

Case No. S213478

APR - 1 2014

IN THE SUPREME COURT OF CALIFORNIA

Frank A. McGuire Clerk

Deputy

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**CALIFORNIA BUILDING INDUSTRY ASSOCIATION**  
Plaintiff and Respondent,  
v.  
**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
Defendant and Appellant.

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After a Decision by the Court Of Appeal  
First Appellate District, Division One  
Case No. A135335 & A136212

Appeal from the Alameda County Superior Court, Case No. RG10548693  
The Honorable Frank Roesch, Judge Presiding

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**BAY AREA AIR QUALITY MANAGEMENT DISTRICT'S  
SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE;  
DECLARATION OF ELLISON FOLK**

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**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Pursuant to California Evidence Code Sections 452, 453 and 459, and California Rules of Court 8.520(g) and 8.252(a), Defendant and Appellant Bay Area Air Quality Management District requests that the Court take judicial notice of Exhibit U, which the Air District offers in support of its Answering Brief previously filed with this Court. A supplemental declaration of Ellison Folk, attached to this Supplemental Motion for Judicial Notice, establishes the authenticity of the exhibit. The document does not relate to proceedings occurring after the trial court's judgment, and the Air District did not present the document to the trial court.

Exhibit U consists of a Legislative Assembly Committee bill report drafted for the Assembly Committee on Natural Resources. The report discusses AB 2583 (1984), which modified CEQA in various ways. As described in the report, AB 2583 "result[ed] from a study of CEQA by the Committee on the Environment of the California State Bar Association." Exhibit U, p. 3. The Air District previously moved that the Court take judicial notice of the referenced State Bar Report as Exhibit H to its Motion for Judicial Notice, filed February 25, 2014, with this Court. The State Bar Report in Exhibit H, in turn, describes how CEQA requires agencies to analyze the impacts of locating development near areas which contain adverse environmental conditions. *See* Exhibit H, p. 45. The State Bar Report did not recommend changing this aspect of CEQA (Exhibit H, pp.

46-47), but did recommend changing CEQA in other respects (Exhibit U, p. 3).

In its partial opposition to the Air District’s motion for judicial notice, the California Building Industry Association (“CBIA”) argued that Exhibit H was not subject to judicial notice because there was no evidence that it had been submitted to either the entire Assembly Committee on Natural Resources or the Legislature as a whole. CBIA Partial Opposition to Air District MJN, p. 5. Although the text of Exhibit H itself disproves CBIA’s theory,<sup>1</sup> the Air District requests judicial notice of Exhibit U as further evidence that the entire Assembly Committee on Natural Resources received the State Bar Report contained in Exhibit H. *See* Exhibit U, p. 3 (“Each provision of the bill was recommended by that Committee in its report on CEQA filed *with the Assembly Natural Resources Committee earlier this year.*”) (emphasis added).

Accordingly, Exhibit U is relevant to this case because it demonstrates that the Assembly Committee on Natural Resources—and by extension the Legislature—was aware of the State Bar Report’s interpretation of CEQA, including the Report’s opinion that there was no

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<sup>1</sup> The first page of Exhibit H consists of a letter from the Chair of the State Bar Committee to the Chairman of the Assembly Committee stating: “I herewith transmit to you *and the Assembly Committee on Natural Resources* the Report . . . .” (emphasis added).

need to remove CEQA's preexisting requirement that agencies analyze the impacts that existing adverse environmental conditions have on projects.

The Exhibit is subject to judicial notice as an official act of a Legislative Committee pursuant to Evidence Code section 452, subsection (c), and as a proposition not reasonably subject to dispute pursuant to Evidence Code section 452, subsection (h). *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26, 32-35 (citing cases finding that Legislative Committee reports are judicially noticeable); *Empire Properties*, 44 Cal.App.4th at 788 fn.2 (taking judicial notice, pursuant to Evidence Code section 452(h), of a report commissioned by the Legislature).

DATED: March 31, 2014

SHUTE, MIHALY &  
WEINBERGER LLP

By:



ELLISON FOLK

Attorneys for Defendant and Appellant  
BAY AREA AIR QUALITY  
MANAGEMENT DISTRICT

## DECLARATION OF ELLISON FOLK

I, Ellison Folk, declare as follows:

1. I am a member of the State Bar of California, and I am an attorney with the law firm of Shute, Mihaly & Weinberger, attorneys for Defendant and Appellant Bay Area Air Quality Management District. I make this declaration in support of the Air District's attached Supplemental Motion for Judicial Notice.

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. A true and correct copy of the following document for which the Air District is requesting judicial notice is attached to this motion as follows:

- (a) Exhibit U: Assembly Committee on Natural Resources, bill analysis of AB 2583 for hearing on April 10, 1984.

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

Executed on March 31, 2014.



Ellison Folk

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

TERRY GOGGIN, CHAIRMAN

STATE CAPITOL, ROOM 6005  
(916) 445-9367

BILL NO.: AB 2583

FISCAL: W&M

URGENCY: NO

HEARING  
DATE: 4/10/84

BILL NO.: Assembly Bill 2583 (as amended 4/9/84)

AUTHOR: GOGGIN

SUBJECT: CALIFORNIA ENVIRONMENTAL QUALITY ACT.

BACKGROUND:

Under the California Environmental Quality Act (CEQA), lead public agencies must prepare, or cause to be prepared, an Environmental Impact Report (EIR) on any project they propose to carry out or approve which may result in a substantial adverse effect on the environment.

DIGEST:

This bill makes changes to CEQA as follows:

1. Declares state policy that projects to be carried by public agencies shall be subject to the same level of review and consideration as private projects.
2. Provides that noncompliance with information disclosure or substantive provisions of CEQA which prevents relevant information from being presented to the public agency may constitute a prejudicial abuse of discretion, regardless of whether a different outcome would have otherwise resulted. However, there would be no presumption that an error is a prejudicial abuse of discretion.
3. Provides that where there are two or more departments or bodies within a lead agency responsible for approving a project, the first department or body responsible for approving it shall certify the completion of the EIR.
4. Requires that a public agency, when making findings that significant environmental effects have been mitigated or avoided, base its findings on substantial evidence in the record.

BG:df  
Consultant

AB 2583  
Bill No.

5. Declares that public controversy over the environmental effects of a project shall not, in and of itself, constitute substantial evidence that the project may have a significant effect on the environment. Declares that statements in an EIR and comments on an EIR shall not be deemed determinative of whether the project may have a significant effect. Declares that a lead agency shall determine whether a project may have a significant effect on the environment based on substantial evidence in the record.
6. Requires that if a public agency revises an EIR to include significant new information, the EIR must be recirculated to persons who have previously expressed interest.
7. Limits the information needed in EIRs by providing that where a previous EIR has been prepared for a program, plan, policy or ordinance, any lead agency for a later project which is consistent with the general plan and zoning of the city or county shall limit the EIR to effects which either (1) were not examined as significant effects on the environment in the prior EIR or (2) are susceptible to substantial reduction or avoidance by specific revisions in the project, by imposition of conditions, or by other means.
8. Limits substantive comments on an EIR by a responsible agency or other public agency to those activities within the area of that agency's own expertise. Requires the comments to be supported by specific documentation.
9. Provides that the decision of a lead agency to prepare an EIR for a geographic area for a group of projects shall not be a basis for determining that an EIR for an individual project in that area is inadequate.
10. Requires the lead agency to prepare the administrative record within 60 days if requested to do so by a petitioner in a court action to challenge actions of the public agency under CEQA.
11. Requires that when a CEQA related lawsuit is filed against a public agency, the agency must within 60 days schedule a settlement conference within 30 days at which all parties will meet and attempt to settle the litigation. Requires that the settlement conference be held within 45 days of the filing of the lawsuit.
12. Prevents any person from bringing a lawsuit under CEQA to attack, review or set aside a finding of a public agency unless the person bringing the action has participated in the public review process.

STAFF COMMENTS:

1. This bill results from a study of CEQA by the Committee on the Environment of the California State Bar Association. Each provision of the bill was recommended by that Committee in its report on CEQA filed with the Assembly Natural Resources Committee earlier this year.
2. This bill has been amended to include the provisions of AB 1737 (Goggin) which was heard in this Committee last year and passed both houses (passed Assembly 68-3, and Senate on consent). AB 1737 concerned the tiering of environmental impact reports and was a companion measure to AB 1831 (La Follette) which has now been chaptered. AB 1737 was amended into AB 1739 (Goggin) but the conference report on AB 1739 was rejected by the Senate on grounds of germaneness.

SOURCE: Author

SUPPORT: California Business Properties Association  
California Associated Builders and Contractors, Inc.

OPPOSITION: California Municipal Utilities Association

**PROOF OF SERVICE**

***California Building Industry Association v. Bay Area Air Quality  
Management District;  
Supreme Court of California  
Case No. S213478***

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the City and County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On April 1, 2014, I served true copies of the following document(s) described as:

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT'S  
SUPPLEMENTAL MOTION FOR JUDICIAL NOTICE**

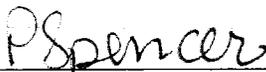
on the parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

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

Executed on April 1, 2014, at San Francisco, California.

  
\_\_\_\_\_  
Patricia A. Spencer

**SERVICE LIST**  
**California Building Industry Association, et al. v. Bay Area Air Quality**  
**Management District; Supreme Court of California**  
**Case No. S213478**

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