

**CEQA Administrative Record**

**FACT SHEET**

**SUMMARY:**

This proposal clarifies and streamlines procedures related to the preparation of the public record for the judicial review of level challenges brought under CEQA in order to reduce the litigation time.

**BACKGROUND:**

California's landmark environmental law, the California Environmental Quality Act (CEQA), provides important public oversight to government-approved projects by requiring the identification and mitigation of a project's environmental impacts. CEQA is enforced by lawsuits brought by the public. While compliance with CEQA may offer environmental benefits to the public, the costs of delays associated with CEQA litigation offer no such benefits and often result in the delay or the demise of beneficial projects such as housing. CEQA lawsuits typically take 1-2 years to resolve at the trial court level. Often the preparation of CEQA administrative records can take a significant period of that time, extending the time and cost of litigation. In the reported case law, record preparation took between four and 17 months.

The administrative record (also referred to as the record or record of proceedings) constitutes the evidence at trial in CEQA cases. Under existing law, parties have 60 days to compile the record, but time extensions are allowed and commonplace. There are several reasons for why record preparation takes so long. First, under current law, petitioners challenging a project may elect to prepare the record themselves, even though public agencies are in physical possession of record documents and are in the best position to efficiently gather, organize, and prepare the record. Further, parties often argue over the scope and contents of the record in court. In particular, parties dispute what documents should be included under Public Resources Code section 21167.6, subdivision (e)(10), which requires the record to include "all internal agency communications" that are "related to the project or to compliance with [CEQA]." This all often results in voluminous records that are filed long after the original 60-day timeframe, with only a fraction of the documents being germane to the issues being litigated.

The proposed CEQA administrative record trailer bill language would clarify and streamline the administrative record requirements set forth in Public Resources Code section 21167.6 to address these issues and to allow CEQA administrative records to be developed more expediently, with fewer litigation delays.

## **PROPOSED LANGUAGE:**

### **Specify procedures to expedite record preparation**

- Allows a public agency to prepare the record notwithstanding the petitioner's election to prepare it. If the public agency elects to prepare the record, it must do so at its own expense, regardless of the outcome of the litigation, and may pass the cost of preparation on to the project applicant. The agency must also notify all parties and the court within 10 days of the service of the complaint of its decision.
- If the petitioner elects to prepare the record but fails to do so within the 60-day deadline, then the public agency may assume the duty of record preparation. The petitioner must also notify the public agency within 10 days of filing the action that it is electing to prepare the record.
- Regardless of which party is preparing the record, mandates that extensions to record preparation deadlines may be granted by the court only upon a showing of good cause.
- Requires that the record will be prepared in an electronic format unless a hard copy is requested by the court and for all court filings to hyperlink the record in court filings citing to the record.

### **More narrowly defines the scope of “internal agency communications”**

- Explains that the term “internal agency communications” does not include internal electronic communications, including emails, that were not presented to the final decision-making body, and which are rarely important to the outcome of a CEQA case.
- This clarification will reduce the time required to gather and review emails, greatly reducing records cost and size.