

More Changes to CEQA Timelines due to the COVID-19 Pandemic

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In response to public-health concerns associated with the COVID-19 pandemic, California Governor Gavin Newsom issued [Executive Order N-54-20](#) (Order) on April 22, 2020. Among its provisions, the Order suspends certain noticing and California Native American tribal consultation requirements under the California Environmental Quality Act (CEQA).

SUSPENSION OF CERTAIN NOTICING REQUIREMENTS

The Order "suspends" for 60 days "public filing, posting, notice, and public access requirements" 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.

During the 60-day suspension period, the Order appears to dispense with the requirement that lead agencies, responsible agencies, or project proponents file the above notices for physical posting by the county clerk. In lieu of the ordinary requirements, the Order mandates parties operating under these suspensions take the following actions:

- Post such notices to the relevant agency's or applicant's public-facing website for the same period ordinarily required of physical posting in the county clerk's office;
- Submit all such notices electronically to the State Clearinghouse; and
- Engage in outreach to any individuals and entities known by the lead agency, responsible agency, or project applicant to be parties interested in the project in the manner otherwise contemplated by applicable provisions of CEQA and the CEQA Guidelines.

It is important to note, however, that the Order neither lengthens timelines for public review nor suspends noticing requirements altogether. Rather, it appears to temporarily suspend certain specific

noticing requirements that rely upon public postings that may no longer be possible due to the closure of government buildings and social-distancing orders. Noticing otherwise required by CEQA through mail, email, publication, or posting at a project site may still be required. Furthermore, the Order does not dispense with requirements for public distribution or availability of CEQA documents other than the five specifically listed types of notices.

While the Order is not clear, it appears that the suspension of these noticing requirements applies when the time for filing a notice would fall within the 60-day suspension period. This may create some timing confusion since the time for filing these notices generally does not fall on a specific day but rather falls within a few day period.

SUSPENSION OF CERTAIN AB 52 TRIBAL CONSULTATION DEADLINES

Executive Order N-54-20 also affects the California Native American tribal consultation process under CEQA as several timelines related to this procedure "are suspended" by the Order.

Ordinarily, within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project, the lead agency must provide formal notification to California Native American tribes that have requested notice. The tribe has 30 days from this notice to request consultation. Lead agencies then have 30 days to begin consultation proceedings after receiving a California Native American tribe's request. Lead agencies must comply with these consultation procedural requirements in order to certify an EIR or adopt an MND for a project with a significant impact on an identified tribal cultural resource.

Unlike the CEQA notice provision of the Order, discussed above, which suspends requirements for certain noticing and specifies alternative steps to be taken in lieu of those requirements, the tribal consultation provision suspends certain "timeframes." Thus, it may be the Governor's intention to extend the time periods for the specified tribal consultation steps for the period they are suspended. If so, under the Order, tribes may have more than the statutory 30 days after receiving a lead agency's notice to request project consultation, and lead agencies may have more than 30 days to begin consultation proceedings after a tribe requests it. With these suspensions, the overall period for completion of CEQA review may be extended for some projects, although these tribal consultation timeframes occur early in the CEQA process such that the suspensions applied under the Order likely will not delay the overall development timeline for most projects.

As the Order only suspends timeframes "within which a California Native American tribe must request consultation and the lead agency must begin the consultation process," the 14-day deadline to provide formal notice to California Native American tribes is unlikely affected by the Order. As such, lead agencies should still notify tribes within 14 days of determining that an application for a project is complete or a decision by a public agency to undertake a project.

OTHER CEQA AND DEVELOPMENT PROJECT TIMELINES AFFECTED

While this Order deals narrowly with five CEQA noticing requirements and certain of the AB 52 tribal consultation timelines, the pandemic is affecting the CEQA process and development project timelines in many other ways. For example, emergency rules adopted by the California Judicial Council have extended the limitations period for bringing a CEQA challenge in court, the timelines for processing permits for development projects have become elongated in some situations, and construction restrictions are in effect in many jurisdictions.

As the Governor's emergency orders and other orders, rules, and policies during the pandemic are frequently being updated, please reach out to us with questions on how Executive Order N-54-20 or any of these other circumstances will impact specific development projects.

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