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COVID-19 Advisory



Impact of COVID-19 on CEQA Challenge Periods and Noticing Procedures

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Recent developments in response to the COVID-19 pandemic bring temporary changes to certain noticing requirements under the California Environmental Quality Act (CEQA), and extends the timeline for a project opponent to file a CEQA lawsuit. Specifically, Governor Newsom's Executive Order N-54-20, issued April 22, 2020, suspends and modifies the public filing, noticing, and tribal consultation requirements under CEQA, whereas the Judicial Council of California's Emergency Rule 9, adopted April 6, 2020, tolls the statutes of limitations for all civil causes of action, including CEQA lawsuits. K-12 and community college districts with projects currently undergoing, or deemed exempt from, CEQA review, and districts who have recently completed the CEQA process and filed a Notice of Determination, need to be aware of these procedural changes.

Suspension of Deadlines for CEQA Filings and Notices

On April 22, 2020, Governor Newsom issued [Executive Order N-54-20](#) in response to the COVID-19 pandemic (Executive Order). The Executive Order effectively suspends, for sixty (60) days, the deadlines for public filing, posting, notice, and public access requirements for CEQA documents associated with the following five CEQA actions: Notice of Exemption; Notice of Intent to Adopt a Negative Declaration (ND) or Mitigated Negative Declaration (MND); Notice of Preparation of an Environmental Impact Report (EIR); Notice of Availability of a Draft EIR; and Notice of Determination after approval of a project for which an EIR, ND, or MND has been prepared. However, the suspension explicitly does not apply to the provisions governing the time for public review of CEQA documents.

Instead of the physical posting requirements that ordinarily apply, districts operating under these suspensions must comply with the following steps during the sixty (60) day suspension period:

- a) Post such notices on the district's public-facing website for the same period of time that physical posting would otherwise be required;
- b) Submit all notices electronically to the State Clearinghouse CEQAnet Web Portal; and
- c) Engage in outreach to any individuals and entities known by the district to be parties interested in the project in the manner contemplated by CEQA and the CEQA Guidelines.

Further, the Executive Order encourages districts to pursue additional methods of public notice and outreach, as appropriate, for certain projects and communities. Districts should be aware that the Executive Order appears to temporarily suspend only those public filing and notice requirements involving a physical posting or public filing with the county clerk or other governmental agency, i.e., requirements which may be impossible or impracticable for the lead agency to adhere to due to the closure of government buildings and social distancing protocols. Accordingly, districts should continue to comply with all other mailing, publication, and posting of notice requirements under CEQA and the CEQA Guidelines.

The Executive Order also impacts certain timeframes of the California Native American tribal consultation process (AB 52), suspending, by sixty (60) days, the deadlines by which a California Native American tribe must request consultation with a lead agency district, and by which the lead agency district must begin the consultation relating to an EIR, ND, or MND under CEQA.

Impact on Legal Challenges and Court Procedures

On April 6, 2020, the Judicial Council of California adopted 11 emergency rules to facilitate criminal, civil, and juvenile actions impacted by COVID-19. Of note, Emergency Rule 9 states:

“Notwithstanding any other law, the statutes of limitation for civil causes of action are tolled from April 6, 2020, until 90 days after the Governor declares that the state of emergency related to the COVID-19 pandemic is lifted.”

Under normal circumstances, the statute of limitations for bringing challenges under CEQA typically runs within: (i) 30 days after a district files a Notice of Determination (NOD) for an EIR, ND, or MND; or (ii) 35 days after filing a Notice of Exemption. CEQA’s short statute of limitation periods are intentional so that districts and developers can proceed with projects without the threat of potential future litigation. (See *Committee for Green Foothills v. Santa Clara County Board of Supervisors* (2010) 48 Cal.4th 32.)

In contrast, Emergency Rule 9 suspends the clock to file a CEQA challenge as of April 6, 2020, until 90 days after the end of the COVID-19 state of emergency. Because it is unknown when the state of emergency will be lifted, Emergency Rule 9 creates uncertainties for districts with projects currently undergoing the CEQA review process, or who recently completed the CEQA process and filed a Notice of Determination, but the statute of limitations has not yet run.

The Judicial Council of California may provide further clarification or amend the emergency rules. DWK will continue to provide guidance as information becomes available.

If you need more information about how these temporary changes to CEQA may impact your public works construction project, please contact an attorney in our Construction or Litigation practice groups. For more information regarding the impact of COVID-19 on your district’s operations, please visit our COVID-19 Resources page which can be found at <https://www.dwkesq.com/covid-19-resources-page/>.