

March 24, 2011

Senator Mark Leno
3501 Civic Center Drive, Suite 425
San Rafael, CA 94903



Subject: Oppose SB 241 (Cannella) Attack on CEQA

Dear Mark:

Marin Conservation League wishes to join the chorus of outraged individuals and organizations opposing SB 241 (Cannella), as well as other similar destructive measures that are attempting to rollback fundamental environmental protections under the California Environmental Quality Act (CEQA). The bill would enact the CEQA Litigation Protection Pilot Program of 2011 and would require the Business, Transportation, and Housing Agency to select 25 projects each year between 2012 and 2016 whose environmental review under CEQA could not be enforced.

We ask you to convey to Governor Brown that this bill must not be used as a means of obtaining Republican approval for other measures in the budget.

Once again opponents of California's environmental laws are trying to use closed-door budget talks to gut CEQA rather than to use a transparent legislative process to discuss any proposed changes to this landmark environmental law. I'm sure you are well aware of the provisions in the Cannella bill that would have the effect of eviscerating CEQA for the selected 125 projects:

- The bill would effectively preclude the ability for private enforcement of CEQA. Under SB 241, only the Attorney General could enforce the EIR requirements of CEQA. This would eliminate from legal challenge any action of a state agency that might violate CEQA requirements. Furthermore, individuals or organizations challenging a public agency's decision to prepare a mitigated negative declaration rather than an EIR would have to post a \$50,000 bond. Finally, the bill would restrict the prevailing party's ability to recover attorney's fees for enforcing CEQA requirements, further limiting the opportunity for private enforcement of CEQA.
- The bill would also eliminate the "fair argument" standard for preparing an EIR – a standard that has been qualified over and over to prevent its frivolous misuse, but which has served as a basic standard for determining the need for an EIR for several decades.
- The bill would disallow any comments received after close of the comment period on a Draft EIR – even if the proposed project is completely changed after that date –to be

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ignored by the lead agency and inadmissible in any lawsuit challenging a negative declaration.

- The bill would exempt development projects from CEQA evaluation of cumulative greenhouse gas emissions if the project is consistent with an unrelated, vaguely described state or regional plan addressing greenhouse gas emissions.
- The bill would restrict the lead agency's cumulative impact analysis to those projects approved or proposed at the time the public agency issues a Notice of Preparation for an EIR, or 90 days prior to the circulation of an initial study. This would eliminate from cumulative consideration any project with a more protracted time-line.
- The Cannella draft bill would redefine "infill site" and expand other urban residential infill exemptions in CEQA to include commercial development in urban areas and residential and commercial development in any "substantially developed" area of a county as long as the development project is consistent with the applicable local general plan. This expansion of the existing urban residential infill exemption could encourage sprawl. By including commercial and residential development in rural communities in the exemption, the bill also would conflict with the state's regional programs as mandated by SB 375 to reduce vehicle miles travelled as one means of meeting greenhouse gas reduction goals established by the California Air Resources Board.

The Los Angeles times commented in the March 17 issue: "(Governor) Brown has expressed sympathy for those who want to streamline CEQA, having seen the complex law's pros and cons up close as mayor of Oakland. If they really want to fix the act, not gut it, Republicans should extract a pledge from the governor to return to the Legislature by the end of the year with a CEQA reform proposal. The law is far from perfect, but the proposal advanced by the GOP would be an abdication, not an improvement."

Sincerely,



Nona B. Dennis,
President

cc: Planning and Conservation League

