to file a notice of determination with the county clerk of the county in which the project is located.

This bill would require that notice of determination be filed with both the Office of Planning and Research and the county clerk. By requiring a county clerk to receive and post that notice of determination filed by a state agency, this bill would impose a state-mandated local program. The bill would provide that notice of determination be filed by the lead agency only.

(3) This bill would require the Office of Planning and Research and the county clerk, after the posting of the notices filed with them, to return the notice to the filing agency with a notation of the period the notice was posted. By requiring a county clerk to return the notice, this bill would impose a state-mandated local program.

~~(4) CEQA establishes a procedure for the preparation and certification of the record of proceedings upon the filing of an action or proceeding challenging a lead agency's action on the grounds of noncompliance with CEQA.~~

~~This bill would require, until January 1, 2017, the lead agency, at the request of a project applicant, to, among other things, prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. Because the bill would require a lead agency to prepare the record of proceedings as provided, this bill would impose a state-mandated local program. The bill would condition, upon the consent of a lead agency that is a state agency, the application to state agency of the concurrent preparation of the record of proceedings.~~

~~(5)~~

~~(4) CEQA defines "environment" and "significant effect on the environment" for its purposes. CEQA requires the EIR to include a detailed statement setting forth specified facts.~~

This bill would revise those definitions, as specified. This bill would additionally require the lead agency to include in the EIR a detailed statement on any significant effects that may result from locating development *the proposed project* near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions. Because the lead agency would be required to undertake this additional consideration, this bill would impose a state-mandated local program.

(6)

(5) The bill would repeal certain exemptions from the requirements of CEQA related to the California Men's Colony West Facility, a prison facility at or in the vicinity of Corcoran, a certain prison facility in the County of King, and the Napa Valley Wine Train.

(7)

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 21060.5 of the Public Resources Code
2 is amended to read:

3 21060.5. "Environment" means the physical conditions that
4 exist within the area that will be affected by a proposed project,
5 including land, air, water, minerals, flora, fauna, noise, objects of
6 historic or aesthetic significance, as well as the health and safety
7 of people affected by the physical conditions at the location of a
8 project.

9 SEC. 2. Section 21068 of the Public Resources Code is
10 amended to read:

11 21068. "Significant effect on the environment" means a
12 substantial, or potentially substantial, adverse change in the
13 environment. "Significant effect on the environment" includes
14 exposure of people, either directly or indirectly, to substantial
15 existing or reasonably foreseeable natural hazard or adverse
16 condition of the environment.

1 SEC. 3. Section 21080.01 of the Public Resources Code is
2 repealed.

3 SEC. 4. Section 21080.02 of the Public Resources Code is
4 repealed.

5 SEC. 5. Section 21080.03 of the Public Resources Code is
6 repealed.

7 SEC. 6. Section 21080.04 of the Public Resources Code is
8 repealed.

9 SEC. 7. Section 21080.5 of the Public Resources Code is
10 amended to read:

11 21080.5. (a) Except as provided in Section 21158.1, when the
12 regulatory program of a state agency requires a plan or other written
13 documentation containing environmental information and
14 complying with paragraph (3) of subdivision (d) to be submitted
15 in support of an activity listed in subdivision (b), the plan or other
16 written documentation may be submitted in lieu of the
17 environmental impact report required by this division if the
18 Secretary of the Natural Resources Agency has certified the
19 regulatory program pursuant to this section.

20 (b) This section applies only to regulatory programs or portions
21 thereof that involve either of the following:

22 (1) The issuance to a person of a lease, permit, license,
23 certificate, or other entitlement for use.

24 (2) The adoption or approval of standards, rules, regulations,
25 or plans for use in the regulatory program.

26 (c) A regulatory program certified pursuant to this section is
27 exempt from Chapter 3 (commencing with Section 21100), Chapter
28 4 (commencing with Section 21150), and Section 21167, except
29 as provided in Article 2 (commencing with Section 21157) of
30 Chapter 4.5.

31 (d) To qualify for certification pursuant to this section, a
32 regulatory program shall require the utilization of an
33 interdisciplinary approach that will ensure the integrated use of
34 the natural and social sciences in decisionmaking and that shall
35 meet all of the following criteria:

36 (1) The enabling legislation of the regulatory program does both
37 of the following:

38 (A) Includes protection of the environment among its principal
39 purposes.

- 1 (B) Contains authority for the administering agency to adopt
2 rules and regulations for the protection of the environment, guided
3 by standards set forth in the enabling legislation.
- 4 (2) The rules and regulations adopted by the administering
5 agency for the regulatory program do all of the following:
- 6 (A) Require that an activity will not be approved or adopted as
7 proposed if there are feasible alternatives or feasible mitigation
8 measures available that would substantially lessen a significant
9 adverse effect that the activity may have on the environment.
- 10 (B) Include guidelines for the orderly evaluation of proposed
11 activities and the preparation of the plan or other written
12 documentation in a manner consistent with the environmental
13 protection purposes of the regulatory program.
- 14 (C) Require the administering agency to consult with all public
15 agencies that have jurisdiction, by law, with respect to the proposed
16 activity.
- 17 (D) Require that final action on the proposed activity include
18 the written responses of the issuing authority to significant
19 environmental points raised during the evaluation process.
- 20 (E) Require the filing of a notice of the decision by the
21 administering agency on the proposed activity pursuant to Section
22 21092.3.
- 23 (F) Require notice of the filing of the plan or other written
24 documentation to be posted pursuant to Section 21092.3 and made
25 to the public and to a person who requests, in writing, notification.
26 The notification shall be made in a manner that will provide the
27 public or a person requesting notification with sufficient time to
28 review and comment on the filing.
- 29 (3) The plan or other written documentation required by the
30 regulatory program does both of the following:
- 31 (A) Includes a description of the proposed activity with
32 alternatives to the activity, and mitigation measures to minimize
33 any significant adverse effect on the environment of the activity.
- 34 (B) Is available for a reasonable time for review and comment
35 by other public agencies and the general public.
- 36 (e) (1) The Secretary of the Natural Resources Agency shall
37 certify a regulatory program that the secretary determines meets
38 all the qualifications for certification set forth in this section, and
39 withdraw certification on determination that the regulatory program
40 has been altered so that it no longer meets those qualifications.

1 Certification and withdrawal of certification shall occur only after
2 compliance with Chapter 3.5 (commencing with Section 11340)
3 of Part 1 of Division 3 of Title 2 of the Government Code.

4 (2) In determining whether or not a regulatory program meets
5 the qualifications for certification set forth in this section, the
6 inquiry of the secretary shall extend only to the question of whether
7 the regulatory program meets the generic requirements of
8 subdivision (d). The inquiry may not extend to individual decisions
9 to be reached under the regulatory program, including the nature
10 of specific alternatives or mitigation measures that might be
11 proposed to lessen any significant adverse effect on the
12 environment of the activity.

13 (3) If the secretary determines that the regulatory program
14 submitted for certification does not meet the qualifications for
15 certification set forth in this section, the secretary shall adopt
16 findings setting forth the reasons for the determination.

17 (f) After a regulatory program has been certified pursuant to
18 this section, a proposed change in the program that could affect
19 compliance with the qualifications for certification specified in
20 subdivision (d) may be submitted to the Secretary of the Natural
21 Resources Agency for review and comment. The scope of the
22 secretary's review shall extend only to the question of whether the
23 regulatory program meets the generic requirements of subdivision
24 (d). The review may not extend to individual decisions to be
25 reached under the regulatory program, including specific
26 alternatives or mitigation measures that might be proposed to lessen
27 any significant adverse effect on the environment of the activity.
28 The secretary shall have 30 days from the date of receipt of the
29 proposed change to notify the state agency whether the proposed
30 change will alter the regulatory program so that it no longer meets
31 the qualification for certification established in this section and
32 will result in a withdrawal of certification as provided in this
33 section.

34 (g) An action or proceeding to attack, review, set aside, void,
35 or annul a determination or decision of a state agency approving
36 or adopting a proposed activity under a regulatory program that
37 has been certified pursuant to this section on the basis that the plan
38 or other written documentation prepared pursuant to paragraph (3)
39 of subdivision (d) does not comply with this section shall be
40 commenced not later than 30 days from the date of the posting of

1 notice of the approval or adoption of the activity pursuant to
2 Section 21092.3.

3 (h) (1) An action or proceeding to attack, review, set aside,
4 void, or annul a determination of the Secretary of the Natural
5 Resources Agency to certify a regulatory program pursuant to this
6 section on the basis that the regulatory program does not comply
7 with this section shall be commenced within 30 days from the date
8 of certification by the secretary.

9 (2) In an action brought pursuant to paragraph (1), the inquiry
10 shall extend only to whether there was a prejudicial abuse of
11 discretion by the secretary. Abuse of discretion is established if
12 the secretary has not proceeded in a manner required by law or if
13 the determination is not supported by substantial evidence.

14 (i) For purposes of this section, a county agricultural
15 commissioner is a state agency.

16 (j) For purposes of this section, an air quality management
17 district or air pollution control district is a state agency, except
18 that the approval, if any, by a district of a nonattainment area plan
19 is subject to this section only if, and to the extent that, the approval
20 adopts or amends rules or regulations.

21 (k) (1) The secretary, by July 1, 2004, shall develop a protocol
22 for reviewing the prospective application of certified regulatory
23 programs to evaluate the consistency of those programs with the
24 requirements of this division. Following the completion of the
25 development of the protocol, the secretary shall provide a report
26 to the Senate Committee on Environmental Quality and the
27 Assembly Committee on Natural Resources regarding the need
28 for a grant of additional statutory authority authorizing the secretary
29 to undertake a review of the certified regulatory programs.

30 (2) The secretary may update the protocol, and may update the
31 report provided to the legislative committees pursuant to paragraph
32 (1) and provide, in compliance with Section 9795 of the
33 Government Code, the updated report to those committees if
34 additional statutory authority is needed.

35 (3) The secretary shall provide a significant opportunity for
36 public participation in developing or updating the protocol
37 described in paragraph (1) or (2) including, but not limited to, at
38 least two public meetings with interested parties. A notice of each
39 meeting shall be provided at least 10 days prior to the meeting to
40 a person who files a written request for a notice with the agency

1 and to the Senate Committee on Environmental Quality and the
2 Assembly Committee on Natural Resources.

3 SEC. 8. Section 21083.9 of the Public Resources Code is
4 amended to read:

5 21083.9. (a) Notwithstanding Section 21080.4, 21104, or
6 21153, a lead agency shall conduct at least one public scoping
7 meeting for either of the following:

8 (1) A proposed project that may affect highways or other
9 facilities under the jurisdiction of the Department of Transportation
10 if the meeting is requested by the department. The lead agency
11 shall call the scoping meeting as soon as possible, but not later
12 than 30 days after receiving the request from the Department of
13 Transportation.

14 (2) A project of statewide, regional, or areawide significance.

15 (b) The lead agency shall provide notice of at least one public
16 scoping meeting held pursuant to paragraph (2) of subdivision (a)
17 by posting a notice of meeting pursuant to Section 21092.3, and
18 providing copies of the notice to all of the following:

19 (1) A county, city, or tribal land that borders on a county or city
20 within which the project is located, unless otherwise designated
21 annually by agreement between the lead agency and the county,
22 city, or tribal government.

23 (2) A responsible agency.

24 (3) A public agency that has jurisdiction by law with respect to
25 the project.

26 (4) A transportation planning agency or public agency required
27 to be consulted pursuant to Section 21092.4.

28 (5) A public agency, organization, or individual who has filed
29 a written request for the notice.

30 (c) For a public agency, organization, or individual that is
31 required to be provided notice of a lead agency public meeting,
32 the requirement for notice of a scoping meeting pursuant to
33 subdivision (b) may be met by including the notice of a scoping
34 meeting in the public meeting notice.

35 (d) A public scoping meeting that is held in the city or county
36 within which the project is located pursuant to the federal National
37 Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.)
38 and the regulations adopted pursuant to that act shall be deemed
39 to satisfy the requirement that a public scoping meeting be held

1 for a project subject to paragraph (2) of subdivision (a) if the lead
2 agency meets the notice requirements of subdivision (b) or (c).

3 (e) The referral of a proposed action to adopt or substantially
4 amend a general plan to a city or county pursuant to paragraph (1)
5 of subdivision (a) of Section 65352 of the Government Code may
6 be conducted concurrently with the public scoping meeting required
7 pursuant to this section, and the city or county may submit its
8 comments as provided pursuant to subdivision (b) of that section
9 at the public scoping meeting.

10 SEC. 9. Section 21092 of the Public Resources Code is
11 amended to read:

12 21092. (a) A lead agency that is preparing an environmental
13 impact report or a negative declaration or making a determination
14 pursuant to subdivision (c) of Section 21157.1 shall provide public
15 notice of that fact within a reasonable period of time prior to
16 certification of the environmental impact report, adoption of the
17 negative declaration, or making the determination pursuant to
18 subdivision (c) of Section 21157.1.

19 (b) (1) The notice shall specify the period during which
20 comments will be received on the draft environmental impact
21 report or negative declaration, and shall include the date, time, and
22 place of any public meetings or hearings on the proposed project,
23 a brief description of the proposed project and its location, the
24 significant effects on the environment, if any, anticipated as a result
25 of the project, the address where copies of the draft environmental
26 impact report or negative declaration, and all documents referenced
27 in the draft environmental impact report or negative declaration,
28 are available for review, and a description of how the draft
29 environmental impact report or negative declaration can be
30 provided in an electronic format.

31 (2) This section shall not be construed in any manner that results
32 in the invalidation of an action because of the alleged inadequacy
33 of the notice content if there has been substantial compliance with
34 the notice content requirements of this section.

35 (3) The notice required by this section shall be filed and posted
36 pursuant to Section 21092.3 and given to the last known name and
37 address of all organizations and individuals who have previously
38 requested notice, and shall also be given by at least one of the
39 following procedures:

1 (A) Publication, no fewer times than required by Section 6061
2 of the Government Code, by the public agency in a newspaper of
3 general circulation in the area affected by the proposed project. If
4 more than one area will be affected, the notice shall be published
5 in the newspaper of largest circulation from among the newspapers
6 of general circulation in those areas.

7 (B) Posting of notice by the lead agency on- and off-site in the
8 area where the project is to be located.

9 (C) Direct mailing to the owners and occupants of contiguous
10 property shown on the latest equalized assessment roll.

11 (c) For a project involving the burning of municipal wastes,
12 hazardous waste, or refuse-derived fuel, including, but not limited
13 to, tires, meeting the qualifications of subdivision (d), notice shall
14 be given to all organizations and individuals who have previously
15 requested notice and shall also be given by at least the procedures
16 specified in subparagraphs (A), (B), and (C) of paragraph (3) of
17 subdivision (b). In addition, notification shall be given by direct
18 mailing to the owners and occupants of property within one-fourth
19 of a mile of any parcel or parcels on which is located a project
20 subject to this subdivision.

21 (d) The notice requirements of subdivision (c) apply to both of
22 the following:

23 (1) The construction of a new facility.

24 (2) The expansion of an existing facility that burns hazardous
25 waste which would increase its permitted capacity by more than
26 10 percent. For purposes of this paragraph, the amount of expansion
27 of an existing facility shall be calculated by comparing the
28 proposed facility capacity with whichever of the following is
29 applicable:

30 (A) The facility capacity approved in the facility's hazardous
31 waste facilities permit pursuant to Section 25200 of the Health and
32 Safety Code or its grant of interim status pursuant to Section
33 25200.5 of the Health and Safety Code, or the facility capacity
34 authorized in any state or local agency permit allowing the
35 construction or operation of a facility for the burning of hazardous
36 waste, granted before January 1, 1990.

37 (B) The facility capacity authorized in the facility's original
38 hazardous waste facilities permit, grant of interim status, or any
39 state or local agency permit allowing the construction or operation

1 of a facility for the burning of hazardous waste, granted on or after
2 January 1, 1990.

3 (e) The notice requirements specified in subdivision (b) or (c)
4 shall not preclude a public agency from providing additional notice
5 by other means if the agency so desires, or from providing the
6 public notice required by this section at the same time and in the
7 same manner as public notice otherwise required by law for the
8 project.

9 SEC. 10. Section 21092.2 of the Public Resources Code is
10 amended to read:

11 21092.2. (a) The notices required pursuant to Sections 21080.4,
12 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be mailed
13 to every person who has filed a written request for notices with
14 either the clerk of the governing body or, if there is no governing
15 body, the director of the agency. If the agency offers to provide
16 the notices by email, upon filing a written request for notices, a
17 person may request that the notices be provided to him or her by
18 email. The request may also be filed with any other person
19 designated by the governing body or director to receive these
20 requests. The agency may require requests for notices to be
21 annually renewed. The public agency may charge a fee, except to
22 other public agencies, that is reasonably related to the costs of
23 providing this service.

24 (b) Subdivision (a) shall not be construed in any manner that
25 results in the invalidation of an action because of the failure of a
26 person to receive a requested notice, if there has been substantial
27 compliance with the requirements of this section.

28 (c) The notices required pursuant to Sections 21080.4 and 21161
29 shall be provided by the State Clearinghouse to any legislator in
30 whose district the project has an environmental impact, if the
31 legislator requests the notice and the State Clearinghouse has
32 received it.

33 SEC. 11. Section 21092.3 of the Public Resources Code is
34 amended to read:

35 21092.3. (a) The notices required pursuant to Sections 21080.4,
36 21080.5, 21083.9, 21092, 21108, 21152, and 21161 shall be filed
37 with and posted for public review in the office of the county clerk
38 of each county in which the project will be located and shall remain
39 posted for a period of at least 30 days or the full duration of any
40 time period under this division that may commence upon the filing

1 of the notice, whichever is longer. The clerk shall, thereafter, return
2 the notice to the filing agency with a notation of the period it was
3 posted. The county clerk shall post the notices within one business
4 day of receipt and shall stamp on the notice the date on which it
5 was actually posted for public review.

6 (b) The notices required pursuant to Sections 21080.4, 21080.5,
7 21083.9, 21092, 21108, 21152, and 21161 shall be filed with, and
8 posted on, a publicly available, online database established and
9 maintained by the Office of Planning and Research. The online
10 database shall include the capability to view and download the
11 notices in the form filed with the Office of Planning and Research.
12 Notices filed in the online database shall be stamped by the Office
13 of Planning and Research with the date on which they were actually
14 posted for online review by the public, and shall remain
15 electronically available in the database for a minimum of 10 years.
16 The Office of Planning and Research shall retain the physical copy
17 of the notice for at least 30 days or for the full duration of a time
18 period required pursuant to this division that may commence upon
19 the filing of the notice, whichever is longer. The Office of Planning
20 and Research shall, thereafter, return the notice to the filing agency
21 with a notation of the period it was posted. The Office of Planning
22 and Research shall post the notices in its online database within
23 one business day of receipt. The Office of Planning and Research
24 may require the agency filing the notice to pay an administrative
25 fee not to exceed ten dollars (\$10) per notice filed for the purposes
26 of maintaining its online database and implementing its duties
27 under this section. The agency filing the notice may recover its
28 filing costs from the person specified in subdivision (b) or (c) of
29 Section 21065, as reflected in the agency's record of proceedings.

30 (c) Any time periods or limitation periods established under this
31 division that are subject to the notices posted under this section
32 shall not commence until the notice is actually posted for public
33 review by the county clerk and in the online database maintained
34 by the Office of Planning and Research. If the county clerk and
35 the Office of Planning and Research posts the notice on different
36 days, the time period shall run from the date of the later posting.

37 (d) For the purposes of this section, "business days" does not
38 include Saturday, Sunday, or a day observed as a holiday by the
39 state government.

1 SEC. 12. Section 21100 of the Public Resources Code is
2 amended to read:

3 21100. (a) All lead agencies shall prepare, or cause to be
4 prepared by contract, and certify the completion of, an
5 environmental impact report on any project which they propose
6 to carry out or approve that may have a significant effect on the
7 environment. Whenever feasible, a standard format shall be used
8 for environmental impact reports.

9 (b) The environmental impact report shall include a detailed
10 statement setting forth all of the following:

11 (1) All significant effects on the environment of the proposed
12 project.

13 (2) In a separate section:

14 (A) Any significant effect on the environment that cannot be
15 avoided if the project is implemented.

16 (B) Any significant effect on the environment that would be
17 irreversible if the project is implemented.

18 (3) Mitigation measures proposed to minimize significant effects
19 on the environment, including, but not limited to, measures to
20 reduce the wasteful, inefficient, and unnecessary consumption of
21 energy.

22 (4) Alternatives to the proposed project.

23 (5) The growth-inducing impact of the proposed project.

24 (6) Any significant effects that may result from locating
25 ~~development~~ *the proposed project* near, or attracting people to,
26 existing or reasonably foreseeable natural hazards or adverse
27 environmental conditions.

28 (c) The report shall also contain a statement briefly indicating
29 the reasons for determining that various effects on the environment
30 of a project are not significant and consequently have not been
31 discussed in detail in the environmental impact report.

32 (d) For purposes of this section, any significant effect on the
33 environment shall be limited to substantial, or potentially
34 substantial, adverse changes in physical conditions which exist
35 within the area as defined in Section 21060.5.

36 (e) Previously approved land use documents, including, but not
37 limited to, general plans, specific plans, and local coastal plans,
38 may be used in cumulative impact analysis.

39 SEC. 13. Section 21108 of the Public Resources Code is
40 amended to read:

1 21108. (a) If a state agency approves or determines to carry
2 out a project that is subject to this division, the state agency shall
3 file notice of that approval or that determination with the Office
4 of Planning and Research and with the county clerk of each county
5 in which the project will be located. The notice shall identify the
6 person or persons in subdivision (b) or (c) of Section 21065, as
7 reflected in the agency's record of proceedings, and indicate the
8 determination of the state agency whether the project will, or will
9 not, have a significant effect on the environment and shall indicate
10 whether an environmental impact report has been prepared pursuant
11 to this division.

12 (b) If a state agency determines that a project is not subject to
13 this division pursuant to subdivision (b) of Section 21080 or
14 Section 21172, and the state agency approves or determines to
15 carry out the project, the state agency may file notice of the
16 determination with the county clerk of each county in which the
17 project will be located and the Office of Planning and Research.
18 A notice filed pursuant to this subdivision shall identify the person
19 or persons in subdivision (b) or (c) of Section 21065, as reflected
20 in the agency's record of proceedings. A notice filed pursuant to
21 this subdivision by a person specified in subdivision (b) or (c) of
22 Section 21065 shall have a certificate of determination attached
23 to it issued by the state agency responsible for making the
24 determination that the project is not subject to this division pursuant
25 to subdivision (b) of Section 21080 or pursuant to Section 21172.
26 The certificate of determination may be in the form of a certified
27 copy of an existing document or record of the state agency.

28 SEC. 14. Section 21152 of the Public Resources Code is
29 amended to read:

30 21152. (a) If a local agency approves or determines to carry
31 out a project that is subject to this division, the local agency shall
32 file notice of the approval or the determination within five working
33 days after the approval or determination becomes final, with the
34 county clerk of each county in which the project will be located
35 and with the Office of Planning and Research. The notice shall
36 identify the person or persons in subdivision (b) or (c) of Section
37 21065, as reflected in the agency's record of proceedings, and
38 indicate the determination of the local agency whether the project
39 will, or will not, have a significant effect on the environment and
40 shall indicate whether an environmental impact report has been

1 prepared pursuant to this division. The notice shall also include
2 certification that the final environmental impact report, if one was
3 prepared, together with comments and responses, is available to
4 the general public.

5 (b) If a local agency determines that a project is not subject to
6 this division pursuant to subdivision (b) of Section 21080 or
7 pursuant to Section 21172, and the local agency approves or
8 determines to carry out the project, the local agency may file a
9 notice of the determination with the county clerk of each county
10 in which the project will be located and the Office of Planning and
11 Research. A notice filed pursuant to this subdivision shall identify
12 the person or persons in subdivision (b) or (c) of Section 21065,
13 as reflected in the agency's record of proceedings. A notice filed
14 pursuant to this subdivision shall have a certificate of determination
15 attached to it issued by the local agency responsible for making
16 the determination that the project is not subject to this division
17 pursuant to subdivision (b) of Section 21080 or Section 21172.
18 The certificate of determination may be in the form of a certified
19 copy of an existing document or record of the local agency.

20 SEC. 15. Section 21161 of the Public Resources Code is
21 amended to read:

22 21161. Whenever a public agency has completed an
23 environmental impact report, it shall cause a notice of completion
24 of that report to be filed with the county clerk of each county in
25 which the project will be located and the Office of Planning and
26 Research. The notice of completion shall briefly identify the project
27 and shall indicate that an environmental impact report has been
28 prepared. The notice of completion shall identify the project
29 location by latitude and longitude. Failure to file the notice required
30 by this section shall not affect the validity of a project.

31 ~~SEC. 16. Section 21167.6 of the Public Resources Code is~~
32 ~~amended to read:~~

33 ~~21167.6. Notwithstanding any other law, in all actions or~~
34 ~~proceedings brought pursuant to Section 21167, except as provided~~
35 ~~for in Section 21167.6.2 or those involving the Public Utilities~~
36 ~~Commission, all of the following shall apply:~~

37 ~~(a) At the time that the action or proceeding is filed, the plaintiff~~
38 ~~or petitioner shall file a request that the respondent public agency~~
39 ~~prepare the record of proceedings relating to the subject of the~~
40 ~~action or proceeding. The request, together with the complaint or~~

1 petition, shall be served personally upon the public agency not
2 later than 10 business days from the date that the action or
3 proceeding was filed.

4 (b) (1) The public agency shall prepare and certify the record
5 of proceedings not later than 60 days from the date that the request
6 specified in subdivision (a) was served upon the public agency.
7 Upon certification, the public agency shall lodge a copy of the
8 record of proceedings with the court and shall serve on the parties
9 notice that the record of proceedings has been certified and lodged
10 with the court. The parties shall pay any reasonable costs or fees
11 imposed for the preparation of the record of proceedings in
12 conformance with any law or rule of court.

13 (2) The plaintiff or petitioner may elect to prepare the record
14 of proceedings or the parties may agree to an alternative method
15 of preparation of the record of proceedings, subject to certification
16 of its accuracy by the public agency, within the time limit specified
17 in this subdivision.

18 (c) The time limit established by subdivision (b) may be
19 extended only upon the stipulation of all parties who have been
20 properly served in the action or proceeding or upon order of the
21 court. Extensions shall be liberally granted by the court when the
22 size of the record of proceedings renders infeasible compliance
23 with that time limit. There is no limit on the number of extensions
24 that may be granted by the court, but no single extension shall
25 exceed 60 days unless the court determines that a longer extension
26 is in the public interest.

27 (d) If the public agency fails to prepare and certify the record
28 within the time limit established in paragraph (1) of subdivision
29 (b), or any continuances of that time limit, the plaintiff or petitioner
30 may move for sanctions, and the court may, upon that motion,
31 grant appropriate sanctions.

32 (e) The record of proceedings shall include, but is not limited
33 to, all of the following items:

34 (1) All project application materials.

35 (2) All staff reports and related documents prepared by the
36 respondent public agency with respect to its compliance with the
37 substantive and procedural requirements of this division and with
38 respect to the action on the project.

39 (3) All staff reports and related documents prepared by the
40 respondent public agency and written testimony or documents

1 submitted by any person relevant to any findings or statement of
2 overriding considerations adopted by the respondent agency
3 pursuant to this division:

4 (4) Any transcript or minutes of the proceedings at which the
5 decisionmaking body of the respondent public agency heard
6 testimony on, or considered any environmental document on, the
7 project, and any transcript or minutes of proceedings before any
8 advisory body to the respondent public agency that were presented
9 to the decisionmaking body prior to action on the environmental
10 documents or on the project.

11 (5) All notices issued by the respondent public agency to comply
12 with this division or with any other law governing the processing
13 and approval of the project.

14 (6) All written comments received in response to, or in
15 connection with, environmental documents prepared for the project,
16 including responses to the notice of preparation:

17 (7) All written evidence or correspondence submitted to, or
18 transferred from, the respondent public agency with respect to
19 compliance with this division or with respect to the project.

20 (8) Any proposed decisions or findings submitted to the
21 decisionmaking body of the respondent public agency by its staff,
22 or the project proponent, project opponents, or other persons:

23 (9) The documentation of the final public agency decision,
24 including the final environmental impact report, mitigated negative
25 declaration, or negative declaration, and all documents, in addition
26 to those referenced in paragraph (3), cited or relied on in the
27 findings or in a statement of overriding considerations adopted
28 pursuant to this division:

29 (10) Any other written materials relevant to the respondent
30 public agency's compliance with this division or to its decision on
31 the merits of the project, including the initial study, any drafts of
32 any environmental document, or portions thereof, that have been
33 released for public review, and copies of studies or other documents
34 relied upon in any environmental document prepared for the project
35 and either made available to the public during the public review
36 period or included in the respondent public agency's files on the
37 project, and all internal agency communications, including staff
38 notes and memoranda related to the project or to compliance with
39 this division:

1 ~~(11) The full written record before any inferior administrative~~
2 ~~decisionmaking body whose decision was appealed to a superior~~
3 ~~administrative decisionmaking body prior to the filing of litigation.~~

4 ~~(f) In preparing the record of proceedings, the party preparing~~
5 ~~the record shall strive to do so at reasonable cost in light of the~~
6 ~~scope of the record.~~

7 ~~(g) The clerk of the superior court shall prepare and certify the~~
8 ~~clerk's transcript on appeal not later than 60 days from the date~~
9 ~~that the notice designating the papers or records to be included in~~
10 ~~the clerk's transcript was filed with the superior court, if the party~~
11 ~~or parties pay any costs or fees for the preparation of the clerk's~~
12 ~~transcript imposed in conformance with any law or rules of court.~~
13 ~~Nothing in this subdivision precludes an election to proceed by~~
14 ~~appendix, as provided in Rule 8.124 of the California Rules of~~
15 ~~Court.~~

16 ~~(h) Extensions of the period for the filing of any brief on appeal~~
17 ~~may be allowed only by stipulation of the parties or by order of~~
18 ~~the court for good cause shown. Extensions for the filing of a brief~~
19 ~~on appeal shall be limited to one 30-day extension for the~~
20 ~~preparation of an opening brief, and one 30-day extension for the~~
21 ~~preparation of a responding brief, except that the court may grant~~
22 ~~a longer extension or additional extensions if it determines that~~
23 ~~there is a substantial likelihood of settlement that would avoid the~~
24 ~~necessity of completing the appeal.~~

25 ~~(i) At the completion of the filing of briefs on appeal, the~~
26 ~~appellant shall notify the court of the completion of the filing of~~
27 ~~briefs, whereupon the clerk of the reviewing court shall set the~~
28 ~~appeal for hearing on the first available calendar date.~~

29 ~~(j) This section shall remain in effect only until January 1, 2017,~~
30 ~~and as of that date is repealed, unless a later enacted statute, that~~
31 ~~is enacted before January 1, 2017, deletes or extends that date.~~

32 ~~SEC. 17. Section 21167.6 is added to the Public Resources~~
33 ~~Code, to read:~~

34 ~~21167.6. Notwithstanding any other law, in all actions or~~
35 ~~proceedings brought pursuant to Section 21167, except those~~
36 ~~involving the Public Utilities Commission, all of the following~~
37 ~~shall apply:~~

38 ~~(a) At the time that the action or proceeding is filed, the plaintiff~~
39 ~~or petitioner shall file a request that the respondent public agency~~
40 ~~prepare the record of proceedings relating to the subject of the~~

1 action or proceeding. The request, together with the complaint or
2 petition, shall be served personally upon the public agency not
3 later than 10 business days from the date that the action or
4 proceeding was filed.

5 (b) (1) The public agency shall prepare and certify the record
6 of proceedings not later than 60 days from the date that the request
7 specified in subdivision (a) was served upon the public agency.
8 Upon certification, the public agency shall lodge a copy of the
9 record of proceedings with the court and shall serve on the parties
10 notice that the record of proceedings has been certified and lodged
11 with the court. The parties shall pay any reasonable costs or fees
12 imposed for the preparation of the record of proceedings in
13 conformance with any law or rule of court.

14 (2) The plaintiff or petitioner may elect to prepare the record
15 of proceedings or the parties may agree to an alternative method
16 of preparation of the record of proceedings, subject to certification
17 of its accuracy by the public agency, within the time limit specified
18 in this subdivision.

19 (c) The time limit established by subdivision (b) may be
20 extended only upon the stipulation of all parties who have been
21 properly served in the action or proceeding or upon order of the
22 court. Extensions shall be liberally granted by the court when the
23 size of the record of proceedings renders infeasible compliance
24 with that time limit. There is no limit on the number of extensions
25 that may be granted by the court, but no single extension shall
26 exceed 60 days unless the court determines that a longer extension
27 is in the public interest.

28 (d) If the public agency fails to prepare and certify the record
29 within the time limit established in paragraph (1) of subdivision
30 (b), or any continuances of that time limit, the plaintiff or petitioner
31 may move for sanctions, and the court may, upon that motion,
32 grant appropriate sanctions.

33 (e) The record of proceedings shall include, but is not limited
34 to, all of the following items:

35 (1) All project application materials.

36 (2) All staff reports and related documents prepared by the
37 respondent public agency with respect to its compliance with the
38 substantive and procedural requirements of this division and with
39 respect to the action on the project.

1 ~~(3) All staff reports and related documents prepared by the~~
2 ~~respondent public agency and written testimony or documents~~
3 ~~submitted by any person relevant to any findings or statement of~~
4 ~~overriding considerations adopted by the respondent agency~~
5 ~~pursuant to this division.~~

6 ~~(4) Any transcript or minutes of the proceedings at which the~~
7 ~~decisionmaking body of the respondent public agency heard~~
8 ~~testimony on, or considered any environmental document on, the~~
9 ~~project, and any transcript or minutes of proceedings before any~~
10 ~~advisory body to the respondent public agency that were presented~~
11 ~~to the decisionmaking body prior to action on the environmental~~
12 ~~documents or on the project.~~

13 ~~(5) All notices issued by the respondent public agency to comply~~
14 ~~with this division or with any other law governing the processing~~
15 ~~and approval of the project.~~

16 ~~(6) All written comments received in response to, or in~~
17 ~~connection with, environmental documents prepared for the project,~~
18 ~~including responses to the notice of preparation.~~

19 ~~(7) All written evidence or correspondence submitted to, or~~
20 ~~transferred from, the respondent public agency with respect to~~
21 ~~compliance with this division or with respect to the project.~~

22 ~~(8) Any proposed decisions or findings submitted to the~~
23 ~~decisionmaking body of the respondent public agency by its staff,~~
24 ~~or the project proponent, project opponents, or other persons.~~

25 ~~(9) The documentation of the final public agency decision,~~
26 ~~including the final environmental impact report, mitigated negative~~
27 ~~declaration, or negative declaration, and all documents, in addition~~
28 ~~to those referenced in paragraph (3), cited or relied on in the~~
29 ~~findings or in a statement of overriding considerations adopted~~
30 ~~pursuant to this division.~~

31 ~~(10) Any other written materials relevant to the respondent~~
32 ~~public agency's compliance with this division or to its decision on~~
33 ~~the merits of the project, including the initial study, any drafts of~~
34 ~~any environmental document, or portions thereof, that have been~~
35 ~~released for public review, and copies of studies or other documents~~
36 ~~relied upon in any environmental document prepared for the project~~
37 ~~and either made available to the public during the public review~~
38 ~~period or included in the respondent public agency's files on the~~
39 ~~project, and all internal agency communications, including staff~~

1 notes and memoranda related to the project or to compliance with
2 this division.

3 ~~(11) The full written record before any inferior administrative~~
4 ~~decisionmaking body whose decision was appealed to a superior~~
5 ~~administrative decisionmaking body prior to the filing of litigation.~~

6 ~~(f) In preparing the record of proceedings, the party preparing~~
7 ~~the record shall strive to do so at reasonable cost in light of the~~
8 ~~scope of the record.~~

9 ~~(g) The clerk of the superior court shall prepare and certify the~~
10 ~~clerk's transcript on appeal not later than 60 days from the date~~
11 ~~that the notice designating the papers or records to be included in~~
12 ~~the clerk's transcript was filed with the superior court, if the party~~
13 ~~or parties pay any costs or fees for the preparation of the clerk's~~
14 ~~transcript imposed in conformance with any law or rules of court.~~
15 ~~Nothing in this subdivision precludes an election to proceed by~~
16 ~~appendix, as provided in Rule 8.124 of the California Rules of~~
17 ~~Court.~~

18 ~~(h) Extensions of the period for the filing of any brief on appeal~~
19 ~~may be allowed only by stipulation of the parties or by order of~~
20 ~~the court for good cause shown. Extensions for the filing of a brief~~
21 ~~on appeal shall be limited to one 30-day extension for the~~
22 ~~preparation of an opening brief, and one 30-day extension for the~~
23 ~~preparation of a responding brief, except that the court may grant~~
24 ~~a longer extension or additional extensions if it determines that~~
25 ~~there is a substantial likelihood of settlement that would avoid the~~
26 ~~necessity of completing the appeal.~~

27 ~~(i) At the completion of the filing of briefs on appeal, the~~
28 ~~appellant shall notify the court of the completion of the filing of~~
29 ~~briefs, whereupon the clerk of the reviewing court shall set the~~
30 ~~appeal for hearing on the first available calendar date.~~

31 ~~(j) This section shall become operative on January 1, 2017.~~

32 ~~SEC. 18. Section 21167.6.2 is added to the Public Resources~~
33 ~~Code, to read:~~

34 ~~21167.6.2. (a) (1) Notwithstanding Section 21167.6, for a~~
35 ~~project described in subdivision (f), upon the written request of a~~
36 ~~project applicant received no later than 30 days after the date that~~
37 ~~a lead agency makes a determination pursuant to subdivision (a)~~
38 ~~of Section 21080.1, Section 21094.5, or Chapter 4.2 (commencing~~
39 ~~with Section 21155), the lead agency shall prepare and certify the~~
40 ~~record of proceedings in the following manner:~~

1 (A) The lead agency for the project shall prepare the record of
2 proceedings pursuant to this division concurrently with the
3 administrative process.

4 (B) All documents and other materials placed in the record of
5 proceedings that are not otherwise exempted from public disclosure
6 shall be posted on, and be downloadable from, an Internet Web
7 site maintained by the lead agency commencing with the date of
8 the release of the draft environmental document for a project
9 specified in subdivision (f). If the lead agency cannot maintain an
10 Internet Web site with the information required pursuant to this
11 section, the lead agency shall provide a link on the agency's
12 Internet Web site to that information.

13 (C) The lead agency shall make available to the public, in a
14 readily accessible electronic format, the draft environmental
15 document for a project specified in subdivision (f) and all other
16 documents submitted to, cited by, or relied on by, the lead agency
17 in the preparation of the draft environmental document for a project
18 specified in subdivision (f).

19 (D) A document prepared by the lead agency or submitted by
20 the applicant after the date of the release of the draft environmental
21 document for a project specified in subdivision (f) that is a part of
22 the record of the proceedings shall be made available to the public
23 in a readily accessible electronic format within five business days
24 after the document is released or received by the lead agency.

25 (E) The lead agency shall encourage written comments on the
26 project to be submitted in a readily accessible electronic format;
27 and shall make any comment available to the public in a readily
28 accessible electronic format within five days of its receipt.

29 (F) Within seven business days after the receipt of any comment
30 that is not in an electronic format, the lead agency shall convert
31 that comment into a readily accessible electronic format and make
32 it available to the public in that format.

33 (G) The lead agency shall certify the record of proceedings
34 within 30 days after the filing of the notice required pursuant to
35 Section 21108 or 21152.

36 (2) This subdivision does not require the disclosure or posting
37 of a trade secret, as defined in Section 6254.7 of the Government
38 Code, information about the location of archaeological sites or
39 sacred lands, or other information that is subject to the exemption

1 from disclosures specified in Section 6254 of the Government
2 Code.

3 (b) Any dispute regarding the record of proceedings shall be
4 resolved by the court in an action or proceeding brought pursuant
5 to Section 21167. The parties shall meet and confer in good-faith
6 effort to resolve any dispute before seeking resolution in court.

7 (c) The content of the record of proceedings shall be as specified
8 in subdivision (c) of Section 21167.6.

9 (d) Subdivisions (g) to (i), inclusive, of Section 21167.6 are
10 applicable to an appeal of a decision in an action or proceeding
11 brought pursuant to Section 21167.

12 (e) The negative declaration, mitigated negative declaration,
13 draft and final environmental impact report, or other environmental
14 document for a project specified in subdivision (f) shall include a
15 notice in no less than 12-point type stating the following:

16
17 “THIS NEGATIVE DECLARATION, MITIGATED
18 NEGATIVE DECLARATION, EIR, OR ENVIRONMENTAL
19 DOCUMENT IS SUBJECT TO SECTION 21167.6.2 OF THE
20 PUBLIC RESOURCES CODE, WHICH REQUIRES THE
21 RECORD OF PROCEEDINGS FOR THIS PROJECT TO BE
22 PREPARED CONCURRENTLY WITH THE
23 ADMINISTRATIVE PROCESS, DOCUMENTS PREPARED
24 BY, OR SUBMITTED TO, THE LEAD AGENCY TO BE
25 POSTED ON THE LEAD AGENCY’S INTERNET WEB SITE,
26 AND THE LEAD AGENCY TO ENCOURAGE WRITTEN
27 COMMENTS ON THE PROJECT TO BE SUBMITTED TO THE
28 LEAD AGENCY IN A READILY ACCESSIBLE ELECTRONIC
29 FORMAT.”

30
31 (f) This section applies to the record of proceedings for the
32 preparation of a negative declaration, mitigated negative
33 declaration, environmental impact report, or other environmental
34 document prepared for any of the following:

35 (1) A project determined to be of statewide, regional, or
36 areawide environmental significance pursuant to subdivision (d)
37 of Section 21083.

38 (2) A project subject to Section 21094.5 or Chapter 4.2
39 (commencing with Section 21155).

1 ~~(3) (A) A project, other than one described in paragraphs (1)~~
2 ~~and (2), for which the lead agency consents to prepare the record~~
3 ~~of proceedings pursuant to this paragraph.~~

4 ~~(B) The lead agency shall respond to a request by the project~~
5 ~~applicant within 10 business days from the date that the request~~
6 ~~pursuant to subdivision (a) is received by the lead agency.~~

7 ~~(C) A project applicant and the lead agency may mutually agree,~~
8 ~~in writing, to extend the time period for the lead agency to respond~~
9 ~~pursuant to subparagraph (B), but they shall not extend that period~~
10 ~~beyond the commencement of the public review period for the~~
11 ~~proposed negative declaration, mitigated negative declaration, or~~
12 ~~draft environmental impact report.~~

13 ~~(D) The request to prepare a record of proceedings pursuant to~~
14 ~~this paragraph shall be deemed denied if the lead agency fails to~~
15 ~~respond within 10 business days of receiving the request or within~~
16 ~~the time period agreed upon pursuant to subparagraph (C),~~
17 ~~whichever ends later.~~

18 ~~(g) For a lead agency that is a state agency, the preparation of~~
19 ~~the record of proceedings pursuant to this section applies if the~~
20 ~~state agency consents to the preparation of the record of~~
21 ~~proceedings pursuant to this section.~~

22 ~~(h) The written request of the applicant submitted pursuant to~~
23 ~~subdivision (a) shall include an agreement to pay all of the lead~~
24 ~~agency's costs in preparing and certifying the record of proceedings~~
25 ~~pursuant to this section and complying with the requirements of~~
26 ~~this section in a manner specified by the lead agency.~~

27 ~~(i) The costs of preparing the record of proceedings pursuant~~
28 ~~to this section and complying with the requirements of this section~~
29 ~~are not recoverable costs pursuant to Section 1033 of the Code of~~
30 ~~Civil Procedure.~~

31 ~~(j) This section shall remain in effect only until January 1, 2017,~~
32 ~~and as of that date is repealed, unless a later enacted statute, that~~
33 ~~is enacted before January 1, 2017, deletes or extends that date.~~

34 ~~SEC. 19:~~

35 ~~SEC. 16.~~ No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 a local agency or school district has the authority to levy service
38 charges, fees, or assessments sufficient to pay for the program or

- 1 level of service mandated by this act, within the meaning of Section
- 2 17556 of the Government Code.

O



EXHIBIT C

BILL ANALYSIS

SB 617

SENATE COMMITTEE ON ENVIRONMENTAL QUALITY
 Senator Jerry Hill, Chair
 2013-2014 Regular Session

BILL NO: SB 617
 AUTHOR: Evans
 AMENDED: April 1, 2013
 FISCAL: Yes
 URGENCY: No

HEARING DATE: May 1, 2013
 CONSULTANT: Joanne Roy

SUBJECT : CALIFORNIA ENVIRONMENTAL QUALITY ACT

SUMMARY :

Existing law, under the California Environmental Quality Act (CEQA):

- 1) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code §21000 et seq.).
- 2) Defines "environment" as "the physical conditions that exist within the area that will be affected by a proposed project including land, air, water, minerals, flora, fauna, noise, objects of historic or aesthetic significance." (§21060.5).
- 3) Defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in the environment." (§21068).
- 4) Provides exemptions from the requirements of CEQA for the California Men's Colony West Facility, a prison facility at or in the vicinity of Corcoran, a prison facility in the County of King, and the Napa Valley Wine Train. (§§21080.01, 21080.02, 21080.03, and 21080.04).
- 5) Requires a lead agency preparing an EIR or negative declaration to provide public notice specifying the period

SB 617
 Page 2

during which comments will be received on the draft EIR or negative declaration; the date, time, and place of any public meetings or hearings on the proposed project; a brief description of the proposed project and its location; the significant effects on the environment, if any, anticipated by the project; and the address where copies of the draft EIR or negative declaration, and all documents referenced in the draft EIR or negative declaration, are available for review. (§21092(b)).

- 6) Requires a lead agency to call at least one scoping meeting for specific types of projects. (§21083.9).
- 7) Provides for specific requirements for posting of notices such as the period of days for posting. (§21092.3).
- 8) Requires the preparation and certification of EIRs, and specifies information to be included in an EIR. (§21100).
- 9) Requires a state lead agency to file a notice of approval or determination with OPR and requires a local lead agency to file a notice of approval or determination with the county clerk in which the project is located. (§21108 and §21152). Requires a public agency to file a notice of completion for an EIR with OPR. (§21161).
- 10) Sets requirements relating to preparation, review, comment, approval, and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA. At the time an action or proceeding is filed, the plaintiff must file a request that the respondent public agency prepare the record of proceedings, which must be served personally upon the public agency no later than 10 business days from the date the action or proceeding was filed. (§21167.6(a)). The public agency must prepare and certify the record no later than 60 days from the date the request was made by the plaintiff, and

upon certification the public agency must lodge a copy of the record with the court. (§21167.6(b)). The plaintiff may elect to prepare the record of proceedings or the parties may agree to an alternative method of preparation of the record. (§21167.6(c)).

SB 617
Page 3

This bill :

- 1) Adds to the definition of "environment" to include "the health and safety of people affected by the physical conditions at the location of a project." (§21060.5).
- 2) Adds to the definition of "significant effect on the environment" to include "exposure of people, either directly or indirectly, to substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment." (§21068).
- 3) Repeals obsolete exemptions from the requirements of CEQA. (§§21080.01, 21080.02, and 21080.03).
- 4) Requires a notice of determination be filed with both the Office of Planning and Research (OPR) and the county clerk where the project is located. Requires OPR and the county clerk to return the notice to the filing agency with a notation showing the period of time the notice was posted. (§§21080.5 and 21092.3).
- 5) Requires a lead agency to post a notice of a public scoping meeting and provide copies of the notice to specified entities, including tribal governments. (§21083.9).
- 6) Expands the requirements for posting of notices to include electronic posting of notices by OPR, requires OPR to retain a physical copy of the notice for a specified period of time, and return the notice to the filing agency with a notation of the period it was posted. Authorizes OPR to require the filing agency to pay an administrative fee not to exceed \$10 per notice. (§21092.3).
- 7) Requires an EIR to include a statement on "any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions." (§21100).
- 8) Requires lead agencies, both state and local, to file a notice of approval or determination and notice of completion with the

SB 617
Page 4

county clerk of each county the project is located in and OPR. (§§21108, 21152, and 21161).

- 9) Requires, until January 1, 2017, the lead agency, at the request of a project applicant, to prepare a record of proceedings concurrently with the preparation of negative declarations, mitigated negative declarations, EIRs, or other environmental documents for specified projects. (§21167.6).

COMMENTS :

1) Purpose of Bill . According to the author, "SB 617 will 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.

Since the enactment of the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900, Chapter 354, Statutes of 2011), various parties have been interested in providing for the record of proceedings to be prepared concurrently with the administrative process at the request of the applicant, in order to save time and effort in the event of a challenge to a project under CEQA review. SB 617 applies to a broad range of environmental projects and documents and requires that documents and other materials placed in the record of proceedings be posted on the lead agency's website. Further, that notices during the environmental review process

be posted concurrently online at the county recorder's office in the affected county and with [OPR], a known clearinghouse for CEQA information. Finally SB 617 addresses the court's decision in Ballona Wetlands Trust by clarifying that project reviews must take into account the physical environment on a given project."

- 2) Brief background on CEQA . CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a

SB 617
Page 5

negative declaration. If the initial study shows that the project may have a significant effect on the environment, then the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Prior to approving any project that has received an environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the proposed project, the effects of the mitigation measure must be discussed but in less detail than the significant effects of the proposed project.

- 3) Ballona Wetlands . In the case of Ballona Wetlands Land Trust et al. v. City of Los Angeles (Ballona Wetlands), the petitioners alleged that the revised EIR failed to adequately analyze the impacts of potential sea level rise from global warming on the project under CEQA Guidelines §15126.2(a). The appellate court held that CEQA does not require analysis of the effects on a project caused by the environment. On March 21, 2012, the California Supreme Court denied the petition for review and requests for depublication of the Second District Court of Appeal's opinion in Ballona Wetlands. Some have referred to this as a converse CEQA analysis.

The provision at issue is in the CEQA Guidelines, §15126.2(a), and states:

The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people in to the area affected. For example, an EIR on a subdivision astride an active fault line should identify as a significant effect the seismic hazard to future occupants of the subdivision. The subdivision would have the effect of attracting people to the location and exposing them to

SB 617
Page 6

the hazards found there. Similarly, the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

It should be noted that although the Second District Court of Appeal held that CEQA does not require analysis of the effects on a project caused by the environment and may be considered persuasive in the other district courts of appeal, the holding is not necessarily binding on those other appellate districts. Also, it is unknown whether California Supreme Court's decision not to hear the case is an endorsement of the holding in Ballona Wetlands.

OPR and the Natural Resources Agency have kept the provision in §15126.2(a) in place after previous decisions with similar

conclusions. For example, in 1995, the First District Court of Appeal in *Baird v. County of Contra Costa*, 32 Cal.App.4th 1464, held that the effect of the environment on the project is "beyond the scope of CEQA." It appears that OPR is not currently planning on repealing the challenged language and may be relying on footnote 9 in Ballona Wetlands to support its position. Footnote 9 states:

?the statement in Guidelines section 15126.2, subdivision (a) that 'the EIR should evaluate any potentially significant impacts of locating development in other areas susceptible to hazardous conditions (e.g. floodplains, coastlines, wildfire risk areas) as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazard areas' is consistent with CEQA only to the extent that such impacts constitute impacts on the environment caused by the development rather than impacts on the project caused by the environment.

SB 617 addresses Ballona Wetlands by requiring an EIR to include "any significant effects that may result from locating development near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions."

SB 617
Page 7

4) Providing environmental documents in an electronic format .

Under CEQA, environmental documents must be submitted to the State Clearinghouse for review and comment by state agencies under certain conditions (e.g., state agency is a lead, responsible or trustee agency; proposed project is of sufficient statewide, regional, or areawide environmental significance). A copy of the environmental document must also be provided in an electronic format. (PRC §21082.1(c)(4)).

5) Concurrent preparation of the record of proceedings . AB 900

(Buchanan and Gordon), Chapter 354, Statutes of 2011, enacted The Jobs and Economic Improvement Through Environmental Leadership Act of 2011, to set procedures relating to an "environmental leadership development project" (ELDP) selected by the Governor. An ELDP must meet certain requirements and one of the provisions given for an ELDP is that the record of proceedings must be prepared concurrently with the administrative process.

Since the enactment of AB 900, the author states that various parties have been interested in providing for the record of proceedings to be prepared concurrently with the administrative process at the request of the applicant in order to save time and effort in the event of a challenge to a project under CEQA review. This bill requires that documents and other materials placed in the record of proceedings be posted on the lead agency's Internet website.

6) Related legislation and technical consideration . SB 436

(Jackson) clarifies the entities that must receive public notice regarding the period to comment on an environmental document. Each bill amends different provisions of the same section. If SB 436 and SB 617 are both approved by the Senate, double-jointing language will be necessary to amend in each bill in the Assembly. SB 436 is also being heard in Senate Environmental Quality Committee on May 1, 2013.

7) Previous legislation . AB 209 (Ammiano), Chapter 171, Statutes

of 2011, requires a lead agency preparing an EIR or negative declaration under CEQA to include a description of how the draft EIR or negative declaration could be provided in an electronic format.

SB 617
Page 8

SOURCE : Author

SUPPORT : California Coastkeeper Alliance
Center on Race, Poverty & the Environment
Clean Water Action
Endangered Habitats League
Environmental Protection Information Center
Laguna Greenbelt, Inc.

League of Women Voters of California
Planning and Conservation League
Santa Clarita Organization for Planning and the
Environment
Sierra Club California
1 Individual

OPPOSITION :

American Council of Engineering Companies,
California
Associated Builders and Contractors of California
Association of California Water Agencies
California Apartment Association
California Association of Realtors
California Chamber of Commerce
California Grocers Association
California League of Food Processors
California Manufacturers and Technology
Association
California Special Districts Association
Chemical Industry Council of California
Civil Justice Association of California
Large-Scale Solar Association



EXHIBIT D

BILL ANALYSIS

Senate Appropriations Committee Fiscal Summary
 Senator Kevin de León, Chair

SB 617 (Evans) - California Environmental Quality Act.

Amended: April 1, 2013 Policy Vote: EQ 7-2
 Urgency: No Mandate: Yes
 Hearing Date: May 23, 2013 Consultant: Marie Liu

SUSPENSE FILE. AS PROPOSED TO BE AMENDED.

Bill Summary: SB 617 would require assessments under the California Environmental Quality Act (CEQA) to consider the exposure of people to natural hazards or adverse environmental conditions; make various changes to CEQA reporting requirements; require the Office of Planning and Research (OPR) make CEQA notices publically available on an online database; and repeal obsolete exemptions.

Fiscal Impact (as approved on May 23, 2013):

Ongoing costs, varying annually in the hundreds of thousands of dollars, from the General Fund and special funds, depending on the project, for additional analysis under CEQA with some costs being recovered through fees. Possible one-time costs, likely in the high tens of thousands to low hundreds of thousands of dollars from the General Fund for OPR to create an expanded database for CEQA notices.

Background: CEQA provides a process for evaluating the environmental effects of a project. Under CEQA, lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project are required to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for the project, unless the project is exempt. Generally an EIR must be prepared for projects that have a "significant impact on the environment" with the environment being defined as the physical conditions that exist within the area that will be affected by a proposed project. Certain types of project also require that the lead agency conduct at least one scoping meeting.

At several decision points, such as when the lead agency decides an EIR needs to be prepared or when an EIR is approved, CEQA

SB 617 (Evans)
 Page 1

requires notifications be sent to the public, local agencies, and interested parties. Notification requirements vary somewhat depending on the action.

AB 900 (Buchanan/Gordon) Chapter 354/2011 established CEQA procedures for "environmental leadership development projects." These projects are selected by the Governor and must meet certain requirements. The lead agency considering a leadership project must prepare a record of proceedings concurrently with the administrative process.

Existing law requires OPR to develop guidelines for the implementation of CEQA ("CEQA Guidelines"). OPR is required to review the CEQA guidelines every two years for possible updates. The guidelines are anticipated to be updated in 2014.

Proposed Law: This bill would expand the definition of the "environment" and "significant effect on the environment" and would require that projects are evaluated for how it might be affected by the environment, such as sea level rise and natural hazards.

This bill would also standardize how notices are filed under CEQA and to whom. This bill would require expand the notices required to be sent to the Office of Planning and Research (OPR) and would require OPR to post the notices in a publicly available, online database. OPR would also be authorized to charge the filing agency an administrative fee not to exceed \$10 per notice.

This bill would also require lead agencies, until January 1, 2017 and at the request of a project applicant, to prepare a record of proceedings concurrently with the administrative process. The request would be required to include an agreement to pay all of the lead agency's costs for preparing and certifying the record of proceedings.

This bill would also require that scoping meetings under CEQA are public and would delete obsolete statutory CEQA exemptions.

Related Legislation: AB 380 (Dickinson) is substantially similar to the provisions of this bill that would expand the notices that are required to be sent to OPR and would require OPR to post the notices in a publically available, online database. AB

SB 617 (Evans)
Page 2

380 is in the Assembly Appropriations Committee.

AB 953 (Ammiano) is identical to the provisions of the bill that would expand the definition of "environment" and "significant effect on the environment and require that projects be evaluated for how it might be affected by the environment. AB 953 is currently on the Assembly Floor.

SB 984 (Simitian) 2012 would have allowed concurrent preparation of the record of proceedings. SB 984 died pending concurrence on the Senate Floor.

Staff Comments: This bill potentially increases the workload for a lead agency to review a project as this bill would require that lead agency to also consider the impact of natural hazards or adverse environmental conditions on the project. This requirement could increase state costs for both when a state agency is a lead or responsible agency and when the state is the project proponent. However, staff notes that this analysis is currently required by the current CEQA Guidelines (§15126.2(a), which are adopted regulations, despite recent litigation. Because this analysis is currently in the CEQA guidelines, it is reasonable to assume that at least some agencies may already be doing this analysis, thus reducing the potential cost impact of this bill provision. Actual costs would vary greatly depending on the project and are speculative, but staff believes it is reasonable to assume that costs could average in the hundreds of thousands of dollars collectively across state agencies.

Currently OPR has a searchable database of CEQA documents that are received by the office, including summaries of EIRs and negative declarations, called CEQAnet. This database was created in the 1990s and does not provide the full text of any environmental documents. CEQAnet is also not a comprehensive database of all CEQA documents as not all documents are required to be submitted to OPR. Last year, OPR initiated an effort to modernize and expand the database and they anticipate a prototype being finished in Fall 2013. OPR, through the contractor for the database update, is exploring options that allow for the full electronic submission of CEQA documents from various parties, linking CEQA documents to interactive maps and state parcel data, electronic collection of CEQA fees on behalf of the Department of Fish and Wildlife, and various search capabilities. The contract to create a prototype database cost

SB 617 (Evans)
Page 3

approximately \$200,000. Costs are likely to total \$500,000 once the database is finalized. This update may result in a database that meets the requirements set under this bill; however, if it does not, OPR may incur additional information technology (IT) costs. Staff notes that these IT costs are likely in the high tens of thousands of dollars to low hundreds of thousands of dollars.

This bill allows OPR to charge an administrative fee of up to \$10 to pay for its costs of maintaining the database. However, OPR notes that as an office of the Governor's office it is difficult and awkward to charge fees. Staff notes as an example, the services provided to businesses through GoBiz, another office of the Governor, are provided at no costs. Therefore, although the bill gives OPR fee authority, it is likely that OPR will not utilize the authority.

This bill is a mandate as it would require a lead agency, which can be a local agency, to take certain actions under CEQA. However, as local agencies can charge a fee to a project proponent to cover the costs of providing such activities, this bill does not create a reimbursable mandate.

The committee amendments would delete requirements for concurrent preparation of the record of proceedings.



EXHIBIT E

BILL ANALYSIS

AB 953
Page 1

Date of Hearing: April 15, 2013

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Wesley Chesbro, Chair
AB 953 (Ammiano) - As Introduced: February 22, 2013SUBJECT : California Environmental Quality ActSUMMARY : 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.EXISTING LAW:

- 1) Requires a lead agency, as defined, to prepare and certify the completion of an EIR for a proposed project that it finds would have a significant effect on the environment, or adopt a negative declaration if it finds otherwise.
- 2) Requires a lead agency to prepare a mitigated negative declaration if revisions to a proposed project would avoid or mitigate a significant effect on the environment and there is no substantial evidence to indicate that the revised project would have a significant effect on the environment.
- 3) Defines "environment" to mean the physical conditions existing within the area affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.
- 4) Defines "significant effect on the environment" to mean a substantial, or potentially substantial, adverse change in the environment.

THIS BILL :

- 1) Amends the definition of "environment" in Section 21060.5 of the Public Resources Code to include the health and safety of people affected by existing physical conditions at the location of a project.
- 2) Amends the definition of "significant effect on the

AB 953
Page 2

environment" in Section 21068 of the Public Resources Code to include people's direct or indirect exposure to a substantial existing or reasonably foreseeable natural hazard or adverse condition of the environment.

- 3) Requires an EIR to include a detailed statement setting forth factual determinations of 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.

FISCAL EFFECT : UnknownCOMMENTS :

1) Background . Since its enactment in 1970 as a counterpart to the federal National Environmental Policy Act (NEPA), CEQA has emerged as the cornerstone of California's environmental laws. CEQA, which applies to virtually every state and local agency, establishes an environmental review process for a discretionary project to be approved or carried out by a public agency. California's Natural Resources Agency, through the Office of Planning and Research (OPR), promulgates related CEQA Guidelines and updates them every two years.

Before approving a discretionary project, a lead agency spearheads the following three-step environmental review process: first, establish that the proposal is a "project" for the purposes of the law; second, determine whether the proposed project is exempt from CEQA's requirements; and third, identify any significant environmental impacts caused by the project. If there are no significant impacts, the lead agency may file a negative declaration and approve the project.

A finding of significant environmental impacts, however, triggers a lead agency's responsibility to prepare an EIR that

would analyze those impacts. The EIR must also outline alternatives to the project or measures that would mitigate significant impacts. CEQA requires the adoption of mitigation measures where feasible. If a lead agency approves a proposed project despite its significant environmental impacts, the EIR must contain a statement of overriding considerations explaining the economic, social, and other factors that support this decision.

AB 953
Page 3

2)CEQA Guidelines require lead agencies to consider the effects of hazardous or adverse environmental conditions on a proposed project. In addition to the required analysis of a proposed project's significant effects on the environment, Section 15126.2(a) of the CEQA Guidelines states that "(t)he EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected." This "converse-CEQA" analysis is typically used to evaluate and address problems caused by bringing people and new development to areas with poor air quality, incompatible land uses, or hazardous conditions such as heightened seismic activity.

While not explicitly required by statute, this requirement in the Guidelines promotes good planning and is thus considered anyway by stakeholders throughout the environmental review process. Appendix G to the Guidelines provides a sample initial study checklist of items that an EIR must address related to this concern. And as California continues its efforts to address climate change, Section 15126.2(a) is also used to analyze the effect of impacts arising from this phenomenon, such as increased risk for flooding due to sea-level rise.

3)This bill seeks to override a line of appellate court cases that invalidates provisions in the CEQA Guidelines requiring consideration of the effects of hazardous or adverse environmental conditions on a proposed project. Ballona Wetlands Land Trust v. City of Los Angeles, a 2011 decision by the Second District Court of Appeal, held that the aforementioned requirement in Section 15126.2(a) is invalid. Finding that CEQA literally requires analysis of the project's significant impacts on the environment-and not the environment's impacts on the project-the Second District held that the effects of preexisting environmental hazards on the project and its users are not environmental impacts under CEQA. According to the court, to hold otherwise would be inconsistent with the statute's legislative purpose and statutory requirements.

In writing the Ballona decision, the Second District joined the First and Fourth Districts in undermining Section 15126.2(a) as unauthorized under CEQA and therefore invalid. The California Supreme Court refused to grant a petition to

AB 953
Page 4

review the Ballona case, effectively making this line of case law binding on superior courts across the state.

According to the author, "AB 953 seeks to clarify legislative purpose and statutory requirements for EIRs to include the effects of locating a proposed project near, or attracting people to, existing or reasonably foreseeable natural hazards or adverse environmental conditions such as sea-level rise, wildfire areas, and earthquake faults." This update to CEQA, as the author also argues, would "ensure that future environmental concerns and effects on the project site are considered, thus protecting not only the project, but the people who live, work, or visit in the area of that project."

The author's views seem to coincide with the Office of the Attorney General's position on Section 15126.2(a) as it relates to promoting environmental justice through CEQA. In its legal background on environmental justice, the Attorney General highlights how both Section 15126.2(a) and Appendix G of the CEQA Guidelines would require a lead agency to, for instance, carefully examine the effects of exposing adversely-impacted populations to air pollution. The background further points out that this supports CEQA's overall legislative purpose.

REGISTERED SUPPORT / OPPOSITION :Support

Planning and Conservation League (sponsor)
 American Planning Association, California Chapter
 Association for Environmental Professionals
 Bay Area Air Quality Management District
 California Coastal Protection Network
 California Coastkeeper Alliance
 California Native Plant Society
 Center on Race, Poverty and the Environment
 Clean Water Action
 Coalition for Clean Air
 Communities for a Better Environment
 Communities for Green Foothills
 Endangered Habitats League
 Environment California
 Environmental Defense Fund
 Environmental Protection Information Center

AB 953
 Page 5

Foothill Conservancy
 Friends of the Eel River
 Grassetti Environmental Consulting
 Laguna Greenbelt
 Natural Resources Defense Council
 Nichols-Berman Environmental Planning
 North County Watch
 Paw PAC
 Santa Clarita Organization for Planning and the Environment
 Sierra Club California
 Surfrider Foundation
 Transportation Solutions Defense and Education Fund

Opposition

American Council of Engineering Companies, California
 Brea Chamber of Commerce
 California Association of Realtors
 California Building Industry Association
 California Cement Manufacturers Environmental Coalition
 California Chamber of Commerce
 California Manufacturers and Technology Association
 Palm Desert Chamber of Commerce
 Simi Valley Chamber of Commerce
 Southwestern California Legislative Council

Analysis Prepared by : Melissa Sayoc / NAT. RES. / (916)
 319-2092



EXHIBIT F



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH



KEN ALEX
DIRECTOR

Possible Topics to be Addressed in the 2014 CEQA Guidelines Update

December 30, 2013

I. Introduction

During the summer of 2013, the Governor's Office of Planning and Research (OPR) and the Natural Resources Agency distributed a Solicitation for Input on possible changes to the CEQA Guidelines. Over forty organizations, public agencies, and individuals submitted written suggestions for changes. Several broad themes emerged.

This document identifies the specific suggestions that appear consistent with the California Environmental Quality Act (Pub. Resources Code §§ 21000 et seq.) and case law, as well as the goals described in the Solicitation for Input. Note, some suggestions were modified to be consistent with legal authority or to fit within the structure of the Guidelines. Please also note that because OPR and the Natural Resources Agency continue to engage in outreach with various stakeholders, additional topics and changes may be considered beyond those listed in this document.

II. Input Requested

OPR and the Natural Resources Agency seek your input on this preliminary list of topics. In particular, we seek the following:

1. Are these topics appropriate for the CEQA Guidelines Update?
2. Are there any important topics that we missed and that should be addressed?
3. If you have not already provided specific suggested language, do you have any that we should consider?

Input may be submitted electronically to CEQA.Guidelines@ceres.ca.gov. While electronic submission is preferred, suggestions may also be mailed or hand delivered to:

Christopher Calfee, Senior Counsel
Governor's Office of Planning and Research
1400 Tenth Street
Sacramento, CA 95814

Please submit all suggestions before **February 14, 2014** at 5:00pm.

III. Specific Suggested Changes

The following briefly describes the topics that OPR intends to address in this comprehensive update.

Section 15051 (Criteria for Identifying the Lead Agency)

Clarify when the determination of lead agency may be made by agreement. Specifically, provide that the agency that acts first shall “normally” be the lead agency, which leaves open the possibility of designating another by agreement.

Section 15060.5 (Pre-application Consultation)

Recast this section to address consultation more generally. Add provisions to address specific consultation requirements, and include suggestions on tribal consultation. Address consultation with regional air districts.

Section 15061 (Preliminary Review)

In subdivision (b)(3), replace the phrase “general rule” with “common sense exemption” to be consistent with the terminology used by the Supreme Court in *Muzzy Ranch v. Solano County ALUC* (2007) 41 Cal. 4th 372.

Section 15063 (Initial Study)

Clarify that initial studies may be prepared by contract to the lead agency, consistent with Section 15084. Also clarify in subdivision (g) that the lead agency may share an administrative draft of the initial study with the applicant in order to ensure accuracy in the project description and mitigation measures.

Section 15064 (Determining the Significance of the Environmental Effects Caused by a Project)

Add a definition of regulatory standard, and explain when a standard may be used appropriately in determining the significance of an impact under CEQA.

Add loss of open space as an example of potential cumulative impacts in subdivision (h)(1).

Add explanation of baseline in this section, since 15125 technically addresses the contents of an environmental impact report.

Section 15064.4 (Determining the Significance of Impacts From Greenhouse Gas Emissions)

Clarify that analysis of greenhouse gas emissions is required, and the role of the Scoping Plan in determining the significance of greenhouse gas emissions.

Further clarify that “business as usual” (or hypothetical baseline) analysis is not appropriate. Also clarify that, particularly for long range plans, lack of complete precision in projections of emissions will not make the use of models inadequate for information disclosure purposes.

Section 15065 (Mandatory Findings of Significance)

Add roadway widening and the provision of excess parking as examples of projects that may achieve short-term environmental goals (congestion relief) to the disadvantage of long-term environmental goals (reducing greenhouse gas emissions).

Section 15082 (Notice of Preparation)

Clarify that NOPs must be posted at the County Clerk’s office.

Section 15083 (Early Public Consultation)

Clarify that the lead agency may share an administrative draft of the EIR, or portions thereof, with the applicant in order to ensure accuracy in the project description and mitigation measures.

Section 15087 (Public Review of Draft EIR)

Revise section 15087 to require that all documents “incorporated by reference” into the environmental impact report be made available for public inspection, but not necessarily every document cited in the EIR.

Clarify that copies provided to the public and to libraries may be electronic copies.

Section 15088 (Evaluation of and Response to Comments)

Clarify that proposed responses to public agency comments may be provided electronically.

Clarify that responses may correspond to the level of detail contained in the comment, and specifically that responses to general comments may be general. Provide further that comments that do not explain the basis for the comments or the relevance of evidence submitted with the comment do not require a response. *Citizens for Responsible Equitable Environmental Development v. City of San Diego*

(2011) 196 Cal. App. 4th 515; Gilroy Citizens for Responsible Planning v. City of Gilroy, 140 Cal. App. 4th 911.

Section 15091 (Findings)

Clarify requirements regarding the need for findings on alternatives, as well as the difference between feasibility for the purpose of analysis in the environmental impact report versus actual feasibility for the purpose of making findings.

Section 15107 (Completion of a Negative Declaration)

Provide that a lead agency may request an extension of time (under the Permit Streamlining Act) to be consistent with Section 15108.

Section 15124 (Project Description)

In the description of the project's technical, economic, and environmental characteristics, allow the lead agency to discuss the project's benefits.

Section 15125 (Environmental Setting)

Provide guidance on appropriateness of use of alternative baselines, including changes resulting from climate change, future baselines to address large-scale infrastructure, historic use, and unpermitted uses.

Provide that the description of the environmental setting may include a description of the community within which the project is proposed in order to better analyze the specific impacts to that community.

Clarify the analysis of consistency with adopted plans, both local and regional.

Section 15126.4 (Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects)

Provide guidance on when an agency may appropriately defer mitigation details.

Discuss mitigation banking.

Mention vectors as an example of potential impacts that result from mitigation measures.

Provide additional guidance on mitigation of energy impacts.

Section 15126.6 (Consideration and Discussion of Alternatives to the Proposed Project)

Provide guidance on the feasibility of alternatives.

Section 15152 (Tiering)

Clarify that tiering is only one streamlining mechanism, and this section does not govern the other types of streamlining.

Section 15155 (City or County Consultation with Water Agencies)

Provide further guidance on the adequacy of water supply analysis under CEQA. Also account for increasing variability in water supply.

Section 15168 (Program EIR)

Provide further guidance on determining whether a later project is “within the scope” of a program EIR.

Section 15182 (Projects Pursuant to a Specific Plan)

Add description of new specific plan exemption in Section 21155.4.

Section 15222 (Preparation of Joint Documents)

Clarify that CEQA lead agencies may enter into a memorandum of understanding to facilitate joint review with a federal lead agency.

Section 15269 (Emergency Projects)

Clarify that emergency exemption does not preclude projects responding to emergencies that require some long-term planning, consistent with the *CalBeach Advocates v. City of Solana Beach* (2002) 103 Cal. App. 4th 529 decision.

Section 15301 (Existing Facilities)

Revise to incorporate holding in *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, regarding the level of historic use, so that the exemption

cannot be used to expand the use of a facility beyond its historic use (rather than use at the time of the lead agency's determination).

Clarify that this exemption includes alterations for bike lanes, pedestrian crossings, street trees, and implementation of other complete streets features.

Section 15357 (Discretionary Project)

Augment the definition of a "discretionary project" to provide further guidance about whether a project is ministerial or discretionary.

Section 15370 (Mitigation)

Clarify that preservation in perpetuity can be appropriate mitigation.

Section 15378 (Project)

Revise the definition of "project" to more clearly address pre-approval agreements.

Appendix G: Environmental Study Checklist

Several suggestions recommended changes to the Appendix G sample environmental checklist. Some of the topics that may be addressed include the following:

- Add a question about conversion of open space generally, and then give examples (agriculture, forestry, habitat connectivity, etc.) of possible impacts.
- Add a question about the cumulative loss of agricultural land.
- Add fire hazard questions (SB 1241).
- Move the question about geologic features and paleontological features from the cultural resources section to the geology section.
- Remove question (c) in land use planning because it is already covered in the section on biological resources.
- Add a question about providing excess parking.
- Revise the section on utilities to be clearer and remove redundancy, and add questions related to energy infrastructure.
- Revise the questions regarding biological resources and mandatory findings of significance to be consistent with Section 15065.

Appendix J (Examples of Tiering)

Revise to provide better guidance on use of different and new streamlining tools.

New Appendix (Mitigation Monitoring and Reporting Program)

Provide a sample Mitigation Monitoring and Reporting Program.

New Appendix (Supplemental Review Checklist)

Provide a checklist to guide supplemental review, including guidance on fair argument

New Appendix (Transportation Analysis)

Provide guidance on a non-LOS analysis of transportation impacts. Also address local conditions, safety, mode conflicts.

IV. Issue That Will Not Be Addressed at This Time

Many commenters suggested providing further clarification of Section 15126.2, and the required analysis of a project's relationship with its environment. The California Supreme Court recently accepted review of *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2013) 218 Cal. App. 4th 1171. Review in that case is limited to the following question: "Under what circumstances, if any, does the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project?" The Office of Planning and Research will not suggest any changes to this section until after the Supreme Court rules on this issue.



EXHIBIT G

Exhibit G

I, Andrew B. Sabey, declare as follows:

1. I am a member of the State Bar of California, and I am an attorney with the law firm of Cox, Castle & Nicholson LLP, attorneys for Plaintiff and Respondent California Building Industry Association (“CBIA”). I make this declaration in support of the CBIA’s Motion for Judicial Notice filed concurrently.

2. I have personal knowledge of the matters set forth in this declaration, and if called upon to testify to those matters, I could and would so testify.

3. Attached hereto as Exhibit A is a true and correct copy of Assembly Bill No. 953 (2013-2014 Reg. Sess.) downloaded from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/asm/ab_0951-1000/ab_953_bill_20130222_introduced.pdf] on January 8, 2014.

4. Attached hereto as Exhibit B is a true and correct copy of Senate Bill No. 617 (2013-2014 Reg. Sess.) downloaded from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_bill_20130528_amended_sen_v97.pdf] on January 8, 2014.

5. Attached hereto as Exhibit C is a true and correct copy of Senate Committee on Environmental Quality, Analysis of Senate Bill No. 617 (2013-2014 Reg. Sess.) downloaded from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_cfa_20130429_132119_sen_comm.html] on January 8, 2014.

6. Attached hereto as Exhibit D is a true and correct copy of Senate Appropriations Committee, Analysis of Senate Bill No. 617 (2013-2014 Reg. Sess.) downloaded from the Official California Legislative Information official website [http://leginfo.ca.gov/pub/13-14/bill/sen/sb_0601-0650/sb_617_cfa_20130529_111603_sen_comm.html] on January 8, 2014.

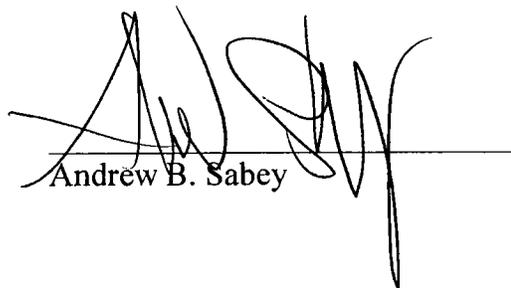
7. Attached hereto as Exhibit E is a true and correct copy of Assembly Committee on Natural Resources, Analysis of Assembly Bill No. 953 (2013-2014 Reg. Sess.) downloaded from the Official California Legislative Information official website [http://www.leginfo.ca.gov/pub/13-14/bill/asm/ab_0951-1000/ab_953_cfa_20130412_134944_asm_comm.html] on January 8, 2014.

8. Attached hereto as Exhibit F is a true and correct copy of Possible Topics to be Addressed in the 2014 CEQA Guidelines Update, Dec. 30, 2013, downloaded from the Office of Planning and Research official website

[<http://opr.ca.gov/docs/PossibleTopics2014CEQAGuidelinesUpdate.pdf>] on January 8, 2014.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct.

Executed this 10th day of January 2014 in San Francisco, California.


Andrew B. Sabey

Case No. S213478

IN THE SUPREME COURT OF CALIFORNIA

CALIFORNIA BUILDING INDUSTRY ASSOCIATION
Plaintiff and Respondent

vs.

BAY AREA AIR QUALITY MANAGEMENT DISTRICT
Defendant and Appellant

CALIFORNIA BUILDING INDUSTRY ASSOCIATION'S
MOTION FOR JUDICIAL NOTICE

After a Decision by the Court of Appeal in a Published Opinion
First Appellate District, No. A135335 & A136212

On Appeal from a Judgment
Alameda County Superior Court, No. RG10548693
Honorable Frank Roesch, Judge of the Superior Court

[PROPOSED] ORDER

The Court grants CBIA's motion and takes judicial notice of the following documents:

Exhibit A _____
Exhibit B _____
Exhibit C _____
Exhibit D _____
Exhibit E _____
Exhibit F _____

IT IS SO ORDERED.

Dated: _____, 2014

Justice of the Supreme Court

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PROOF OF SERVICE

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is 555 California Street, 10th Floor, San Francisco, California 94104-1513.

On **January 10, 2014**, I served the foregoing document(s) described as **CALIFORNIA BUILDING INDUSTRY ASSOCIATION'S MOTION FOR JUDICIAL NOTICE; DECLARATION OF ANDREW B. SABEY & [PROPOSED] ORDER** on ALL INTERESTED PARTIES in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Please see attached Service List

On the above date:

 x BY U.S. MAIL The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Cox, Castle & Nicholson LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

I hereby certify that the above document was printed on recycled paper.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on **January 10, 2014**, at San Francisco, California.



Michell Ho

SERVICE LIST

Supreme Court of California Case No. S213478

*CALIFORNIA BUILDING INDUSTRY ASSOCIATION, et al. v.
BAY AREA QUALITY MANAGEMENT DISTRICT
APPELLATE CASE NOS. A135335 & A136212*

Party	Attorney
Bay Area Air Quality Management District: Defendant and Appellant	Ellison Folk Shute, Mihaly & Weinberger 396 Hayes Street San Francisco, CA 94102-4421 Brian Charles Bunger Bay Area Air Quality Management District 939 Ellis Street San Francisco, CA 94109
Alameda County Superior Court Case No. RG10-548693	The Honorable Frank Roesch Alameda County Superior Court 1221 Oak Street Oakland, CA 94612
Court of Appeal of the State of California First Appellate District, Div. 5, Appellate Case Nos. A135335 & A136212	Clerk of the Court Court of Appeal of the State of California First Appellate District, Division 5 350 McAllister Street San Francisco, CA 94102-3600 Telephone: 415-865-7300
	VIA HAND DELIVERY Clerk of the Supreme Court Supreme Court of California 350 McAllister Street San Francisco, CA 94102-4797 Telephone: 415-865-7000 (Original and 9 copies)