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PROJECT APPROVAL UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT: IT ALWAYS TAKES LONGER THAN YOU THINK

Barbara Sahm*

INTRODUCTION

When the California Environmental Quality Act (CEQA)1 was enacted in 1970, it was hailed by environmentalists as a fundamental step in protecting and enhancing the state's rural and urban ecology.2 Others criticized the Act and its requirement of an environmental impact report (EIR) for projects with significant impacts3 as merely bureaucratic paperwork.4 Recently, the latter view appears to be dominant.

Developers subject to the provisions of CEQA have been especially critical. The environmental review process, often results in an EIR on larger projects. It requires an analysis that the developer may consider unnecessary and inevitably adds to the cost of the project.5 Even more significant, according to

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5. Although CEQA was passed in 1970, it was not until Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 247, 104 Cal. Rptr. 761 (1972), that the law was held to apply to private projects as well as those undertaken by a governmental agency, such as building roads and government buildings. Since the application of CEQA to private projects, EIR preparation has become a substantial business, costing from $5000 or less to several hundred thousand dollars. The number prepared is large: San Francisco County averages 15 to 30 required per year; Sacramento and Santa Cruz Counties average over 35, and San Diego works on over 100 per year. (Survey conducted in November, 1978, by Raymond D. Johnson, Administrative Officer for Santa Barbara County.) According to some sources, "some 3800 EIR's are filed each year ...." Gilliam, NEPA's Historic Impact, Sunday Examiner and Chronicle (This
developers, the environmental review process increases costs by slowing project approval. Because there were no time limits or deadlines, developers saw themselves at the mercy of a public agency which could take years to weigh the environmental impact of a project in addition to processing permits.

These complaints fell upon sympathetic ears in the California Legislature. To speed project approval, time limits were first placed on the preparation of EIR's, and then on approval of development projects. The time limits on project approval, contained in A.B. 884, cut across earlier established environmental review deadlines and have had a major effect on permit processing.

Although the state and local agencies responsible for approving development projects and conducting environmental review have made good faith efforts to enforce the deadlines fairly, there have been serious difficulties. These difficulties arise from ambiguities in the law, the basic unworkability of some provisions, and the impossibility of meeting inflexible deadlines under certain circumstances.

This article presents a background discussion of these laws establishing time limits on environmental review and project approval in California. Some of the implementation problems of the laws are then examined. This necessitates a discussion of the impact of the deadlines on environmental review and the


6. See, e.g., ENGINEERING NEWS RECORD, Oct. 27, 1977, at 14, where it is reported that a 10 percent cost increase in the past 10 years is due to social and environmental programs. Not all of this 10 percent was caused by EIR requirements, but one respondent cited these reports as the greatest single cost to clients, and another simply cited delays caused by the regulatory process as the problem. Prof. Bernard J. Frieden, in The Environmental Protection Hustle (MIT Press 1979), charges that wealthy proponents of no-growth policies are using pseudo-environmental issues to enlist local government in halting home building in exclusive, affluent communities, driving up costs of middle class homes.

The California Building Industry Association has released a study which charges that the complicated planning process in California is substantially increasing costs of housing as well as commercial and industrial construction. Among other things this study recommends shortening the time allowed for environmental review under present state law. CAL. BLDG. INDUS. ASSOC., THE PLANNING PROCESS IN CALIFORNIA AND ITS RELATIONSHIP TO THE BUILDING INDUSTRY 33 (1979). See also Sunday Examiner and Chronicle, March 11, 1979, at 31, col. 1.


9. Id.
applicability of the deadlines to specific government actions such as approvals of building permits, subdivisions, and amendments of general plans and zoning ordinances. Finally, the article analyzes the effects of the deadlines on public agencies and on project approvals and concludes that the present deadline scheme under CEQA should be revised.

A.B. 2679: THE FIRST CEQA DEADLINES

Legislative History

Assembly Bill 2679 was introduced into the California Legislature by Assemblyman John Knox in January, 1976. The bill contained several important additions to CEQA that were subsequently enacted, including deadlines for local agency action, public notice requirements, provisions streamlining preparation of EIR's, and a policy statement indicating that projects with significant environmental impacts should not be approved unless alternatives or mitigation measures were infeasible.

One provision of the bill allowed agencies to "establish . . . appropriate time limits for the receipt, processing, and completion of environmental impact reports. . . ." This provision set a time limit for agency action on the certification of environmental impact reports. As introduced, A.B. 2679 re-

12. Id. § 21092 (West 1977).
13. Environmental Impact Reports are to omit unnecessary project descriptions and to use established data bases wherever possible. CAL. PUB. RES. CODE § 21003 (West 1977); State EIR Guidelines, CAL. ADMIN. CODE tit. 14, § 15149 (1978). Reports are to contain brief statements indicating reasons for determinations that various effects are not significant and therefore have not been discussed. CAL. PUB. RES. CODE § 21100 (West 1977).
15. Section 4 of A.B. 2679, as introduced on Jan. 12, 1976, read as follows:
   Section 21151.5 is added to the Public Resources Code, to read: Local agencies may establish, by ordinance, appropriate time limits for the receipt, processing, and completion of environmental impact reports; provided that the maximum period between receipt of an environmental impact report and certification thereof shall not exceed 45 days; and provided further that a local agency may provide for an extension of such time period, not to exceed an additional 45 days, in the event that unforeseen circumstances justify additional time and that the project applicant consents thereto.

quired the EIR to be certified 45 days after "receipt." This time limit had several flaws. Since EIR's are not "received" by lead agencies, but are prepared by them, this wording would have been meaningless. Even if a point of receipt could be identified, the 45-day period would invariably be consumed by the required public review period, leaving no time for preparation of responses to comments of a Draft EIR or for certification on a Final EIR.

These problems were recognized by the Assembly, which removed the 45-day limit by amendment, and left the bill unauthoritative as to deadlines for EIR certification. The amendment restricted application of time limits to private projects and measured the time limits "from the date on which an application requesting approval of . . . [a] project is received." Subsequently, the State Senate amended the section to set a one-year maximum time limit for the completion of all environmental review. Codified as a section of CEQA, it read:

Local agencies shall establish . . . time limits, not to exceed one year, for completing environmental impact reports and negative declarations for [private] projects . . . . Such ordinances or resolutions may establish different time limits for different types or classes of projects, but

16. Id.
17. CAL. PUB. RES. CODE § 21151 (West 1977) requires that:
   All local agencies shall prepare, or cause to be prepared by contract, and certify the completion of an environmental impact report on any project they intend to carry out or approve which may have a significant effect on the environment.

The State EIR Guidelines amplify the preparation requirement by indicating that the agency may require an applicant to submit data and information to assist in the preparation of an EIR. But the Guidelines still require that the Draft EIR that is sent out for public review reflect the independent judgment of the agency. CAL. ADMIN. CODE tit.14, § 15061(b) (1978).

18. The State EIR Guidelines suggest a minimum 30-day public review period with a 45-day required minimum for state projects. CAL. ADMIN. CODE tit.14, § 15160(c) (1978).

19. Id. § 15146(a)(4),(b). The time required to prepare responses to comments on a Draft EIR can be quite substantial. For example, on two very controversial San Francisco projects, there were several hundred individual comments on a wide variety of issues, requiring over three weeks for preparation of responses. (City and County of San Francisco West Side Transport/Storage Final EIR, July, 1977, and Neiman Marcus Department Store Final EIR, December, 1978).

22. Id. at 16, line 7.
all such limits shall be measured from the date on which an application requesting approval of such project is received by the local agency. The ordinances required by this section may provide for a reasonable extension of such time period in the event that unforeseen circumstances justify additional time and that the project applicant consents thereto.\textsuperscript{24}

This one-year time limit was imposed only on "local" and not state agencies, and only applied to government issuance "of a lease, permit, license, certificate, or other entitlement for use;"\textsuperscript{25} most often projects proposed by private developers. The section allowed a "reasonable" extension of time, but the requirements of unforeseen circumstances and applicant consent often precluded such an extension.

Implementing the One-Year Deadline

Although the CEQA time limit adopted in 1976 was a marked improvement over the original proposal, a one-year limit on EIR preparation is not without problems. The first problem arising in 1977 involved measuring the year limit that is to begin running on the date the local agency receives an "application requesting approval" of a project. The question is: Which application?

Most local jurisdictions require several applications for ultimate approval of major projects, including perhaps, applications for conditional use permits, variances from zoning ordinances, and building permits. All of these could be considered an "application requesting approval." Assuming that the limit begins running when the \textit{first} application requesting approval is received,\textsuperscript{26} the agency would have one year from that date to complete the entire environmental review process, including gathering of relevant information about the project from the applicant. An applicant could easily supply the required information so gradually as to use up the entire year.

\textsuperscript{24} Id.
\textsuperscript{25} CAL. PUB. RES. CODE § 21065 (c) (West 1977) (defining "projects").
\textsuperscript{26} This can be considered a reasonable point because environmental review must be done before the decision to approve, CAL. PUB. RES. CODE § 21061 (West 1977), and the State EIR Guidelines define the time of approval, in connection with private activities, as occurring at the "earliest commitment to issue . . . a discretionary contract, grant, subsidy, loan, or other form of financial assistance, lease, permit, license, certificate, or other entitlement for use of the project." CAL. ADMIN. CODE tit.14, § 15021 (1978).
Assuming a cooperative project sponsor, and a determination that the proposed project would not have a significant effect on the environment, the resulting preparation of a negative declaration could be easily accomplished within the year allowed. Most projects requiring environmental analysis receive negative declarations and are processed in a matter of weeks.

On the other hand, the one-year deadline poses more serious problems for projects found to have a significant effect on the environment. In dealing with such projects, the agency must usually obtain more detailed information about the project, arrange for an in-depth analysis of potential effects, develop alternatives and mitigation measures with the cooperation of the developer, write or have written and publish the Draft EIR, receive comments during the usual 45-day public comment period, respond to the comments, revise the Draft EIR, and certify the Final EIR.

Working backwards, it takes several weeks to prepare responses to comments, seven weeks minimum for public review, a few weeks for typing and printing the Draft EIR, and several weeks to write the document after analysis is complete. The total of the above activities could reasonably be four to six months, leaving six or seven months for gathering necessary details about the proposal and analyzing potential effects. This amount of time seems to be more than adequate on initial reading, and it can be for most projects. A seven or eight month EIR, from start to certification, is not unreasonable for a relatively simple, non-controversial project.

Nevertheless, producing an EIR in that period depends primarily on fast data collection and analysis by both the


28. EIR’s can and have been prepared in less time when the project is similar to one on which an EIR has already been prepared in a setting similar to that of a previously analyzed project where there is an already existing master data base, or where impacts were thoroughly analyzed before the application was submitted or as part of a previous project. For example, Contra Costa County has a Master Data Base on a set of 17 overlay maps that can reduce EIR preparation time to two or three months. Sacramento County catalogues its EIR’s by geographical coordinates as a partial data base for future EIR work. The time reduction occurs largely in data gathering and writing times; unless there are no comments on the Draft EIR (unlikely in San Francisco but possible in many other counties), the remainder of the times are not particularly flexible.
agency and the project sponsor. Frequently, developers mistakenly believe that certain information is unrelated to an environmental issue and withhold data. Without thorough analysis, other relevant facts may go undiscovered. Even with a cooperative sponsor, ecological analysis cannot always be conducted at the time the issue is discovered. If a site is believed to contain a rare or endangered plant and research for the EIR is begun in the fall, manifestations of the plant may not occur for seven or eight months. In a drought year, the plant may remain dormant for an entire growing season. This leaves less than adequate time to complete the EIR if project design and mitigation measures depend on this field data.29

Although there is already much general information on air quality and weather, in areas more than a few miles from a major weather station, specific information on air currents and pollutant levels may be needed to predict the specific impact of a particular project. Because this data changes with the seasons, it cannot be obtained by measurements taken only during winter or summer months. There are many other examples of analyses that take longer than one year to adequately prepare.30 This sort of problem is, of course, usually limited to complicated, controversial projects with potentially serious environmental effects, but these are the very projects on which CEQA intended to focus attention.

The one-year period also diminishes the possibility of developing innovative mitigation measures. For example, a development proposed for an area with a relatively limited water supply could have a significant impact on the area's groundwater supply and quality. Mitigation might include provision for wastewater reclamation facilities, reducing total water usage by irrigating the landscape with reclaimed water. Engineering feasibility and cost analyses, tests to demonstrate public safety, determination of the environmental impact of reclaimed water use, and pilot plant studies could easily take more than one year. Assuming the developer was willing, the

29. Adequate data gathering could also be essential to the developer if the results are proof that a rare plant is not in the area. See Frieden, supra note 6, at 77-78.

30. For example, if a project is determined in part by ocean currents (i.e., an offshore oil well, ocean discharge of treated or untreated wastewater effluent), a measurement of those currents is usually essential to the analysis, but there may be significant seasonal differences in the currents, requiring that measurements be taken in spring, summer, fall, and winter. (See City and County of San Francisco, Southwest Outfall Final EIR, 1975).
time limit might be extended. If not, the EIR could only suggest the mitigation measures and indicate the absence of data concerning its potential effects. This would leave the decision-making body with the choices of disapproving the proposal, approving the project as proposed with the significant impact on water supplies in spite of the potentially feasible mitigation measure and based on a less than adequate environmental analysis, or approving the proposal with the mitigation measure, but conditioned upon proving effectiveness and safety and lack of environmental effects of the reclamation procedure. The last action secures the data that the EIR should have contained, but does not provide for public comment on that data. It effectively admits that the EIR was inadequate, and delays the project for the same length of time that it would have been delayed had the one-year time limit been extended.

Other problems arose from the time limit extension allowed under A.B. 2679. If the applicant refused to agree to the extension, the agency had the option of preparing an incomplete EIR, thereby running the risk of legal challenge, or refusing to approve the proposed project on the grounds of inadequate environmental review.

31. EIR's must be accurate, but the courts have held that they need not contain information that would be unreasonably difficult to develop or would take many years to gather. The California Court of Appeals, in San Francisco Ecology Center v. City and County of San Francisco, 48 Cal. App. 3d 584, 594, 122 Cal. Rptr. 100, 106 (1975) found that
an evaluation of the environmental effects of a proposed project need not be exhaustive [citations]. The sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible [citations]. Preparation of an EIR need not be interminably delayed "to include all potential comments or results of works in progress which might shed some light on the subject of the impact statement. . . . The courts should look for adequacy and completeness in an impact statement, not perfection." [citation].


In Society for California Archaeology v. County of Butte, 65 Cal. App. 3d 832, 838, 135 Cal. Rptr. 679, 682 (1977), the court noted that it is unreasonable to find an EIR inadequate because the agency had not conducted every test and performed all research and experimentation recommended regardless of expense.

Determining many of the effects of use of reclaimed wastewater and providing results of pilot plant studies necessary to choose the appropriate treatment technology would not be impossible to obtain or take many years to develop in most cases. The problem is the lack of time under the one-year mandate.

32. CAL. PUB. RES. CODE § 21151.5 (West 1977) provided: "The ordinances required by this section may provide for a reasonable extension of such time period in the event that unforeseen circumstances justify additional time and that the project applicant consents thereto."

33. Although disapproval of a project was not explicitly exempted from the ap-
The alternative for all of the problem projects under the CEQA amendments was to ignore the one-year time limit since the law provided no penalty for failure to meet the deadline. The clear intent of CEQA, as expressed in its policy statements, is to develop and maintain a high quality environment, to require agencies to consider qualitative as well as economic factors, and to ensure that the long-term protection of the environment is a guiding criterion in public decisions. Decision making, without the benefit of full environmental analysis of proposals that could have a significant environmental effect merely because the time limits have run, would fly in the face of this expressed legislative intent. If the project is not to be disapproved, the agency must simply press on and complete environmental review as soon as possible, regardless of the sponsor’s consent. It does not seem desirable, however, to simply ignore a provision in the law. One solution to this problem would have been to provide for automatic disapproval if environmental review were not completed in the allotted time; this course was not taken.

In spite of the one-year deadline for preparation of EIR’s, major developments did not move through the permit process any faster. A notable example was the Dow Chemical Company’s fight to obtain approvals for its petrochemical manufacturing plant proposed for the edge of San Francisco Bay. Following several years of environmental analysis and public hearings in front of a variety of local and state bodies, Dow abandoned its proposal. This and other similar situations were part of the impetus for developing state-mandated time limits for all permit processing, not merely for the environmental review process.

A.B. 884: New Deadlines for Development Projects and CEQA

Assembly Bill 884, which passed the California Legislature in 1977, was intended to streamline the permit process for development projects and secondarily to encourage business to locate in California by easing burdens on business development and expansion. A.B. 884 added a new chapter to the California Government Code and amended the California Environmental Quality Act. It set time limits and procedures for the processing of "development permits" that apply to all state and local agencies except the State Energy Commission. Many of these permit processes impact on the environmental review process. Under CEQA, A.B. 884 set sub-deadlines within the one-year deadline and increased consultation between agencies to ensure that environmental analysis was conducted speedily and efficiently.

36. Cal. Gov't Code § 65921 (West Supp. Pamph. 1966-1978) states: The Legislature finds and declares that there is a statewide need to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects. Consequently, the provisions of this chapter shall be applicable to all public agencies, including charter cities.

37. The code section does not state that its purpose is to encourage major business development in California, but the timing of the bill, and its business community supporters, including the California Manufacturer's Association, Californians for Environmental and Economic Balance, and the State Chamber of Commerce, provide some evidence of this intent. Selected 1977 California Legislation, 9 Pac. L. J. 638, 643 (1978). See also, Wright, AB 884: Streamlining the Permit Process, OPR, a publication of the California Office of Planning and Research, at 13 (October, 1978).


41. Cal. Gov't Code §§ 65920, 65922 (West Supp. Pamph. 1966-1978). Section 65955 also exempts protests of applications to appropriate water. The reason for this additional exemption, according to the Office of Permit Assistance in the California Office of Planning and Research is "lengthy public hearing requirements of the State Water Resources Board." Wright, supra note 37, at 13. The regulations governing public hearings for protests of applications to appropriate water do not have any specific time requirements, nor is this the only lengthy public process in California.

42. Cal. Pub. Res. Code § 21080.2 (West Supp. 1979) (time limits); id. § 21080.3 (consultation with responsible agencies); id. § 21080.4 (consultation between agencies); id. § 21083.6 (time limits); id. § 21083.7 (consultations); id. §§ 21100.2, 21151.5 (time limits).
Approval of Development Projects

The Government Code provisions relating to review and approval of development projects gain their significance from the broad definition of "development." Development includes "placement . . . of any solid material or structure; . . . grading, removing, [or] mining, . . . of any materials; change in the density or intensity of use of land . . ., [and] construction, reconstruction, demolition or alteration of the size of any structure. . . ."\(^{43}\)

The most important requirement of the new law is that lead agencies\(^{44}\) must approve or disapprove an application for a development project within one year from the date on which the application requesting approval is accepted as complete.\(^{45}\) All public agencies have 30 calendar days from the date an application is received to determine whether or not the application is complete.\(^{46}\) This determination must be in writing; if the application is not complete, its inadequacies must be detailed so that the application can be completed.\(^{47}\) If the applicant is reluctant to provide the requested information, or if the agency's request is not completely clear, this process may have to be repeated several times before the application is finally determined to be complete.\(^{48}\)

After accepting an application as complete, a public agency may not require new or additional information from the developer.\(^{49}\) The agency may, however, request clarification,


\(^{44}\) Id. § 65929 provides: "'Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project." The CEQA definition is strikingly similar: "'Lead agency' means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." CAL. PUB. RES. CODE § 21067 (West 1977).


\(^{46}\) Id. § 65943.

\(^{47}\) Id.

\(^{48}\) CAL. GOV'T CODE §§ 65940, 65941 (West Supp. Pamph. 1966-1978) require state agencies to compile lists of information required from any applicant and criteria that the agency will use to determine whether an application is complete in order to speed processing. If the applicant followed these lists and the specification in the letter indicating what parts of an application are incomplete, he or she should be able to make the application complete after the first notice. Similar lists are encouraged but not required of local agencies in CAL. OFF. PLANNING & RESEARCH, STATE ADMINISTRATIVE MANUAL § 1087 (1978) [hereinafter cited as S.A.M.].

\(^{49}\) Id. § 65944(a) provides:

After a public agency accepts an application as complete, such agency shall not subsequently request of an applicant any new or additional information which, with respect to a state agency, was not specified
correction or amplification of the information presented. If public hearings are required by several public agencies as part of processing a development permit, A.B. 884 requires that the State Office of Planning and Research consolidate the hearings to the maximum extent feasible, avoiding the delay required by several hearings on the same project.

Within one year from the date the application is determined to be complete, the lead agency must process the application and make its decision to approve or disapprove the project. Responsible agencies have much less time to review and decide than do lead agencies. Their time limits are the longer of 180 days from the date the lead agency approved or disapproved the project, or 180 days from the date an application was accepted as complete by the responsible agency. Presumably, a responsible agency will have the benefit of the lead

in the list prepared pursuant to Section 65940, or, with respect to a local agency, was not required as part of the application. Such agency may, in the course of processing the application, request the applicant to clarify, amplify, correct, or otherwise supplement the information required for the application.

51. Id. § 65945.
52. Id. Consolidated hearings could be both advantageous and detrimental, depending not only on which "side" one is on, but also on specific circumstances. Individuals and groups interested in permit disapproval could be aided by not needing to keep up the momentum and "call out the troops" several times during the decision-making process, but they also lose their second chance to appear before another board or commission if the first of many hearings results in approval in spite of their arguments. On the developer's side, with consolidated hearings it is not necessary to make the same presentation several times or counter the same opposition arguments before several different public bodies, and it should save time as well as money. Consolidated hearings also potentially reduce the opportunity to discuss publicly new information discovered due to points raised at the first hearing.

53. Id. § 65950.
54. Id. § 65933 defines "responsible agency" as "a public agency, other than the lead agency, which has responsibility for carrying out or approving a project." The CEQA definition is exactly the same. CAL. PUB. RES. CODE § 21067 (West 1977).
55. CAL. GOV'T CODE § 65952(a) (West Supp. Pamph. 1966-1978) reads as follows:

Any public agency which is a responsible agency for a development project shall approve such project within whichever of the following periods of time is longer:

(a) Within 180 days from the date on which the lead agency has approved or disapproved such project.
(b) Within 180 days of the date on which completed applications for such projects have been received and accepted as complete by each responsible agency.

It is unclear why a responsible agency would be taking any action on a project disapproved by the lead agency.

56. Id. § 65952(b).
PROJECT APPROVAL

agencies' analysis. Furthermore, a responsible agency's power is often limited to one specific area such as air or water pollution issues, so it is reasonable to allow it less time to make determinations. A single 90-day extension is allowed for the lead agency and for the responsible agency, provided, however, that the public agency and the applicant consent.57

Unlike the time limits imposed in CEQA in the previous year,58 failure to act within the permit processing time limits in the new sections of the Government Code has a consequence. If a public agency fails to approve or disapprove a permit request within the designated time, the project is deemed approved.59 This automatic approval has some precedent in the Subdivision Map Act, which provides for automatic approval of a tentative or final map within a specified number of days if no action is taken.60

New CEQA Provisions

A.B. 884 made several important changes in the environmental review process. Many processing steps and deadlines were added, all in the name of expediting permit processing. At the same time, the bill added provisions reducing the controversy over which of several possible agencies should prepare environmental documents,61 established a conclusive presumption of adequacy for EIR's not challenged within a limitations period,62 and provided for continuation of the permit process during litigation.63

57. Id. § 65957.
60. Id. § 66452.4.
62. Id. § 21167.2.
63. See, e.g., id. § 21167.3, providing that if an action challenging the adequacy of an EIR is commenced within the allowed time, a responsible agency may take a conditional action based on the challenged document, but the final determination may not occur until the EIR is determined to be in compliance with CEQA. This allows the permit process to proceed during litigation rather than waiting in limbo until litigation is complete, and could save the developer many months in the total process. Opponents could argue, however, that the new CEQA section allows a decision to occur based on inadequate environmental information, because the responsible agency is not required to review and consider any new information in the acceptable EIR that may have been required as a result of the challenge to the original document before the conditional action becomes final. This failing could, conceivably, work to the detriment of the developer as well if the conditional action were disapproval and through additional court-mandated research, favorable information turned up that would have
Deadlines. Most significantly, the lead agency must now determine whether an EIR or a negative declaration is required by CEQA within 45 days of the date that an application for approval of a project by a private developer is “accepted as complete.” This decision to require an EIR or file a negative declaration is final and conclusive; responsible agencies may not decide later in the process that an EIR should have been prepared. During this 45-day period, the lead agency must consult all responsible agencies, calling in the State Office of Planning and Research if requested.

If the lead agency determines that the proposed project would not have a significant effect on the environment, then the lead agency has 60 more days to complete preparation of a negative declaration because A.B. sets a limit of 105 days for completion of those declarations. However, if there has
been sufficient analysis to make the determination that there could be no significant environmental effect, the agency will probably have completed nearly all analysis necessary for a final negative declaration except the final write-up and public notice, actions that seldom take 60 days. Therefore, the new 45-day limit for deciding whether or not an EIR is required in fact imposes a less-than-105-day limit on completion of negative declarations, although actual completion may be put off until the last minute to take care of more pressing deadlines.

The A.B. 2679 time limit of one year for the preparation of an EIR was not changed by A.B. 884, but the limit was extended to cover state agencies as well as local ones, and the day the one-year deadline begins was changed from the date of receipt of an application to the date on which an application requesting approval is accepted as complete. This latter change removes the problems caused by applicants who might use the entire year to provide enough information to complete an application. Retention of the one-year limit suggests either that problems inherent in the limitation were not recognized by the legislators, or that these problems were not considered as important as ensuring that permits would be acted upon expeditiously regardless of environmental consequences.

The unlimited extension of time limits for EIR preparation was also retained, but the requirement of "compelling" circumstances replaced the previous "unforeseen" circumstances as the criterion for obtaining extensions. No penalty or consequence for failure to meet the EIR deadline was added; reading CEQA alone, it can only be assumed either that work stops with no decision on the project, that there is no complete EIR and the sponsor must reapply to start a new year, or that the deadline is ignored and work on the EIR continues.

Inter-Agency Consultation. The second major impact of A.B. 884 on CEQA is a requirement that the responsible and lead agencies consult each other at an earlier stage in the pro-

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21100.2. A.B. 2825, passed the next year, amended § 21151.5 to clarify this, but failed to make any change in § 21100.2.
69. Id. § 21100.2.
70. Id. §§ 21100.2, 21151.5.
71. See text accompanying notes 26-33 supra. The County Supervisors Association of California (CSAC) pointed out the impossibility of a one-year deadline on EIR's in a letter to Assemblyman McCarthy (sponsor of A.B. 884) in April, 1977, well before the bill was passed and signed in September, 1977.
If an EIR is required by CEQA and the State EIR Guidelines, the lead agency must immediately formally notify all responsible agencies by certified mail or some equivalent means. The EIR guidelines call this required notice a “Notice of Preparation.” The responsible agency must then inform the lead agency exactly what information is needed for the EIR to be adequate. Agencies “which have jurisdiction . . . over natural resources affected by the project which are held in trust for the people” are also to be consulted. If more than one responsible agency is involved, then all must specify the required data so that the one EIR prepared satisfies the needs of every agency. This guidance from responsible agencies must be communicated to the lead agency in writing, by certified mail, within 45 days of receipt of the Notice of Preparation.

This new consultation requirement ensures early participation by responsible agencies, particularly where lead agencies have been reticent to establish dialogue until the Draft EIR reaches the public comment period. It also allows for early consideration of project modifications where the project does not meet some basic environmental criterion of an agency that would ordinarily not act until the project is many months into the permit process. The time limit does, however, limit the thoroughness with which a responsible agency can analyze a

74. See, inter alia, CAL. PUB. RES. CODE § 21061 (West 1977) (definition of an environmental impact report); id. §§ 21100, 21151; CAL. ADMIN. CODE tit.14, §§ 15081, 15082, 15084 (1978); and provisions concerning projects not subject to environmental review, including CAL. PUB. RES. CODE §§ 21080(b), 21084, 21085, 21085.5, 21085.6 (West 1977 & Supp. 1979).
75. CAL. PUB. RES. CODE § 21080.4(a) (West Supp. 1979).
76. CAL. ADMIN. CODE tit.14, § 15066 (1978); id. Appendix J.
77. CAL. PUB. RES. CODE § 21080.4(a) (West Supp. 1979).
78. Id. § 21080.3(a).
79. Id. Measuring the 45 days from the date of receipt of notice, rather than from the date of mailing, could cause some uncertainty on the part of the lead agency as to when the time period begins, but the use of certified mail should provide a formal record of the date of receipt of the notice by the responsible agency. Requiring that both the notice and the reply be sent by certified mail occasionally sets up the anomalous situation of spending money to mail something to an office in the same building or across the street. For example, when Marin County was a lead agency, it was required to send by certified mail a Notice of Preparation to the North Central Coast Regional Coastal Commission, as responsible agency; both agencies have offices in the Marin County Civic Center. Although this is not likely to have wasted millions of tax dollars, it does seem odd. This problem was remedied in amendments passed by the Legislature the next year.
new proposal. Many responsible agency delineations of necessary data are likely to degenerate into a form letter requesting that the agency's general policies be covered in the EIR. This does little to ensure a single, adequate EIR.

In addition to the written consultation requirement, A.B. 884 allows and encourages meetings between the lead agency and responsible agencies to discuss the scope of the information that the responsible agency has requested. Once requested by affected agencies, the meetings are apparently mandatory. These meetings are to be held as soon as possible but in any case, no later than 30 days after the original request. Although a meeting would appear to be a logical action that a reasonable agency staff would arrange regardless of a statutory mandate, the law demands communication to resolve potential differences of opinion. Agencies may no longer ignore other concerned government groups to the detriment and confusion of the applicant. Conflicting requirements must be ironed out at the beginning of the EIR process.

A.B. 884 has brought a new sense of urgency to the environmental review process, and should prove a valuable measure in speeding project approval. However, in the implementation of the law, issues have been presented that demand scrutiny if the approval process is to be accelerated.

IMPLEMENTING A.B. 884: PROBLEMS OF INTERPRETATION

The state and local agencies implementing A.B. 884 have had no easy task given the law's inflexible deadlines, the different agency procedures, and the individual demands of each project. Furthermore, several questions in interpreting the law have arisen. There are doubts about the impact when concurrent one-year time limits of CEQA and the permit processing rules both apply. There are questions about the applicability of the law to certain government actions. The effect of the time limits on administrative appeals initially raised questions, although this problem appears to have been solved by 1978 amendments to A.B. 884. These problems merit discussion because they are likely to be encountered both by public agency staffs and by developers.

80. Id. § 21080.4(b).
81. Id.
82. Id.
The Impact of the Concurrent One-Year Limits

CEQA and the sections of the California Government Code covering development project approval both set one-year deadlines for completion of the EIR and of permit processing. An initial question arose as to whether the one-year deadlines ran concurrently or consecutively. It could be argued that a "complete" application under the permit processing rules requires a complete environmental impact report, allowing one year for EIR's and a second for permit processing. Some local agencies attempted this interpretation. 3

The State Office of Planning and Research (OPR), in preparing its "Guidelines for Processing Permits for Development Projects" (permit guidelines) recognized the potential for confusion in the mandatory portion of the guidelines covering state agencies and in the advisory sections covering local agencies. 4 The permit guidelines require that state lead agency time limits for CEQA and permit processing begin and run concurrently, not consecutively, 8 and suggest that a local lead agency should prepare environmental documents concurrently with processing permit applications. 46 A change in the relevant Government Code section settled the issue and confirmed that the time limits were intended to begin running at the same time. 87 Of course, concurrent processing does not attenuate the technical problems inherent in preparing EIR's in one year or less. Rather, it compounds these difficulties by adding more proce-

83. San Francisco attempted this interpretation until inquiry by city staff, and by other agencies, at workshops held by the Office of Permit Assistance in Dec., 1978 and Jan., 1979, brought forth the answer that the intent was to require concurrent EIR and development permit processing time limits. The City of Los Angeles took a slightly different angle in refusing to accept applications at all until environmental information for an EIR had been submitted in order to ensure adequate time for review.

84. The permit guidelines were established for state agencies pursuant to Cal. Gov't Code § 65923 (West Supp. Pamph. 1979), and are found in the S.A.M. §§ 1070-1099. The S.A.M. is not part of the California Administrative Code and is not binding on local agencies. Although the permit guidelines were adopted following formal public notice and hearing procedures as provided by the State Administrative Procedures Act, Cal. Gov't Code §§ 11371-11528 (West 1966 & Supp. 1979), the state guidelines in S.A.M. are not required to conform to these procedures because they are internal state office operating procedures, not formal regulations, although they are binding on state agency staff. S.A.M. §§ 0001, 0004, 1070.


86. Id. § 1087.2.

dural steps and by reducing by several months the time available for completing the EIR.

The combined process now means that the environmental review office responsible for CEQA implementation must begin processing by entering into the 30-day period during which the agency makes its determination whether or not a permit application is complete. Therefore, the office where the application was initially filed must be sure that all concerned offices and departments are informed of the project sponsor's filing date. This interdepartmental communication is likely to consume several of the 30 days. The environmental review office must coordinate with other interested agencies to ensure that all applications for projects subject to CEQA include the information necessary to determine whether the project is categorically exempt, or whether it should be reviewed. The office must then decide whether there is enough information in the application to determine whether a negative declaration or EIR is appropriate. The environmental section and other agency departments must finally communicate in writing any deficiencies in the application to the project sponsor within the 30-day time limit.

Many of these requirements were extant in the environmental review and building permit process before A.B. 884, simply because sufficient information to determine whether or not a proposal met building and planning codes would eventually be required, and because environmental review of privately-sponsored projects could not be completed without appropriate information from the developer. However, performing these tasks within 30 days, notifying applicants in writing as to application completeness, and following the deadline for each and every application will not speed the permit process unless additional personnel are available to the processing agencies. For this reason, the overlay of development

88. CEQA implementation is often carried out in the local city planning departments, but may be done in the departments of public works. In some counties, such as Santa Barbara, implementation is effected by a separate department, the Department of Environmental Resources. Sacramento County also has a separate department of environmental review, the Environmental Impact Section.


90. Friends of Mammoth v. Board of Supervisors, 8 Cal. 3d 247, 502 P.2d 1049, 104 Cal. Rptr. 761 (1972), found that CEQA requires environmental review for projects that need leases, permits, or other discretionary approvals from public agencies even though the projects are privately sponsored.
project rules on CEQA may be counterproductive to the goal of speeding permit processing.

Fact Gathering in the Environmental Review Process. The combination of CEQA and permit processing rules presented problems of interpretation affecting fact gathering under CEQA.

The permit processing rules provide that once an application is accepted as complete, the agency cannot request new or additional information. Limiting the availability of information in this way under CEQA would either stifle environmental review for lack of information or require agencies to request all possibly relevant environmental information as part of a complete application. Requiring great amounts of detailed EIR-type data at this initial application stage is not consonant with the new CEQA section which provides that the 45-day period following acceptance of the application as complete is to be used to determine whether an EIR is required and whether such information must be supplied. If a negative declaration would be adequate to fulfill CEQA requirements, EIR levels of data would be superfluous.

The state permit guidelines provided that state agencies were not precluded from demanding environmentally relevant information necessary to the EIR despite the lack of clarity in the law. However, the issue remained open for local agencies since the guidelines are not binding on them. The legislature resolved the question by adding a subsection which states that

92. See notes 63-66 supra.
94. Rules of legislative interpretation require that when there is a conflict, the courts should interpret the law to give effect to the entire law and not interpret it so as to leave out a section if at all possible. Moyer v. Workman's Comp. Appeals Bd., 10 Cal. 3d 222, 514 P.2d 1224, 110 Cal. Rptr. 144 (1973) and R.E.A. Enterprises v. California Coastal Commission, 52 Cal. App. 3d 596, 125 Cal. Rptr. 204 (1975). The S.A.M. interpretation correctly follows this rule, allowing both the intent of Cal. Gov't Code § 65944 (to avoid requesting essential information at the last minute and thereby forcing disapproval for lack of information) and the essential data gathering for preparation of an adequate EIR. However, A.B. 884 did not limit the amount of information that could be required for a complete application, nor did the new CEQA sections in A.B. 884 limit the amount of information appropriate for the decision whether or not an EIR is required. Therefore, although burdensome, the latter interpretation, requiring much of the information necessary for an EIR as part of the complete application, would not necessarily have been incorrect until the Government Code sections were clarified to indicate that the informational equivalent of an EIR was not appropriate as a requirement of a complete application. Cal. Gov't Code §§ 65941, 65944 (West Supp. Pamph. 1979).
“[t]his section shall not be construed as limiting the ability of a public agency to request and obtain information . . . needed in order to comply with the provisions of . . . the Public Resources Code.”

Another section was added to clarify that agencies could not require the informational equivalent of an EIR as part of a complete application. This resolution does not relieve public agencies of their burdens, but at least resolves the issue and encourages thorough environmental review within the allowed time limits.

A second problem arose from the possibility that project sponsors would slowly and reluctantly supply needed project information, using up much of the year and causing an automatic project approval. This result would be ironic since A.B. 884 was intended to reduce agency-caused delays rather than those caused by developers. The authors of the state permit guidelines foresaw this dilemma and suggested that local agencies deny a permit application where the applicant failed to supply requested information essential to preparation of a legally adequate EIR. Shortly thereafter, the legislature added a subsection to the Development Projects laws permitting disapproval of a development project for failure to submit complete or adequate information.

In order to effectively implement the permit processing law and conduct effective environmental review, the code sections dealing with fact gathering must be read together. Under the permit processing rules, an agency must inform the developer, prior to accepting an application, of any information that will subsequently be required from the applicant in order to complete final action on the application.

The variation in necessary information ranges from requirements for detailed project descriptions all the way to the entire spectrum of environmental analysis to be presented in the format of preliminary Draft EIR. CAL. PUB. RES. CODE §§ 21082.1, 21160 (West 1977 & Supp. 1979), and the guidelines, CAL. ADMIN. CODE tit. 14, § 15061(a) (1978), allow an agency to obtain information in any form; the EIR Guidelines make it clear that regardless of the format, the lead agency must make an independent review of the document and take responsibility for its contents. At the same time, the agency may not require the developer to submit the informational equivalent of an EIR as part of a complete applica-

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96. Id. § 65941.
97. The variation in necessary information ranges from requirements for detailed project descriptions all the way to the entire spectrum of environmental analysis to be presented in the format of preliminary Draft EIR. CAL. PUB. RES. CODE §§ 21082.1, 21160 (West 1977 & Supp. 1979), and the guidelines, CAL. ADMIN. CODE tit. 14, § 15061(a) (1978), allow an agency to obtain information in any form; the EIR Guidelines make it clear that regardless of the format, the lead agency must make an independent review of the document and take responsibility for its contents.
100. Id. § 65944(b).
tion, and expressly retains the freedom to obtain the information necessary to comply with CEQA, including the sanction of project disapproval where it is not forthcoming. Since the agency now has the burden of determining at the outset what types of information will be needed for later analysis, the agency is likely to err on the side of safety and request more data than is reasonably necessary. Developers will undoubtedly be forced to produce additional, perhaps unnecessary, information as the price for knowing the agency's data requirements in advance.

**Applicability of A.B. 884 to Specific Government Actions**

Serious questions are presented as to the extent of A.B. 884's coverage of important but commonplace government actions. It is still largely unclear whether the issuance of building permits, subdivision approvals, general plan amendments or zoning changes are subject to the one-year permit processing deadlines. Further clarification in the law may be required.

*Issuance of Building Permits.* The question of whether issuance of a building permit falls under the one-year deadline is more precisely framed as whether a building permit is part of development project approval. The problem was perceived after passage of A.B. 884 but a subsequent amendment has only added to the confusion. The relevant section now reads:

"Development project" includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate. "Development project" does not include any ministerial projects proposed to be carried out or approved by public agencies.

Certain interpretations suggest that a building permit is a development project under this definition because it is a "permit for construction," but strong arguments can be made that the issuance of a building permit is a ministerial act and thus excluded from the deadline.

A.B. 884 itself did not expressly include or exclude building permits, but the codified legislative findings and the

103. *Id.* § 65956(b).
104. *Id.* § 65928.
105. As codified, A.B. 884 unhelpfully defined a "development project" as "any project undertaken for the purpose of development." *See* note 39 *supra.* *Cal. Gov't*
broad definitions of the new Government Code chapter 107 imply that final approval of a project in the form of a building permit was contemplated to be completed in one year. The state permit guidelines in the State Administrative Manual clouded the issue by defining "project" to include "[t]hose ministerial permits as defined pursuant to the California Environmental Quality Act which are required before actual construction can commence, which can include but are not limited to, building permits and final subdivision maps." 108 The guidelines thus suggested that a building permit is both an action on a development project and a ministerial action. Since the change in the definition of development project in the Government Code, the State Office of Planning and Research has proposed amendments in the State Administrative Manual, including removing actions on building permits from the list of "projects" covered by the time limits, in order to bring their definition of "project" in line with their interpretation of the change in the law.

There are several facts which lend credence to the argument that the issuance of a building permit is ministerial. The State EIR Guidelines in the California Administrative Code presume issuance of building permits to be ministerial unless the local ordinance contains discretionary provisions. 109 The definition of "ministerial" in the EIR Guidelines is broad enough to cover all building permit approvals where the project comports with the various codes and ordinances and needs no deliberative decision. 110 As noted, the state permit guidelines defined "project" under the permit processing rules as "[t]hose ministerial permits as defined pursuant to the California Environmental Quality Act which are required before actual construction can commence . . . ." 111 This definition could be read so as to distinguish two categories of ministerial

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106. The legislative findings urge the "statewide need" to expedite development and therefore direct that provisions of the chapter shall cover all public agencies. CAL. GOV'T CODE § 65921 (West Supp. Pamph. 1966-1978).
107. See note 39 supra.
108. S.A.M. § 1078 (1978). CAL. PUB. RES. CODE § 21080(b)(1) (West 1977), specifically excludes from its application "ministerial projects proposed to be carried out or approved by public agencies." The State EIR Guidelines list issuance of building permits as one of the items ordinarily considered ministerial and therefore excluded from the application of CEQA.
110. Id. § 15032. Section 15024 defines "discretionary project."
permits which overlap: one category of permits defined by CEQA (but not by the permit processing rules) as ministerial, which fall under the one-year deadline; and another category defined by both statutes as ministerial, which do not fall under the one-year deadline. This dichotomy does not appear to be the result intended by the legislature. Both the EIR guidelines and the permit guidelines seem to assume that issuing a building permit is a ministerial act.

The Uniform Building Code (hereinafter UBC),\textsuperscript{112} which is adopted in all California cities and counties that had not adopted building standards before 1970,\textsuperscript{113} also provides for issuance of building permits as a ministerial act. The UBC instructs the relevant official that if he is satisfied that the plans submitted conform to the Code's requirements, he \textit{shall} issue a permit to the applicant,\textsuperscript{114} leaving no discretion in the hands of the official. Another section of the UBC allows the building official to approve alternate materials or construction methods at his discretion only if the material or method is at least the equivalent of the quality and safety prescribed by the Code.\textsuperscript{115}

Under present statutory and administrative rules, the question of whether issuance of a building permit falls under the permit processing one-year deadline is problematic. If issuance of building permits is ministerial, as most sources assume, then the statutory distinction in Government Code section 65928 between permits for construction and ministerial projects is contradictory, and issuance may not fall within the one-year deadline. If the issuance is not ministerial, then the one-year deadline does apply and the CEQA definition of building

\textsuperscript{112} The \textit{Uniform Bldg. Code} is enacted by the International Conference of Building Officials and revised approximately every three years.


\textsuperscript{114} \textit{Uniform Bldg. Code} § 302(a) (1976).

\textsuperscript{115} \textit{Id.} § 106. The California Court of Appeals, in a case challenging the discretion of a building official to disapprove a permit, limited the issue to whether or not the official could disapprove, based on local restrictions stricter than the State-adopted National Electrical Code, if the local restrictions are necessary to safeguard life and property. Baum Electric Co. v. Huntington Beach, 33 Cal. App. 3d 573, 109 Cal. Rptr. 260 (1973). The court on this limited issue held that disapproval was within the official's power, using a provision in the National Electrical Code indicating that the drafters did not intend to foreclose disapproval of materials or methods tested and found unsafe. \textit{Id.} at 579-80, 109 Cal. Rptr. at 261. It is noteworthy that the Electrical Code has no section that is equivalent to that in the UBC instructing that a permit shall be issued if the plans conform to the requirements of the Code. \textit{See Nat.'l Electrical Code} §§ 90-7, 90-4 (1968).
permits as ministerial may need legislative revision. In either case, clarification is necessary.

Subdivision Approvals. A.B. 884 specifically included subdivisions as defined by the Subdivision Map Act within its ambit, thus subjecting subdivisions to its one-year development project deadline. Under this scheme, there are timing problems where the subdivision requires an EIR since, under the Subdivision Map Act, a tentative subdivision map must be given a conditional approval within 50 days of filing the application, and it is impossible to prepare an EIR in 50 days. Taking no action within the 50 days does not provide a solution since no action within the period results in automatic approval.

Before the passage of A.B. 884, when environmental review of a subdivision was necessary, agencies required proof of completion of the process as a prerequisite to filing a tentative subdivision map, or granted extensions of the 50-day limit for completion of the process. The permit guidelines recognized the impossibility of meeting A.B. 884 deadlines within the Subdivision Map Act deadlines, and in their advisory capacity suggested that the local agency could refuse to accept the tentative map for filing until the application was accompanied by completed environmental documents. Unfortunately, not only was this administrative guideline not binding on local agencies, but it also provided conflicting interpretations of

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116. Regardless of the interpretation of the issue raised by potentially conflicting portions of Cal. Gov't Code § 65928, exclusion of ministerial projects may not solve the time problem for the few local agencies that interpret their permit processes to be entirely discretionary. The California Supreme Court, in Lindell Co. v. San Francisco Bd. of Permit Appeals, 23 Cal. 2d 303, 144 P.2d 4 (1943), interpreted the city charter and various city ordinances to mean that the various departments involved in permit review have general discretionary powers.

118. Id. § 65922(b).
119. Id. § 66452.1.
120. The normal public review period alone is 45 days, and even reducing this to the minimum of 30 days allowed by the State EIR Guidelines provides no time for distribution. Cal. Admin. Code tit.14, § 15160(c)(1978). All other actions which must be based in part on the contents of the EIR would take place the same day that the tentative map was acted upon. It is clearly not possible to both follow the A.B. 884 mandate to not require the equivalent of a complete EIR as part of the complete application and follow the Subdivision Map Act time limits.

122. Id. § 66451.1. This section provides for extensions by mutual consent of the subdivider and the agency. No time limit is imposed on the extension.
123. S.A.M. § 1087.3 (1978).
what constitutes a complete application depending on the type of project being reviewed. Amendments to the relevant statute now make it clear that an agency may not require an EIR as part of a complete application,124 and the guideline will need to be changed.

Ignoring the impossible CEQA review period, it is unreasonable to expect a developer to proceed from the tentative map to the final map and building permits within one year, given the burdens of producing the required data.125 Because tentative maps are conditionally approved and most developers would be unable to comply with all of the conditions within the year, most final maps would have to be disapproved.126

In 1978, the Legislature clarified the application of the development project deadlines by exempting final subdivision maps from the deadlines generally, and then by providing that approval of the final map must occur within one year from the date on which the final map was filed for approval.127 This change reduces the ambiguity regarding tentative/final map approval but does not resolve the problem of complying with the EIR deadline and the 50-day deadline. If the subdivision requires environmental review, developers will probably be forced to grant extensions of the 50-day limit or have their tentative maps disapproved.128 The one-year limit on EIR certification would still be in effect, but the Map Act time limits would become inconsequential.

General Plan Amendments and Zoning Changes. It is presently unclear whether amendments to general plans129 or zoning

124. See text accompanying notes 95-96 supra.
125. The subdivider must fulfill all conditions made part of the tentative map approval, provide a full land survey, provide a soils report, obtain signatures of any property owners of the parcel, including non-fee owners, make dedications of land to the local agency as required by the agency and guarantee improvements (roads, sewers, water lines, etc.) either by construction or by monetary security or a surety bond. Upon completion of these requirements, a final subdivision map may be submitted and approved. Cal. Gov't Code §§ 66434, 66436, 66439, 66490 (West Supp. Pamph. 1966-1978).
126. The action on the final map must be taken within 10 days of application, but the action is ministerial if the final map conforms to the local and state codes and the local subdivision ordinance. Id. § 66458; Great Western Savings & Loan v. City of Los Angeles, 31 Cal. App. 3d 405, 107 Cal. Rptr. 359 (1973).
128. Even negative declarations are allowed 105 days under Cal. Pub. Res. Code §§ 21100.2, 21151.5 (West Supp. 1979), and thus, are not required to be completed within the Subdivision Map Act time period.
ordinances\textsuperscript{130} fall within the development project deadlines, with the better view favoring the position that they do not. If this is the case, then projects requiring such changes may be delayed well beyond the one-year deadline. The source of the confusion stems from language and acts of the Legislature. The definition of "development" includes a "change in density or intensity of use of land . . ."\textsuperscript{131} which could be interpreted to include zoning changes and perhaps plan amendments. However, a "project" only includes an "activity involving issuance to a person of a lease, permit, license, certificate or other entitlement for use . . . ."\textsuperscript{132} A local agency does not need to issue to itself a lease, permit, license, or any other sort of entitlement to change a zoning ordinance. The state permit guidelines found such actions as issuing rules and regulations and amending a general plan or zoning ordinance not to be included in the definition of "project".\textsuperscript{133}

The issue of the general plan and zoning ordinance amendment timing in relation to the A.B. 884 time limits has been further complicated by the Legislature's recent actions. In May, 1978, the Assembly passed a provision exempting from the time limits "[a]ctions of a local agency to adopt or amend a general plan or any element thereof, or to adopt or amend a zoning ordinance."\textsuperscript{134} The State Senate, in June, 1978, added the words "or to adopt or amend a specific plan."\textsuperscript{135} There is no indication in any of the discussions of this provision that the acts proposed to be excluded from coverage were recognized to be in fact excluded by definitions already in the law. Both the Assembly and Senate provisions were removed by the Senate in August and were never enacted.\textsuperscript{136} Failure to enact the provisions could be construed to mean that the Legislature intended not to change existing law that the Legislature believed

\begin{footnotesize}
\begin{enumerate}
\item[130.] \textit{Id.} §§ 65850-65863.
\item[131.] \textit{Id.} § 65927.
\item[132.] \textit{Id.} § 65931.
\item[133.] S.A.M. § 1078 (1978).
\item[134.] A.B. 2825, Reg. Sess. 1977-78 (June 23, 1978) § 1, lines 14 and 15, page 3, and line 1, page 4. If passed, the subsection would have been part (d) of section 65922. This amendment was one of eight proposed by staff of the Assembly Committee on Resources, Land Use and Energy and discussed with Assemblyman McCarthy by the League of California Cities. The wording was suggested by the League. (Letter of May 15, 1978, from William Kaiser to Tom Willoughby).
\item[136.] 1978 Cal. Stats. c. 1113, § 1, at 3733.
\end{enumerate}
\end{footnotesize}
included general plan and zoning changes in the time limits. However, since the law can be read to exclude these actions through the definition of “project,” it is also possible that the exemption provision was dropped as unnecessary. It is in this unsettled state of affairs that cities and counties must consider projects that involve general plan or zoning changes.

If the A.B. 884 deadlines exclude general plan or zoning ordinance changes, an application for a project requiring such a change could not be accepted as complete until the change was finalized. Without the required change, decision makers would be forced to disapprove any such project as contrary to the city or county zoning ordinance or general plan; it would be a waste of agency and developer time for the agency to accept such an application unless it could be approved by the decision-making body. Therefore, it is reasonable to require the general plan amendment as a condition of a complete application. And, of course, processing time for the general plan amendment would normally include time to prepare an EIR, with no limit on EIR preparation time because the law restricts the EIR time limit to “private” projects. This would mean that an applicant is required to request a general plan amendment, wait for that action to be approved, and then wait a maximum of one year for action on the proposed project, a total of more than one year.

If an EIR is necessary for the project and also for the general plan amendment or zoning change, time may be saved by following the State EIR Guidelines. The Guidelines require that the entirety of a project be covered by the EIR, but also indicate that “a general plan EIR may be used as the foundation document for EIR’s subsequently prepared for specific projects within the geographic area covered by the general plan.” Because the later project-specific EIR could reference the general plan EIR for environmental details and general impacts discussion, it could be relatively brief and should take less

140. There are time limits on general plan amendment actions but they do not control the total time available for final approval. CAL. GOV'T CODE §§ 65356, 65356.1 (West Supp. 1979).
141. CAL. ADMIN. CODE tit. 14, § 15037(a)-15037(c) (1978).
142. Id. § 15068.5.
143. Id.
time to prepare than the usual EIR on a major development project, allowing more time to complete the rest of the permit processing in the single year allowed. This “piggyback” is probably not appropriate when a request for rezoning or adoption of a specific plan is limited to the exact area of the project proposed. Although the zoning change or specific plan adoption remains an agency action, it amounts to an issuance of an entitlement for use, since its purpose is solely to accommodate the proposed project, unlike a general plan amendment or major zoning ordinance revision affecting properties outside the specific project area. If the state permit guidelines' suggestions along this line are followed, the rezoning or specific plan adoption must be processed during the year allotted for the rest of the permit processing. However, it is illogical to carry on permit processing activities while a plan or zoning change is pending, since the change, as adopted, will determine the actual parameters of the project. It still seems more appropriate to act on the items sequentially rather than waste time processing project-specific permits if the necessary rezoning is ultimately to be disapproved.

The agency considering a general plan or zoning ordinance amendment presently faces two difficulties. First, it must decide whether these actions are governed by deadlines. Assuming they are not, the agency must then decide how to expedite the affected projects through the system. It would benefit project sponsors to work closely with public agencies facing these problems so that project approval can be accelerated.

Impact of Deadlines on Administrative Appeals

Although not required by state law, some agencies provide for appeal of the requirement of an EIR. Administrative appeal is also available on many agency project decisions. A.B. 884 did not exclude these administrative appeals from its time limit, producing several anomalous results. A concerned citizens' group could appeal the issuance of a conditional approval and find the undesirable project automatically approved when the deadline passed. A project sponsor could appeal a decision

146. According to the survey prepared by Santa Barbara County Administrative Officer Raymond D. Johnson, in 1978, 11 out of the 12 counties surveyed allowed some type of formal appeal to the determination of a requirement for an EIR.
to require an EIR and, by prolonging this action, find the one-year deadline passed and receive the permit, automatically bypassing the environmental review process. The decision-making agency, by taking action on the project late in the year, could potentially preclude the possibility of an appeal of the issuance of the conditional use permit, building permit, or other appealable permit for use.

The Legislature recognized these problems and excluded "[a]dministrative appeals within a state or local agency or to a state or local agency" from the development project deadlines,\textsuperscript{147} and found that this amendment was declarative of existing law.\textsuperscript{148} Thus, an administrative appeal stops the clock, and automatic approval cannot occur during the appeal process.

**CEQA AND DEVELOPMENT PROJECT DEADLINES: ONE STEP FORWARD, TWO STEPS BACK**

The goal of speeding environmental review and project approval is important to project sponsors and ultimately to the public. Putting deadlines on the completion of these tasks is clearly a step in the right direction. However, given the burdens it has placed upon agency staffs, project sponsors, and the permit approval process, A.B. 884 takes two steps backward. The effects of these deadlines must be examined closely.

**EIR Deadlines, Agency Staffs, and Project Sponsors**

The result of the new instructions in CEQA is to add more procedure to its already detailed procedural requirements with little added substance. Over and above conducting environmental analyses, public notice, and public and agency review and consultation periods, an agency must now keep track of the date of receipt of applications, notify applicants of deficiencies in applications within the 30-day limit, and determine when an application is complete and keep track of that date. It must consult all affected agencies and decide whether or not an EIR will be required within 45 days of the date an application was accepted as complete.

If the agency decides not to prepare an EIR, it must complete a negative declaration in the next 60 days, again keeping

\begin{itemize}
\item \textsuperscript{147} CAL. GOV'T CODE § 65922(b) (West Supp. Pamph. 1966-1978).
\item \textsuperscript{148} 1978 Cal. Stats. c. 1113, § 9, at 3736.
\end{itemize}
an accurate record of time elapsed for each project so as not to miss deadlines. If an EIR is required, the agency must now immediately notify responsible agencies and agencies with jurisdiction by law by certified mail and meet with these agencies within 30 days of a request. Not only do these specific tasks demand additional time, but detailed record keeping invariably adds to the work as well. The agency then must gather information about the proposal, perform the necessary analyses, and prepare the EIR as usual.

For most projects the time limits are reasonable when viewed alone. Many local agencies, however, have large case loads and backlogs which must be carefully managed to allow projects to be finished on time. Public agencies cannot control the date of receipt of applications nor for the most part the date of completion of an application. Therefore, a rash of applications at the same time, all requiring EIR's, can overload an otherwise carefully managed system, making time limits difficult to meet while still meeting CEQA's intent to provide complete and accurate environmental analysis.

The additional record keeping may appear to be an inconsequential burden to some but it cannot fail to add to the time necessary to process most cases handled by local agencies. If only two to four extra hours per non-EIR case are required, this could still demand at least a one-half to one person addition to the agency's staffing requirement even assuming that most cases do not press the deadline of 105 days. In this era of Proposition 13 cutbacks on agency staffs, the requirement of additional personnel may simply go unmet, causing deadlines to be broken.

One alternative is to raise processing fees, a burden that falls proportionately harder on smaller projects. For the vast majority of the cases receiving negative declarations, the additional two to four hours of record filing and processing can increase the total time needed per case by 10 to 15 percent, depending on the time needed for overall processing. These

149. Populous cities and counties often handle 400 to 500 cases per year or more. In a limited survey conducted by the Administrative Office of the County of Santa Barbara in fall, 1978, out of 11 counties surveyed (mostly coastal counties), 7 handled over 450 cases and 4 of these had over 800 per year. The normal person-year is about 2000 working hours; 500 cases times the smaller number—2 extra hours per case—would be a minimum ½ staff-person of work per year for new work since passage of A.B. 884 if it is being properly implemented in these counties.

150. San Francisco assumes only an average of 8 hours per simple case, often spread out over several weeks to allow for a field trip and data gathering as well as
delays are also likely to be a greater burden to smaller developments. A.B. 884 was intended to speed up processing, and it may have accomplished this for developers of large, controversial projects requiring major EIR's at the expense of the small project developer. Large, complex projects are likely to strain the one-year EIR deadline and demand extensive analysis, while the small projects with few environmental impacts languish for lack of attention.

In addition to the extra record keeping and nuisance of scheduling dozens of applications so that each is dealt with in its time line, the 45-day limit precludes “conditional” or mitigated negative declarations for many developers. A conditional negative declaration is appropriate for projects that could have significant environmental effects as proposed, but only where those effects are mitigable. If the project sponsor is willing to guarantee implementation of measures that reduce or eliminate a potential impact, a negative declaration can be issued based on the sponsor’s agreement to mitigate the adverse effects.151 Although this conditional negative declaration could significantly reduce permit processing time when compared to the alternative of preparing an EIR, it is not possible in many cases to negotiate satisfactory mitigation measures within the 45-day limit allowed for determining whether a negative declaration or an EIR is appropriate. The smaller project sponsor is likely to be forced to accept one of three unpleasant options: wait longer for a negative declaration; endure the expense and delay of an EIR because a mitigated negative declaration could not be arranged within the time limits; or pay higher processing fees to enable the agency to hire another staff person to manage the increased workload.

The combination of all of the time limits on the environmental review process ironically means that there is no longer

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151. Not all jurisdictions call this action a “conditional” negative declaration. Appendix I of the State EIR Guidelines, the sample Environmental Checklist form for initial studies to be prepared pursuant to CAL. ADMIN. CODE tit.14 § 15080 (1978), contains a sample conditional negative declaration that reads:

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measures described on an attached sheet have been added to the project. A NEGATIVE DECLARATION will be prepared.

Id. app. I, at 324.11.
a full year to prepare and certify an EIR if the entire process is followed. The 45-day period, within which a lead agency determines whether to prepare an EIR or a negative declaration, begins on the date that the application is complete, but so does the one year allowed for preparation and certification of an EIR. Therefore, 320 days are available between formal determination and certification, not 365. This period also must include the minimum 45-day public review and comment period\(^{152}\) and some time for responding to comments, leaving fewer than 200 working days to actually gather data, perform analyses, write, edit and produce the formal Draft EIR.

The legal requirements most likely to be slighted by those projects that will take a full year or longer to process are the public review and comment period for the Draft EIR and the preparation of responses to these comments. These activities occur at the end of the EIR process when the Draft EIR will be on a tight schedule to meet the deadline. New issues are often raised during the public comment period which result in potential project modifications both to reduce environmental impact and to increase public acceptability of a proposal. Significant changes in the EIR can be required either as a result of public comments when new information is made available that was not previously known to either the agency or the developer, or when a sponsor refuses to supply information and the agency leaves it out of the Draft EIR, depending on the public to demand the data.\(^{153}\) Shortening the comment period would have unfortunate effects on project approval and public receptiveness. If the public agency has no time for the preparation of responses, the certifying body is under increased pressure to accept the Final EIR regardless of the adequacy of the document. The alternatives may be: 1) to have the sponsor agree to an extension; 2) to ignore the deadline; or 3) to deny the permit request based on lack of adequate environmental review.

**EIR Deadlines and Development Project Approval**

Coordinating and completing the two one-year deadlines that run consecutively can present major problems of timing, as the decision on the permit cannot legally be made until the

\(^{152}\) *Id.* § 15160.

\(^{153}\) This has happened in San Francisco. Preparation of responses to comments in such a situation can take four to six weeks or more.
Final EIR is complete. This problem becomes severe when one considers that EIR's generally affect the final form of the project.

Although the EIR is not a decision-making document, it does suggest potential changes that could reduce or eliminate environmental impacts—suggestions highly relevant to other actions on the project. For example, if a conditional use permit is one of the approvals required for the proposed project, it may draw some of its conditions from the EIR. Or, if the EIR requires a finding that a project as proposed would have a significant effect on the environment, the deciding body must either adopt feasible mitigation measures or project alternatives to lessen impacts, or find that the alternatives or mitigation measures are not feasible, citing specific reasons.

Because the EIR usually has some influence on the final project description, it is inefficient for the planning department or other agency staff to do a substantial amount of work on conditional use or other permits until the EIR is complete, although the staffs should participate in EIR preparation and begin to develop potential conditions through the environmental review process. It is also not expeditious for other departments, such as public works, to review the project drawings and technical aspects until conditions have been imposed, if it is possible that the conditions would make substantive changes in the project. Should a conditional approval include conditions that require proof of compliance and department approval before ultimate issuance of the permit, such as redesigning facade details of a building or rerouting a road in a residential subdivision proposal, must these actions be completed during the one year limit? If so, the time available for completing an EIR must be shorter in order to allow a reasonable time for the developer to comply with the conditions. In addition, if the EIR is completed a week two before the year is over, there simply is not enough time to hold the necessary hearings, impose conditions, redraft drawings as necessary to meet conditions, perhaps obtain board of supervisors or city council approval, and review final drawings to determine whether they meet local building codes. In practice, an EIR cannot be al-

154. CAL. PUB. RES. CODE § 21061 (West Supp. 1979). Of course, staff can work on permit actions in anticipation of the decision.
allowed to consume the full year unless it is known in advance that no changes will be required, thereby allowing other sections of the local agency to review plans as originally presented. One alternative, then, is to further accelerate EIR preparation.

The problem of accelerating the EIR looms most significant for the larger projects. The more complicated and numerous the required approvals, the shorter will be the time available for preparing and certifying the EIR. Since a project requiring several local agency approvals is likely to be a complex project demanding detailed environmental analysis, it is unreasonable to expect speedy preparation of a complex EIR. Concurrent processing by several departments is only partially possible, since the decision by one department or section is likely to influence the work done by the next department or section.

Extension of the time limits offers only partial relief. The CEQA extension is not specifically limited, and states “[t]he resolutions or orders required by this section may provide for a reasonable extension of such time period in the event that compelling circumstances justify additional time and project applicant consents thereto.” The extension under the development project review process is, however, limited to a period “not to exceed 90 days,” and also requires applicant consent. Again, the CEQA section loses practical meaning except as it fits within the development project review process: “reasonable extensions” of the CEQA deadlines are limited to 90 days under the development project rules. If all of the steps of permit review are to be accomplished, the 90-day extension is seldom likely to be used for environmental review but may be needed to finish processing the permit when the full year allowed for EIR certification is consumed.

Some of the time problems with projects requiring several consecutive decisions could be solved if the A.B. 884 language regarding time limits was taken so literally as to interpret “the application requesting approval” to mean a single applica-

158. A.B. 2825 added a single word to CAL. GOV'T CODE § 65957: “once.” The section now reads: “The time limits established by sections 65950 and 65952 may be extended once for a period not to exceed 90 days upon consent of the public agency and the applicant.” This change insured that the section would not be interpreted to allow a series of 90-day extensions.
159. CAL. GOV'T CODE § 65950 (West Supp. Pamph. 1966-1978); CAL. PUB. RES. CODE §§ 21100.2, 21151.5 (West Supp. 1979). Other Government Code sections con-
tion, such that when several local actions were required, each would begin its own set of time limits. Although the EIR would still need to be certified before the end of a full year, the schedule would not require a shorter period for an EIR on a complicated project when more approvals were required.

It is doubtful that the Legislature intended this result. The permit guidelines adopt an interpretation allowing each different application for an entitlement for use to be processed separately with its own time limit, but they avoid the lengthened permit process by forbidding the local agency from requiring the approval of another entitlement for use as part of a complete application. The permit guidelines further indicate that the agency should allow simultaneous submission of all applications for a project if the developer so desires.

One solution to the agency's time limit problems is, as always, to disapprove applications for which an EIR is incomplete at the end of the year. In fact, permit disapproval appears to be the major recourse for handling projects that cannot receive adequate attention in the allotted period. The permit guidelines suggest denial if adequate environmental documents cannot be prepared due to lack of information where they are required but not supplied or where year-long studies are incomplete. Neither the guidelines nor the wording of A.B. 884 suggest that denial should occur when the deadline is not met due to internal processing problems rather than the sponsor's failure to submit information or data-gathering that clearly takes a full year to complete. However, if the agency were able to reasonably support disapproval with the requisite substantial evidence, it should probably take such action before allowing automatic approval. A disapproval for any reason would comply with CEQA in that environmental review is then completed before the decision-maker acts on a project.

However, disapproval is rarely desired, either by the applicant or the agency. Many agencies do not allow immediate reapplication by the same sponsor for the same project, causing more delays than if A.B. 884 had provided some flexibility. The

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161. Id.
162. Id. § 1099.
permit guidelines offer two semi-alternatives to the unaccepta-
ble choice between automatic approval without review and 
complete disapproval without leave to reapply. One suggestion 
is the establishment of standard conditions such as consistency 
with existing zoning and building codes on all automatically 
approved permits, meaning that review of plans for these 
items could occur after approval and the agency would still be 
allowed to require conformity to the codes. The permit guide-
lines also suggest disapproval without prejudice under certain 
circumstances, with the right to reapply immediately for the 
same project.

CONCLUSION

In spite of all its problems, A.B. 884's permit process will 
force increased efficiency in many local and state offices as 
agencies make efforts to comply. Providing deadlines adds 
some level of certainty to a process that has been criticized as 
an impossible labyrinth. Important advances have been en-
acted, including provisions for inter-agency consolidation of 
public hearings and creation of a presumption of validity for 
EIR's not challenged within the CEQA statute of limitations. 
The law now allows continued review of permits during legal 
challenge against the EIR where approval is conditioned on a 
final determination that the EIR is adequate. These steps will 
undoubtedly clarify and shorten the environmental review pro-
cess and reduce its contribution to overall permit processing 
time.

It may also be that the operation of other provisions of the 

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165. The circumstances allowing disapproval under S.A.M. § 1099 (1978) include 
lack of information to support a decision to approve with substantial evidence. Because 
the permit guidelines are not binding on local agencies, and because this section did 
not purport to provide all possible circumstances, it is reasonable to assume that the 
agency could add a specific circumstance such as failure to comply with conditions 
required in order to find the project in conformity with applicable planning and zoning 
codes allowing disapproval of a development permit application.
166. The survey of several coastal counties by Santa Barbara County Adminis-
trative offices (note 2 supra) showed that many were unable to meet deadlines and, in 
the wake of Proposition 13 budget questions, did not have the staff time to be able to 
comply. It may take several years for some counties to revamp procedures to meet 
requirements; some kinds of projects simply may not be able to be processed in one 
year and the local governments may need to be quite creative in rewriting procedures.
reduce the quality of analysis. The record keeping necessary for an agency to prove compliance with the variety of deadlines may work against the important goal of a faster process. Agency staff may push each project to its deadline regardless of the amount of work needed in order to schedule review within the mandatory deadlines of larger projects requiring more staff hours. Establishment of deadlines also may have increased the proportional staff time required per project. The same amount of work accomplished in a shorter period will require both increased efficiency and more personnel in many cases. If more person-hours will be necessary for permit processing, increased cost is inevitable.

EIR's, unlike negative declarations on small projects, will need to be rushed and may seldom be permitted to take the entire allotted year, even when an adequate EIR requires a full year of study, unless the application is disapproved after one year and project sponsor is permitted to reapply immediately and continue the review process. Lead agencies may require all of the background information for the Draft EIR shortly after accepting the application as complete, thus placing the burden of time limits back on the developer and avoiding developer-caused delay in providing data. Agencies may also require this information from the applicant in the format of an EIR, spending less time producing data themselves and more time merely reviewing and revising applicant-produced data. This could move the time-consuming portion of the EIR process from the agency to the developer.

The concerned public may suffer most from speedier, less analytic EIR production. Since public review cannot occur until there is something to react to, the Draft EIR and public comment period must be near the end of the EIR process when deadlines are looming near. Public hearings are time consuming, and since they are not required, they may not be held on as many EIR's. This will force comments to be made in writing and reduce public exposure to the project. New issues raised during the public comment period will not be as carefully researched if time is short; decision makers will be under pressure either to ignore public information or to disapprove the project based on insufficient information. There is no provision in the law for automatic disapproval of a project application for which environmental review has not been completed although more projects with significant environmental effects may be disapproved because of the failure to complete environmental
analysis within the deadline. However, there is provision for automatic approval. It is now the responsibility of concerned citizens to monitor local agencies and ensure that such approvals do not occur and, if necessary, bring suit to have such approvals overturned.

Speeding the environmental review process will not be easy. Effective implementation of A.B. 884 demands resolution of the ambiguities in the law and a clear understanding by both agencies and project sponsors of the difficulties involved in project approval. It is this cooperation which may ultimately contribute the most to speedy project approval.