



CEQA 2.0 Summary

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. 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 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-interest practitioners, aims to make CEQA significantly more efficient as well as more protective.

Note: Many other areas of potential improvement identified, but not yet resolved, have not been included in this package of necessary updates, but should be pursued in ensuing updates.

Goal 1: Record Streamlining (SEC.20)

Problem:

The preparation of the record has become time-consuming and expensive. Many records contain thousands of pages of documents, including e-mails, which have no bearing on the issues raised in the action and are never referenced by the parties or considered by the court.

Remedy:

These amendments provide for revised procedures which have the potential to reduce the time and expense of record preparation through procedural requirements intended to encourage parties to engage in coordinated, cooperative effort to streamline the record content while still ensuring that the court is provided with the necessary documentation to determine the issues. Petitioners will retain their existing right to elect to prepare the record as a means of containing costs, but respondents and real parties will obtain a statutory right to prepare the record if they agree to bear the full costs, win or lose.

Goal 2: CMC Procedures (SEC. 19, 20, 23)

Problem:

There is limited ability under current procedures for parties to anticipate and pro-actively manage record disputes, logistical delays, review settlement potential, and to expedite a hearing on the merits.

Remedy:

These amendments establish an early mandatory Case Management Conference (CMC) enabling parties and the court to focus on, among other things, issues that could delay the timely completion of a sufficient record. Common means for narrowing the scopes of records – such as excluding categories of irrelevant documents – will become mandatory topics of conversation. No mandatory judicial intervention is required, but the intent is that open discussion of these issues amongst the parties and the court will facilitate the resolution of sticky issues more expeditiously.

Mandatory settlement conferences very early in cases may be limited to discussion among counsel of procedural issues and assessing whether settlement discussions could be fruitful. More focused client participation would be delayed until after completion of the CMC.

Goal 3: Tolling Agreements (SEC. 16, 5, 6)

Problem:

CEQA and the Government Code provide very short statutes of limitations, after which the right to file litigations is waived. At times, interested parties would like to engage in settlement discussions without litigation being filed and to provide for additional time for those discussions. However, current law is less clear than it could be that parties can agree by stipulation to toll deadlines so as not to require the filing of litigation in order not to lose the rights to file a lawsuit.

Remedy:

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)

Problem:

CEQA currently requires the litigating parties to engage in a mandatory settlement meeting within 45 days of service of a lawsuit on a public agency, yet, early settlement conferences typically do not bear fruit, as the parties, very early in cases, are typically not in the proper frames of mind for fashioning compromise solutions.

Remedy:

These amendments alter the nature of this conference by allowing it to occur by phone and just amongst the attorneys, and by allowing the participants to focus on logistical matters and the possibility that settlement discussions might be fruitful. This proposal would also create a second, subsequent full settlement meeting, where actual settlement issues must be discussed. This second meeting would occur no later than 45 days after the mandatory case management conference that would be created by Goal 2 amendments.

The odds of successful settlements should increase if settlement conversations are held later in the litigation, after a case management conference has helped the court to set a roadmap for litigation of the case, and after the parties have gained a better sense of the strengths and weaknesses of each other's respective legal arguments.

Goal 5: Increased CEQA Expertise (SEC. 17, 18)

Problem:

The California judiciary, particularly in rural areas, currently lacks sufficient capacity and expertise to ensure the qualified, expeditious and consistent application of the law. Existing law only requires counties with populations of over 200,000 persons to appoint CEQA judges.

Remedy:

These amendments would encourage the leadership in superior courts to extend the normal terms of CEQA judges in order to facilitate the accumulation of ever-greater levels of CEQA expertise amongst such jurists over time. In order to ascertain how well the current system of CEQA judges is working and how it might be improved, the Judicial Council will be required to undertake a study and to formulate recommendations for how, if necessary, to expand the number of CEQA judges and to facilitate the transfer of complex CEQA cases from non-CEQA judges to experienced CEQA judges. Where a complex CEQA case is filed in a county without CEQA judges, any party would have 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. A court could also bring about such a result on its own initiative. Any party's objection to such a transfer will have to be considered, however.

Goal 6: Final EIR Comments (SEC. 15, 26)

Problem:

Under existing law, a lead agency must provide written responses to timely agency comments, typically in the form of a Final EIR, only ten days before EIR certification, and project opponents and others can raise new legal issues as late as during the public hearing on the project. Under this quick timeline, agencies can receive extensive written comments on final environmental impact reports (FEIR) on the day of, or shortly before, a hearing on the certification of the FEIR and approval of a project which are difficult for agency staff to review.

Remedy:

In order to provide a process for ensuring comments are submitted with enough time for public agency staff to review them before a hearing, while still ensuring sufficient time for the public to review and comment on FEIRs, this legislation provides 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. Verbal comments will continue to be accepted at any time prior to the close of the public hearing.

Goal 7: Monetary Settlements (SEC.21, 27)

Problem:

CEQA is sometimes abused to bring litigation, alleging noncompliance, primarily or exclusively for the purposes of monetary gain to individuals or organizations, rather than for environmental or community protection.

Remedy:

These amendments require the petitioner in any CEQA litigation that is settled 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. The form, which will be developed by the Attorney General's office, will provide information regarding key components of the settlement agreement, including whether monetary consideration was a component of the settlement agreement and how the monetary consideration will be used to further environmental protection. If the Attorney General determines that a petitioner or a member of an organization that is a petitioner has filed multiple actions resulting primarily in monetary settlements, the Attorney General has the ability to pursue action under the Business and Professions Code Section 17200 for fraudulent business practices.

Goal 8: Affordable Housing Challenges (SEC. 2)

Problem:

CEQA is sometimes abused to bring litigation in bad faith against higher density, affordable housing projects, in an attempt to delay or otherwise discourage such projects.

Remedy:

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. The amendment is intended to bolster the ability to discourage litigation against compliant projects based on erroneous concerns intended to delay or frustrate these projects, while striking a balance to ensure that challenges which are based on genuine concerns regarding the impacts of such projects are not subjected to this bond requirement.

Goal 9: Tuolumne Jobs Fix (SEC. 3, 4)

Problem:

Precedent established by “Tuolumne Jobs and Small Business Alliance vs. The Superior Court of Tuolumne County” interprets current law under the Elections Code to allow a legislative body to directly-approve a project proposed by a qualified voter-sponsored initiative without CEQA review.

Remedy:

This amendment changes the Elections Code to provide 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. The initiative must go to the ballot.

Goal 10: Translation Requirements (SEC. 14)

Problem:

CEQA currently does not provide for equitable access, in the form of translations, to information of planning processes and actions for non-English speaking persons who could be affected by these processes and actions.

Remedy:

This amendment adds the requirement for translation of certain documents prepared pursuant to the CEQA into non-English languages, consistent with existing state law outside of CEQA. The amendment directs authority to the Governor’s Office of Planning and Research (OPR) to develop guidelines for such translations, as well as for interpretation at public hearings, including the mandate for translation of most notices prepared under CEQA and, if requested, Statements of Overriding Considerations. The amendment also provides that public agencies can prepare their own procedures and thresholds for translation and interpretation, and that “minor inaccuracies in translation of a document shall not be a basis for invalidation of a public agency decision, unless they are found to preclude informed decision-making or informed public participation.”

Goal 11: Emergency and Transitional Housing Exemptions (SEC. 13)

Problem:

CEQA is used consistently to delay emergency housing projects for our state’s most vulnerable residents, often where opposition to the project is not tied to genuine environmental concerns.

Remedy:

This amendment exempts homeless shelters, transitional housing and supportive housing projects in urbanized areas from the need to comply with CEQA, so long as the project meets one of the following criteria: it is otherwise compliant with underlying land use plans and zoning; it is proposed on a site identified as suitable for moderate or lower-income housing and is consistent with underlying density; or, where a local jurisdiction has failed to meet its obligations under Housing Element law, the project is proposed on a site that allows residential uses. The amendment also incorporates common qualifiers from other statutory exemptions, to ensure that the project does not have common environmental impacts, and that the site does not have existing environmental concerns.

Goal 12: Environmental Justice and Modernization (SEC. 7, 8, 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.

CEQA 2.0 AMENDMENT SUMMARY CHART, FEBRUARY 2020

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GOAL	SPECIFIC ACTION(S)	STATUTORY AMENDMENT	TIME SAVED/LITIGATION AVOIDED
1) Record Streamlining Significant reduction of time to hearing on the merits	Real party/lead agency can elect to take over preparation of record if they assume all costs; Record streamlining procedures; Electronification of the record.	Amend PRC §21167.6 (Bill SEC. 20)	Estimated time saved, by Goals #1 and #2 combined, for a typical CEQA case*, where the election is exercised, is 30-90 days. For a complex/large project case** it is 180 days to 1+ year.
2) CMC Procedures Significant reduction of time to hearing on the merits; encourage timely settlement discussions	Allow for agreement on hearing date; Mandate a Case Management Conference and enhance case management procedures to anticipate and proactively manage record disputes, logistical delays and review settlement potential.	Amend PRC §21167.4 Amend PRC §21167.6 Add PRC §21167.8.5 (Bill SEC. 19, 20, 23)	Estimated time saved for a typical CEQA case, where the election is not exercised, is 30-60 Days. For a complex/ large project its 60-90 days. (Estimates assume adoption and success of Goal #5)
3) Tolling Agreements Encourage/ facilitate pre-litigation settlement of CEQA disputes	Clarify ambiguity in current law on the effectiveness of tolling agreements; Clarify who can sign on behalf of parties to agreement.	Amend PRC §21167 Amend GOV §65009 Amend GOV §66499.37 (Bill SEC. 16, 5, 6)	Estimate 4-6% of annual CEQA filings*** avoided
4) Pre-hearing Settlement Meeting Increase pre-merits hearing settlements	Expedite initial settlement and procedural discussions; Require settlement meeting after first CMC.	Amend PRC §21167.8 Add PRC §21167.8.5 (Bill SEC. 22, 23)	Estimate increase of pre-merits hearing settlements by 5-10%. (with Goal #2 amendments)
5) Increased CEQA Expertise Facilitate prompt hearings, timely decisions, and the reduction of the number of CEQA appeals with uniform application of the law	Increase CEQA judges' expertise and experience through enhanced training and extended terms; Make qualified CEQA judges available to counties under 200,000 in population; Assign experienced judges to	Amend PRC §21167.1 Add PRC §21167.1.5 (Bill SEC. 17, 18)	Estimate number of appeals, statewide, could decline by 10 to 15%, when judicial experience and expertise increases and qualified judges are used for complex/ large project cases and for cases arising in smaller counties

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	complex cases; Expedite appellate court decisions.		Estimated time reductions, in tandem Goal #1 and #2 amendments, will be 30 to 60 days for the typical case and 60 to 90 for complex/ large project cases
6) Final EIR Comments Establishing pre-project approval procedures to fairly and efficiently handle “eleventh hour” submissions.	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. Verbal comments will continue to be accepted up to the close of public hearing.	Amend PRC §21092.5 Amend PRC §21177 (Bill SEC. 15, 26)	Will avoid pressures to continue/ delay approval hearings and facilitate decision makers having all issues and supporting evidence/data before them when they vote.
7) Monetary Settlements Discourage CEQA cases filed primarily for monetary gain.	Require confidential reporting to Attorney General of settlements of litigation involving monetary payments, other than attorney's fees. If a pattern emerges, AG may file section 17200 Civil Suit.	Add PRC §21167.7.5 (Bill SEC. 21, 27)	Estimated reduction of case filings of 3-5%. Will likely discourage monetary components of pre-litigation settlements.
8) Affordable Housing Challenges Discourage unfounded challenges to affordable housing projects.	Clarify and enhance existing statute CCP 529.2, requiring, at the discretion of the court, a posting of a bond for challenges of questionable merit.	Amend CCP §529.2 (Bill SEC. 2)	Will likely discouraged unfounded challenges, but an estimate of the number of suits to be avoided is uncertain.
9) Tuolumne Jobs Fix Correct court interpretation that allows the by-passing of CEQA through voter-initiative.	Prohibiting direct adoption of voter-sponsored initiatives by a lead agency, if that adoption would constitute approval of a “project” per CEQA.	Amend ELEC §9215 Amend ELEC §9310 (Bill SEC. 3, 4)	Eliminates loophole in CEQA that undermines the uniform application of the law.
10) Translation Requirements	Direct OPR to develop guidelines for Translation of CEQA documents and interpretation at	Add PRC §21083.03 (Bill SEC. 14)	Minor increase in lead agency staff time once templates are developed. Substantial increase in

GOAL	SPECIFIC ACTION(S)	STATUTORY AMENDMENT	TIME SAVED/LITIGATION AVOIDED
Improve access to planning processes for non-English speaking persons.	hearings. Mandate the translation of most CEQA notices and Statements of Overriding Considerations where necessary and appropriate.		ability of community stakeholders to participate in CEQA process, reduced burden on nonprofits and community orgs facilitating public participation, enhanced consideration of equity, reduction in recirculation of notices.
11) Emergency Housing Exemptions Avoid unfounded challenges to transitional and emergency housing projects.	Create a clear explicit Exemption for shelters, transitional and supportive housing developments.	Add PRC §21080.51 (Bill SEC. 13)	Avoidance of a range of challenges to projects addressing homelessness.
12) Environmental Justice and Modernization	Add environmental justice as an explicit consideration for CEQA; Remove outmoded language and inappropriate references to gender.	Amendments to PRC §21000, 21001, 21001.1, 21002, 21080 (Bill SEC. 7, 8, 9, 10, 11)	Nominal increase in lead agency time for substantially improved impact analysis.
13) Decluttering	Eliminate outdated or obsolete sections from the statute.	Repeal PRC §21080.04, 21168.6.5, 21168.6.6 (Bill SEC. 12, 24, 25)	Less time reading the statute!

* Typical CEQA cases, involving relatively modest projects, get to the merits hearing on average in 9 to 12 months.

** Complex/large project cases can take 18 to 24 months to get to the merits hearing and under some circumstances even longer.

*** The average number of CEQA cases is approximately 200 per year. Four to six percent equals eight to twelve cases.

****Specific hour and cost estimates for “Minor” and “Modest” categories to be determined.