



EDMUND G. BROWN JR.
GOVERNOR

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



KEN ALEX
DIRECTOR

MEMORANDUM

Date: December 21, 2011
To: City and County Planning Directors and Interested Parties
From: Scott Morgan, State Clearinghouse Director
Subject: **New California Environmental Quality Act and General Plan Requirements**

The Governor's Office of Planning and Research (OPR) would like to notify city and county planning staff of recent changes in state law that affect local government planning processes and California Environmental Quality Act (CEQA) compliance.

This memo summarizes three bills passed in the 2011 legislative session related to CEQA compliance (Assembly Bill (AB) 209, AB 320, Senate Bill (SB) 226, and Assembly Bill (AB) 900), and one bill containing key new general plan requirements (SB 244). See Attachment 1 for a full list of bills related to land use passed in 2011. These new requirements go into effect January 1, 2012.

AB 209

AB 209 (Ammiano), signed August 4, 2011, amends section 21092 of the Public Resources Code. The law requires a lead agency publishing a Draft Environmental Impact Report (EIR) or Negative Declaration to include in its public notice a description of how the Draft EIR or Negative Declaration is being provided electronically for public review.

AB 320

AB 320 (Hill), signed October 8, 2011 amends sections 21108, 21152, and 21167.6.5 of the Public Resources Code. The changes require a lead agency to identify the project applicant on the notice of determination (NOD) or notice of exemption (NOE) form.

Sections 15075 and 15094, as well as Appendices D (NOD form) and E (NOE form) of the State CEQA Guidelines have been revised to incorporate these new requirements.

The attached NOE and NOD forms comply with the new statutory requirements. OPR is currently working with the California Natural Resources Agency and the Office of Administrative Law to update the forms through the regulatory process.

SB 226

SB 226 (Simitian), signed October 4, 2011, amends Section 65919.10 of the Government Code, amends Sections 21083.9 and 21084 of the Public Resources Code, and adds Sections 21080.35, 21094.5, 21094.5.5, and 25500.1 to, the Public Resources Code. Specific provisions include:

- A change in a zoning code does not require referral to an affected city or county if it is consistent with a general plan that has been referred to the affected city or county.
- Rooftop solar projects are exempt from CEQA.
- A proposed adoption or substantial amendment to a general plan of a city or county may be referred pursuant to the Government Code concurrently with a CEQA scoping meeting.
- A project's greenhouse gas emissions, by themselves, will not trigger an exception to the use of a categorical exemption.

SB 226 also creates a new streamlining tool for infill projects meeting specified criteria and that satisfy a set of performance standards. The statute requires OPR to develop guidelines and performance standards for that new streamlined process by July 1, 2012, and the California Natural Resources Agency must adopt those guidelines and performance standards by January 1, 2013. The streamlined review procedures will go into effect once those guidelines and performance standards have been adopted.

SB 244

SB 244 (Wolk), signed October 7, 2011, amends sections 56375, 56425, and 56430 of, and adds sections 53082.5, 56033.5, and 65302.10 to the Government Code, and adds section 13481.7 to the Water Code. The changes require local agencies to plan for disadvantaged unincorporated communities through the Local Agency Formation Commission (LAFCO) planning process and General Plan updates. Specific provisions include:

- Requirement that, on or before the next adoption of its housing element, a city or county must review and update the land use element of its general plan to include an analysis of the presence of island, fringe, or legacy unincorporated communities, as well as water, wastewater, stormwater drainage, and structural fire protection deficiencies in those communities and financially feasible ways to extend those services.
- Requirement that LAFCOs must consider the present and probable need for public facilities and services of disadvantaged unincorporated communities when determining a local agency's sphere of influence.
- Allowance for a city, county, or special district providing or intending to provide wastewater services to borrow money and incur indebtedness pursuant to provisions in the Water Code related to the State Water Pollution Control Revolving Fund.
- Requirements for annexation of territory including or adjacent to a disadvantaged unincorporated community.

AB 900

AB 900, the "Jobs and Economic Improvement Through Environmental Leadership Act" requires the Governor to establish procedures for projects to apply for streamlined litigation process. The bill sets up specific criteria which must be met by large projects. The Governor's Office released draft guidelines for review and comment which are available on the OPR website at www.opr.ca.gov under California Jobs.

More information on these bills can be found on the OPR web page at www.opr.ca.gov under Announcements and Technical Advisories, and fillable versions of the attached forms can be found under Publications. For additional questions, please contact the State Clearinghouse at (916) 445-0613 or state.clearinghouse@opr.ca.gov.

Attachments:

- 1) 2011 Land Use Bills
- 2) Notice of Determination – Appendix D
- 3) Notice of Exemption – Appendix E

2011 Land Use Bills

AB 147 (Dickinson) Subdivisions.

Authorizes a local ordinance to require the payment of a fee subject to the Mitigation Fee Act, as a condition of approval of a final map or as a condition of issuing a building permit for purposes of defraying the actual or estimated cost of constructing other transportation facilities.

Status: Chapter 228, Statutes of 2011

AB 208 (Fuentes) Land use: subdivision maps: expiration dates.

Extends the expiration date by 24 months for specified subdivision maps that will expire on or before January 1, 2014, and for any legislative, administrative or other approval by a state agency relating to a development project in the subdivision.

Status: Chapter 88, Statutes of 2011

AB 418 (Ammiano) Tidelands/submerged lands: City/County of San Francisco: Pier 70.

Authorizes the State Lands Commission to approve and effectuate a land exchange involving public trust lands within the Pier 70 area in San Francisco for the purpose of facilitating the Port of San Francisco's redevelopment plans; Frees the public trust restrictions from Seawall Lot 330 in San Francisco and authorizes the transfer of the property to a private party.

Status: Chapter 477, Statutes of 2011

AB 936 (Hueso) Redevelopment: debt forgiveness.

Requires a public body or a redevelopment agency to adopt a resolution prior to forgiving a loan, advance, or indebtedness.

Status: Chapter 226, Statutes of 2011

AB 1103 (Huffman) Land use: housing element.

Adds units on foreclosed property to the types of existing units a local government can count towards meeting housing element obligations if the local government provides funding to make the units affordable to low- and very low-income households for at least 40 years.

Status: Chapter 210, Statutes of 2011

AB 1265 (Nielsen) Local government: Williamson Act.

Authorizes a county, until January 1, 2015, in any fiscal year in which payments authorized for reimbursement to a county for lost revenue from Williamson Act contracts is less than one-half of the county's actual foregone general fund property tax revenue, to revise the terms for new contracts.

Status: Chapter 90, Statutes of 2011

AB 1338 (Hernández) Redevelopment.

Requires, on or after January 1, 2012, a redevelopment agency (RDA) obtain an appraisal from a qualified independent appraiser to determine the fair market value of property before the RDA acquires or purchases property.

Status: Chapter 299, Statutes of 2011

SB 152 (Pavley) Public lands: general leasing law: littoral landowners.

Requires the State Lands commission to charge rent for a private recreational pier constructed on state lands.

Status: Chapter 585, Statutes of 2011

SB 226 (Simitian) Land use planning.

Revises the scoping procedure, under the California Environmental Quality Act (CEQA), by authorizing referral of a proposed action to adopt or substantially amend a general plan to a city or county to be conducted concurrently with a scoping meeting and establishes exemption and limits to environmental review under CEQA for specific projects and provides that the thermal power plant certification process will be applicable to owners or specific proposed solar thermal power plants who are proposing to convert the facility from solar thermal to photovoltaic technologies.

Status: Chapter 469, Statutes of 2011

SB 244 (Wolk) Land use: general plan: disadvantaged unincorporated communities.

Requires cities, counties, and local agency formation commissions (LAFCOs) to plan for disadvantaged unincorporated communities.

Status: Chapter 513, Statutes of 2011

SB 267 (Rubio) Water supply planning: renewable energy plants.

Excludes a proposed photovoltaic or wind energy generation facility approved on or after the effective date of this measure from the definition of a "project" subject to a water supply assessment if the facility would demand no more than 75 acre feet of water annually.

Status: Chapter 588, Statutes of 2011

SB 310 (Hancock) Local development.

Allows cities and counties to create incentives for transit priority projects.

Status: Chapter 446, Statutes of 2011

SB 436 (Kehoe) Land use: mitigation lands: nonprofit organizations.

Authorizes a state or local agency to allow a qualified and approved nonprofit organization or special district to hold property and long-term stewardship funds to mitigate adverse impacts to natural resources caused by a permitted development project.

Status: Chapter 590, Statutes of 2011

SB 551 (DeSaulnier) State property: tidelands transfer: City of Pittsburg.

Repeals the 2006 public trust grant made to the City of Pittsburg and makes a new grant that includes the lands from the 2006 grant as well as lands annexed to the City in 2009.

Status: Chapter 422, Statutes of 2011

SB 618 (Wolk) Local government: Williamson Act: solar-use easement.

Allows a city or county and a landowner to concurrently rescind a Williamson Act contract on marginally productive or physically impaired lands and enter into a solar-use easement that restricts the use of land to photovoltaic solar facilities.

Status: Chapter 596, Statutes of 2011

SB 668 (Evans) Local government: Williamson Act.

Allows a city or county, in order to compensate for a reduction in state subvention payments for the Williamson Act, to accept contributions from a nonprofit, a land-trust organization, a nonprofit entity, or a public agency for specific land that is under a Williamson Act contract to supplement the city or county's foregone property tax revenues.

Status: Chapter 254, Statutes of 2011

Notice of Determination

Appendix D

To:

Office of Planning and Research
U.S. Mail: _____ Street Address: _____
P.O. Box 3044 1400 Tenth St., Rm 113
Sacramento, CA 95812-3044 Sacramento, CA 95814

County Clerk
County of: _____
Address: _____

From:

Public Agency: _____
Address: _____

Contact: _____
Phone: _____

Lead Agency (if different from above): _____
Address: _____

Contact: _____
Phone: _____

SUBJECT: Filing of Notice of Determination in compliance with Section 21108 or 21152 of the Public Resources Code.

State Clearinghouse Number (if submitted to State Clearinghouse): _____

Project Title: _____

Project Applicant: _____

Project Location (include county): _____

Project Description:

This is to advise that the _____ has approved the above
(Lead Agency or Responsible Agency)

described project on _____ and has made the following determinations regarding the above
(date)
described project.

1. The project [will will not] have a significant effect on the environment.
2. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA.
3. Mitigation measures [were were not] made a condition of the approval of the project.
4. A mitigation reporting or monitoring plan [was was not] adopted for this project.
5. A statement of Overriding Considerations [was was not] adopted for this project.
6. Findings [were were not] made pursuant to the provisions of CEQA.

This is to certify that the final EIR with comments and responses and record of project approval, or the negative Declaration, is available to the General Public at:

Signature (Public Agency): _____ Title: _____

Date: _____ Date Received for filing at OPR: _____

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: _____

From: (Public Agency): _____

(Address)

Project Title: _____

Project Applicant: _____

Project Location - Specific:

Project Location - City: _____ Project Location - County: _____

Description of Nature, Purpose and Beneficiaries of Project:

Name of Public Agency Approving Project: _____

Name of Person or Agency Carrying Out Project: _____

Exempt Status: **(check one)**:

- Ministerial (Sec. 21080(b)(1); 15268);
- Declared Emergency (Sec. 21080(b)(3); 15269(a));
- Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- Categorical Exemption. State type and section number: _____
- Statutory Exemptions. State code number: _____

Reasons why project is exempt:

Lead Agency

Contact Person: _____ Area Code/Telephone/Extension: _____

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? Yes No

Signature: _____ Date: _____ Title: _____

Signed by Lead Agency Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____