S238563



IN THE

SUPREME COURT OF CALIFORNIA

| | |
|---|---|
| UNION OF MEDICAL MARIJUANA PATIENTS,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>CITY OF SAN DIEGO,<br><br>Defendant and Respondent,<br><br>CALIFORNIA COASTAL COMMISSION,<br><br>Real Party in Interest, | **Fourth District Court of Appeal, Division One Case No. D068185**<br><br>San Diego Superior Court Case No. 37-2014-00013481-CU-TT-CTL |

# RESPONDENT'S REQUEST FOR JUDICIAL NOTICE (DOCUMENTS ATTACHED EXHIBIT A – EXHIBIT D)

Mara W. Elliott, City Attorney
Glenn T. Spitzer, Deputy City Attorney
California State Bar No. 218664

Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101-4178
Telephone: (619) 236-6220
Facsimiie: (619) 236-7215
email: gspitzer@sandiego.gov

Attorneys for Respondent City of San Diego

**S238563**

IN THE

SUPREME COURT OF CALIFORNIA

| | |
|---|---|
| UNION OF MEDICAL MARIJUANA PATIENTS,<br><br>Plaintiff and Appellant,<br><br>v.<br><br>CITY OF SAN DIEGO,<br><br>Defendant and Respondent,<br><br>CALIFORNIA COASTAL COMMISSION,<br><br>Real Party in Interest, | **Fourth District Court of Appeal, Division One Case No. D068185**<br><br>San Diego Superior Court Case No. 37-2014-00013481-CU-TT-CTL |

---

**RESPONDENT'S REQUEST FOR JUDICIAL NOTICE (DOCUMENTS ATTACHED EXHIBIT A – EXHIBIT D)**

---

Mara W. Elliott, City Attorney
Glenn T. Spitzer, Deputy City Attorney
California State Bar No. 218664

Office of the City Attorney
1200 Third Avenue, Suite 1620
San Diego, California 92101-4178
Telephone: (619) 236-6220
Facsimile: (619) 236-7215
email: gspitzer@sandiego.gov

Attorneys for Respondent City of San Diego

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF CALIFORNIA:

The Respondent City of San Diego (City) herein moves this court pursuant to California Rules of Court, Rule 8.252 and Evidence Code section 459 for an order granting the City's request for judicial notice of the following attached hereto as Exhibits "**A**" through "**D**."

**Exhibit A:** Enrolled Bill Reports purchased by the City from Legislative Intent Service, Inc. regarding Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065. Exhibit A consists of nine (9) pages Bates labeled 0001 through 0009 in the upper right corner of the page.

**Exhibit B:** Legislative materials purchased by City from Legislative Intent Service, Inc. regarding Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065. Exhibit B consists of eighteen (18) pages Bates labeled 0010 through 0027 in the upper right corner of the page.

**Exhibit C:** An excerpt of Senate Bill No. 94 (2017). Exhibit C consists of five (5) pages Bates labeled 0028 through 0032 in the upper right corner of the page.

**Exhibit D:** A copy of a printout of California Legislative Information pertaining to Senate Bill No. 94 (2017). Exhibit D consists of two (2) pages Bates labeled 0033 through 0034 in the upper right corner of the page.

Dated: July 27, 2017

MARA W. ELLIOTT, City Attorney

By: _____
Glenn Spitzer
Deputy City Attorney
Attorneys for Respondent
City of San Diego

## MEMORANDUM OF POINTS AND AUTHORITIES

## I.

## STATUTORY AUTHORITY GOVERNING JUDICIAL NOTICE FOR A REVIEWING COURT

Evidence Code section 459(a) states that the reviewing court may take judicial notice of any matter specified in Section 452. California Rules of Court, Rule 8.252(a) sets forth the following procedure for the motion:

> (a) Judicial notice
>
> (1) To obtain judicial notice by a reviewing court under Evidence Code section 459, a party must serve and file a separate motion with a proposed order.
>
> (2) The motion must state:
>
> (A) Why the matter to be noticed is relevant to the appeal;
>
> (B) Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court;
>
> (C) If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453; and
>
> (D) Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.
>
> (3) If the matter to be noticed is not in the record, the party must serve and file a copy with the motion or explain why it is not practicable to do so.

Cal. R. Ct. 8.252(a).

## A. Rule 8.252(a)(2) Showing for Exhibit A—Enrolled Bill Reports for Senate Bill 749 (1994)

### 1. Why the matter to be noticed is relevant to the appeal.

At issue is the application of Public Resources Code Section 21065 to zoning amendments. Section 21065 defines "projects" under the California Environmental Quality Act (CEQA). Only "projects" are subject to CEQA. Petitioner argues that, under Public Resources Code Section 21080(a), certain listed activities including zoning amendments qualify as "projects" and are therefore subject to CEQA regardless of whether they meet the "project" definition set forth in Section 21065. The Enrolled Bill Reports in Exhibit "A" are instructive on the Legislature's intent with respect to whether certain activities are exempted from the Section 21065 requirements.

### 2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.

No, this material was not presented to the trial court.

### 3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.

Evidence Code Section 452(c) permits a court to take judicial notice of the official acts of the legislative and executive departments of California. *See also* Evidence Code § 452(c). The California Supreme Court has "routinely found enrolled bill reports, prepared by a responsible agency contemporaneous with passage and before signing, instructive on matters of legislative intent." *Eisner v. Uveges* (2004) 34 Cal. 4th 915, 934, fn 19.

**4. Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.**

This matter does not relate to proceedings occurring after judgment.

**B. <u>Rule 8.252(a)(2) Showing for Exhibit B—Excerpts of Legislative Materials for Senate Bill 749 (1994)</u>**

**1. Why the matter to be noticed is relevant to the appeal.**

At issue is the application of Public Resources Code Section 21065 to zoning amendments. Section 21065 defines "projects" under CEQA. Only "projects" are subject to CEQA. Petitioner argues that, under Public Resources Code Section 21080(a), certain listed activities including zoning amendments qualify as "projects" and are therefore subject to CEQA regardless of whether they meet the "project" definition set forth in Section 21065. The Legislative materials in Exhibit "B" are instructive on the Legislature's intent with respect to whether certain activities are exempted from the Section 21065 requirements.

**2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.**

No, this material was not presented to the trial court.

**3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.**

Evidence Code section 452(a) permits a court to take judicial notice of the resolutions and private acts of the Legislature of this state. Evidence Code Section 452(c) permits a court to take judicial notice of the official acts of the legislative department of California. Legislative materials

assembled by Legislative Intent Service are proper matter for judicial notice. *Coburn v. Sievert* (2005) 133 Cal. App. 4th 1483, 1498.

**4. Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.**

This matter does not relate to proceedings occurring after judgment.

**C. <u>Rule 8.252(a)(2) Showing for Exhibit C—Senate Bill No. 94 (2017).</u>**

**1. Why the matter to be noticed is relevant to the appeal.**

Senate Bill No. 94 exempts from CEQA those ordinances similar to the ordinance that is the subject of this litigation. This bill impacts Petitioner's ability to obtain the remedy it seeks.

**2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.**

No, this material was not presented to the trial court as it was not available at that time.

**3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.**

Evidence Code section 451(a) requires a court to take judicial notice of the public statutory law of this state. Evidence Code section 452(a) permits a court to take judicial notice of the resolutions and private acts of the Legislature of this state. *See also* Evid. Code § 452(c) (official acts of the legislative department of any state of the United States).

**4. Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.**

This matter relates a proceeding that occurred after judgment (*i.e.*, the passage of new law).

## D. Rule 8.252(a)(2) Showing for Exhibit D—California Legislative Information Bill Status Sheet.

**1. Why the matter to be noticed is relevant to the appeal.**

The bill status sheet is relevant to show that Senate Bill No. 94 (2017) passed and was signed by the Governor.

**2. Whether the matter to be noticed was presented to the trial court and, if so, whether judicial notice was taken by that court.**

No, this material was not presented to the trial court as it was not available at that time.

**3. If judicial notice of the matter was not taken by the trial court, why the matter is subject to judicial notice under Evidence Code section 451, 452, or 453.**

Evidence Code section 451(a) requires a court to take judicial notice of the public statutory law of this state. Evidence Code section 452(a) permits a court to take judicial notice of the resolutions and private acts of the Legislature of this state. *See also* Evid. Code § 452(c) (official acts of the legislative department of any state of the United States).

4. **Whether the matter to be noticed relates to proceedings occurring after the order or judgment that is the subject of the appeal.**

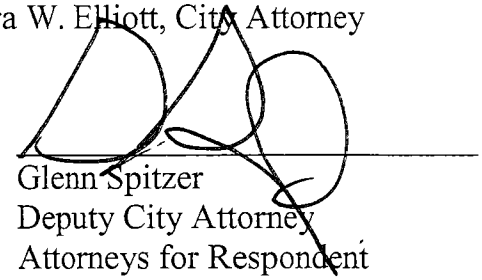
## II.

## CONCLUSION

For the reasons set forth above, the City respectfully requests the court grant the City's Request for Judicial Notice of Exhibits A through D attached hereto.

Dated: July 28, 2017

Mara W. Elliott, City Attorney

By: 

Glenn Spitzer
Deputy City Attorney
Attorneys for Respondent
City of San Diego

## DECLARATION OF GLENN T. SPITZER

I, Glenn T. Spitzer, declare as follows:

1. I am an attorney licensed to practice law in the State of California and before this Court. I am a Deputy City Attorney employed by the Office of the City Attorney, and I am assigned to represent the City of San Diego, the Defendant and Respondent in the above-captioned matter, to which this motion is directed. I have personal knowledge of the matters set forth herein and if called upon as a witness, I could competently testify thereto.

2. Attached hereto as Exhibit A are true and correct copies of enrolled bill reports for Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065, which the City purchased at my request from Legislative Intent Service, Inc.

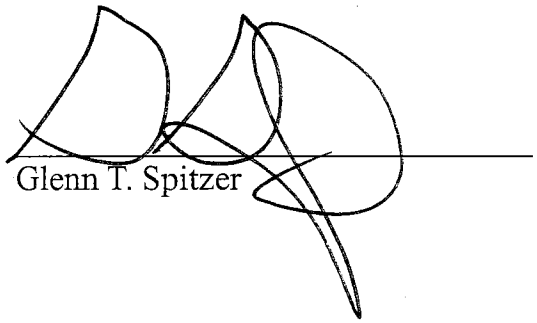
3. Attached hereto as Exhibit B are true and correct copies of excerpts of legislative history materials regarding Senate Bill No. 749 (1994) concerning the amendment to the definition of "project" in Public Resources Code section 21065, which the City purchased at my request from Legislative Intent Service, Inc. The declaration of Anna Maria Bereczky-Anderson from Legislative Intent Service, Inc. that is included in Exhibit A applies to both the Exhibit A and Exhibit B materials.

3. Attached hereto as Exhibit C is a true and correct copy of an excerpt of Senate Bill No. 94 (2017) passed by the Legislature and signed by Governor Brown on June 27, 2017.

4. Attached hereto as Exhibit D is a true and correct copy of a printout from California Legislative Information concerning Senate Bill 94 (2017) showing the bill's passage and approval by the Governor.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 28, 2017, at San Diego, California.



Glenn T. Spitzer

[PROPOSED]

**ORDER TAKING JUDICIAL NOTICE OF DOCUMENTS**

Good cause appearing,

IT IS HEREBY ORDERED that Respondent City of San Diego's Motion for Judicial Notice in support of its Respondent's Brief is granted.

IT IS ORDERED that this Court shall take judicial notice of the following:

1. Legislative history materials consisting of enrolled bill reports pertaining to Senate Bill No. 749 (1994).

2. Legislative history materials pertaining to Senate Bill No. 749 (1994).

3. An excerpt of Senate Bill No. 94 (2017).

4. A bill status printout from California Legislative Information for Senate Bill No. 94 (2017).

DATED: _____ By _____
Chief Justice of the
Supreme Court of California

## CERTIFICATE OF COMPLIANCE

## [CRC 14(c)(1)]

Pursuant to California Rule of Court, Rule 14(c)(1), I certify that this ANSWER BRIEF ON THE MERITS, contains 1,933 words and is printed in a 13-point typeface.

Dated: July 28, 2017

Mara W. Elliott, City Attorney

By

Glenn T. Spitzer
Deputy City Attorney

Attorneys for Respondent,
City of San Diego

# EXHIBIT "A"

# GOVERNOR'S OFFICE OF PLANNING AND RESEARCH

## *Enrolled Bill Report*

| Bill Number | Author | As Amended |
|---|---|---|
| SB 749 | THOMPSON | 8/25/94 |

Subject: Environmental Quality

SUMMARY

This bill would: clarify certain definitions under CEQA; limit the content requirements of EIRs; exempt from CEQA certain low to moderate income housing projects; establish provisions for the record of proceedings; authorize the deletion of infeasible mitigation measures and substitution of feasible measures prior to approving a project for which a mitigated negative declaration was prepared; and OPR to review specific guidelines and include survey questions. URGENCY.

ANALYSIS

Under the California Environmental Quality Act (CEQA), a lead agency (the agency with primary responsibility for approving or carrying out a project) must determine project significance and then prepare an Environmental Impact Report (EIR) on projects which may significantly affect the environment, or a negative declaration or mitigated negative declaration for projects which either do not have significant effects or whose significant effects can be mitigated.

Project Definition

Under current law, the vague definition of "project" has been the subject of wide interpretation. For example, decisions from the courts of appeal have not always been consistent with one another.

SB 749 would specify that a "project" under CEQA is limited to actions which result in a direct, or reasonably foreseeable indirect, physical change in the environment.

Mitigated Negative Declaration

Current law provides that a negative declaration shall be adopted when the project will not result in an adverse environmental effect. This is termed a "mitigated negative declaration," when mitigation measures have been imposed on the project to avoid the identified effects. A draft negative declaration must be circulated for review prior to adoption.



Recommendation: SIGN

By: [signature] Date: 9/7/94

Title: LEE GRISSOM
DIRECTOR

SB 749 would clarify the use of mitigated negative declarations, specifying that mitigation measures must be incorporated as revisions to project plans or set forth in the proposed conditions of project approval, with the applicant's agreement. It would further provide that if a proposed mitigation measure is found to be infeasible or undesirable, the lead agency may adopt equivalent, substitute measures without having to recirculate the negative declaration for an additional review period.

Project Exemptions

Current law exempts specified projects from CEQA, including residential projects consistent with a specific plan for which an EIR had been previously prepared. SB 749 would create a new exemption for affordable housing projects of 45 units or less, involving two acres or less, in urbanized areas. After meeting other qualifications, including review of the site by an environmental assessor for possible hazardous contaminants, the projects must be consistent with the applicable local general plan and zoning, as well as being located in a developed area with no habitat value.

Mitigation Measures

Current law provides that when there is a project for which mitigation is required, an agency must, among other things, adopt mitigation measures as conditions of project approval. SB 749 would specify that for a plan, policy, or other public project, the mitigation measures are to be incorporated into the plan, policy, regulation, or project design.

EIR Contents

CEQA dictates the minimum contents of an EIR. This includes a project description and analyses of significant effects, proposed mitigation measures, alternatives to the proposal, growth inducing impacts, the relationship between the short-term uses of man's environment and the maintenance of long-term productivity, and significant irreversible impacts of the proposal.

The CEQA Guidelines provide that the EIR shall focus on significant effects.

SB 749 would eliminate the requirement to analyze the relationship between the short-term uses of man's environment and the maintenance of long-term productivity.

The bill would statutorily authorize the omittance from EIRs the detailed discussion of potential environmental effects which are not significant.

CEQA Litigation

Current law establishes procedures for bringing and maintaining litigation alleging noncompliance with CEQA, including provisions for preparing the record of proceedings. Further, it sets time limits for litigation proceedings.

SB 749 specifies the minimum content of a record of proceedings and establishes specific time lines.

CEQA Guidelines

CEQA requires that the Office of Planning and Research (OPR) review the guidelines adopted to implement the Act every two years.

SB 749 would require that OPR review and provide additional development of the concept of using a focused EIR and revise the Guideline's definition of project consistent with this bill. OPR would also be required to include in its annual survey of planning agencies questions that analyze the ability of the lead agency to address potential significant effects on the environment, relative to the exemption for affordable housing projects proposed by this bill.

COST

No appropriation. SB 749 would not create a State-mandated local program.

ECONOMIC IMPACT

SB 749 would not adversely affect the State's business or economic climate.

LEGAL IMPACT

SB 749 would not conflict with existing State or federal law or increase the State's liability. The revisions to CEQA litigation proposed by SB 749 would streamline proceedings and require litigation to be undertaken in a timely manner. The amended definition of "project" will limit litigation not related to environmental effects and will reduce frivolous litigation.

SB 749 would amend certain sections of CEQA also amended by AB 314, which is also pending before the Governor. If both bills are chaptered, provisions of SB 749 that amend Sections 2100, 21100.1, and 21167.6 of the Public Resources Code shall prevail over the provisions of AB 314, regardless of signing order.

SB 749 and AB 314 also each amend Public Resources Code Section 21080.6. Both bills contain appropriate double-joining language so no particular signing order is necessary.



PE-7

LEGISLATIVE HISTORY

SB 749 is sponsored by Senator Thompson.

Last year, SB 1031 (Thompson) was introduced in response to the recommendation contained in the 1991 report of the Governor's Council on California's Competitiveness and on the January 12, 1993, joint hearing of the Senate Governmental Organization, Judiciary, Local Government, Natural Resources and Wildlife, and Housing and Urban Affairs Committees. The joint hearing examined whether CEQA is adequately performing its role of protecting the environment, or whether it produces a great deal of regulation, at significant cost, without safeguarding the environment. Governor Wilson vetoed SB 1031, because he did not agree with the provisions of the bill that specifically included rent control as an example of an economic activity which should not be subjected to CEQA. In his veto message, the Governor expressed a willingness to sign legislation that did not include the objectionable reference to rent control.

SB 749 is essentially the same bill as SB 1031, minus the reference to rent control. Also omitted was a section that would have changed the time period for writ of mandates. Necessary changes were also made to account for the CEQA revisions enacted by 1993's AB 1888 (Ch. 1030) and SB 939 (Ch. 1031).

Positions

SB 749 is supported by the California State Association of Counties, the League of California Cities, the Association of California Water Agencies, the California Building Industry Association, the California Council American Institute of Architects, the California Association of Realtors, the California Association of Sanitation Agencies, and the California Business Properties Association.

SB 749 is opposed by the Sierra Club due to the revised definition of "project". However, we note that the Sierra Club did not oppose this identical provision in SB 1031.

VOTE: Senate - 06 May 1993
Ayes - 34
Noes - 0

Assembly - 29 August 1994
vote not available

Concurrence - 30 August 1994
vote not available

RECOMMENDATION

The Governor's Office of Planning and Research recommends the Governor SIGN SB 749.

PE-8

SB 749 offers a number of consensus revisions to CEQA which will improve implementation of the Act as well as streamline litigation. The proposed definition of "project" will focus environmental analysis upon the physical aspects of proposed activities and will restrict the use of CEQA to challenge projects on nonenvironmental basis. This will restrict frivolous litigation where no evidence of environmental effects exist. For example, lawsuits instigated by trade unions for the purpose of forcing the use of union labor will be limited to those instances where physical impacts can be shown to exist.

The clarified provisions for "mitigated negative declarations" ensure that mitigation measures will be incorporated into project approvals, that negative declarations will not be recirculated unnecessarily, and that lead agencies will be able to exchange the mitigation measures identified in a negative declaration which may be infeasible for more practical measures which would continue to mitigate potential impacts. This will encourage the use of mitigated negative declarations rather than EIRs when all project impacts can be mitigated.

This bill would also create a concise exemption for infill residential projects of 45 or fewer low or moderate income units. This will encourage the use of vacant property within urban areas, offer an incentive for the efficient use of land, and increase the supply of affordable housing, while protecting environmental quality.

SB 749 would eliminate the vague requirement for EIRs to analyze the relationship between the short-term uses of man's environment and the maintenance of long-term productivity. This will contribute to streamlining the CEQA process, and increasing the practicality of EIR analyses.

The bill specifies the minimum contents of records of proceedings, thereby ensuring an even playing field for both sides in CEQA disputes. It also strengthens compliance and establishes monitoring programs to ensure compliance during project implementation.

The urgency clause was added to enact these measures immediately in order to apply to future projects.

Mark Goss, Project Analyst
Terry Rivasplata, Principal Planner
Nancy Patton, Assistant Deputy Director, Legislation
KM



PE-9

# ENROLLED BILL REPORT

| AGENCY | BILL NUMBER |
|---|---|
| RESOURCES | SB 749 |
| DEPARTMENT, BOARD OR COMMISSION | AUTHOR |
| WATER RESOURCES | Thompson |

SUBJECT: California Environmental Quality Act

SUMMARY:

The bill would make a number of changes in the ways that the California Environmental Quality Act (CEQA) applies to the approval of projects and to the court challenges to those approvals. The key parts of the bill are as follows:

1. Redefine the term "project."

2. Limit recirculation of a negative declaration where equally effective mitigation measures are substituted for old ones.

3. Exempt affordable housing projects of up to 45 units subject to certain limitations.

4. Delete from the required contents of an environmental impact report (EIR), the discussion of short term uses of the environment versus long term productivity.

5. Define the "record of proceedings" used in CEQA court actions.

The bill would make other relatively minor changes in CEQA, putting into the statute several concepts already authorized by the State CEQA Guidelines adopted by the Resources Agency.

Prepared by: Norman Hill (916) 653-5555, Home (916) 447-8149
Lucinda Chipponeri 653-0488, Home (916) 443-9028
Robert G. Potter 653-6055, Home (916) 392-6401

NHill 9/1/94

Sheba 9/1/94

Chipponeri 9-1-94

RECOMMENDATION: Sign the bill.

92-10

| DEPARTMENT HEAD | DATE | AGENCY HEAD | DATE |
|---|---|---|---|
| [signature] | 9-2 | Shannon Hood | 9/6/94 |

ANALYSIS:

The detailed provisions of SB 1031 are as follows:

1. **Definition of "project".**

Under existing law, CEQA applies to decisions of public agencies to carry out or approve projects. The bill would add a limitation that projects under CEQA would include only those activities that would cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Discussion: This change would codify the holdings in two court decisions that ruled that environmental effects of an activity must be reasonably foreseeable before CEQA will apply to the approval of that activity. A number of other decisions have required CEQA compliance where the impacts were uncertain and difficult to foresee. This change in the definition will help focus CEQA on situations where the environmental effects can be reasonably analyzed and made understandable to the people who must consider the information in making a public decision.

2. **Limit Recirculation of Negative Declarations.**

Under existing law, standards are not clear as to when a negative declaration would need to be recirculated for additional public review. This lack of clarity is a problem where a negative declaration was sent out for public review with one set of mitigation measures and then the public agency changes the mitigation based on public comment. The bill would provide that recirculation would not be needed if the agency found some of the mitigation measures undesirable and substituted other mitigation measures that would be equivalent or more effective.

Discussion: This change is highly desirable. It would encourage agencies to be more responsive to public comment and to be more willing to change mitigation measures. The standard of "equivalent or more effective" would help assure that the mitigation would not be weakened and that environmental protection would be maintained.



PE-11

ENROLLED BILL REPORT — Business, Transportation & Housing Agency

| DEPARTMENT | AUTHOR | BILL NO. |
|---|---|---|
| Housing and Community Development | Mike Thompson (D-Napa Valley) | SB 749 |
| SPONSOR | RELATED BILLS | DATE LAST AMENDED |
| Author | AB 314, AB 3373 SB 1320, SB 1971 | August 25, 1994 |
| SUBJECT: California Environmental Quality Act (CEQA) | | |

1. **SUMMARY:**

SB 749 would modify review and procedural requirements under the California Environmental Quality Act and add a CEQA exemption for affordable housing projects of 45 or fewer units located within urbanized areas.

> This analysis comments on provisions of the bill affecting housing. The Governor's Office of Planning and Research has lead responsibility for California Environmental Quality Act bills, and we defer to OPR for an overall analysis of the bill.

2. **ANALYSIS:**

A. **Policy:**

**Existing Law:** The California Environmental Quality Act (CEQA) requires local agencies to prepare an Environmental Impact Report (EIR) for discretionary projects that may significantly affect the environment. Localities must adopt feasible alternatives or mitigation measures in carrying out or approving such projects. CEQA also requires agencies to adopt a "negative declaration" for a project having no significant impact on the environment or one that has been revised to avoid significant impacts.

CEQA provides, under certain circumstances, that lead agencies may use an EIR, prepared for certain land use plans (e.g., general plans, community plans or zoning classifications), for residential and other development projects that are consistent with those plans. Also, a "master" and a "focused" EIR may be prepared for



| VOTE: ASSEMBLY FLOOR | Aye 77 | No 0 | VOTE: SENATE FLOOR | Aye 34 | No 0 |
|---|---|---|---|---|---|
| Policy Cmte. Natural Resources | Aye 8 | No 0 | Policy Cmte. Government Organization | Aye 8 | No 0 |

RECOMMENDATION: SIGN

| DEPARTMENT | DATE | AGENCY | DATE |
|---|---|---|---|
| Timothy L. Coyle, Director | 9/6/94 | Michael B. Davis | 9/9/94 |

PE-20

related projects. For example, a master EIR may be prepared for a policy, plan, program, or ordinance, and followed by a narrower or site-specific EIR that concentrates only on effects that were not analyzed in the master EIR. Effective January 1, 1994, a focused EIR may be prepared for in-fill projects consisting of not more than 100 multifamily units or a mixed-use residential and commercial development of not more than 100,000 square feet.

Projects that maintain, repair, restore, replace, or demolish property or facilities that were damaged or destroyed by a disaster in an area where the Governor has declared a state of emergency are exempt from CEQA. This exemption also extends to emergency repairs of public service facilities.

Existing law defines "project" for the purposes of CEQA to mean activities directly undertaken by any public agency, activities undertaken by persons which are supported by assistance from public agencies, and activities involving various entitlements (e.g., permits or certificates) issued by public agencies.

**SB 749 would, among other things:**

- Redefine "project" to mean activities directly undertaken by any public agency, activities undertaken by persons which are supported by assistance from public agencies, and activities involving various entitlements (e.g., permits or certificates) issued by public agencies which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.

- Exempt from CEQA affordable housing projects of 45 or fewer units located within urbanized areas if they meet specified conditions.

- Define "urbanized area" as a populated area with a density of at least 1,000 persons per square mile.

- Provide that the exempted housing must be either:

  - Affordable to lower-income households, as defined in the Health and Safety Code (H&SC), if the developer provides sufficient legal commitments to the appropriate local agency to ensure continued availability and use of the housing units for at least 15 years for lower-income households.

    - The Health and Safety Code citation specifies lower-income households by a reference to qualifying income limits established under Section 8 of the United States Housing Act of 1937 and published by the Department of Housing and Community Development (HCD); or,

LEGISLATIVE
INTENT SERVICE, INC.

712 Main Street, Suite 200, Woodland, CA 95695
(800) 666-1917 • Fax (530) 668-5866 • www.legintent.com

## DECLARATION OF ANNA MARIA BERECZKY-ANDERSON

I, Anna Maria Bereczky-Anderson, declare:

I am an attorney licensed to practice in California, State Bar No. 227794, and am employed by Legislative Intent Service, Inc., a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service, Inc. undertook to locate and obtain documents relevant to the enactment of Senate Bill 749 of 1994. The documents listed below were obtained through Legislative Intent Service, Inc.'s online quick purchase service of previously-compiled legislative histories. Senate Bill 749 was approved by the Legislature and was enacted as Chapter 1230 of the Statutes of 1994.

The following list identifies all documents purchased on April 27, 2017, through Legislative Intent Service, Inc.'s online quick purchase service of compiled legislative histories, on Senate Bill 749 of 1994. All documents listed in this Declaration are true and correct copies of the originals gathered by Legislative Intent Service, Inc.

**SENATE BILL 749 OF 1994**:

1. All versions of Senate Bill 749 (Thompson-1994);
2. Procedural history of Senate Bill 749 from the 1993-94 *Senate Final History*;
3. Analysis of Senate Bill 749 prepared for the Senate Committee on Governmental Organization;
4. Material from the legislative bill file of the Senate Committee on Governmental Organization on Senate Bill 749 as follows:
   a. General correspondence;
   b. Support and background letters;
5. Document from the legislative bill file of the Senate Committee on Appropriations on Senate Bill 749;

6. Special Consent analysis of Senate Bill 749 prepared by the Office of Senate Floor Analyses;
7. Material from the legislative bill file of the Office of Senate Floor Analyses on Senate Bill 749 as follows:
   a. General correspondence,
   b. Support and opposition letters;
8. Two analyses of Senate Bill 749 prepared for the Assembly Committee on Natural Resources;
9. Material from the legislative bill file of the Assembly Committee on Natural Resources on Senate Bill 749 as follows:
   a. General correspondence,
   b. Support and opposition letters;
10. Analysis of Senate Bill 749 prepared for the Assembly Committee on Ways and Means;
11. Four Third Reading analyses of Senate Bill 749 prepared by the Assembly Committee on Natural Resources;
12. Material from the legislative bill file of the Assembly Republican Caucus on Senate Bill 749;
13. Material from the legislative bill file of Senator Mike Thompson on Senate Bill 749 as follows:
   a. General correspondence,
   b. Background material,
   c. Support letters;
14. Post-enrollment documents regarding Senate Bill 749;
15. Excerpt regarding Senate Bill 749 from the *Digest of Significant Legislation*, prepared by the Office of Senate Floor Analyses, 1994.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 26th day of July, 2017 at Woodland, California.

Anna Maria Bereczky-Anderson

ANNA MARIA BERECZKY-ANDERSON

W:\Worldox\WDOCS\SNATBILL\sb\749\00224325.DOC

# EXHIBIT "B"

AMENDED IN ASSEMBLY JULY 16, 1993

AMENDED IN ASSEMBLY MAY 18, 1993

# SENATE BILL No. 749

Introduced by Senator ~~Deddeh~~ *Thompson*

March 3, 1993

An act to ~~add Section 87100.2 to the Government Code, relating to environmental quality.~~ *amend Sections 21002.1, 21005, 21064.5, 21065, 21080, 21080.1, 21080.10, 21081.6, 21100, 21100.1, 21167.4, and 21167.6 of the Public Resources Code, relating to environmental quality.*

LEGISLATIVE COUNSEL'S DIGEST

SB 749, as amended, ~~Deddeh~~ *Thompson*. Environmental quality.

(1) *Existing law, the California Environmental Quality Act, requires the lead public agency, as defined, after the conduct of an initial study, to prepare a negative declaration or an environmental impact report for a proposed project, as specified.*

*The act requires that the environmental impact report contain, among other things, the potentially significant effects on the environment, as defined, of the project and a brief statement indicating the reasons for determining that various potential effects are not significant and consequently have not been discussed in detail in the report.*

*This bill would specify that an environmental impact report discuss fully only the potential effects on the environment which the lead agency has determined are, or may be, significant and omit any detailed discussion of potential effects on the environment that the lead agency has determined are not significant. The bill would declare policy*

0011

*in that regard and make related changes.*

*The bill would revise the definition of "project" for purposes of the act to specify that it is an activity which may cause a direct physical change, or a reasonably foreseeable indirect change, in the environment, and would express legislative intent in that regard.*

*The bill would exempt from the act, with a specified exception, any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 45 units in an urbanized area, as defined, that is affordable to low- and moderate-income households, as defined, that meets specified requirements. By imposing new duties on local agencies regarding determining the applicability of, and giving notice of, that exemption, the bill would impose a state-mandated local program.*

*(2) The act requires an environmental impact report to set forth the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.*

*This bill would delete that requirement.*

*(3) The act requires a lead agency to adopt a negative declaration if it determines that there is no substantial evidence in light of the record before the lead agency that the proposed project would have a significant effect on the environment, or, after an initial study identifying potentially significant effects on the environment that may result from the project, that the project, as revised and mitigated, would not have a significant effect on the environment.*

*This bill would authorize the lead agency to conclude that certain mitigation measures that have been identified in the initial study are unfeasible or otherwise undesirable, and would, in those circumstances, authorize the lead agency, prior to approving the project, to delete those mitigation measures and substitute for them other mitigation measures that are equivalent or more effective in mitigating significant effects on the environment.*

*(4) The act requires the plaintiff or petitioner in an action or proceeding alleging noncompliance with the act to request a hearing within 90 days from the date of filing the complaint or petition.*

*This bill would require the court to hear the complaint or petition within 180 days from the date that the complaint or petition is filed.*

*(5) The act prescribes procedures relating to the preparation and certification of the record of proceedings in an action or proceeding alleging noncompliance with the act.*

*This bill would require the record of proceedings to include specified items.*

*(6) The act requires the Office of Planning and Research, at least every 2 years, to review the guidelines adopted to implement the act. The act authorizes the use of a focused environmental impact report under prescribed circumstances.*

*This bill would require the office, in its next scheduled review of the guidelines, to review and provide further development of the concept of using a focused environmental impact report, and to provide recommendations for revising the definition of "project" in the guidelines to conform to changes in that definition made by the bill, as specified in (1), above.*

*(7) The bill would make various clarifying and technical changes.*

*(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.*

*This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.*

*Moreover, the bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for other costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for those other costs.*

~~Existing law, the Political Reform Act of 1974, an initiative measure, prohibits a public official from participating in or~~

~~influencing a governmental decision. The failure to comply with the act may result in criminal penalties. The act provides that the Legislature may amend the act to further the act's purposes with a ⅔ vote of each house and compliance with specified procedural requirements.~~

~~This bill would provide that a person who receives payment for the preparation of a draft environmental impact report or draft negative declaration does not have a financial interest in a governmental decision solely by reason of that payment if specified conditions are met. By excluding certain activities from the act, the bill would impose a state-mandated local program by changing the definition of a crime.~~

~~The bill would make legislative findings and declarations that the bill furthers the purposes of the act.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: ⅔ *majority*. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

~~SECTION 1. Section 87100.2 is added to the~~

*SECTION 1. Section 21002.1 of the Public Resources Code is amended to read:*

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature *hereby* finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects ~~of a project~~ on the environment *of a project*, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects it ~~approves or~~ carries out *or approves* whenever it is feasible to do so.

(c) ~~In the event that~~ *If* economic, social, or other conditions make it infeasible to mitigate one or more significant effects ~~of a project~~ on the environment *of a project*, the project may nonetheless be ~~approved or~~ carried out *or approved* at the discretion of a public agency ~~, provided that~~ *if* the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of ~~a public agency which is functioning as a~~ *the* lead agency shall differ from that of a ~~public agency which is functioning as a~~ responsible agency. ~~A public agency functioning as a~~ *The* lead agency shall ~~have responsibility~~ *be responsible* for considering the effects, both individual and collective, of all activities involved in a project. A ~~public agency functioning as a~~ responsible agency shall ~~have responsibility~~ *be responsible* for considering only the effects of those activities involved in a project ; which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments *that* the *public* agency may wish to make pursuant to Section 21104 or 21153.

*(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, fully discuss in the environmental impact report only the potential effects on the environment of a proposed project which the lead agency has determined are or may be significant, based upon the initial study or information identified during the scoping or public review process, and omit from the report any detailed discussion of potential effects on the environment that the lead agency has determined are not significant.*

*SEC. 2. Section 21005 of the Public Resources Code is amended to read:*

0013

21005. *(a)* The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or *noncompliance* with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

~~The Legislature further finds and declares that~~

*(b) It is the intent of the Legislature that,* in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

*(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.*

*SEC. 3. Section 21064.5 of the Public Resources Code is amended to read:*

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration ~~is~~ *and initial study are* released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) 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.

*SEC. 4. Section 21065 of the Public Resources Code is amended to read:*

21065. "Project" means *an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of* the following:

(a) ~~Activities directly~~ *Directly* undertaken by any public agency.

(b) ~~Activities undertaken~~ *Undertaken* by a person ~~which are~~ *and* supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) ~~Activities involving~~ *Involves* the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

*SEC. 5. Section 21080 of the Public Resources Code is amended to read:*

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division shall not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to

any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe benefits, (B) purchasing or leasing supplies, equipment, or materials, (C) meeting financial reserve needs and requirements, (D) obtaining funds for capital projects necessary to maintain service within existing service areas, or (E) obtaining funds necessary to maintain those intracity transfers as are authorized by city charter. The public agency shall incorporate written findings in the record of any proceeding in which an exemption under this paragraph is claimed setting forth with specificity the basis for the claim of exemption.

(9) All classes of projects designated pursuant to Section 21084.



(10) A project for the institution or increase of passenger or commuter services on rail or highway rights-of-way already in use, including modernization of existing stations and parking facilities.

(11) A project for the institution or increase of passenger or commuter service on high-occupancy vehicle lanes already in use, including the modernization of existing stations and parking facilities.

(12) Facility extensions not to exceed four miles in length which are required for the transfer of passengers from or to exclusive public mass transit guideway or busway public transit services.

(13) A project for the development of a regional transportation improvement program or the state transportation improvement program.

(14) Any project or portion thereof located in another state which will be subject to environmental impact review pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.) or similar state laws of that state. Any emissions or discharges that would have a significant effect on the environment in this state are subject to this division.

(15) Projects undertaken by a local agency to implement a rule or regulation imposed by a state agency, board, or commission under a certified regulatory program pursuant to Section 21080.5. Any site-specific effect of the project which was not analyzed as a significant effect on the environment in the plan or other written documentation required by Section 21080.5 is subject to this division.

(c) If a lead agency determines that a proposed project, not otherwise exempt from this division, ~~does~~ *would* not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. The negative declaration shall be prepared for the proposed project in either of the following circumstances:

(1) There is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment.

0015

(2) An initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration ~~is~~ *and initial study are* released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence in light of the whole record before the lead agency that the project, as revised, may have a significant effect on the environment.

(d) If there is substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment, an environmental impact report shall be prepared.

(e) Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

*(f) As a result of the public review process for a mitigated negative declaration, including administrative decisions and public hearings, the lead agency may conclude that certain mitigation measures identified pursuant to paragraph (2) of subdivision (c) are infeasible or otherwise undesirable. In those circumstances, the lead agency, prior to approving the project, may delete those mitigation measures and substitute for them other mitigation measures that are equivalent or more effective in mitigating significant effects on the environment to a less than significant level. If those new mitigation measures are made conditions of project approval or are otherwise made part of the project approval, the deletion of the former measures and the substitution of the new mitigation measures shall not constitute an action or circumstance requiring recirculation of the mitigated negative declaration.*



*(g) Nothing in this section shall preclude a project applicant from challenging, in an administrative or judicial proceeding, the legality of a condition of project approval imposed by the lead agency. If, however, any condition of project approval set aside by either an administrative body or court was necessary to avoid or lessen the likelihood of the occurrence of a significant effect on the environment, the lead agency's approval of the negative declaration and project shall be invalid and a new environmental review process shall be conducted before the project can be reapproved, unless the lead agency substitutes a new condition that is equivalent to, or more effective in, lessening or avoiding significant effects on the environment.*

*SEC. 6. Section 21080.1 of the Public Resources Code is amended to read:*

21080.1. (a) The lead agency shall ~~have the responsibility~~ *be responsible* for determining whether an environmental impact report ~~or~~, a negative declaration, *or a mitigated negative declaration* shall be required for any project which is subject to this division. That determination shall be final and conclusive on all persons, including responsible agencies, unless challenged, as provided in Section 21167.

(b) In the case of a project described in subdivision (c) of Section 21065, the lead agency shall, upon the request of a potential applicant, provide for consultation prior to the filing of the application regarding the range of actions, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the project.

*SEC. 7. Section 21080.10 of the Public Resources Code is amended to read:*

21080.10. This division does not apply to any of the following:

(a) An extension of time, granted pursuant to Section 65361 of the Government Code, for the preparation and adoption of one or more elements of a city or county general plan.

(b) Actions taken by the Department of Housing and

Senate Bill No. 749

CHAPTER 1230

An act to amend Sections 21002.1, 21005, 21064.5, 21065, 21080, 21080.1, 21081.6, 21100, 21100.1, and 21167.6 of, and to add Section 21080.14 to, the Public Resources Code, relating to environmental quality, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1994. Filed with Secretary of State September 30, 1994.]

LEGISLATIVE COUNSEL'S DIGEST

SB 749, Thompson. Environmental quality.

(1) Existing law, the California Environmental Quality Act, requires the lead public agency, as defined, after the conduct of an initial study, to prepare a negative declaration or an environmental impact report for a proposed project, as specified.

The act requires that the environmental impact report set forth, among other things, the potentially significant effects on the environment, as defined, of the project and a brief written statement indicating the reasons for determining that various potential effects are not significant and consequently have not been discussed in detail in the report.

This bill would specify that a lead agency, in an environmental impact report, is required to focus the discussion on those potential effects on the environment which the lead agency has determined are, or may be, significant and may limit the discussion on other effects to a brief explanation as to why those effects are not potentially significant. The bill would declare policy in that regard and make related changes.

[ The bill would revise the definition of "project" for purposes of the act to specify that it is an activity which may cause a direct physical change, or a reasonably foreseeable indirect change, in the environment, and would express legislative intent in that regard. ]

The bill would exempt from the act, with a specified exception, any development project which consists of the construction, conversion, or use of residential housing consisting of not more than 45 units in an urbanized area, as defined, that is affordable to lower income households or low- and moderate-income households, as prescribed, that meets specified requirements. By imposing new duties on local agencies regarding determining the applicability of, and giving notice of, that exemption, the bill would impose a state-mandated local program.

(2) The act requires an environmental impact report to set forth the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.

This bill would delete that requirement and would conform related provisions. These provisions of the bill would prevail over specified provisions of AB 314 if both bills are chaptered, regardless of which bill is chaptered last.

(3) The act requires a lead agency to adopt a negative declaration if it determines that there is no substantial evidence in light of the record before the lead agency that the proposed project would have a significant effect on the environment, or, after an initial study identifying potentially significant effects on the environment that may result from the project, that the project, as revised and mitigated, would not have a significant effect on the environment.

This bill would authorize the lead agency to conclude that certain mitigation measures that have been identified in the initial study are infeasible or otherwise undesirable, and would, in those circumstances, authorize the lead agency, prior to approving the project, to delete those mitigation measures and substitute for them other mitigation measures that are equivalent or more effective in mitigating significant effects on the environment.

(4) The act prescribes procedures relating to the preparation and certification of the record of proceedings in an action or proceeding alleging noncompliance with the act.

This bill would require the record of proceedings to include specified items.

(5) The act requires the Office of Planning and Research, at least every 2 years, to review the guidelines adopted to implement the act. The act authorizes the use of a focused environmental impact report under prescribed circumstances.

This bill would require the office, in its next scheduled review of the guidelines, to review and provide further development of the concept of using a focused environmental impact report, and to provide recommendations for revising the definition of "project" in the guidelines to conform to changes in that definition made by the bill.

(6) The bill would also authorize the office to include in its annual survey questions relating to the impact of the exemption for development projects that are affordable to lower income households or to low- and moderate-income households on lead agencies that are considering the approval of those development projects.

(7) The bill would make various clarifying and technical changes.

(8) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that for certain costs no reimbursement is required by this act for a specified reason.

Moreover, the bill would provide that no reimbursement shall be made from the State Mandates Claims Fund for other costs mandated by the state pursuant to this act, but would recognize that local agencies and school districts may pursue any available remedies to seek reimbursement for those other costs.

(9) This bill also makes additional changes proposed by AB 314, to be operative only if AB 314 and this bill are both chaptered and become effective on or before January 1, 1995, and this bill is chaptered last.

(10) The bill would declare that it is to take effect immediately as an urgency statute.

*The people of the State of California do enact as follows:*

SECTION 1. Section 21002.1 of the Public Resources Code is amended to read:

21002.1. In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

(a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.

(b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.

(c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.

(d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.

(e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section

21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

SEC. 2. Section 21005 of the Public Resources Code is amended to read:

21005. (a) The Legislature finds and declares that it is the policy of the state that noncompliance with the information disclosure provisions of this division which precludes relevant information from being presented to the public agency, or noncompliance with substantive requirements of this division, may constitute a prejudicial abuse of discretion within the meaning of Sections 21168 and 21168.5, regardless of whether a different outcome would have resulted if the public agency had complied with those provisions.

(b) It is the intent of the Legislature that, in undertaking judicial review pursuant to Sections 21168 and 21168.5, courts shall continue to follow the established principle that there is no presumption that error is prejudicial.

(c) It is further the intent of the Legislature that any court, which finds, or, in the process of reviewing a previous court finding, finds, that a public agency has taken an action without compliance with this division, shall specifically address each of the alleged grounds for noncompliance.

SEC. 3. Section 21064.5 of the Public Resources Code is amended to read:

21064.5. "Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) 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.

SEC. 4. Section 21065 of the Public Resources Code is amended to read:

21065. "Project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

(a) An activity directly undertaken by any public agency.

(b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.

(c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

SEC. 5. Section 21080 of the Public Resources Code is amended to read:

21080. (a) Except as otherwise provided in this division, this division shall apply to discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.

(b) This division shall not apply to any of the following activities:

(1) Ministerial projects proposed to be carried out or approved by public agencies.

(2) Emergency repairs to public service facilities necessary to maintain service.

(3) Projects undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(4) Specific actions necessary to prevent or mitigate an emergency.

(5) Projects which a public agency rejects or disapproves.

(6) Actions undertaken by a public agency relating to any thermal powerplant site or facility, including the expenditure, obligation, or encumbrance of funds by a public agency for planning, engineering, or design purposes, or for the conditional sale or purchase of equipment, fuel, water (except groundwater), steam, or power for a thermal powerplant, if the powerplant site and related facility will be the subject of an environmental impact report, negative declaration, or other document, prepared pursuant to a regulatory program certified pursuant to Section 21080.5, which will be prepared by the State Energy Resources Conservation and Development Commission, by the Public Utilities Commission, or by the city or county in which the powerplant and related facility would be located if the environmental impact report, negative declaration, or document includes the environmental impact, if any, of the action described in this paragraph.

(7) Activities or approvals necessary to the bidding for, hosting or staging of, and funding or carrying out of, an Olympic games under the authority of the International Olympic Committee, except for the construction of facilities necessary for the Olympic games.

(8) The establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by public agencies which the public agency finds are for the purpose of (A) meeting operating expenses, including employee wage rates and fringe

SB 1031 was one of the major CEQA reform bills in 1993. It was generally supported by the groups involved in the CEQA negotiations.

2. Detailed Provisions:

**a. Definition of "project".**

Under existing law, CEQA applies to decisions of public agencies to carry out or approve projects. The bill would add a limitation that projects under CEQA would include only those activities that would cause either a direct physical change or a reasonably foreseeable indirect physical change in the environment.

Discussion: This change is important. CEQA has been used by groups to oppose activities for economic or other non-environmental reasons. These groups have forced EIRs to be prepared for such activities as rent control ordinances or building standards allowing the use of plastic pipe. Limiting CEQA to projects that would cause reasonably foreseeable physical changes in the environment would help prevent abuse of CEQA and the unnecessary expenditure of public funds.

**b. Limit Recirculation of Mitigated Negative Declarations.**

Under existing law, standards are not clear as to when a mitigated negative declaration would need to be recirculated for additional public review. This lack of clarity is a problem where a mitigated negative declaration was sent out for public review with one set of mitigation measures and then the public agency changes the mitigation based on public comment. The bill would provide that recirculation would not be needed if the agency found some of the mitigation measures undesirable and substituted other mitigation measures that would be equivalent or more effective.

Discussion: This change is highly desirable. It would encourage agencies to be more responsive to public comment and to be more willing to change mitigation measures. The standard of "equivalent or more effective" would help assure that the mitigation would not be weakened and that environmental protection would be maintained.

# BILL ANALYSIS

0020
RESOURCES AGENCY

| DEPARTMENT | AUTHOR | BILL NUMBER |
|---|---|---|
| Department of Water Resources | Thompson | SB 749 |
| **SPONSORED BY** | **RELATED BILLS** | **DATE LAST AMENDED** |
| Author | AB 1888 of '93 | 3-24-94 |

SUBJECT

Environmental Impact Review

BILL SUMMARY:

The bill would make a number of changes in the ways that the California Environmental Quality Act (CEQA) applies to the approval of projects and to the court challenges to those approvals. [The key parts of the bill are as follows:]

1. Redefine the term "project."

2. Limit recirculation of a mitigated negative declaration where equally effective mitigation measures are substituted for old ones.

3. Exempt affordable housing projects of up to 45 units subject to certain limitations.

4. Delete from the required contents of an environmental impact report (EIR), the discussion of short term uses of the environment versus long term productivity.

5. Define the "record of proceedings" used in CEQA court actions.

ANALYSIS

1. History and Sponsorship

This bill is essentially identical to SB 1031 (Thompson) of 1993. That bill was vetoed because it contained references to rent control. The provisions mentioning rent control have been removed from this bill. Other portions of SB 1031 that were enacted by AB 1888 (Sher) of 1993 were removed from this draft.

Analyzed by: Norman Hill, (916) 653-5555 NHill 4-13-94
Lucinda Chipponeri (916) 653-0488 [illegible] 4/15/94
[illegible] 4/18/94

DEPARTMENTS THAT MAY BE AFFECTED: Resources Agency, Office of Planning & Research

[illegible] 4/18 STATE MANDATE ☐ GOVERNOR'S APPOINTMENT ☐

| Department Director Position | | Agency Secretary Position | |
|---|---|---|---|
| ____ S | ____ O | ____ S | ____ O |
| ____ SA | ____ OUA | ____ SA | ____ OUA |
| ____ N | ____ NP | ____ N | ____ NP |
| ____ NA | ____ NAR | ____ NA | ____ NAR |
| X DEFER TO Resources Agency | | ____ DEFER TO ____ | |

| Department Director | Date | Agency Secretary | Date |
|---|---|---|---|
| [illegible] | 4/20/94 | Original Signed By: Michael A. Mantell | 4/24/94 |

GOVERNOR'S OFFICE USE

| | |
|---|---|
| Position approved | |
| Position disapproved | |
| Position noted | SFA-4 |
| By: | Date: |

Date of Hearing: June 13, 1994
Fiscal: Yes
Urgency: No

ASSEMBLY COMMITTEE ON NATURAL RESOURCES
Byron D. Sher, Chair

SB 749 (Thompson) - As Amended: March 24, 1994

| | | |
|---|---|---|
| Senate Governmental Organization | (8-0) | (4/13/94) |
| Senate Appropriations | (Rule 28.8) | (4/26/94) |
| Senate Floor | (34-0) | (5/6/94) Consent |

SUBJECT: **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

DIGEST

[ Existing law, pursuant to the California Environmental Quality Act (CEQA): ]

1) Requires a lead agency (the agency with primary responsibility for approving or carrying out a project) to prepare an environmental impact report (EIR) on projects which may significantly affect the environment, or a negative declaration for projects which do not have significant effects.

2) Requires the Secretary of the Resources Agency to adopt CEQA Guidelines which interpret CEQA and generally have the force of regulation.

3) Requires an EIR to contain a statement briefly indicating the reasons for determining that some project effects are not significant and thus have not been discussed in detail.

[ 4) Defines project to include activities which are directly undertaken by a person or a public agency. ]

[ This bill: ]

1) States legislative findings that an EIR should omit a detailed discussion of potential environmental effects which are not significant.

[ 2) Defines project as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. ]

3) After preparation of a mitigated negative declaration, authorizes the imposition by the lead agency of mitigation measures which are equivalent or more effective than the previously identified mitigation measures.

4) Deletes the requirements that an EIR must set forth the relationship between local short/term uses of the environment and long/term productivity, and any significant irreversible environmental changes caused by the project.

- continued -

**SUMMARY OF SB 749**
**As Amended March 24, 1994**

SB 749 (Thompson) contains the important provisions of SB 1031 (Thompson) and excludes the one provision which caused it to be vetoed relating to rent control. It also eliminates any conflicts with SB 919 and AB 1888 relating to CEQA which were enacted in 1993. The overall purpose of SB 749 is to improve the operations of CEQA by making it both more efficient and effective.

SB 749 does the following:

1) Adds to the statement of legislative intent regarding judicial review that any court finding any agency in noncompliance shall address each of the grounds of noncompliance.

   Comment: This is intended to encourage the court to consider all the noncompliance issues in order that corrective actions can be taken.

2) Adds to the statement of policy regarding the preparation of Environmental Impact Reports (EIRs) that the lead agency report only the potential effects on the environment that the agency has determined are or may be significant.

   Comment: This is intended to focus review on the potentially significant effects on the environment of a proposed project and reduce the time, cost, and delay for all parties of reviewing nonrelevant material.

3) Specifies that the definition of "project" means an activity which may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment which meets certain conditions.

   Comment: This is intended to clarify the definition of a project in the preparation of EIRs.

4) Specifies that a lead agency is responsible for determining whether a "mitigated negative declaration" is required and clarifies the use of "mitigated negative declarations."

   Comment: This is intended to recognize and clarify the use of mitigated negative declarations.

5) Exempts up to 45 units of affordable housing in an urbanized area under specified conditions from the preparation of an EIR.



AP-1C

**ASSEMBLY NATURAL RESOURCES COMMITTEE**
**REPUBLICAN ANALYSIS**

SB 749 (Thompson) -- ENVIRONMENTAL QUALITY
Version: 8/17/94 Lead Republican: Doris Allen
Analyzed: 8/22/94 Vote: 2/3 (Urgency)
Recommendation: Support

SUMMARY: **Amends the California Environmental Quality Act to do the following:** 1) states legislative intent that a lead agency may choose to not discuss in detail in the EIR the potential environmental effects that the lead agency has determined are not significant; 2) defines "project" as an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect change in the environment; 3) authorizes the lead agency to substitute mitigation measures when determined that the current measures are unfeasible or undesirable; 4) deletes the requirement that an EIR set forth the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity; 5) directs OPR to revise the Guidelines to develop the concept of a focused EIR and to revise the definition of "project" to reflect the new definition in the bill; 6) exempts from CEQA development projects of 45 or fewer low or moderate income households in urban settings that meet specified criteria. FISCAL EFFECT: No fiscal impact.

**TAX OR FEE INCREASE:** None.

**POTENTIAL EFFECTS:** Would expedite the environmental review process.

SUPPORT: ACWA; Ca. Business Properties Assoc.; Ca. Assoc. of Realtors; Ca. Assoc of Sanitation Agencies; Ca. Council of the American Institute of Architects.
OPPOSITION: Sierra Club.
GOVERNOR'S POSITION: Unknown

COMMENTS:

- **Background:** This measure is similar to SB 1031 of last year, which the Governor vetoed. The objectionable portion of SB 1031, dealing with rent control ordinances, is not in this bill.
- **Purpose of bill.** The overall intent of the bill is to streamline CEQA proceedings and to limit frivolous lawsuits. It's redefining what is a "project" for purposes of CEQA and will prohibit CEQA from being used to delay or kill projects that have no direct or indirect effect on the environment. In the case where certain mitigation measures are deemed unfeasible, this bill authorizes lead agencies to delete those mitigation measures and substitute other mitigation measures in their place without having to go through the review process.
- **Codification of two court holdings.** The bill states legislative intent that the amended definition of "project" to codify two holdings issued by appellate courts. 1. Kaufman & Broad-South Bay, Inc. v. Morgan Hill Unified School District. The 4th





ARC-1

appellate court held in Kaufman, (1992) that, for a government decision does not have a "direct effect" on the environment, it must be "a necessary step in the chain of events which would culminate in physical impact on the environment." The controversy which led to this holding involved a developer and a school district over the formation of a community facilities district under Mello-Roos. The developer feared onerous fees and hoped to block or delay the formation of this CFD by invoking CEQA. The school argued that the mere formation of a financing mechanism for future public facilities was not a "project" which demands CEQA compliance. The Kaufman court agreed and held that in "cases such as this where funding issues alone are involved, courts should look for a binding commitment to spend in a particular manner before requiring environmental review." Although we might sympathize with the plight of that particular developer, the holding is logical and consistent with good public policy. If the developer had prevailed in Kaufman, local governments would not only have to comply with CEQA for actual physical projects, but also the establishment of financing mechanisms. There are a variety of ways to block the formation of public financing mechanisms, but CEQA should not be one of them. If it were, there would be no foundation for establishing parameters with respect to the application of CEQA. In the final analysis, the most significant reforms to CEQA are those which provide certainty and regularity to project applicants. **2. City of Livermore v. LAFCO.** The 3rd appellate court held that LAFCOs wishing to revise their "spheres of influence guidelines" governing potential development in municipalities' spheres of influence are required to prepare an environmental impact report. Although no specific "project" was involved, the court reasoned that the "potential impact of the revisions is great." Thus, codification of this appellate holding would require that LAFCOs all around California comply with CEQA if they wish to adopt revisions to the "sphere of influence guidelines." If you really like LAFCOs you might not like this provision. If you hate them, you will like this provision.

- **Low- and moderate-income housing in urban areas.** This bill exempts from CEQA any development project creating 45 or fewer low- to moderate-income housing units in an urbanized area, if the development is consistent with the general plan, zoning designation, is adjacent on at least two sides to developed land, is not more than two acres in area, can be adequately served by utilities, has no value as a wildlife habitat, and would not affect a historical structure. Apparently, concerned neighbors of proposed low- to moderate-income developments have successfully used CEQA to delay or stop these developments, out of concern of the effect these developments would have on their property values.
- **Why exempt only low- to moderate-income developments?** If neighbors are using CEQA to stop the development of low- to moderate-income housing for reasons not related to the environment, then these developments should be exempt -- as should other housing developments that are small in nature but are not low- to moderate-income developments. **This bill should**

**be amended to exempt all housing developments in an urban setting on less than two acres.**.

- o **Summary.** This legislation is only a modest improvement to CEQA, not a major reform.

Senate Republican Floor vote -- NOT RELEVANT DUE TO AMENDMENTS
Assembly Republican Committee vote
Nat. Resources -- 6/13/94
(8-0) Ayes: All Republicans except
Abs.: Haynes
Ways & Means -- 8/10/94
(23-0) Ayes: All Republicans
Consultant: Mark Christian/Tony Gonzalez

# SUMMARY OF SB 749
## As Amended March 24, 1994

SB 749 (Thompson) contains the important provisions of SB 1031 (Thompson) and excludes the one provision which caused it to be vetoed relating to rent control. It also eliminates any conflicts with SB 919 and AB 1888 relating to CEQA which were enacted in 1993. The overall purpose of SB 749 is to improve the operations of CEQA by making it both more efficient and effective.

SB 749 does the following:

1) Adds to the statement of legislative intent regarding judicial review that any court finding any agency in noncompliance shall address each of the grounds of noncompliance.

   Comment: This is intended to encourage the court to consider all the noncompliance issues in order that corrective actions can be taken and the need for repetitive litigation be eliminated.

2) Adds to the statement of policy regarding the preparation of Environmental Impact Reports (EIRs) that the lead agency fully discuss only the potential effects on the environment that the agency has determined are or may be significant.

   Comment: This is intended to focus review on the potentially significant effects on the environment of a proposed project and reduce the time, cost, and delay for all parties of preparing and reviewing nonrelevant material.

3) Specifies that the definition of "project" means an activity which may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment which meets certain conditions.

   Comment: This is intended to clarify the definition of a project for determining whether a project is subject to CEQA and in the preparation of EIRs.

4) Specifies that a lead agency is responsible for determining whether a "mitigated negative declaration" is required and clarifies the use of "mitigated negative declarations."

   Comment: This is intended to recognize and clarify the use of mitigated negative declarations.

5) Exempts up to 45 units of affordable housing in an urbanized area under specified conditions from the preparation of an EIR.

**SUMMARY OF SB 749**
**As Amended August 8, 1994**

SB 749 (Thompson) contains the important provisions of SB 1031 (Thompson) and excludes the one provision which caused it to be vetoed relating to rent control. It also eliminates any conflicts with SB 919 and AB 1888 relating to CEQA which were enacted in 1993. The overall purpose of SB 749 is to improve the operations of CEQA by making it both more efficient and effective.

SB 749 does the following:

1) Adds to the statement of legislative intent regarding judicial review that any court finding any agency in noncompliance shall address each of the grounds of noncompliance.

   Comment: This is intended to encourage the court to consider all the noncompliance issues in order that corrective actions can be taken and the need for repetitive litigation be eliminated.

2) Adds to the statement of policy regarding the preparation of Environmental Impact Reports (EIRs) that the lead agency focus discussion on the potential effects on the environment that the agency has determined are or may be significant.

   Comment: This is intended to focus review on the potentially significant effects on the environment of a proposed project and reduce the time, cost, and delay for all parties of preparing and reviewing nonrelevant material.

3) Specifies that the definition of "project" means an activity that may cause a direct physical change or a reasonably foreseeable indirect physical change in the environment which meets certain conditions.

   Comment: This is intended to clarify the definition of a project for determining whether a project is subject to CEQA and in the preparation of EIRs.

4) Specifies that a lead agency is responsible for determining whether a "mitigated negative declaration" is required, clarifies the use of "mitigated negative declarations" and specifies the requirement for substituting mitigation measures which are equivalent or more effective in mitigating significant effects on the environment.

   Comment: This is intended to recognize and clarify the use of mitigated negative declarations.

# EXHIBIT “C”

**Senate Bill No. 94**

CHAPTER 27

An act to amend Sections 26000, 26001, 26011, 26012, 26013, 26014, 26030, 26031, 26038, 26040, 26043, 26044, 26050, 26052, 26053, 26054, 26054.2, 26055, 26057, 26058, 26060, 26061, 26063, 26065, 26066, 26070, 26070.5, 26080, 26090, 26104, 26106, 26120, 26130, 26140, 26150, 26151, 26152, 26153, 26154, 26155, 26160, 26161, 26180, 26181, 26190, 26191, 26200, 26202, 26210, and 26211 of, to amend the heading of Chapter 10 (commencing with Section 26100) and the heading of Chapter 13 (commencing with Section 26130) of Division 10 of, to amend the heading of Division 10 (commencing with Section 26000) of, to amend and renumber Section 26101 of, to add Sections 26010.5, 26011.5, 26013.5, 26046, 26047, 26051.5, 26060.1, 26062.5, 26070.1, 26121, 26131, 26132, 26133, 26134, 26135, 26156, 26162, 26162.5, 26180.5, 26190.5, and 26210.5, to, to add Chapter 6.5 (commencing with Section 26067) and Chapter 22 (commencing with Section 26220) to Division 10 of, to add and repeal Section 26050.1 of, to repeal Sections 26054.1, 26056, 26056.5, 26064, 26067, 26100, and 26103 of, to repeal Chapter 3.5 (commencing with Section 19300) of Division 8 of, to repeal Chapter 17 (commencing with Section 26170) of Division 10 of, and to repeal and add Sections 26010, 26032, 26033, 26034, 26045, 26051, 26062, 26102, and 26110 of, the Business and Professions Code, to amend Sections 1602 and 1617 of the Fish and Game Code, to amend Sections 37104, 54036, and 81010 of the Food and Agricultural Code, to amend Sections 11006.5, 11014.5, 11018, 11018.1, 11018.2, 11018.5, 11032, 11054, 11357, 11358, 11359, 11360, 11361, 11361.1, 11361.5, 11362.1, 11362.2, 11362.3, 11362.4, 11362.45, 11362.7, 11362.71, 11362.715, 11362.765, 11362.768, 11362.77, 11362.775, 11362.78, 11362.785, 11362.79, 11362.795, 11362.8, 11362.81, 11362.83, 11362.85, 11362.9, 11364.5, 11470, 11478, 11479, 11479.2, 11480, 11485, 11532, 11553, and 109925 of, to amend the heading of Article 2 (commencing with Section 11357) of Chapter 6 of Division 10 of, and to repeal Section 11362.777 of, the Health and Safety Code, to amend Sections 34010, 34011, 34012, 34013, 34014, 34015, 34016, 34018, 34019, and 34021.5 of, to amend the heading of Part 14.5 (commencing with Section 34010) of Division 2 of, and to add Section 34012.5 to, the Revenue and Taxation Code, to amend Section 23222 of, and to add Section 2429.7 to, the Vehicle Code, and to amend Sections 1831, 1847, and 13276 of the Water Code, relating to cannabis, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 27, 2017. Filed with Secretary of State June 27, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

SB 94, Committee on Budget and Fiscal Review. Cannabis: medicinal and adult use.

(1) The California Uniform Controlled Substances Act makes various acts involving marijuana a crime except as authorized by law. Under the Compassionate Use Act of 1996 and existing law commonly referred to as the Medical Marijuana Program, these authorized exceptions include exemptions for the use of marijuana for personal medical purposes by patients pursuant to physician's recommendations and exemptions for acts by those patients and their primary caregivers related to that personal medical use. The Medical Marijuana Program also provides immunity from arrest to those exempt patients or designated primary caregivers who engage in certain acts involving marijuana, up to certain limits, and who have identification cards issued pursuant to the program unless there is reasonable cause to believe that the information contained in the card is false or fraudulent, the card has been obtained by means of fraud, or the person is otherwise in violation of the law. Under existing law, a person who steals, fraudulently uses, or commits other prohibited acts with respect to those identification cards is subject to criminal penalties. Under existing law, a person 18 years of age or older who plants, cultivates, harvests, dries, or processes more than 6 living cannabis plants, or any part thereof, may be charged with a felony if specified conditions exist, including when the offense resulted in a violation of endangered or threatened species laws.

The Control, Regulate and Tax Adult of Marijuana Act (AUMA), an initiative measure enacted by the approval of Proposition 64 at the November 8, 2016, statewide general election, commencing January 1, 2018, requires those patients to possess, and county health departments or their designees to ensure that those identification cards are supported by, physician's recommendations that comply with certain requirements.

This bill would require probable cause to believe that the information on the card is false or fraudulent, the card was obtained by fraud, or the person is otherwise in violation of the law to overcome immunity from arrest to patients and primary caregivers in possession of an identification card. The bill would authorize a person 18 years of age or older who plants, cultivates, harvests, dries, or processes more than 6 living cannabis plants, or any part thereof, where that activity results in a violation of specified laws relating to the unlawful taking of fish and wildlife to be charged with a felony. By modifying the scope of a crime, this bill would impose a state-mandated local program.

(2) AUMA authorizes a person 21 years of age or older to possess and use up to 28.5 grams of marijuana and up to 8 grams of concentrated cannabis, and to possess up to 6 living marijuana plants and the marijuana produced by those plants, subject to certain restrictions, as specified. Under AUMA, these restrictions include a prohibition on manufacturing concentrated cannabis using a volatile solvent, defined as volatile organic compounds and dangerous poisons, toxins, or carcinogens, unless done in

accordance with a state license. Under AUMA, a violation of this prohibition is a crime.

This bill would change the definition of volatile solvent for these purposes to include a solvent that is or produces a flammable gas or vapor that, when present in the air in sufficient quantities, will create explosive or ignitable mixtures.

(3) The Medical Cannabis Regulation and Safety Act (MCRSA) authorizes a person who obtains both a state license under MCRSA and the relevant local license to engage in commercial medical cannabis activity pursuant to those licenses, as specified. AUMA authorizes a person who obtains a state license under AUMA to engage in commercial adult-use marijuana activity, which does not include commercial medical cannabis activity, pursuant to that license and applicable local ordinances. Both MCRSA and AUMA generally divide responsibility for state licensure and regulation between the Bureau of Marijuana Control (bureau) within the Department of Consumer Affairs, which serves as the lead state agency, the Department of Food and Agriculture, and the State Department of Public Health. AUMA requires the bureau to convene an advisory committee to advise these licensing authorities on the development of standards and regulations pursuant to the licensing provisions of AUMA, and requires the advisory committee members to include specified subject matter experts. AUMA requires the licensing authorities to begin issuing licenses to engage in commercial adult-use marijuana activity by January 1, 2018.

This bill would repeal MCRSA and include certain provisions of MCRSA in the licensing provisions of AUMA. Under the bill, these consolidated provisions would be known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (MAUCRSA). The bill would rename the bureau the Bureau of Cannabis Control, would revise references to "marijuana" or "medical cannabis" in existing law to instead refer to "cannabis" or "medicinal cannabis," respectively, and would apply a definition of "cannabis" similar to the definition used in MCRSA to MAUCRSA. The bill would generally impose the same requirements on both commercial medicinal and commercial adult-use cannabis activity, with specific exceptions. The bill would make applying for and being issued more than one license contingent upon the licensed premises being separate and distinct. The bill would allow a person to test both adult-use cannabis and medicinal cannabis under a single testing laboratory license. The bill would require the protection of the public to be the highest priority for a licensing authority in exercising its licensing, regulatory, and disciplinary functions under MAUCRSA, and would require the protection of the public to be paramount whenever the protection of the public is inconsistent with other interests sought to be promoted. The bill would require the advisory committee advising the licensing authorities on the development of standards and regulations to include persons who work directly with racially, ethnically, and economically diverse populations.

(4) Under existing law, most of the types of licenses to be issued for commercial adult-use cannabis activity under AUMA correspond to types

of licenses to be issued for commercial medicinal cannabis activity under MCRSA. However, specialty cottage cultivation licenses, producing dispensary licenses, and transporter licenses are available under MCRSA but not AUMA, while microbusiness licenses and commencing January 1, 2023, large outdoor, indoor, and mixed-light cultivation licenses are available under AUMA but not MCRSA.

Under this bill, the types of licenses available for commercial adult-use cannabis activity and commercial medicinal cannabis activity would be the same. The types of licenses available under both MCRSA and AUMA would continue to be available for both kinds of activity, and specialty cottage cultivation licenses, microbusiness licenses, and commencing January 1, 2023, large outdoor, indoor, and mixed-light cultivation licenses would also be available for both kinds of activity. Producing dispensary and transporter licenses would not be available.

This bill would impose certain requirements on the transportation and delivery of cannabis and cannabis products, and would provide the California Highway Patrol authority over the safety of operations of all vehicles transporting cannabis and cannabis products. The bill would require a retailer to notify the licensing authority and the appropriate law enforcement authorities within 24 hours after discovering specified breaches of security. The bill would prohibit cannabis or cannabis products purchased by a customer from leaving a licensed retail premises unless they are placed in an opaque package.

(5) Both MCRSA and AUMA require cannabis or cannabis products to undergo quality assurance, inspection, and testing, as specified, before the cannabis or cannabis products may be offered for retail sale. Licenses for the testing of cannabis are to be issued by the bureau under MCRSA and by the State Department of Public Health under AUMA.

This bill would revise and recast those requirements to instead require distributors to store cannabis batches on their premises during testing, require testing laboratory employees to obtain samples for testing and transport those samples to testing laboratories, and require distributors to conduct a quality assurance review to ensure compliance with labeling and packing requirements, among other things, as specified. The bill would create the quality assurance compliance monitor, an employee or contractor of the bureau. The bill, commencing January 1, 2018, would authorize a licensee to sell untested cannabis or cannabis products for a limited time, as determined by the bureau, if the cannabis or cannabis products are labeled as untested and comply with other requirements determined by the bureau. The bill would also require the bureau to issue testing laboratory licenses.

(6) Both MCRSA and AUMA prohibit testing laboratory licensees from obtaining licenses to engage in any other commercial cannabis activity. MCRSA, until January 1, 2026, places certain additional limits on the combinations of medicinal cannabis license types a person may hold. AUMA prohibits large cultivation licensees from obtaining distributor or microbusiness licenses, but otherwise provides that a person may apply for

and be issued more than one license to engage in commercial adult-use cannabis activity.

The bill would apply the above-described provisions of AUMA to both adult-use cannabis licensees and medicinal cannabis licensees and would not apply MCRSA's additional limits.

(7) Both MCRSA and AUMA require applicants for state licenses to electronically submit fingerprint images and related information to the Department of Justice for the purpose of obtaining conviction and arrest information and to provide certain information and documentation in or with their applications under penalty of perjury. Although these requirements are generally similar, certain persons who are considered to be applicants subject to these requirements under MCRSA are not considered applicants under AUMA, and certain information or documentation must be provided by applicants for licenses under MCRSA or AUMA, but not both. Until January 1, 2019, AUMA authorizes licensing authorities to issue temporary licenses for a period of less than 12 months. Until December 31, 2019, AUMA prohibits licensing authorities from issuing licenses to persons who are not residents of California, as specified.

This bill would repeal that residency requirement. Under the bill, applicants for licenses under MAUCRSA would be subject to revised and recasted application requirements, and the persons subject to these requirements would also be revised. By modifying the scope of the crime of perjury, this bill would impose a state-mandated local program. The bill would also require local jurisdictions to provide information related to their regulation of commercial cannabis activity to the licensing authorities, as specified, and would require a licensing authority to take certain actions with regards to an application for license depending upon the response of the local jurisdiction. By requiring local governments to provide this information, this bill would impose a state-mandated local program. The bill, until July 1, 2019, would exempt from the California Environmental Quality Act the adoption of a specified ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, license, or other authorizations to engage in commercial cannabis activity. The bill would also specify requirements and limitations for those temporary licenses. The bill would provide that MAUCRSA does not prohibit the issuance of a state temporary event license to a licensee authorizing onsite cannabis sales to, and consumption by, persons 21 years of age or older at a county fair or district agricultural association event, provided that certain requirements are met.

(8) MCRSA provides a city in which a state licensed facility is located with the full power and authority to enforce MCRSA and regulations promulgated by the bureau and licensing authorities under MCRSA, if delegated by the state. MCRSA requires a city with this delegated authority to assume complete responsibility for any regulatory function relating to those licensees within the city limits that would otherwise be performed by the county or any county officer or employee.

# EXHIBIT "D"

**SB-94 Cannabis: medicinal and adult use.** (2017-2018)

| Date | Action |
|---|---|
| 06/27/17 | Chaptered by Secretary of State. Chapter 27, Statutes of 2017. |
| 06/27/17 | Approved by the Governor. |
| 06/22/17 | Enrolled and presented to the Governor at 3:30 p.m. |
| 06/15/17 | Assembly amendments concurred in. (Ayes 31. Noes 7.) Ordered to engrossing and enrolling. |
| 06/15/17 | In Senate. Concurrence in Assembly amendments pending. |
| 06/15/17 | Read third time. Passed. Ordered to the Senate. |
| 06/13/17 | Read second time. Ordered to third reading. |
| 06/12/17 | Ordered to second reading. |
| 06/12/17 | Withdrawn from committee. |
| 06/12/17 | Assembly Rule 96 suspended. |
| 06/09/17 | From committee with author's amendments. Read second time and amended. Re-referred to Com. on BUDGET. |
| 06/05/17 | Referred to Com. on BUDGET. |
| 05/11/17 | In Assembly. Read first time. Held at Desk. |
| 05/11/17 | Read third time. Passed. (Ayes 26. Noes 9. Page 1033.) Ordered to the Assembly. |
| 05/09/17 | Read second time. Ordered to third reading. |
| 05/08/17 | Ordered to second reading. |
| 05/08/17 | Withdrawn from committee. (Ayes 26. Noes 11. Page 982.) |

| | |
|---|---|
| 01/19/17 | Referred to Com. on B. & F.R. |
| 01/12/17 | From printer. May be acted upon on or after February 11. |
| 01/11/17 | Introduced. Read first time. To Com. on RLS. for assignment. To print. |

**IN THE**

**SUPREME COURT OF CALIFORNIA**

**PROOF OF SERVICE**

==========

*Union of Medical Marijuana Patients, Inc.. v. City of San Diego, et al.*

S238563 _____

4th Civil No. D068185
San Diego County Superior Court
Case No. 37-2014-00012481-CU-TT-CTL

I, the undersigned, declare that:

I was at least 18 years of age and not a party to the case; I am employed in the County of San Diego, California, where the mailing occurs; and, my business address is 1200 Third Avenue, Suite 1100, San Diego, California, 92101.

I served the foregoing **RESPONDENT'S REQUEST FOR JUDICIAL NOTICE (Documents Attached Exhibit A – Exhibit D)** to the following:

[BY OVERNIGHT MAIL VIA GOLDEN STATE OVERNIGHT (GSO)]

Jamie T. Hall
Julian K. Quattlebaum
CHANNEL LAW GROUP, LLP
8200 Wilshire Blvd., Suite 300
Beverly Hills, CA 90211
Tel: (310) 982-1760
Fax: (323) 723-3960
email: Jamie.hall@channellawgroup.com

Mitchell E. Rishe Deputy Attorney General
Public Rights Division, Land law Section
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, CA 90013
Attorney for Real Party in Interest,
California Coastal Commission
Tel: (213) 897-6224
Fax: (213) 897-2801
Email: mitchellrishe@doj.ca.gov

The Supreme Court of California
http://courts.ca.gov/9408.htm
**Via E-Submission**
350 McAllister Street
Room 1295
San Francisco, CA 94102
(original plus 8 copies)

[BY U.S. MAIL] I further declare I served the individual(s) named by placing a true and correct copy of the documents in a sealed envelope and placed it for collection and mailing with the United States Postal Service this same day, at my address shown above, following ordinary business practices. [CCP § 1013(a)]

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business.

The Honorable Joel Wohlfeil
San Diego Superior Court
Department C-73
330 West Broadway
San Diego, CA 92101

Court of Appeal
**4th District Div 1**
750 B Street, Suite 300
San Diego, CA 92101

I declare under penalty of perjury and the laws of the State of California that the foregoing is true and correct. Executed on July 28, 2017, in San Diego, California.

Merlita S. Rich
Legal Secretary