For the last 50 years, the California Environmental Quality Act (CEQA) has been the primary California law for protecting the environment and community involvement in discretionary project approvals. Yet, in recent years there has been an ever-growing narrative that CEQA is a primary inhibitor of housing production and quality development in California. While the Planning and Conservation League (PCL) finds this assertion to be fundamentally untrue, PCL does find that there are updates to CEQA that can assist in making this valuable statute more efficient, effective and predictable. The public process that CEQA provides is critical to ensuring that development in California is both sustainable and equitable, but it can be improved. This comprehensive package of 21st century updates to the CEQA process, developed by cross-sector practitioners, aims to make CEQA significantly more efficient as well as more protective of our environment and our communities.

Background

CEQA was adopted in 1970, and since that time there has been no comprehensive update of the statute. With increasingly complex statewide problems, including critical affordable housing shortages, environmental justice challenges, climate change, wildfire, and drought, it is more important than ever that CEQA function effectively and efficiently.

The CEQA process has become unnecessarily more costly and time-consuming than originally intended, largely due to administrative and technological developments (such as email) not foreseen 50 years ago. CEQA, in some cases, has also come to be used, or by-passed, in ways that are not consistent with the intent of the original statute. After decades of ongoing “hand to hand combat” in the legislature, including a seemingly endless stream of CEQA exemption proposals, it was time to take a careful and comprehensive look at the law, including its guidelines, and to make a patient and good faith attempt to find common ground solutions among the many stakeholders in the State.

To that end, PCL, as a key initiator and stakeholder of the original CEQA legislation, has for the last 18 months assembled a technical working group of cross-sector CEQA attorneys and planners to meet and carefully examine how the law is and is not working and to come up with logical amendments. This “CEQA 2.0” process presented a strategy to identify the problems that have arisen with the implementation of CEQA from the business, environmental advocates, and public and governmental agencies’ perspective, and to develop consensus-based amendments to CEQA that could resolve those problems without reducing the community and environmental protection benefits of the public process that CEQA provides. SB 950 is the product of this effort.

This Bill

This package of updates to the CEQA process, taken together, will provide significant efficiencies in time and cost, encourage conflict resolution without litigation, improve access to the process for non-English speakers, while discouraging abuses of the process, as well as undue avoidance of CEQA. These goals and corresponding amendments include:

Goal 1: Record Streamlining (SEC.20)
These amendments provide revised procedures that have the potential to reduce the time and expense of record preparation by encouraging parties to engage in coordinated, cooperative effort to streamline the record content.

Goal 2: CMC Procedures (SEC. 19, 20, 23)
These amendments establish an early mandatory Case Management Conference (CMC) enabling parties and the court to facilitate the expeditious resolution of issues that could delay the timely completion of a sufficient record.

Goal 3: Tolling Agreements (SEC. 16, 5, 6)
These amendments clarify that tolling agreements are effective to toll the commonly applicable statutes of limitations, and that legal counsel for a public agency has the authority to execute tolling agreements on behalf of that agency.
Goal 4: Pre-hearing Settlement Meeting (SEC. 22, 23)
These amendments alter the settlement conference requirements to allow for the early meeting to occur by phone, and just amongst the attorneys, as well as a second, full settlement meeting, after the mandatory case management conference (Goal 2), to increase the chance of fruitful settlements.

Goal 5: Increased CEQA Expertise (SEC. 17, 18)
These amendments would encourage the leadership in superior courts to extend the normal terms of CEQA judges to facilitate the accumulation of CEQA expertise over time; require the Judicial Council to undertake a study to formulate recommendations for how, if necessary, to expand the number of CEQA judges and to facilitate the transfer of complex CEQA cases to experienced CEQA judges; allow any party would the right to make a motion to transfer the case to a county with a CEQA judge or to have the Judicial Council appoint a CEQA judge to hear the case in the locale the matter was originally filed.

Goal 6: Final EIR Comments (SEC. 15, 26)
To avoid “eleventh-hour” comment submissions that cannot be adequately reviewed, these amendments provide for an optional alternative process whereby FEIRs are released for public review at least 30 days before a hearing on project approval, and written comments on those FEIRs must be submitted at least 10 days before the final hearing.

Goal 7: Monetary Settlements (SEC.21, 27)
To discourage litigation enacted primarily or exclusively for monetary gain, these amendments require the petitioner in any settled CEQA litigation that includes the payment of money other than the payment of reasonable attorneys’ fees to submit a form to the Attorney General within 7 days after filing the request for dismissal with the court. If a concerning pattern emerges with a petitioner, the Attorney General can pursue action for fraudulent business practices.

Goal 8: Affordable Housing Challenges (SEC. 2)
To discourage bad-faith litigation against affordable housing projects that to do not present legitimate concerns, this amendment strengthens an existing provision for requiring the posting of a bond for challenges to certain projects, including affordable, transitional, supportive, and emergency housing, if the court finds that the bad-faith grounds for requiring such a bond have been established.

Goal 9: “Tuolumne Jobs Fix” (SEC. 3, 4)
To avoid the by-passing of CEQA, allowed by a loophole in Elections Code, this amendment requires that voter-sponsored initiative measures shall not be directly approved by the legislative body, whenever the approval would constitute an approval of a “project” within the meaning of CEQA. Rather, such an initiative must go to the ballot.

Goal 10: Translation Requirements (SEC. 14)
This amendment adds the requirement for translation of certain documents prepared according to CEQA into non-English threshold languages of the locale, consistent with other existing state law, including most notices prepared under CEQA and, if requested, Statements of Overriding Considerations.

Goal 11: Emergency Housing Exemption (SEC. 13)
To avoid bad-faith challenges to housing of our state’s most vulnerable residents, this amendment exempts homeless shelters, transitional, and supportive housing projects in urbanized areas from the need to comply with CEQA, when meeting prescribed criteria.

Goal 12: Environmental Justice and Modernization (SEC. 7, 8, 10, 11)
These amendments explicitly add environmental justice considerations to the mandated considerations of the CEQA process, and remove outmoded language and inappropriate references to gender.

Goal 13: Decluttering (SEC. 12, 24, 25)
These amendments repeal expired project approvals and other now-obsolete sections from CEQA.

Support
Planning and Conservation League

For More Information
Siddharth Nag
Office of Senator Jackson
(916) 651-4019
Siddharth.Nag@sen.ca.gov

Matthew Baker, Policy Director
Planning and Conservation League
matthew@pcl.org