# New Law Requires CEQA Lead Agencies to Identify Real Parties in Notices

By Arthur F. Coon on October 11th, 2011

As I pointed out on September 13, 2011 ("Ten CEQA Litigation Mistakes To Avoid"), a CEQA plaintiff must not forget to name all real parties in interest since a failure to name indispensible parties under Code of Civil Procedure § 389 will result in dismissal. On October 9, 2011, Governor Brown signed into law a bill (AB 320 (Hill)) which makes it easier to avoid that mistake.

CEQA has long required state and local lead agencies approving a project to file a notice of determination ("NOD") where an EIR is certified or negative declaration adopted, and allowed them to file a notice of exemption ("NOE") where the project is determined to be exempt from CEQA. These notices are to be filed within five (5) working days of final project approval, and principally serve to alert the public of the agencies' final decision and CEQA determination, and to trigger CEQA's short (30 and 35 day) statutes of limitation for project challenges.

AB 320 amends CEQA's provisions to require that lead agencies approving a project must now identify in their NOD or NOE all project approval recipients. (*See* new Pub. Resources Code, §§ 21108(a)(b), 21152(a)(b).) It further provides that CEQA plaintiffs shall name, as real parties in interest, the parties so identified and that "[f]ailure to name potential persons, other than those real parties in interest [so identified] is not grounds for dismissal pursuant to Section 389 of the Code of Civil Procedure." (*See* new Pub. Resources Code, § 21167.6.5(d).)

The new law provides more comfort and certainty to CEQA plaintiffs, and will require public agencies and approval recipients to exercise more care and attention in the preparation of NODs and NOEs. The law will not apply to CEQA actions pending on or before, or seeking to challenge decisions for which an NOD or NOE was filed on or before, December 31, 2011.