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DEVELOPING NEWS

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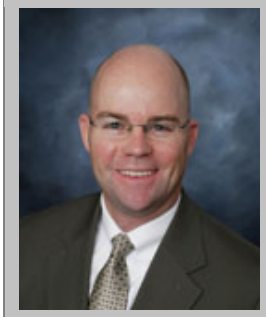

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CEQA Reform Update

In January of this year I offered some thoughts on sensible reform of the California Environmental Quality Act ("CEQA") – A Sensible Proposal for CEQA Reform (1/16/13). Now that the deadline has passed for the legislators to introduce their bills, we have a clearer picture of what Sacramento views as CEQA reform. Of the roughly 22 introduced bills having something to do with CEQA, only two – SB-787 (Berryhill) and SB-731 (Steinberg) – are focused on significant reforms. Notably, two other bills – AB-823 (Eggman) and AB-953 (Ammiano) – would impose new CEQA requirements and significantly increase the burden and expense of CEQA compliance.

CEQA Reform Bills

In my January article, I wrote that Senator Michael Rubio (D. Bakersfield) was expected to introduce SB-317 as a CEQA reform bill. Senator Rubio resigned February 22, and Senate President pro Tem Darrell Steinberg appears to have picked up his torch by introducing SB-731. As introduced, SB-731 merely articulates policies, leaving the details to future amendments. Among the goals of SB-731:

1. To create greater certainty for "smart infill development";
2. To streamline renewable energy, advanced manufacturing, transit, bike, and pedestrian projects;
3. To establish standardized thresholds of significance for noise, aesthetics, parking, and traffic impacts;

4. To establish clearer procedures for trial courts to remand to a lead agency for remedying only those portions of an EIR, negative declaration, or other CEQA document found to be in violation of CEQA; and

5. To establish clear statutory rules under which "late hits" and "document dumps" are prohibited or restricted prior to certification of an EIR.

This last goal could be achieved by requiring a meaningful "exhaustion of administrative remedies," which I addressed in my January article. The other goals are all worthy, meaningful improvements in the law. The first two would affect only a small portion of projects, but the third and fourth could make a significant improvement across the board.

The other CEQA reform bill is SB-787 (Berryhill). Introduced by Republican Senator Tom Berryhill of the Central Valley, SB-787 proposes specific changes to CEQA. Named the "Sustainable Environmental Protection Act," Senator Berryhill's bill devotes 10 pages describing the numerous state and federal laws that protect our environment independently of CEQA, and declares the bill's intent to rely upon these laws which apply uniformly and "provide greater clarity than the project-by-project ad hoc review process that was created for CEQA in 1970." SB-787 focuses primarily on the concept of integrating CEQA with our existing array of environmental laws by providing that, so long as a project follows and complies with the requirements, standards, methods, and mitigation methods imposed by existing law, it suffices under CEQA.

Counter-Reform Bills

While much attention has been given to CEQA reform, little attention has been given to two bills that would add to CEQA's existing requirements.

Assembly bill 823, introduced by Assemblyperson Susan Talamantes Eggman (D. Stockton), would enact the California Farmland Protection Act. This new law would require that the conversion of any agricultural land to permanent non-agricultural uses be mitigated through the permanent protection and

conservation of land suitable for agricultural uses. This would constitute a drastic change to CEQA. First, CEQA currently requires mitigation only for significant losses of "Prime Farmland," "Unique Farmland," or "Farmland of Statewide Importance," whereas this bill would require mitigation for loss of any agricultural land. Second, CEQA does not mandate conservation easements as the exclusive means of mitigation, and requires implementation of mitigation only if feasible. AB-823 would require conservation easements even if infeasible.

Another bill swimming against the current of CEQA reform is AB-953, introduced by Assemblyman Tom Ammiano (D. San Francisco). Under existing law, CEQA is intended to address a project's impacts on the environment – not the environment's impacts on a project. *See, e.g., South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604 (housing project near sewage treatment plant did not need to address impact of odors on future residents). AB-953 would expand CEQA's reach by applying it to impacts that the surrounding environment may have on residents/occupants of a proposed project. Think projects near freeways, projects in industrial areas, etc.

Thus, it remains to be seen whether CEQA will be meaningfully reformed to curb abuses, or whether it will be business as usual.

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