SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair
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SUBDIVISION MAP ACT: ACTION OR PROCEEDING

Provides that an action to enforce the Subdivision Map Act cannot be commenced or sustained if it raises substantially similar issues or claims to an action related to the California Environmental Quality Act.

Background

The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements.

The general plan must be "internally consistent," which means the various elements cannot have conflicting information or assumptions. Additionally, cities' and counties' major land use decisions—including zoning ordinances and development permitting—must be consistent with their general plans.

Subdivision Map Act. The Subdivision Map Act (Map Act) governs how local officials regulate the division of real property into smaller parcels for sale, lease, or financing. Cities and counties adopt local subdivision ordinances to carry out the Map Act and local requirements. City councils and county boards of supervisors use the Map Act to control a subdivision's design and improvements. Local subdivision approvals must be consistent with city and county general plans.

In general, all subdivisions creating five or more parcels require a city or county to approve a tentative map, followed by a final map. Under the Subdivision Map Act, cities and counties can attach scores of conditions to map approvals. The Map Act allows local officials to require, as a condition of approving a proposed subdivision, the dedication of property within a subdivision for streets, alleys, drainage, utility easements, and other public easements and improvements. An applicant who agrees to the conditions and meets the other requirements in the Map Act and local subdivision ordinances may be granted a tentative map. Once subdividers comply with those conditions, local officials must issue final maps. For smaller subdivisions that create four

or fewer parcels, local officials usually use parcel maps, but they can instead require tentative parcel maps followed by final parcel maps.

The Map Act also constrains the dedications and improvements that local cities and counties can require as a condition of a subdivision of four or fewer lots to only the dedication of rights-of-way, easements, and the construction of reasonable offsite and onsite improvements for the parcels being created.

The California Environmental Quality Act. Enacted in 1970, the California Environmental Quality Act (CEQA) requires California's state and local agencies to evaluate, disclose, and where feasible, mitigate the potential environmental effects of their actions before they approve projects. State law establishes CEQA's fundamental purposes to include informing government decision-makers and the public about potential environmental effects, identifying ways to avoid or significantly reduce environmental damage, preventing significant avoidable impacts by adopting feasible mitigation measures or alternatives, and publicly disclosing the rationale for approving projects with unavoidable significant impacts.

CEQA process. Since cities and counties exercise land use authority in their jurisdictions, they are often a "lead agency"—the state or local agency with the principal responsibility for carrying out or approving a project—for purposes of CEQA. CEQA requires a lead agency to first determine whether an action constitutes a "project" under CEQA. A project is a discretionary activity that a public agency proposes to be carried out or approved that could have a foreseeable impact on the physical environment. If an action isn't a project, or is non-discretionary (ministerial), CEQA does not apply.

Exemptions. Some actions are exempt from CEQA's requirements because they fall within one of numerous exemptions listed in statute or in the CEQA Guidelines developed by the Office of Planning and Research (recently renamed to the Office of Land Use and Climate Innovation, or "LCI") that identify classes of projects that do not have a significant effect on the environment (categorical exemptions). A categorical exemption still may not apply to a project if there are "unusual circumstances" or "cumulative impacts" that might cause a significant environmental impact.

Negative declaration. If a project under CEQA isn't exempt, the lead agency must perform an initial study to determine whether an environmental impact report (EIR) or negative declaration (ND) must be prepared.

If the project will not have a significant effect on the environment, the lead agency can prepare a ND. A lead agency can instead prepare a specific type of ND, known as a "mitigated negative declaration" (MND) for a project when the initial study has identified potentially significant effects on the environment, but:

- The project applicant proposed or agreed to changes to the project that would mitigate the effects to a point where clearly no significant effect on the environment would occur; and
- There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Environmental Impact Report. If the lead agency can't prepare an ND or MND, or chooses not to, they must prepare an EIR. As articulated by the California Supreme Court,[1] a lead agency must prepare an EIR whenever substantial evidence in the administrative record supports a "fair argument" that a proposed project "may have a significant effect on the environment," even if there is other substantial evidence that the project will not have a significant effect.

An EIR provides thorough environmental review of a proposed project, analyzing the significant direct and indirect impacts of a proposed project on a long list of environmental factors, including water quality, transportation, air quality and greenhouse gas emissions, land use, wildfire risk, and many others. The EIR also includes proposed mitigation measures for any significant effects that it identifies. It also requires consideration of alternatives to the proposed project, and a consideration of cumulative and growth-inducing impacts.

Courts consider the EIR "the 'heart of CEQA.' Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[2]

EIRs involve very comprehensive analyses of a wide variety of environmental impacts. For example, the City of Los Angeles Planning Department identifies 16 categories of impacts to be examined in an EIR, including: aesthetics; agricultural resources; air quality; biology; cultural resources; geology and soils; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; land use and planning; mineral resources; noise; population, housing, and employment; public services and recreation; transportation/circulation; tribal cultural resources; and utilities/service systems.

An EIR that fails to adequately analyze an impact may be ruled invalid by a court, jeopardizing the project for which the EIR was prepared.

Harmony Grove Village South. In 2018, the San Diego County Board of Supervisors approved entitlements for the Harmony Grove Village South project (Harmony Grove) outside of Escondido in unincorporated San Diego County. The project proposed a mixed-use development that includes:

- 453 single family and multi-family residential units;
- 5,000 square feet of commercial/civic uses;
- 35 acres of biological open space;
- Four acres of public and private parks, along with two miles of trails; and
- A wastewater treatment facility site.

The project is located in the Very High Fire Hazard Severity Zone and was approved with an exception to the County Fire Code regarding evacuation routes because a secondary evacuation route was infeasible. The project included preparation of a Fire Protection Plan that provided alternative measures intended to provide the same level of protection as the requirements in the County Fire Code. The project is also subject to a project labor agreement with the laborers in San Diego County.

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[1] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68

[2] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553.

As with many large projects, it was subject to review under CEQA and the County prepared an EIR. The entitlements for the project also included a subdivision map to allow individual parcels to be sold.

Litigation over Harmony Grove. Harmony Grove has been the subject of controversy and multiple lawsuits since the County approved it. After the Board approved the project, two lawsuits challenged the project's approval on the grounds that it violated CEQA and the County's general plan. The trial court ordered the County to rescind its approval because it found numerous issues with the EIR. On appeal, in 2021 the 4th District Court of Appeal found that the project complied with most requirements, including the analysis of whether the project would exacerbate wildfires. However, the 4th District Court found that the greenhouse gas mitigation measures for the project did not provide reasonable assurance that greenhouse gas reductions will actually occur, and that the County's General Plan required housing projects to contain affordable housing units, which Harmony Grove did not.[3]

Complying with the court's decision, the County rescinded the approval in 2022. It then revised the project to provide more certain greenhouse gas mitigation measures and require the project to make 5% of the units affordable to lower income households and 5% to moderate income households. The County approved the revised project in 2025.

Following approval of the revised project, the same plaintiffs that had previously challenged the project filed two new lawsuits: one that alleged the project's failure to comply with the County's ordinances, including its ordinances adopted under the Subdivision Map Act, and one that alleged new CEQA violations. That litigation is ongoing.

The author wants to reduce litigation over housing projects.

Proposed Law

Senate Bill 1256 provides that an action or proceeding to enforce the Map Act cannot be maintained if all the following criteria exist:

- The action or proceeding to enforce the Map Act includes substantially similar claims or issues to claims or issues raised in an action or proceeding to enforce CEQA;
- The defendant in both proceedings is the same, and the plaintiff is the same or in privity with the plaintiff in both actions;
- The action or proceeding to enforce CEQA has been fully adjudicated; and
- The project that is the subject of the action or proceeding to enforce CEQA has been approved by the lead agency.

Comments

1. Purpose of the bill. According to the author, "California's housing crisis is exacerbated by frivolous, never-ending lawsuits brought against developers of planned housing projects. Nowhere is this more apparent and frequently utilized for abuse than under the California Environmental Quality Act (CEQA), where an entire cottage industry has grown around litigation related to the Act. However, when CEQA lawsuits are fully adjudicated and developers

[3] *Elfin Forest Harmony Grove Town Council v. County of San Diego*, 2021 Cal. App. Unpub. LEXIS 6474

are able to remedy any issues with the projects to the satisfaction of the court and lead agency, plaintiffs have begun to petition the court under different statutes to further delay projects.

"Avoiding the legal principle of res judicata by suing project developers for issues already adjudicated in a CEQA lawsuit under a different statute is contrary to the principles of our legal system, our environmental laws and the State's stated goals on providing more housing inventory.

"This bill would prevent plaintiffs from engaging in this end-run maneuver by barring a plaintiff from suing the same defendant for the same project under the Subdivision Maps Act – a favorite vessel for this tactic – if the issues being raised are substantially similar to those raised in a previously adjudicated CEQA lawsuit.

"This bill does not erode CEQA's environmental protections, does not carve out any project from CEQA or otherwise affect the application of CEQA."

2. Necessary? The judicial doctrines of res judicata (claim preclusion) and equitable estoppel (issue preclusion) aim to relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and prevent inconsistent decisions and repetitive litigation. Res judicata "prevents relitigation of the same cause of action [claim] in a second suit between the same parties or parties in privity [sharing the same interest] with them."[4] Equitable estoppel precludes relitigation of the same *issue* already resolved in an earlier proceeding, even if the two claims are not the same. Courts have some discretion in determining whether to apply these doctrines: if all four of the requirements for issue preclusion are satisfied, a court then also determines whether application of preclusion would be consistent with the "preservation of the integrity of the judicial system, promotion of judicial economy, and protection of litigants from harassment by vexatious litigation."[5]

SB 1256 prevents an action from being maintained—filed—if it raises substantially similar claims or issues and the parties are the same, among other requirements, in order to streamline litigation. This appears to generally track these existing doctrines but allows courts to determine if the issues are *substantially* similar, rather than identical. It is unclear the extent to which this expands the doctrine because some of this will be up to judicial interpretation. For example, if a court interprets this liberally, issues related to wildfire might be considered substantially similar even though one might pertain to the impact of a project on wildfire in the area while the other issue might be addressing the wildfire mitigation measures on the site of the project itself. In this circumstance, the bill's efforts to streamline litigation could affect the ability of the public to litigate legitimate issues. On the other hand, courts may interpret this in line with their current practices, which would change little. Regardless, in the case of Harmony Grove, the litigation is ongoing and courts may ultimately uphold the approval on the basis of one of the above doctrines or other grounds, even without the bill.

3. Getting it right. SB 1256 is intended to prohibit adding new issues or claims to *ongoing* litigation that are substantially similar to claims previously raised in that same litigation, but not to preclude other *separate* actions from raising new issues, if otherwise allowed. Similarly, the bill is intended to address cases where a defendant addressed all of the issues to the satisfaction of the court. For example, in the case of Harmony Grove, the Court of Appeals in the original

[4] *DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 824.
[5] *Ibid.*

litigation ultimately vacated the County's approval because of two issues: that the project's greenhouse gas mitigation measures did not fully comply with CEQA and that the general plan required an affordable housing component, which the project did not contain. The County subsequently revised the mitigation measures and required the project to contain 5% low income and 5% moderate income units. According to the project proponents, the plaintiffs never objected to those revisions. However, plaintiffs in new litigation are raising concerns regarding changes to the State's Fire Safe regulations applicable to projects in the very high fire hazard severity zone, and those questions have not been fully adjudicated. To ensure that the bill provides a measure of judicial relief from frivolous lawsuits without cutting off legitimate avenues of inquiry, the Committee may wish to consider amending SB 1256 to provide that the bill does not prohibit the filing of timely objections to ensure the court's mandates are followed, or the timely filing of a separate action relating to the same project.

4. Incoming! The Senate Rules Committee has ordered a double referral of SB 1256: first to the Committee on Judiciary, which approved the bill at its April 21st hearing on a vote of 13-0, and second to the Committee on Local Government.

Support and Opposition (4/24/26)

Support: Local 89 San Diego
RCS Harmony Partners

Opposition: None submitted.

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