

California Governor Newsom Allows Electronic Noticing Under CEQA and Suspends Tribal Consultation Requirements for 60 Days

Governor Gavin Newsom issued an executive order on April 22 suspending for a period of 60 days (1) the filing, posting, notice, and public access requirements related to certain notices under the California Environmental Quality Act, and providing for electronic posting; and (2) certain aspects of the consultation process with Native American tribes. The executive order expressly states that the suspensions "do not apply to provisions governing the time for public review," so the order does not extend the deadlines for the public to submit comments on an environmental document. Executive Order N-54-20 (Apr. 22, 2020).

Section 8 of the executive order provides that the public filing, posting, notice, and public access requirements associated with the following notices are suspended for 60 days: Notice of Preparation of an EIR, Notice of Availability of an EIR, Notice of Completion of an EIR, Notice of Intent to adopt a Negative Declaration or Mitigated Negative Declaration, Notice of Exemption, Notice of Determination, and certain notices associated with use of a Master EIR under Public Resources Code section 21157.1

The order substitutes the following electronic means of providing notice: (1) posting materials on the relevant agency's or applicant's public website for the same period of time that physical posting would otherwise be required; (2) submitting all materials to the State Clearinghouse CEQAnet database; and (3) engaging in outreach to entities and individuals known to be interested in the project and its CEQA compliance. Agencies also are encouraged to "pursue additional methods of public notice and outreach as appropriate for particular projects and communities."

Section 9 of the executive order suspends certain aspects of CEQA's tribal consultation process. CEQA requires that a lead agency preparing a negative declaration, mitigated negative declaration, or EIR provide formal notification to representatives of potentially affected tribes, and that once a tribe receives such notification, it has 30 days to request a consultation with the lead agency. The lead agency then has 30 days from this request to initiate the consultation process. While a lead agency must continue to provide the formal notification, the executive order suspends the two 30-day consultation deadlines for a period of 60 days.

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