



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

June 5, 2023

The Honorable Luz Rivas
Chair, Assembly Natural Resources Committee
1020 N Street, Room 164
Sacramento, CA 95814

RE: CEQA Administrative Record Trailer Bill - SUPPORT

Dear Assembly Member Rivas:

On behalf of the Rural County Representatives of California (RCRC), we are pleased to support the Governor's California Environmental Quality Act (CEQA) Administrative Record Trailer Bill. RCRC is an association of forty rural California counties and the RCRC Board of Directors is comprised of elected supervisors from each of those member counties.

The trailer bill: 1) Allows a public agency to prepare the project's administrative record in place of the petitioner; and, 2) Focuses the contents of the administrative record by excluding internal agency communications that were not presented to the final decision-making body. Together, these changes will reduce the timeframe for resolving CEQA litigation by several months and will reduce the complexity and burden of preparing the record of proceedings.

CEQA is a very powerful information dissemination and environmental mitigation tool. Its core functions are to improve the government decision making process and require the disclosure and mitigation of a project's significant impacts on the environment. RCRC strongly supports these objectives and does not discount the value CEQA provides in these contexts. At the same time, we also recognize that since its enactment in 1970, CEQA has expanded into a complex regulatory obligation with serious consequences resulting from procedural or substantive missteps. As such, CEQA is often rightly criticized today as a litigation trap that can be exploited by those seeking competitive gain or to stop projects altogether. Preparation of the administrative record is one avenue for project opponents to increase uncertainty, project costs, and add litigation delays.

Preparation of the Administrative Record

Under existing law, the public agency must prepare and certify the record of proceedings within 60 days; however the plaintiff or petitioner may elect to prepare the

1215 K Street, Suite 1650, Sacramento, CA 95814 | www.rcrcnet.org | 916.447.4806 | Fax: 916.448.3154

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record of proceedings itself. Unfortunately, the option for the petitioner/plaintiff to prepare the record has sometimes resulted in increased costs and lengthy delays, thereby creating even more uncertainty for the public agency and project proponent. Failure of the plaintiff/petitioner to timely prepare and file the record of proceedings has been found to be inadequate grounds for a superior court to terminate a CEQA action in at least one case, thereby opening the door for questions concerning just how much delay a court will tolerate before imposing terminating sanctions. In *Leavitt v. County of Madera* (2004) 123 Cal. App.4th 1502, the Court of Appeal overrode a Superior Court's decision to terminate a CEQA action when the plaintiff failed to timely prepare the record of proceedings. In that case, the plaintiff elected to prepare the record itself at the outset of the action, but then abruptly changed course more than two months later and requested that the county prepare the record. The Court ultimately determined that "a superior court has the discretion to impose a terminating sanction for failure to timely prepare the ROP where the petitioners violated a court order that defined the scope of the ROP or the court has no other means, such as the imposition of lesser sanctions, to bring about compliance with the obligation to prepare the ROP." The court noted that the interest in preparing an adequate record of proceedings was a higher priority than CEQA's other policy goals calling for prompt resolution of CEQA litigation. This has left public agencies and project proponents essentially at the mercy of plaintiffs/petitioners and created another means by which project opponents may seek to delay or increase costs for the project proponent.

This trailer bill maintains the plaintiff/petitioner's authority to prepare the record of proceedings; however, it also allows the public agency to prepare the record at its own expense. This option will create more certainty for project proponents and avoid potentially several months of litigation delays and added costs related to the plaintiff/petitioner preparing the record.

Contents of the Administrative Record

The trailer bill also seeks to focus the scope of what "internal agency communications" must be included in the administrative record. Existing law has been construed to require inclusion of potentially thousands of internal e-mails and messages that were never ultimately presented to the final decision-making body, thereby increasing the complexity and cost of preparing the record of proceedings and cluttering the record before the court. To address this, the trailer bill appropriately specifies that the administrative record is not required to include internal electronic communications that were never presented to the final decision-making body. This strikes the right balance by ensuring that staff memos and other materials that were the basis for the decision are included in the record, but that other electronic communications need not be included.

Other Issues

The changes included in the CEQA trailer bills are just a start. While a step in the right direction, they fall far short of the real, meaningful, comprehensive CEQA reforms that are necessary to address the uncertainty the law creates for project proponents and

to preclude organizations from misusing the law in furtherance of their own competitive and NIMBY objectives.

In the same vein, the CEQA Judicial Streamlining Trailer Bill also has merit (far more so than the many sports arenas given similar treatment), but it merely seeks to compress the timeframe for judicial review of CEQA litigation for a small (but important) universe of projects. It does nothing to address the real underlying issues that add so much time, cost, and uncertainty to the environmental review process.

For the above reasons, RCRC supports CEQA Administrative Record Trailer Bill and urges the Legislature to adopt other CEQA reform measures that preserve the law's original intent while better protecting against misuse. If you should have any questions, please do not hesitate to contact me at jkennedy@rcrcnet.org.

Sincerely,



JOHN KENNEDY
Policy Advocate

cc: The Honorable Brian Maienschein, Chair, Assembly Judiciary Committee
The Honorable Ben Allen, Chair, Senate Environmental Quality Committee
Assembly Member Steve Bennett, Chair, Assembly Budget Subcommittee 3 on
Climate Crisis, Resources, Energy, and Transportation
Senator Josh Becker, Chair, Senate Budget Subcommittee 2 on Resources,
Environmental Protection, and Energy
Members of the Assembly Natural Resources Committee
Members of the Assembly Judiciary Committee
Members of the Senate Environmental Quality Committee
Members of Assembly Budget Subcommittee 3 on Climate Crisis, Resources,
Energy, and Transportation
Members of Senate Budget Subcommittee 2 on Resources, Environmental
Protection, and Energy
Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee
Brynn Cook, Consultant, Senate Environmental Quality Committee
Shy Forbes, Consultant, Assembly Budget Committee
Joanne Roy, Consultant, Senate Budget and Fiscal Review Committee
Casey Dunn, Consultant, Assembly Republican Caucus
Scott Seekatz, Consultant, Senate Republican Caucus