S238563

IN THE

SUPREME COURT OF CALIFORNIA

UNION OF MEDICAL MARIJUANA PATIENTS, Plaintiff and Appellant, v. CITY OF SAN DIEGO, Defendant and Respondent, CALIFORNIA COASTAL COMMISSION, Real Party in Interest,	**Fourth District Court of Appeal, Division One Case No. D068185** San Diego Superior Court Case No. 37-2014-00013481-CU-TT-CTL

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE (DOCUMENTS ATTACHED EXHIBIT A – EXHIBIT D)

Mara W. Elliott, City Attorney
Glenn T. Spitzer, Deputy City Attorney
California State Bar No. 218664

Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101-4178
Telephone: (619) 236-6220
Facsimiie: (619) 236-7215
email: gspitzer@sandiego.gov

Attorneys for Respondent City of San Diego

S238563

IN THE

SUPREME COURT OF CALIFORNIA

UNION OF MEDICAL MARIJUANA PATIENTS, Plaintiff and Appellant, v. CITY OF SAN DIEGO, Defendant and Respondent, CALIFORNIA COASTAL COMMISSION, Real Party in Interest,	**Fourth District Court of Appeal, Division One Case No. D068185** San Diego Superior Court Case No. 37-2014-00013481-CU-TT-CTL

RESPONDENT'S REQUEST FOR JUDICIAL NOTICE (DOCUMENTS ATTACHED EXHIBIT A – EXHIBIT D)

Mara W. Elliott, City Attorney
Glenn T. Spitzer, Deputy City Attorney
California State Bar No. 218664

Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101-4178
Telephone: (619) 236-6220
Facsimile: (619) 236-7215
email: gspitzer@sandiego.gov

Attorneys for Respondent City of San Diego

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

The Respondent City of San Diego (City) herein moves this court pursuant to California Rules of Court, Rule 8.252 and Evidence Code section 459 for an order granting the City's request for judicial notice of the following attached hereto as Exhibits "**A**" through "**D**."

Exhibit A: Enrolled Bill Reports purchased by the City from Legislative Intent Service, Inc. regarding Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065. Exhibit A consists of nine (9) pages Bates labeled 0001 through 0009 in the upper right corner of the page.

Exhibit B: Legislative materials purchased by City from Legislative Intent Service, Inc. regarding Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065. Exhibit B consists of eighteen (18) pages Bates labeled 0010 through 0027 in the upper right corner of the page.

Exhibit C: An excerpt of Senate Bill No. 94 (2017). Exhibit C consists of five (5) pages Bates labeled 0028 through 0032 in the upper right corner of the page.

Exhibit D: A copy of a printout of California Legislative Information pertaining to Senate Bill No. 94 (2017). Exhibit D consists of two (2) pages Bates labeled 0033 through 0034 in the upper right corner of the page.

Dated: July 27, 2017

MARA W. ELLIOTT, City Attorney

By: _____
Glenn Spitzer
Deputy City Attorney
Attorneys for Respondent
City of San Diego

MEMORANDUM OF POINTS AND AUTHORITIES

I.

STATUTORY AUTHORITY GOVERNING JUDICIAL NOTICE FOR A REVIEWING COURT

Evidence Code section 459(a) states that the reviewing court may take judicial notice of any matter specified in Section 452. California Rules of Court, Rule 8.252(a) sets forth the following procedure for the motion:

> (a) Judicial notice
>
> (1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.
>
> (2) The motion must state:
>
> (A) Why the matter to be noticed is relevant to the appeal;
>
> (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
>
> (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
>
> (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.
>
> (3) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

Cal. R. Ct. 8.252(a).

A. Rule 8.252(a)(2) Showing for Exhibit A—Enrolled Bill Reports for Senate Bill 749 (1994)

1. Why the matter to be noticed is relevant to the appeal.

At issue is the application of Public Resources Code Section 21065 to zoning amendments. Section 21065 defines "projects" under the California Environmental Quality Act (CEQA). Only "projects" are subject to CEQA. Petitioner argues that, under Public Resources Code Section 21080(a), certain listed activities including zoning amendments qualify as "projects" and are therefore subject to CEQA regardless of whether they meet the "project" definition set forth in Section 21065. The Enrolled Bill Reports in Exhibit "A" are instructive on the Legislature's intent with respect to whether certain activities are exempted from the Section 21065 requirements.

2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.

No, this material was not presented to the trial court.

3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

Evidence Code Section 452(c) permits a court to take judicial notice of the official acts of the legislative and executive departments of California. *See also* Evidence Code § 452(c). The California Supreme Court has "routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent." *Eisner v. Uveges* (2004) 34 Cal. 4th 915, 934, fn 19.

4. Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

This matter does not relate to proceedings occurring after judgment.

B. <u>Rule 8.252(a)(2) Showing for Exhibit B—Excerpts of Legislative Materials for Senate Bill 749 (1994)</u>

1. Why the matter to be noticed is relevant to the appeal.

At issue is the application of Public Resources Code Section 21065 to zoning amendments. Section 21065 defines "projects" under CEQA. Only "projects" are subject to CEQA. Petitioner argues that, under Public Resources Code Section 21080(a), certain listed activities including zoning amendments qualify as "projects" and are therefore subject to CEQA regardless of whether they meet the "project" definition set forth in Section 21065. The Legislative materials in Exhibit "B" are instructive on the Legislature's intent with respect to whether certain activities are exempted from the Section 21065 requirements.

2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.

No, this material was not presented to the trial court.

3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

Evidence Code section 452(a) permits a court to take judicial notice of the resolutions and private acts of the Legislature of this state. Evidence Code Section 452(c) permits a court to take judicial notice of the official acts of the legislative department of California. Legislative materials

assembled by Legislative Intent Service are proper matter for judicial notice. *Coburn v. Sievert* (2005) 133 Cal. App. 4th 1483, 1498.

4. Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

This matter does not relate to proceedings occurring after judgment.

C. <u>Rule 8.252(a)(2) Showing for Exhibit C—Senate Bill No. 94 (2017).</u>

1. Why the matter to be noticed is relevant to the appeal.

Senate Bill No. 94 exempts from CEQA those ordinances similar to the ordinance that is the subject of this litigation. This bill impacts Petitioner's ability to obtain the remedy it seeks.

2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.

No, this material was not presented to the trial court as it was not available at that time.

3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

Evidence Code section 451(a) requires a court to take judicial notice of the public statutory law of this state. Evidence Code section 452(a) permits a court to take judicial notice of the resolutions and private acts of the Legislature of this state. *See also* Evid. Code § 452(c) (official acts of the legislative department of any state of the United States).

4. Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.

This matter relates a proceeding that occurred after judgment (*i.e.*, the passage of new law).

D. Rule 8.252(a)(2) Showing for Exhibit D—California Legislative Information Bill Status Sheet.

1. Why the matter to be noticed is relevant to the appeal.

The bill status sheet is relevant to show that Senate Bill No. 94 (2017) passed and was signed by the Governor.

2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.

No, this material was not presented to the trial court as it was not available at that time.

3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

Evidence Code section 451(a) requires a court to take judicial notice of the public statutory law of this state. Evidence Code section 452(a) permits a court to take judicial notice of the resolutions and private acts of the Legislature of this state. *See also* Evid. Code § 452(c) (official acts of the legislative department of any state of the United States).

4. **Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.**

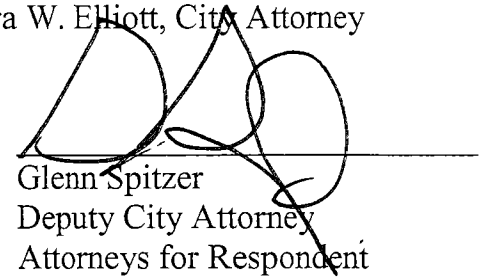
II.

CONCLUSION

For the reasons set forth above, the City respectfully requests the court grant the City's Request for Judicial Notice of Exhibits A through D attached hereto.

Dated: July 28, 2017

Mara W. Elliott, City Attorney

By: 

Glenn Spitzer
Deputy City Attorney
Attorneys for Respondent
City of San Diego

DECLARATION OF GLENN T. SPITZER

I, Glenn T. Spitzer, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a Deputy City Attorney employed by the Office of the City Attorney, and I am assigned to represent the City of San Diego, the Defendant and Respondent in the above-captioned matter, to which this motion is directed. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. Attached hereto as Exhibit A are true and correct copies of enrolled bill reports for Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065, which the City purchased at my request from Legislative Intent Service, Inc.

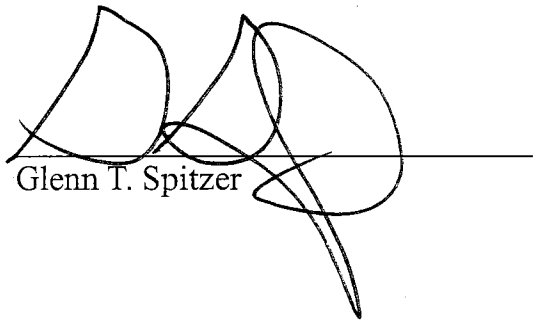
3. Attached hereto as Exhibit B are true and correct copies of excerpts of legislative history materials regarding Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065, which the City purchased at my request from Legislative Intent Service, Inc. The declaration of Anna Maria Bereczky-Anderson from Legislative Intent Service, Inc. that is included in Exhibit A applies to both the Exhibit A and Exhibit B materials.

3. Attached hereto as Exhibit C is a true and correct copy of an excerpt of Senate Bill No. 94 (2017) passed by the Legislature and signed by Governor Brown on June 27, 2017.

4. Attached hereto as Exhibit D is a true and correct copy of a printout from California Legislative Information concerning Senate Bill 94 (2017) showing the bill's passage and approval by the Governor.

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

Executed on July 28, 2017, at San Diego, California.



Glenn T. Spitzer

[PROPOSED]

ORDER TAKING JUDICIAL NOTICE OF DOCUMENTS

Good cause appearing,

IT IS HEREBY ORDERED that Respondent City of San Diego's Motion for Judicial Notice in support of its Respondent's Brief is granted.

IT IS ORDERED that this Court shall take judicial notice of the following:

1. Legislative history materials consisting of enrolled bill reports pertaining to Senate Bill No. 749 (1994).

2. Legislative history materials pertaining to Senate Bill No. 749 (1994).

3. An excerpt of Senate Bill No. 94 (2017).

4. A bill status printout from California Legislative Information for Senate Bill No. 94 (2017).

DATED: _____ By _____
Chief Justice of the
Supreme Court of California

CERTIFICATE OF COMPLIANCE

[CRC 14(c)(1)]

Pursuant to California Rule of Court, Rule 14(c)(1), I certify that this ANSWER BRIEF ON THE MERITS, contains 1,933 words and is printed in a 13-point typeface.

Dated: July 28, 2017

Mara W. Elliott, City Attorney

By

Glenn T. Spitzer
Deputy City Attorney

Attorneys for Respondent,
City of San Diego

EXHIBIT "A"

GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

Enrolled Bill Report

Bill Number	Author	As Amended
SB 749	THOMPSON	8/25/94

Subject: Environmental Quality

SUMMARY

This bill would: clarify certain definitions under CEQA; limit the content requirements of EIRs; exempt from CEQA certain low to moderate income housing projects; establish provisions for the record of proceedings; authorize the deletion of infeasible mitigation measures and substitution of feasible measures prior to approving a project for which a mitigated negative declaration was prepared; and OPR to review specific guidelines and include survey questions. URGENCY.

ANALYSIS

Under the California Environmental Quality Act (CEQA), a lead agency (the agency with primary responsibility for approving or carrying out a project) must determine project significance and then prepare an Environmental Impact Report (EIR) on projects which may significantly affect the environment, or a negative declaration or mitigated negative declaration for projects which either do not have significant effects or whose significant effects can be mitigated.

Project Definition

Under current law, the vague definition of "project" has been the subject of wide interpretation. For example, decisions from the courts of appeal have not always been consistent with one another.

SB 749 would specify that a "project" under CEQA is limited to actions which result in a direct, or reasonably foreseeable indirect, physical change in the environment.

Mitigated Negative Declaration

Current law provides that a negative declaration shall be adopted when the project will not result in an adverse environmental effect. This is termed a "mitigated negative declaration," when mitigation measures have been imposed on the project to avoid the identified effects. A draft negative declaration must be circulated for review prior to adoption.

Recommendation: SIGN

By: [signature] Date: 9/7/94

Title: LEE GRISSOM
DIRECTOR

SB 749 would clarify the use of mitigated negative declarations, specifying that mitigation measures must be incorporated as revisions to project plans or set forth in the proposed conditions of project approval, with the applicant's agreement. It would further provide that if a proposed mitigation measure is found to be infeasible or undesirable, the lead agency may adopt equivalent, substitute measures without having to recirculate the negative declaration for an additional review period.

Project Exemptions

Current law exempts specified projects from CEQA, including residential projects consistent with a specific plan for which an EIR had been previously prepared. SB 749 would create a new exemption for affordable housing projects of 45 units or less, involving two acres or less, in urbanized areas. After meeting other qualifications, including review of the site by an environmental assessor for possible hazardous contaminants, the projects must be consistent with the applicable local general plan and zoning, as well as being located in a developed area with no habitat value.

Mitigation Measures

Current law provides that when there is a project for which mitigation is required, an agency must, among other things, adopt mitigation measures as conditions of project approval. SB 749 would specify that for a plan, policy, or other public project, the mitigation measures are to be incorporated into the plan, policy, regulation, or project design.

EIR Contents

CEQA dictates the minimum contents of an EIR. This includes a project description and analyses of significant effects, proposed mitigation measures, alternatives to the proposal, growth inducing impacts, the relationship between the short-term uses of man's environment and the maintenance of long-term productivity, and significant irreversible impacts of the proposal.

The CEQA Guidelines provide that the EIR shall focus on significant effects.

SB 749 would eliminate the requirement to analyze the relationship between the short-term uses of man's environment and the maintenance of long-term productivity.

The bill would statutorily authorize the omittance from EIRs the detailed discussion of potential environmental effects which are not significant.

CEQA Litigation

Current law establishes procedures for bringing and maintaining litigation alleging noncompliance with CEQA, including provisions for preparing the record of proceedings. Further, it sets time limits for litigation proceedings.

SB 749 specifies the minimum content of a record of proceedings and establishes specific time lines.

CEQA Guidelines

CEQA requires that the Office of Planning and Research (OPR) review the guidelines adopted to implement the Act every two years.

SB 749 would require that OPR review and provide additional development of the concept of using a focused EIR and revise the Guideline's definition of project consistent with this bill. OPR would also be required to include in its annual survey of planning agencies questions that analyze the ability of the lead agency to address potential significant effects on the environment, relative to the exemption for affordable housing projects proposed by this bill.

COST

No appropriation. SB 749 would not create a State-mandated local program.

ECONOMIC IMPACT

SB 749 would not adversely affect the State's business or economic climate.

LEGAL IMPACT

SB 749 would not conflict with existing State or federal law or increase the State's liability. The revisions to CEQA litigation proposed by SB 749 would streamline proceedings and require litigation to be undertaken in a timely manner. The amended definition of "project" will limit litigation not related to environmental effects and will reduce frivolous litigation.

SB 749 would amend certain sections of CEQA also amended by AB 314, which is also pending before the Governor. If both bills are chaptered, provisions of SB 749 that amend Sections 2100, 21100.1, and 21167.6 of the Public Resources Code shall prevail over the provisions of AB 314, regardless of signing order.

SB 749 and AB 314 also each amend Public Resources Code Section 21080.6. Both bills contain appropriate double-joining language so no particular signing order is necessary.

PE-7

LEGISLATIVE HISTORY

SB 749 is sponsored by Senator Thompson.

Last year, SB 1031 (Thompson) was introduced in response to the recommendation contained in the 1991 report of the Governor's Council on California's Competitiveness and on the January 12, 1993, joint hearing of the Senate Governmental Organization, Judiciary, Local Government, Natural Resources and Wildlife, and Housing and Urban Affairs Committees. The joint hearing examined whether CEQA is adequately performing its role of protecting the environment, or whether it produces a great deal of regulation, at significant cost, without safeguarding the environment. Governor Wilson vetoed SB 1031, because he did not agree with the provisions of the bill that specifically included rent control as an example of an economic activity which should not be subjected to CEQA. In his veto message, the Governor expressed a willingness to sign legislation that did not include the objectionable reference to rent control.

SB 749 is essentially the same bill as SB 1031, minus the reference to rent control. Also omitted was a section that would have changed the time period for writ of mandates. Necessary changes were also made to account for the CEQA revisions enacted by 1993's AB 1888 (Ch. 1030) and SB 939 (Ch. 1031).

Positions

SB 749 is supported by the California State Association of Counties, the League of California Cities, the Association of California Water Agencies, the California Building Industry Association, the California Council American Institute of Architects, the California Association of Realtors, the California Association of Sanitation Agencies, and the California Business Properties Association.

SB 749 is opposed by the Sierra Club due to the revised definition of "project". However, we note that the Sierra Club did not oppose this identical provision in SB 1031.

VOTE: Senate - 06 May 1993
Ayes - 34
Noes - 0

Assembly - 29 August 1994
vote not available

Concurrence - 30 August 1994
vote not available

RECOMMENDATION

The Governor's Office of Planning and Research recommends the Governor SIGN SB 749.

PE-8

SB 749 offers a number of consensus revisions to CEQA which will improve implementation of the Act as well as streamline litigation. The proposed definition of "project" will focus environmental analysis upon the physical aspects of proposed activities and will restrict the use of CEQA to challenge projects on nonenvironmental basis. This will restrict frivolous litigation where no evidence of environmental effects exist. For example, lawsuits instigated by trade unions for the purpose of forcing the use of union labor will be limited to those instances where physical impacts can be shown to exist.

The clarified provisions for "mitigated negative declarations" ensure that mitigation measures will be incorporated into project approvals, that negative declarations will not be recirculated unnecessarily, and that lead agencies will be able to exchange the mitigation measures identified in a negative declaration which may be infeasible for more practical measures which would continue to mitigate potential impacts. This will encourage the use of mitigated negative declarations rather than EIRs when all project impacts can be mitigated.

This bill would also create a concise exemption for infill residential projects of 45 or fewer low or moderate income units. This will encourage the use of vacant property within urban areas, offer an incentive for the efficient use of land, and increase the supply of affordable housing, while protecting environmental quality.

SB 749 would eliminate the vague requirement for EIRs to analyze the relationship between the short-term uses of man's environment and the maintenance of long-term productivity. This will contribute to streamlining the CEQA process, and increasing the practicality of EIR analyses.

The bill specifies the minimum contents of records of proceedings, thereby ensuring an even playing field for both sides in CEQA disputes. It also strengthens compliance and establishes monitoring programs to ensure compliance during project implementation.

The urgency clause was added to enact these measures immediately in order to apply to future projects.

Mark Goss, Project Analyst
Terry Rivasplata, Principal Planner
Nancy Patton, Assistant Deputy Director, Legislation
KM

PE-9

ENROLLED BILL REPORT

AGENCY	BILL NUMBER
RESOURCES	SB 749
DEPARTMENT, BOARD OR COMMISSION	AUTHOR
WATER RESOURCES	Thompson

SUBJECT: California Environmental Quality Act

SUMMARY:

The bill would make a number of changes in the ways that the California Environmental Quality Act (CEQA) applies to the approval of projects and to the court challenges to those approvals. The key parts of the bill are as follows:

1. Redefine the term "project."

2. Limit recirculation of a negative declaration where equally effective mitigation measures are substituted for old ones.

3. Exempt affordable housing projects of up to 45 units subject to certain limitations.

4. Delete from the required contents of an environmental impact report (EIR), the discussion of short term uses of the environment versus long term productivity.

5. Define the "record of proceedings" used in CEQA court actions.

The bill would make other relatively minor changes in CEQA, putting into the statute several concepts already authorized by the State CEQA Guidelines adopted by the Resources Agency.

Prepared by: Norman Hill (916) 653-5555, Home (916) 447-8149
Lucinda Chipponeri 653-0488, Home (916) 443-9028
Robert G. Potter 653-6055, Home (916) 392-6401

NHill 9/1/94

Sheba 9/1/94

Chipponeri 9-1-94

RECOMMENDATION: Sign the bill.

92-10

DEPARTMENT HEAD	DATE	AGENCY HEAD	DATE
[signature]	9-2	Shannon Hood	9/6/94

ANALYSIS:

The detailed provisions of SB 1031 are as follows:

1. **Definition of "project".**

Under existing law, CEQA applies to decisions of public agencies to carry out or approve projects. The bill would add a limitation that projects under CEQA would include only those activities that would cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Discussion: This change would codify the holdings in two court decisions that ruled that environmental effects of an activity must be reasonably foreseeable before CEQA will apply to the approval of that activity. A number of other decisions have required CEQA compliance where the impacts were uncertain and difficult to foresee. This change in the definition will help focus CEQA on situations where the environmental effects can be reasonably analyzed and made understandable to the people who must consider the information in making a public decision.

2. **Limit Recirculation of Negative Declarations.**

Under existing law, standards are not clear as to when a negative declaration would need to be recirculated for additional public review. This lack of clarity is a problem where a negative declaration was sent out for public review with one set of mitigation measures and then the public agency changes the mitigation based on public comment. The bill would provide that recirculation would not be needed if the agency found some of the mitigation measures undesirable and substituted other mitigation measures that would be equivalent or more effective.

Discussion: This change is highly desirable. It would encourage agencies to be more responsive to public comment and to be more willing to change mitigation measures. The standard of "equivalent or more effective" would help assure that the mitigation would not be weakened and that environmental protection would be maintained.

PE-11

ENROLLED BILL REPORT — Business, Transportation & Housing Agency

DEPARTMENT	AUTHOR	BILL NO.
Housing and Community Development	Mike Thompson (D-Napa Valley)	SB 749
SPONSOR	RELATED BILLS	DATE LAST AMENDED
Author	AB 314, AB 3373 SB 1320, SB 1971	August 25, 1994
SUBJECT: California Environmental Quality Act (CEQA)		

1. **SUMMARY:**

SB 749 would modify review and procedural requirements under the California Environmental Quality Act and add a CEQA exemption for affordable housing projects of 45 or fewer units located within urbanized areas.

> This analysis comments on provisions of the bill affecting housing. The Governor's Office of Planning and Research has lead responsibility for California Environmental Quality Act bills, and we defer to OPR for an overall analysis of the bill.

2. **ANALYSIS:**

A. **Policy:**

Existing Law: The California Environmental Quality Act (CEQA) requires local agencies to prepare an Environmental Impact Report (EIR) for discretionary projects that may significantly affect the environment. Localities must adopt feasible alternatives or mitigation measures in carrying out or approving such projects. CEQA also requires agencies to adopt a "negative declaration" for a project having no significant impact on the environment or one that has been revised to avoid significant impacts.

CEQA provides, under certain circumstances, that lead agencies may use an EIR, prepared for certain land use plans (e.g., general plans, community plans or zoning classifications), for residential and other development projects that are consistent with those plans. Also, a "master" and a "focused" EIR may be prepared for

VOTE: ASSEMBLY FLOOR	Aye 77	No 0	VOTE: SENATE FLOOR	Aye 34	No 0
Policy Cmte. Natural Resources	Aye 8	No 0	Policy Cmte. Government Organization	Aye 8	No 0

RECOMMENDATION: SIGN

DEPARTMENT	DATE	AGENCY	DATE
Timothy L. Coyle, Director	9/6/94	Michael B. Davis	9/9/94

PE-20

related projects. For example, a master EIR may be prepared for a policy, plan, program, or ordinance, and followed by a narrower or site-specific EIR that concentrates only on effects that were not analyzed in the master EIR. Effective January 1, 1994, a focused EIR may be prepared for in-fill projects consisting of not more than 100 multifamily units or a mixed-use residential and commercial development of not more than 100,000 square feet.

Projects that maintain, repair, restore, replace, or demolish property or facilities that were damaged or destroyed by a disaster in an area where the Governor has declared a state of emergency are exempt from CEQA. This exemption also extends to emergency repairs of public service facilities.

Existing law defines "project" for the purposes of CEQA to mean activities directly undertaken by any public agency, activities undertaken by persons which are supported by assistance from public agencies, and activities involving various entitlements (e.g., permits or certificates) issued by public agencies.

SB 749 would, among other things:

- Redefine "project" to mean activities directly undertaken by any public agency, activities undertaken by persons which are supported by assistance from public agencies, and activities involving various entitlements (e.g., permits or certificates) issued by public agencies which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

- Exempt from CEQA affordable housing projects of 45 or fewer units located within urbanized areas if they meet specified conditions.

- Define "urbanized area" as a populated area with a density of at least 1,000 persons per square mile.

- Provide that the exempted housing must be either:

  - Affordable to lower-income households, as defined in the Health and Safety Code (H&SC), if the developer provides sufficient legal commitments to the appropriate local agency to ensure continued availability and use of the housing units for at least 15 years for lower-income households.

    - The Health and Safety Code citation specifies lower-income households by a reference to qualifying income limits established under Section 8 of the United States Housing Act of 1937 and published by the Department of Housing and Community Development (HCD); or,