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## California governor temporarily suspends notice, posting and filing requirements under the California Environmental Quality Act

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On April 22, 2020, California Governor Gavin Newsom issued an executive order that suspended for 60 days certain public filing, posting, notice, and public access requirements under the California Environmental Quality Act (CEQA). This order affects all projects in the state requiring a governmental approval that triggers environmental review. This could be anything from a commercial development project to a municipality's general plan.

This suspension, which was part of [Executive Order N-54-20](#), is meant to address some of the hurdles we all face during the COVID-19 pandemic. The order stated: “[D]ue to physical distancing protocols, it may be impossible or impracticable for lead agencies, responsible agencies, and project applicants to adhere to certain public filing and notice requirements under [the CEQA].” Further, “strict compliance with various statutes and regulations [such as the CEQA laws specified in the order] would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.”

The 60-day suspension primarily concerns posting, notice and filing requirements when a lead agency requires an environmental impact report (EIR) [Pub. Res. Code, sections 21080.4, 21092.3]; adopts a negative declaration or a mitigated negative declaration [*id.*, sections 21092, 21092.3]; approves a project [*id.*, section 21152]; exempts a project from CEQA review [Cal. Code Regs., tit. 14, section 15062(c)(2)]; then posts a draft EIR for public review [Pub. Res. Code, section 21091].

Importantly, however, “[t]he suspension does *not* apply to provisions governing the time for public review” (emphasis added). Interested parties must be diligent about tracking CEQA decisions by lead agencies, otherwise one risks missing the opportunity to submit public comments and, as a consequence, fail to maintain standing to appeal a CEQA decision.

The following requirements are suspended for 60 days:

**Posting Notice of Determination that EIR is required:** The lead agency must post its notice of determination that an EIR is required for a particular project in the office of the county clerk of each county in which the project will be located. (Pub. Res. Code, sections 21090.4, 21092.3.) The notice shall remain posted for 30 days. (*Id.*)

**Posting Notice of Determination of a Negative Declaration:** The lead agency must post its notice of determination that a negative declaration is being prepared for a particular project in the office of the county clerk of each county in which the project will be located. (Pub. Res. Code, sections 21092, 21092.3.) The notice shall remain posted for 20 days. (*Id.*)

**Filing Notice of Determination of Project Approval:** The lead agency must file a notice of determination within five working days of its approval of a project subject to CEQA. (*Id.*, section 21152; Cal. Code of Regs., tit. 14, section 15075(a).) The notice shall be posted by the county clerk within 24 hours of receipt and should remain posted for 30 days. (Pub. Res. Code, section 21152; Cal. Code Regs., tit., section 15094(a), (d), (e).) If the project requires discretionary approval from any state agency, the local lead agency must also, within five working days of the agency's approval, file a copy of the notice of determination with the Office of Planning and Research. (Cal. Code Regs, tit., section 15094(d).)

**Filing Notice of Exemption:** When a local agency approves a project, determines that it is exempt from CEQA and decides to file a notice of exemption, it must file the notice with the county clerk of each county in which the project will be located. Copies of all such notices will be available for public inspection and such notices shall be posted in the office of the county clerk within 24 hours of receipt. Each notice shall remain posted for a period of 30 days. (Cal. Code Regs., tit. 14, section 15062(c)(2).) If the project applicant, rather than the local agency, decides to file a notice of exemption, the applicant must file it with the Office of Planning and Research if project approval was by a state agency. If project approval was by a local agency, the applicant must file the notice with the county clerk of the county or counties where the project will be located. (*Id.*, (c)(4).)

**Posting Notice of Intent to Adopt Negative Declaration or Mitigated Negative Declaration:** The county clerk of each county within which the proposed project is located shall post the notice of intent to adopt negative declaration or mitigated negative declaration in the office of the county clerk within 24 hours of receipt for a period of at least 20 days. (Cal. Code Regs., tit., section 15072(d).)

**Filing Notice of Determination on Project with Approved Negative or Mitigated Negative Declaration:** The lead agency shall file a notice of determination within five working days after deciding to carry out or approve a project. A local agency must file the notice with the clerk of the county or counties where the project will be located. (Cal. Code Regs., tit., section 15075(a), (d).) A notice of determination filed with the county clerk shall be available for public inspection and shall be posted by the county clerk within 24 hours of receipt for a period of at least 30 days. (*Id.*, (e).)

**Posting Notice of Availability of Draft EIR:** The notice that the Draft EIR is available for public review must be posted in the office of the county clerk of each county in which the project will be located for a period of at least 30 days. The county clerk shall post such notices within 24 hours of receipt. (Cal. Code Regs, tit., section 15087(d).)

During the 60-day suspension period, if a lead agency, responsible agency, or project applicant is not required to publicly post, give notice, or make a filing as a result of the April 22 executive order, then the agency or applicant must:

- Post such materials on the relevant agency or applicant's public-facing website for the same period of time that physical posting would otherwise be required;
- Submit all materials electronically to the State Clearinghouse CEQAnet Web Portal; and

- Engage in outreach to any individuals and entities known to the lead agency, responsible agency, or project applicant to be parties interested in the project in the manner contemplated by Pub. Res. Code, sections 21100 *et seq.* and Cal. Code Regs., title 14, sections 1500 *et seq.*

While these alternatives might give interested parties notice of key CEQA decisions, it is important to keep in mind that public review periods for draft EIRs, negative declarations, and mitigated declarations will run even without the normal triggering event of a filed or posted notice. For example, the public review period for a draft EIR is generally between 30 and 60 days (Pub. Res. Code, section 21091). This period will begin to run when the draft EIR is ready for public review, but there will not be a public posting of its availability. So, interested parties will have to be prepared for the start of the review period by staying in touch with local planning authorities and/or the project applicant. The same goes for reviewing a negative declaration or a mitigated negative declaration, which, generally, have a review period of 20 to 45 days. (*Id.*) If any of these review periods pass without the interested party submitting public comments, that party likely will have waived standing to appeal the CEQA decision.

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