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CEQA reform trims down burdensome administrative record rules.

Recent California legislation will enable municipalities — and reviewing courts — to conserve valuable resources and time during CEQA-related litigation.

By Stephen Zelezny

Gov. Gavin Newsom signed landmark California Environmental Quality Act (CEQA) reform legislation into law on June 30, 2025. Together, Senate Bill 131 (SB 131) and Assembly Bill 130 (AB 130) exempt numerous development projects from extensive environmental review — enacting an urgent statewide effort to spur new housing construction. In addition to prioritizing housing, SB 131 also creates statutory exemptions for nonresidential developments, such as healthcare facilities, day care centers and broadband projects.

Municipalities, developers and residents will surely welcome these new CEQA reforms, as the litany of new exempted projects will significantly reduce housing costs, permitting delays and litigation fees. Further, for attorneys specializing in municipal law, SB 131 introduces another vital reform: streamlining the administrative record during CEQA-related litigation.

California Public Resources Code Section 21167.6(a) requires that at the time a petitioner files a legal challenge to an agency's CEQA determination for a development, the agency shall "prepare the record of proceedings relating to the subject of the action or proceedings." To satisfy the "record of proceedings," otherwise known as administrative record, requirement, Pub. Res. Code Section 21167.6(e) further provides a broad, non-exhaustive range of documents and communications an agency must include pertaining to the subject project.



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In theory, the administrative record provides the court with all of the most relevant information pertaining to a project's approval when reviewing a CEQA writ petition. However, SB 131's reforms imply the administrative record requirements were previously overly burdensome — for municipalities to adhere to and for courts to review for compliance.

Notably, before SB 131, Pub. Res. Code Section 21167.6(e)(10) required municipalities to produce "all internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA]." In application, municipalities responding to a CEQA

challenge would be forced to spend hours, if not days, producing troves of project-related emails in order to comply with this requirement. Courts, in turn, would review the numerous emails to merely determine satisfaction of the Public Resources Code requirements — not to determine their relevance to the agency's ultimate decision.

Considering the sheer amount of emails it would need to produce related to a development, the agency's only recourse would be to assert certain emails constitute privileged communications. This argument is precisely what occurred in *Citizens for Ceres v. Superior Court* (2013)

217 Cal.App.4th 889. In this case, the City of Ceres approved the development of a Wal-Mart store and certified an environmental impact report. The challenger filed a writ petition arguing the City failed to comply with CEQA. When the City prepared an administrative record, it notably left out all informal communications pursuant to Section 21167.6(e)(10) — claiming legal counsel was present in all internal agency communications, including with the developer applicant, and therefore the communications were protected by attorney-client privilege. The City agreed to prepare a privilege log and initially listed 3,311 documents as protected by attorney-client privilege, work-product doctrine or both. The City and challenger disputed for more than six months over the withholding of the purportedly privileged documents. However, even after six months, over 700 documents were still in dispute. While the trial court made a blanket ruling granting all of the City's privilege claims, the 5th District Court of Appeal modified the trial court's ruling — upholding the City's legitimate attorney-client privilege claims while rejecting other privilege-related arguments.

Fortunately, the enactment of SB 131 should help to prevent months-long disputes over the administrative record, such as what occurred in City of Ceres. SB 131, now codified as Pub. Res. Code Section 21167.6(e)(10)(B)(iii), significantly limits the internal-agency-communications requirement to those "presented to the final decisionmaking body...or reviewed by the lead agency

executive or a local agency executive...or other administrative official in a supervisory role who is reviewing the project.” While the new rule does not apply to distribution center and oil and gas projects, it will drastically streamline agency production of the administrative record for all other projects still subject to CEQA review. For courts, the new rule will also promote judicial economy: Judges presiding over a CEQA writ proceeding will only need to review the highest-level internal documents and communications that led to a development’s approval.

Final tips for municipalities facing CEQA litigation:

- Moving forward, when preparing the administrative record for the subject project, only produce internal agency communications that were: (1) presented to the body making the ultimate decision, such as a planning commission or city council; or (2) reviewed by a supervising official, such as a department head, chief, or other executive officer with management duties.
- Remember, CEQA writ petition review does not supersede evidentiary privileges, such as attorney-

client privilege and work-product doctrine. Even though SB 131 significantly limits what agencies are required to produce as internal agency communications, continue to diligently review if such communications are privileged.

- If making privilege claims to internal agency communications, prepare a privilege log and supporting declaration that establishes preliminary facts supporting the claim.

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