



June 22, 2022

The Honorable Dave Cortese
Member, California State Senate
1021 O Street, Suite 6640
Sacramento, CA 95814

**RE: Senate Bill 33 – OPPOSE
As Amended June 9, 2022**

Dear Senator Cortese:

On behalf of the Rural County Representatives of California (RCRC) and the California State Association of Counties (CSAC), we must regretfully oppose your Senate Bill 33 regarding the California Environmental Quality Act (CEQA).

Senate Bill 33 increases uncertainty for project proponents and local governments by significantly extending the statute of limitations for CEQA litigation for even innocent and non-prejudicial procedural oversights. Additionally, SB 33 puts an even greater burden on local governments to provide “concierge” notifications that are unnecessary and duplicative in light of existing posting procedures.

Under existing law, public agencies are required to mail a copy of notices of determination and notices of exemption to individuals who have made a written request for those documents. Those notices must be mailed no later than five days after the public agency’s decision to approve or carry out a project. These mailing requirements are in addition to existing laws that require the lead agency to file those notices with the local county clerk, who must publicly post those notices for 30 days. Many local governments go a step further by also posting notices on their internet websites.

Most troubling, SB 33 indefinitely extends the applicable statutes of limitations that apply under CEQA. Proposed Public Resources Code Section 21167(b)(2) extends existing statutes of limitations under CEQA until the public agency mails or e-mails all required notices to those requesting such notifications. In practice, this means that an innocent procedural mistake – such as failing to mail an amended notice to a single individual – extends the time period in which a person can file CEQA litigation for 30-35 days after the agency discovers and remedies the error. Such errors could go unnoticed for lengthy periods of time, leaving the door open for opponents to file lawsuits deep into

the construction phase or even after completion of a project. Given the constructive notice provided by the physical posting requirements and the increasing availability of electronic postings, SB 33 absolves potential litigants of responsibility for doing their due diligence and opens the door for individuals to bring lawsuits unreasonably late in the process.

SB 33 also requires public agencies to mail or e-mail copies of revisions to those notices of determination and notices of exemption. This is despite the California Supreme Court's statement that potential litigants are already responsible for carefully reviewing those notices and associated revisions. (*Com. for Green Foothills v. Santa Clara Cty.*, 48 Cal 4th 32 at p.54).

We understand that SB 33 is a response to the Sixth District Court of Appeal's 2021 decision in *De Alviso v. City of San Jose* (60 Cal.App.5th 783). In that case, the court determined the plaintiff's claims were time barred by CEQA's short statute of limitations periods despite the public agency failure to mail a second notice of determination to an individual who requested the document. While the court determined that the City failed to mail the second notice as required, the court also faulted the plaintiff who failed to name the correct real party in interest despite having actual notice of that entity well before the limitations period ended. Indeed, the plaintiff's members participated in city council hearings at which the correct real party in interest was identified as the property owner. Moreover, the court noted that the plaintiff had constructive notice because the second notice of determination was properly filed and posted publicly.

While there is admittedly enough blame to go around to all parties involved in the De Aviso case, we are concerned that SB 33 is an overcorrection that will further increase CEQA litigation and uncertainty for project proponents. We are also concerned that SB 33 imposes redundant new obligations on local governments. For these reasons, we must oppose SB 33.

Please do not hesitate to contact John Kennedy (RCRC) at jkennedy@rcrcnet.org or Chris Lee (CSAC) at clee@counties.org with any questions.

Sincerely,



JOHN KENNEDY
Policy Advocate
Rural County Representatives of California



CHRIS LEE
Legislative Representative
California State Association of Counties

cc: The Honorable Luz Rivas, Chair, Assembly Natural Resources Committee
The Honorable Mark Stone, Chair, Assembly Judiciary Committee

The Honorable Dave Cortese

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Members of the Assembly Natural Resources Committee

Members of the Assembly Judiciary Committee

Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee

Nicholas Liedtke, Consultant, Assembly Judiciary Committee

Kirstin Kolpitcke, Consultant, Assembly Republican Caucus

Daryl Thomas, Consultant, Assembly Republican Caucus