

# 2018 CEQA Issues

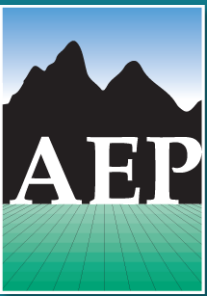
Housing and CEQA: Are they mutually exclusive?

April 4, 2018

9:00 am

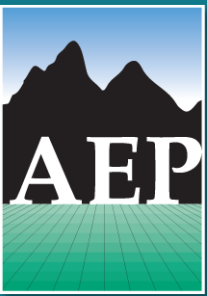
Capitol, Room 317





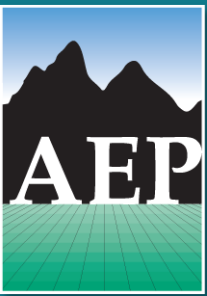
# Today's speakers

- **Devon Muto, AEP President, [Devon.Muto@icfi.com](mailto:Devon.Muto@icfi.com)**
- **William Halligan, Esq., AEP Executive Vice President, [whalligan@placeworks.com](mailto:whalligan@placeworks.com)**
- **Kristin Blackson, AEP Legislative Review Committee, [KBlackson@esassoc.com](mailto:KBlackson@esassoc.com)**



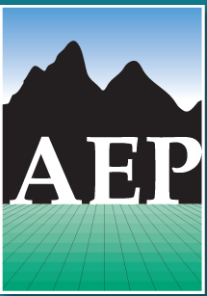
# Today's Agenda

- Who is AEP?
- What is CEQA?
- Housing and CEQA
- California's 2017 Housing Package
- Bills We Are Tracking
- Questions, Answers



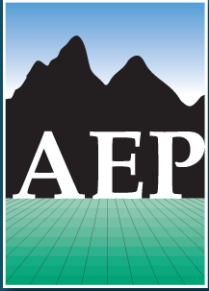
# Who is AEP?

- AEP is a non-profit organization of professionals working to improve their skills as environmental and resource managers.
- Formed in 1974
- Over 1,700 agency, corporate, and individual members
- Planners, environmental scientists, biologists, lawyers, noise specialists, transportation planners, archeologists, geologists, engineers, and other professionals in numerous disciplines.



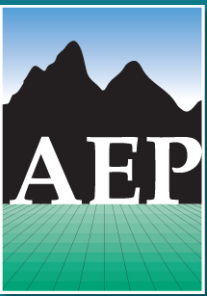
# Our Mission

- **“To enhance, maintain, and protect the quality of natural and human environment;**
- **encourage and carry on research and education for the benefit of the public and concerned professionals in all fields related to environmental planning and analysis;**
- **improve communication and advance the state of the art among people who deal with the environmental planning, analysis and evaluation process; and**
- **improve public awareness and involvement in the environmental planning, analysis, and review process.”**



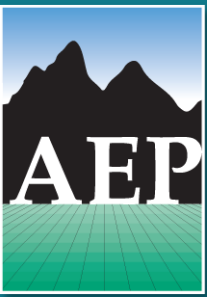
# What is CEQA?





# CEQA Origins

- **1969: The National Environmental Policy Act (NEPA) is enacted. (Federal)**
- **1970: California Environmental Quality Act (CEQA) is enacted. (State)**
- **CEQA (the Statute): Established by Legislature**
  - ...and continuously modified by Legislature
  - ...and “interpreted” by the Courts



# The Rules

## ■ The Statute

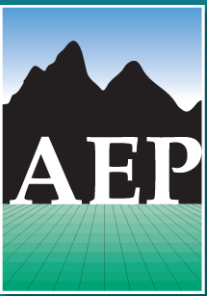
- Public Resources Code §§ 21000-21178

## ■ The Guidelines

- California Code of Regulations Title 14, §15000 et seq.

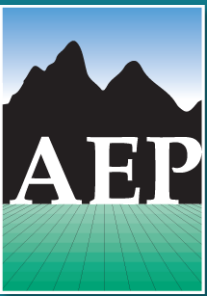
## ■ The Courts





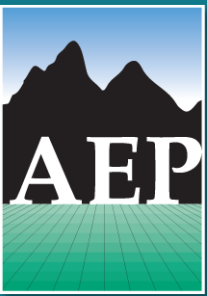
# The Process

- **The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects**



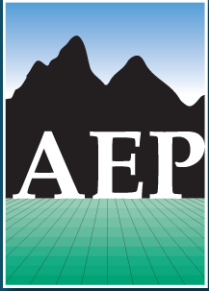
# The Basic Tenets

- **CEQA is a process**
- **Does not prevent a project from being approved**
- **Requires:**
  - **Informed decision making**
  - **Public involvement and disclosure**
  - **Reducing significant environmental impacts if feasible**
- **Overriding circumstances are available**



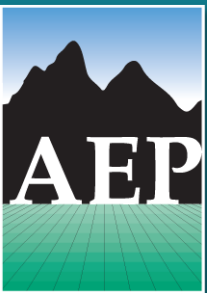
# Types of CEQA Documents

- **Statutory Exemptions**
- **Categorical Exemptions**
- **Initial Studies**
- **Negative Declarations**
- **Mitigated Negative Declarations**
- **Environmental Impact Reports**
- **Reliance on prior documents, addenda, supplements, etc.**



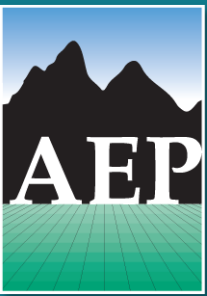
# Housing and CEQA





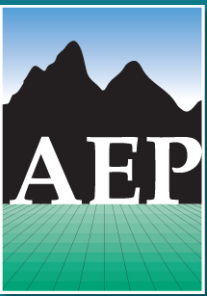
# Housing and CEQA

- **The state is building at least 100,000 fewer units a year than it needs to keep pace with population growth, according to a Brown-administration report released in January 2017**
- **One-third of the California renters spend more than half their income on housing, and the state's homeless population is dramatically higher than the rest of the country.**



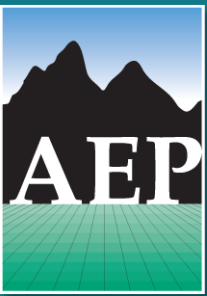
# Housing and CEQA

- **Lt. Gov. Gavin Newsom and former Los Angeles Mayor Antonio Villaraigosa both have said they want developers in California to build a half million homes in a year.**
- **And they want builders to do it for seven straight years, resulting in 3.5 million new homes from the time the next governor takes office through 2025.**



# Housing and CEQA

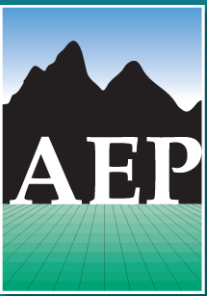
- **CEQA gets a bad rap for housing costs and delays, while it can be a significant driver, other key drivers are ...**
  - **trying to force projects through in bad locations**
  - **not listening to stakeholders**
  - **impact fees**
  - **inefficient approval processes**
  - **non-supportive jurisdictions**
  - **cities lack the political support to approve new housing projects**
  - **No growth and slow growth initiatives**
  - **poor project design (failure to consider site limitations, and project scale and context)**



# Other impediments to Housing

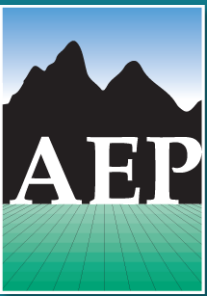
- **No Growth and Slow Growth Initiatives**
  - **SOAR Initiative (Ventura County)**
  - **Measure S (City of Los Angeles) - Failed**
  - **Greenlight Initiative (City of Newport Beach)**
  - **Measure Y (City of Costa Mesa) – Passed in Nov. 2016**
  - **Irvine for Responsible Growth – Attempting to qualify for the November 2018 ballot**





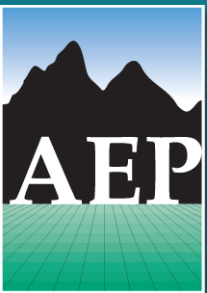
# Housing and CEQA

- **CEQA contains key provisions for streamlining project approvals...**
  - **Infill (although current statutory exemptions are underused because of complexity)**
  - **Exemptions for affordable housing**
  - **Transit Priority Areas**
  - **Exemption for projects consistent with a specific plan and its EIR**
  - **General and community plan consistency**
  - **Subsequent EIR provisions**



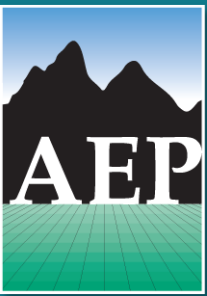
# Housing and CEQA

- **CEQA could be still be improved...**
  - **Simplify/expand exemptions for infill and affordable housing**
  - **Limit “late hits”**
  - **Improve use of tiering**
  - **Promote greater use of mitigated negative declarations**
  - **Limit CEQA abuse**



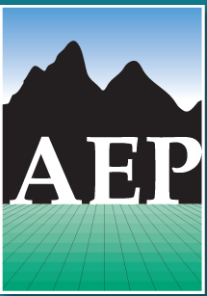
# Housing and CEQA

- **Is CEQA litigation an impediment to housing?**



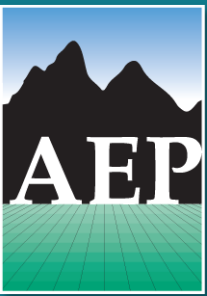
# Housing and CEQA

- **In 2016, the State Clearinghouse received:**
  - **5,051 notices of exemption**
  - **1,614 negative declarations or mitigated negative declarations**
  - **385 environmental impact reports (EIRs)**



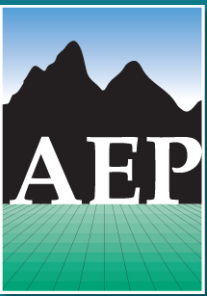
# Housing and CEQA

- **The Senate Environmental Quality Committee recently commissioned a study to look at the effects of CEQA on state projects.**
- **The survey of 94 state agencies found that 1.3 percent of projects required the preparation of a detailed environmental impact report.**
- **An additional 6.2 percent were determined to not have a significant effect on the environment.**
- **Over 90 percent of projects between 2011-12 and 2015-16 were exempt**
- **Less than 1 percent of projects faced CEQA lawsuits.**



# Housing and CEQA

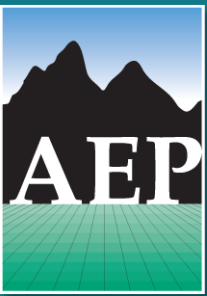
- **Anecdotal evidence?**
- **Between 2006 and 2017, my firm has prepared over 1,500 negative declarations, mitigated negative declarations, and EIRs.**
- **22 have been litigated (1.5 percent)**



# Housing and CEQA

## ■ CREED-21 v. City of Wildomar

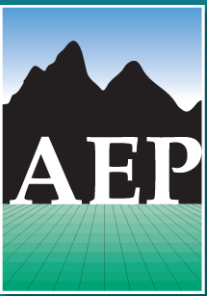
- The state Supreme Court denied a request by San Diego attorney Cory Briggs and his nonprofit client, CREED-21, to unpublish a precedent-setting opinion involving CEQA and a Wal-Mart project in Riverside County.
- Wal-Mart argued that CREED-21 lacked standing and asked Briggs to produce a client for deposition. Briggs refused and said the group's membership was irrelevant. The court then ordered CREED-21 to produce a member.



# Housing and CEQA

- **CREED-21 v. City of Wildomar**
  - Briggs did not comply, so the court issued a sanction that resulted in ending the case.

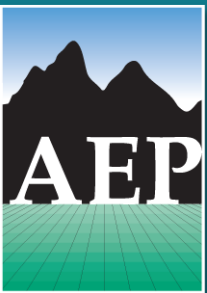




# Housing and CEQA

## ■ Other Housing Solutions

- Improve local government support (incentives, penalties, and mandates)
- Replace redevelopment funding
- Grants for specific plans and program EIRs
- Change the public perception regarding high-density housing and mixed-use development



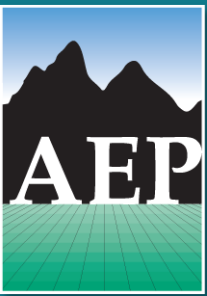
# AEP Housing Study

- **AEP is commissioning a thorough study on the relationship and impacts of CEQA on housing in CA.**
- **Based on feedback received and following the housing discussion, AEP felt it would be important for decisionmakers to have comprehensive facts on CEQA's impact on housing projects.**
- **The results of the study will be shared at the AEP Institute in August.**
- **If there are any other CEQA-related areas where you feel study is needed, please let us know.**



# California's 2017 Housing Package

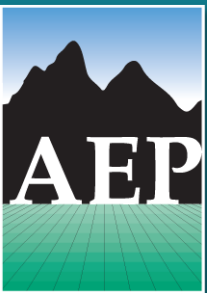




# 2017 Housing Package

## SB 35 (Wiener) Streamline Approval Process

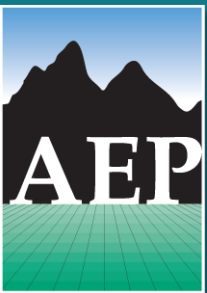
**Creates a streamlined approval process for developments in localities that have not yet met their housing targets, provided that the development is on an infill site and complies with existing residential and mixed use zoning.**



# 2017 Housing Package

## AB 73 (Chiu) Streamline and Incentivize Housing Production

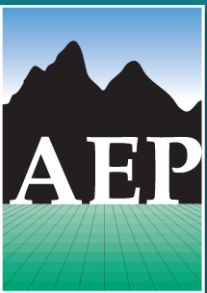
**Provides state financial incentives to cities and counties that create a zoning overlay district with streamlined zoning.**



# 2017 Housing Package

## SB 540 (Roth) Workforce Housing Opportunity Zones

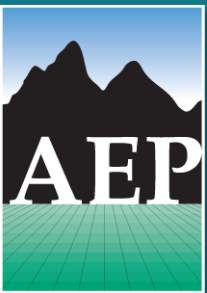
**Authorizes the state to provide planning funds to a city or county to adopt a specific housing development plan that minimizes project level environmental review.**



# 2017 Housing Package

## AB 678 (Bocanegra)/SB 167 (Skinner) Strengthen the Housing Accountability Act

**Strengthens the Housing Accountability Act by increasing the documentation necessary and the standard of proof required for a local agency to legally defend its denial of low-to-moderate-income housing development projects.**

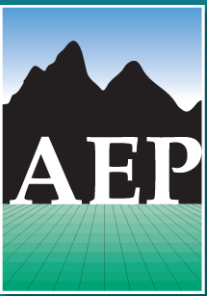


# 2017 Housing Package

## AB 1515 (Daly) Reasonable Person Standard

**States that a housing development conforms with local land use requirements if there is substantial evidence that would allow a reasonable person to reach that conclusion.**

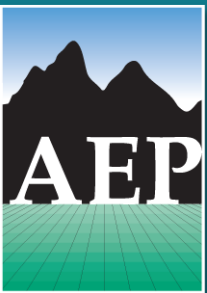




# 2017 Housing Package

## AB 72 (Santiago) Enforce Housing Element Law

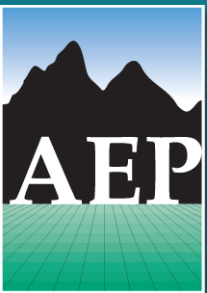
**Authorizes HCD to find a jurisdiction out of compliance with state housing law at any time (instead of the current 8-year time period), and refer any violations of state housing law to the Attorney General.**



# 2017 Housing Package

## AB 1397 (Low) Adequate Housing Element Sites

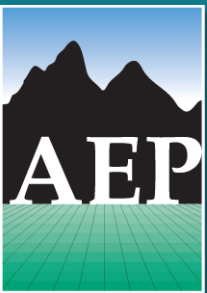
**Requires cities to zone more appropriately for their share regional housing needs and in certain circumstances require by-right development on identified sites.**



# 2017 Housing Package

## SB 166 (Skinner) No Net Loss

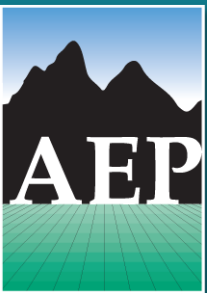
**Requires a city or county to identify additional low-income housing sites in their housing element when market- rate housing is developed on a site currently identified for low-income housing.**



# 2017 Housing Package

## AB 879 (Grayson) and related reporting bills

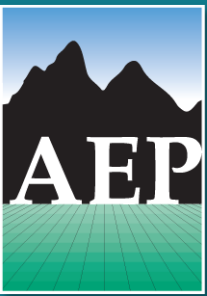
**Make various updates to housing element and annual report requirements to provide data on local implementation including number of project application and approvals, processing times, and approval processes.**



# 2017 Housing Package

## SB 2 (Atkins) Building Jobs and Homes Act

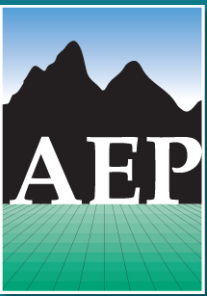
**Imposes a fee on recording of real estate documents excluding sales for the purposes of funding affordable housing.**



# 2017 Housing Package

## SB 3 (Beall) Veterans and Affordable Housing Bond Act

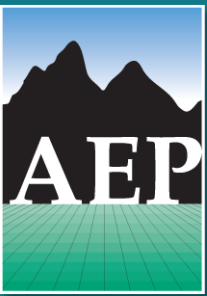
**Places a \$4 billion general obligation bond on the November 2018 general election ballot.**



# 2017 Housing Package

## AB 1505 (Bloom) Inclusionary Ordinances

**Authorizes the legislative body of a city or county to require a certain amount of low-income housing on-site or off-site as a condition of the development of residential rental units.**

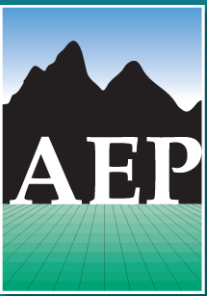


# 2017 Housing Package

## AB 1521 (Bloom) Preserve the Existing Affordable Housing Stock

**Requires the seller of a subsidized housing development to accept a bona-fide offer to purchase from a qualified purchaser, if specified requirements are met.**

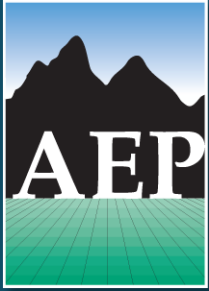




# 2017 Housing Package

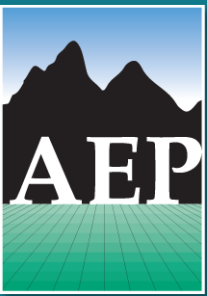
## AB 571 (E. Garcia) Low Income Housing Credits for Farmworkers

**Makes modifications to the state's farmworker housing tax credit to increase use. Authorizes HCD to advance funds to operators of migrant housing centers at the beginning of each season to allow them to get up and running.**



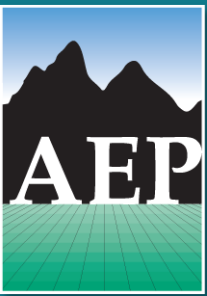
# Bills we are tracking





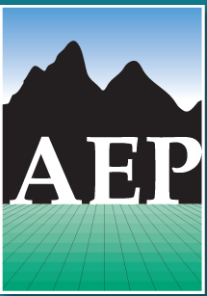
## **SB 827 (Wiener) – Housing**

- **This bill establishes an incentive for building housing near high-quality transit by exempting these developments from certain zoning standards.**
- **A development in a transit-rich housing zone will be exempted from local controls on maximum residential density, maximum floor area ratio, and minimum automobile parking spaces.**
- **Transit-rich housing is defined the same as in SB 375, which passed and is intended to help plan sustainable communities at the regional level.**



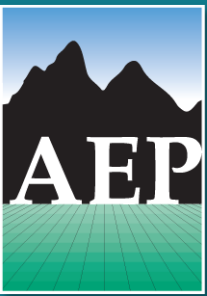
# AB 1804 (Berman) – Infill Exemption

- **Would require OPR to expand the current categorical infill exemption to apply to unincorporated areas (counties).**
- **Currently, the infill exemption, which OPR created in the Guidelines, is only available to incorporated cities.**



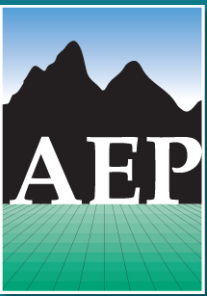
## **AB 3023 (Medina) – Noticing**

- **Would require lead agencies to post notices and environmental documents on either (1) their website, or (2) to the State Clearinghouse database at OPR.**
- **AEP is generally supportive of the creation of the State Clearinghouse at OPR as a repository for all CEQA documents in the state.**
- **However, we only support centralized noticing if done to make the process more efficient and publicly accessible, not if it makes it more cumbersome.**



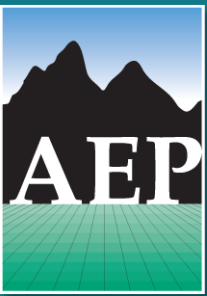
# SB 1341 (Glazer) – CEQA Litigation

- **Would require anyone challenging a lead agency decision pursuant to CEQA to disclose the entities or individuals funding the effort.**



# AB 1905 (Grayson) – CEQA Litigation

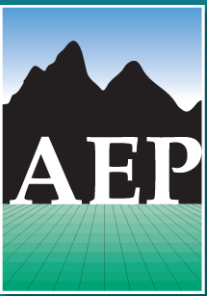
- Under CEQA, prohibit a court from staying or enjoining a transportation project that would reduce VMT, that is included in a sustainable communities strategy, and for which an environmental impact report has been certified.



# **AB 2447 (Reyes) – Environmental Justice**

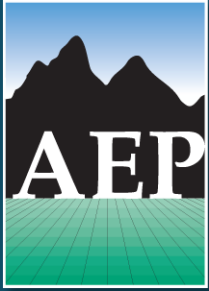
- **Add new, specific and detailed, noticing requirements under CEQA for any proposed project in or near a Disadvantaged Community.**
- **Also prohibits a project from moving forward if the EIR identified significant impacts, unless there's a finding that no discrimination is taking place by approving the project.**





# AB 3027 (Chavez) – CEQA Litigation

- **Would limit the recovery of attorneys fees in a CEQA case to only (1) a home, property or business owner within a specified mailing radius of the proposed project, or (2) an environmental non-profit with at least 50,000 members.**



# The End

Thank You for Coming!

