

CEQA Legislative Update

ITE SOUTHERN CALIFORNIA & SAN DIEGO SECTIONS

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AECOM

Statutory Revisions: § 21089(c)(1)(2)

- Agency can collect reasonable fees from members of public for a copy of an ED, not to exceed the cost of production.
- May provide ED in electronic format.
- Includes CEQA and NEPA documents used by state and local agencies.

Statutory Revisions: § 21094

- (a) A finding of overriding considerations from a prior EIR can be used for a later project, if:
 - Impacts are not greater or different.
 - All applicable earlier mitigation incorporated.
 - No previous infeasible alternatives or mitigation now feasible.
 - Mitigation is not deferred.
 - Prior EIS is less than 3 years old.
- (e) A cumulative effect need not be examined in a later ED if “adequately addressed” in a prior EIR.

Sunsets after January 1, 2016

Statutory Revisions: § 21159

- Existing provisions for streamlined CEQA review of pollution controls amended to extend to the adoption of performance standards for AB 32.

Statutory Revisions: § 21167.8

- Parties objecting to a CEQA approval action may request mediation.
- Mediation may be conducted concurrently with judicial proceedings.

Statutory Revisions: § 21167.10

- Notice requesting mediation must be filed within 5 business days from date of NOD.
- Request is denied if agency fails to respond within 5 business days.
- Statute of limitations is tolled if agency accepts mediation.
- 90-day limit on mediation attempt

Statutory Revisions: § 21167.11

- Court may sanction attorney for filing a frivolous lawsuit.
- Allows any party to file a motion, up to 30 days before the hearing on the merits, requesting the court to impose a sanction for a frivolous claim made in the course of a CEQA action.
- Frivolous is defined as totally and completely without merit.
- Court can impose sanctions of up to \$10,000 against the attorneys, law firms, or parties responsible for the frivolous claim.

Sunsets after January 1, 2016

Statutory Revisions § 21177

- When an organization formed after project approval files a CEQA lawsuit, it will be limited to litigating issues specifically raised by its own individual members during the administrative process.
- Amended to state that the member may have presented such comment either directly, or indirectly supporting the comments on another person.

Sunsets after January 1, 2016

Enhanced CEQA Action Team (ECAT)

- Joint American Planning Association CA (APACA) and Association of Environmental Professionals (AEP) Group
- Mission is to provide recommendations to enhance CEQA's efficiency and effectiveness
- Kicked off in November
- Recommendations in April May 2011

Enhanced CEQA Action Team (ECAT)

Legislative Issues

- TOP 5:
 - Litigation process – “late hits”
 - Infill streamlining provisions
 - MNDs/NDs – fair argument standard
 - Tiering provisions
 - Cumulative impact analyses
- Others:
 - GHG analyses, standardized mitigation, SB 375 streamlining, alternatives analyses, thresholds of significance, public outreach and participation, planning/environmental “disconnect”, co-lead agencies, electronic distribution/noticing