

Date of Hearing: May 13, 2020

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Laura Friedman, Chair

AB 2731 (Gloria) – As Amended May 6, 2020

SUBJECT: California Environmental Quality Act: City of San Diego: transit and transportation facilities projects

SUMMARY: Establishes special procedures under the California Environmental Quality Act (CEQA) for concurrent preparation of the administrative record, public hearings, and mediation for a “transit and transportation facilities” project (a multimodal regional transportation facility to serve as a connection to link regional transit to the San Diego International Airport).

EXISTING LAW:

- 1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines).
- 2) Authorizes judicial review of CEQA actions taken by public agencies, following the agency's decision to carry out or approve the project. Challenges alleging improper determination that a project may have a significant effect on the environment, or alleging an EIR doesn't comply with CEQA, must be filed in the superior court within 30 days of filing of the notice of approval. The courts are required to give CEQA actions preference over all other civil actions.
- 3) Establishes that a record of proceeding includes, but is not limited to, all application materials, staff reports, transcripts or minutes of public proceedings, notices, written comments, and written correspondence prepared by or submitted to the public agency regarding the proposed project.
- 4) Establishes a procedure for the preparation, certification, and lodging of the record of proceedings. Specifically:
 - a) Requires the plaintiff to file a request that the respondent public agency prepare the record of proceedings, and serve this request, together with the complaint or petition, personally upon the public agency within 10 days of the date the action or proceeding was filed.
 - b) Requires the respondent public agency to prepare and certify the record of proceedings not later than 60 days from the date that plaintiff served the request; lodge a copy of the certified record with the court; and serve on the parties a notice that the record of proceedings has been certified and lodged with the court.
 - c) Authorizes the plaintiff to elect to prepare the record subject to certification by the respondent public agency, or the parties may agree to an alternative method of preparing

the record of proceedings, within the time limits specified in the law.

- d) Requires the parties to pay any reasonable costs or fees imposed for the preparation of the record of proceedings in conformance with any law or rule of court.
 - e) Authorizes the plaintiff to move the court for sanctions, and the court to grant the plaintiff's motion for sanctions, if the public agency fails to prepare and certify the record within the time limits specified in the law.
- 5) Authorizes an alternative procedure for concurrent preparation of the record of proceedings, where a lead agency, upon a project applicant's request, prepares the record of proceedings concurrently with the administrative process.
- a) Requires all documents and other materials placed in the record of proceedings to be posted on a Web site maintained by the lead agency.
 - b) Requires the lead agency to make publicly available, in electronic format, the draft environmental document, and associated documents, for the project.
 - c) Requires the lead agency to make any comment publicly available electronically within five days of its receipt.
 - d) Requires the lead agency to certify the record of proceedings within 30 days after filing notice of determination or approval.
 - e) Requires certain environmental review documents to include a notice, as specified, stating that the document is subject to this section.
 - f) Requires the applicant to pay for the lead agency's cost of concurrently preparing and certifying the record of proceedings.

THIS BILL:

- 1) Requires, notwithstanding any other law, the preparation and certification of the record of proceedings for the transit and transportation facilities project to be performed in the following manner:
- a) The lead agency for the project shall prepare the record of proceedings concurrently with the administrative process.
 - b) All documents and other materials placed in the record of proceedings shall be posted on, and be downloadable from, an internet website maintained by the lead agency commencing with the date of the release of the draft EIR.
 - c) The lead agency shall make available to the public in a readily accessible electronic format the draft EIR and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft EIR.

- d) A document prepared by the lead agency after the date of the release of the draft EIR that is a part of the record of the proceedings shall be made available to the public in a readily accessible electronic format within five business days after the document is released or received by the lead agency.
 - e) The lead agency shall encourage written comments on the project to be submitted in a readily accessible electronic format, and shall make any comment available to the public in a readily accessible electronic format within five days of its receipt.
 - f) Within 14 business days after the receipt of any comment that is not in an electronic format, the lead agency shall convert that comment into a readily accessible electronic format and make it available to the public in that format.
 - g) Notwithstanding paragraphs (b) to (f), inclusive, documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. For those copyright-protected documents, the lead agency shall make an index of these documents available in an electronic format no later than the date of the release of the draft EIR, or within five business days if the document is received or relied on by the lead agency after the release of the draft EIR. The index shall specify the libraries or lead agency offices in which hardcopies of the copyrighted materials are available for public review.
 - h) The lead agency shall certify the final record of proceedings within five days after the filing of the notice of determination for the project.
- 2) Requires the lead agency:
- a) To conduct an informational workshop within 10 days after the release of the draft EIR to inform the public of the key analyses and conclusions of the draft EIR.
 - b) To hold a public hearing within 10 days before the close of the public comment period to receive testimony on the draft EIR. A transcript of the hearing shall be included as an appendix to the final EIR.
- 3) Authorizes a commenter on the draft EIR to submit to the lead agency a written request for nonbinding mediation within five days following the close of the public comment period.
- a) Requires the lead agency to participate in nonbinding mediation with all commenters who submitted timely comments on the draft EIR and who requested the mediation.
 - b) Requires mediation to end no later than 35 days after the close of the public comment period.
 - c) Requires a request for mediation to identify all areas of dispute raised in the comment submitted by the commenter that are to be mediated.
 - d) Requires the lead agency to select one or more mediators who shall be retired judges or recognized experts with at least five years' experience in land use and environmental law or science, or mediation.

- e) Requires the lead agency to bear the costs of mediation.
 - f) Requires a mediation session to be conducted on each area of dispute with the parties requesting mediation on that area of dispute.
 - g) Requires the lead agency to adopt, as a condition of approval, any measures agreed upon by the lead agency and any commenter who requested mediation.
 - h) Prohibits a commenter who agrees to a measure in mediation from raising the issue addressed by that measure as a basis for an action or proceeding challenging the lead agency's decision to certify the EIR or to grant one or more initial project approvals.
- 4) Requires the lead agency to file the notice of determination for the project within five days after the last initial project approval.
 - 5) Requires the lead agency, no later than three business days following the date of the release of the draft EIR, to make available to the public in a readily accessible electronic format the draft EIR and all other documents submitted to or relied on by the lead agency in the preparation of the draft EIR. Requires a document prepared by the lead agency after the date of the release of the draft EIR that is a part of the record of proceedings to be made available to the public in a readily accessible electronic format within five business days after the document is prepared or received by the lead agency, except for copyright-protected material as specified.
 - 6) Requires the lead agency to encourage written comments on the project to be submitted in a readily accessible electronic format, and to make any such comment available to the public in a readily accessible electronic format within five days of its receipt.
 - 7) Requires the lead agency, within seven business days after the receipt of any comment that is not in an electronic format, to convert that comment into a readily accessible electronic format and make it available to the public in that format.
 - 8) Requires the lead agency, within five days after the filing of the notice of determination, to certify the record of proceedings for the approval or determination and provide an electronic copy of the record of proceedings to a party that has submitted a written request for a copy. Authorizes the lead agency to charge and collect a reasonable fee from a party requesting a copy of the record of proceedings, which shall not exceed the reasonable cost of reproducing that copy.
 - 9) Requires the lead agency, within 10 days after being served with a complaint or a petition for a writ of mandate, to lodge a copy of the certified record of proceedings with the superior court.
 - 10) Requires any dispute over the content of the record of proceedings to be resolved by the superior court. Unless the superior court directs otherwise, requires a party disputing the content of the record of proceedings to file a motion to augment the record of proceedings at the time it files its initial brief.

FISCAL EFFECT: Unknown

COMMENTS:

1) Author's statement:

For decades, the San Diego region has explored ways to provide better connectivity to San Diego International Airport, the busiest single-runway airport in the nation. The airport anticipates an increase of 16 million annual passengers by 2050, which would result in a total of 40 million passengers annually. The projected increase in airport passengers is expected to exceed the capacity of current airport roadway connections. Due to the anticipated future growth combined with limited ground transit access to the airport, SANDAG, in partnership with the City of San Diego, the Port of San Diego, and the San Diego County Regional Airport Authority, has made it a chief priority to identify a solution for a direct transit connection to the airport. Optimally positioned near the airport, the Old Town Center (OTC) presents great potential to provide an enduring solution to the region's longstanding challenge of airport connectivity and is one of several sites being considered for development of a Central Mobility Hub.

On September 19, 2019, SANDAG and the Navy signed an initial agreement to explore options for redevelopment of the OTC. On January 23 of this year, SANDAG signed the Navy OTC Revitalization Agreement, which lays out a timeline for the Navy and SANDAG to explore the redevelopment of the OTC site to include a Central Mobility Hub. On January 24, the Navy began an environmental analysis of the intended revitalization project in accordance with NEPA. This analysis will enable the Navy to prepare an EIS outlining potential environmental impacts associated with the project. SANDAG will cooperate with the Navy to supplement this environmental analysis to be technically sufficient under CEQA. SANDAG has committed \$50 million in funding for continued Central Mobility Hub analysis, which includes environmental analysis, preliminary engineering, and complete corridor planning.

AB 2731 will establish important public processes for SANDAG to undertake should the Central Mobility Hub project move forward. In light of the COVID-19 pandemic, this project, and the resulting public comment that will follow, will be essential to San Diego's economic recovery.

- 2) Background.** CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. If a project is not exempt from CEQA, an initial study is prepared to determine whether the project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a negative declaration. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

An EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. If mitigation measures are required or incorporated into

a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

Generally, CEQA actions taken by public agencies can be challenged in superior court once the agency approves or determines to carry out the project. CEQA appeals are subject to unusually short statutes of limitations. Under current law, court challenges of CEQA decisions generally must be filed within 30-35 days, depending on the type of decision. The courts are required to give CEQA actions preference over all other civil actions. However, the schedules for briefing, hearing, and decision are less definite. The petitioner must request a hearing within 90 days of filing the petition and, generally, briefing must be completed within 90 days of the request for hearing. There is no deadline specified for the court to render a decision.

In 2011, AB 900 and SB 292 established expedited judicial review procedures for a limited number of projects. For AB 900, it was large-scale projects meeting extraordinary environmental standards and providing significant jobs and investment. For SB 292, it was a proposed downtown Los Angeles football stadium and convention center project achieving specified traffic and air quality mitigations. As part of their expedited judicial review procedures, these bills required the lead agency to prepare and certify the record of proceedings concurrently with the administrative process and required the applicant to pay for it. It was commonly agreed that this would expedite preparation of the record for trial.

Since 2011, several additional bills have provided similar project-specific concurrent preparation procedures. In addition, in 2016, SB 122 established an optional concurrent preparation procedure for any CEQA project, subject to the lead agency agreeing, and the applicant paying the agency's costs.

According to the author, the "transit and transportation facilities" project will consist of an intermodal transportation hub connecting the greater San Diego region to the San Diego International Airport. This project will provide enhanced efficient transportation options including bike and pedestrian connections while furthering region and statewide climate action goals. The transit and transportation project is currently being studied on a programmatic level as an alternative within the Navy's NEPA environmental analysis for the redevelopment of the Navy's OTC complex. SANDAG will be following up this programmatic study with a project level analysis under both NEPA and CEQA with the intent to issue a Notice of Preparation in late 2020.

- 3) **Objectives of bill could be achieved under current law.** The procedures outlined in this bill for record preparation, public hearings, and mediation are available under current law. For example, the record preparation procedures largely duplicate the optional record preparation provisions of SB 122. One key difference is that, in contrast to all existing concurrent preparation requirements, this bill does not require the applicant to pay the agency's costs. SANDAG explains that these provisions are not applicable to SANDAG's project because SANDAG is the project proponent and will prepare the record at its own cost.

In sponsoring this bill, SANDAG appears to be requiring itself to do something it could choose to do under current law.

- 4) **Findings don't relate to operative provisions.** This bill includes extensive findings from the prior version, including findings related to Navy projects, that don't relate to the operative provisions of the bill. The author and the committee may wish to consider striking these extraneous findings.
- 5) **Concerns.** Though not opposed, Sierra Club California writes with the following concerns, which seem based on the prior (May 4) version of the bill and/or potential future amendments:
- a) CEQA exemptions for the Grand Central Station, especially if CEQA exemptions were extended to the Navy and City of San Diego's planned new residential and commercial development expected to accompany the Grand Central Station and new NAVWAR facility. In our view, CEQA exemptions and streamlining could damage the integrity of California's premier environmental law and limit meaningful environmental review and public participation processes for large scale development.
 - b) Potential provisions authorizing environmental documents under the federal National Environmental Policy Act (NEPA) to be used as the environmental review documents under CEQA. CEQA has a much higher standard for environmental review than NEPA and requires mitigation measures to be taken for projects significantly impacting the environment. Moreover, given the current federal administration's recent weakening of NEPA, we have less trust that meaningful environmental review will take place.
 - c) Future project-specific CEQA environmental review would likely consist of lesser Mitigated Negative Declarations rather than full EIRs due to the programmatic level of review for the initial project.

REGISTERED SUPPORT / OPPOSITION:

Support

City of San Diego
San Diego Association of Governments (SANDAG)

Opposition

None on file

Analysis Prepared by: Lawrence Lingbloom / NAT. RES. /