

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

July 27, 1993

To: Board of Directors (Special Committee on Legislation--Action)
(Executive Committee--Action)

From: General Manager

Subject: Senate Bill 517 (Bergeson)--Mediation of Land Use Disputes

Report

Senate Bill 517, introduced by Senator Marian Bergeson, establishes a voluntary mediation procedure for land use litigation. In addition to litigation involving denials of development projects, permits, fee disputes, and amendments to general, specific and redevelopment plans, the bill applies to litigation over any decision made pursuant to the California Environmental Quality Act (CEQA) and the Cortese-Knox Local Government Reorganization Act. Although Metropolitan has no direct land use regulatory power, the legislation will directly affect Metropolitan's CEQA actions and annexation decisions.

The bill allows the superior court to invite the parties to land use litigation to mediate their dispute by selecting a mutually acceptable mediator. There is a 60 day time limit on the mediation process once a mediator is selected. The time limits normally applicable within the litigation are tolled during the mediation. The mediator has no power to make a binding decision. If the parties do not reach some compromise, the mediator reports to the court on the discussions and any issues that were settled or left to be resolved. The mediator may also report on any matters the mediator believes will assist the court in resolving the action. After the mediation, the court may schedule a settlement conference before a judge to attempt to resolve any remaining issues. The bill makes no provision on how the mediator's fees are to be paid. Presumably, the parties will agree to allocate the cost at the time they agree to enter the mediation process.

The legislative intent is to provide a cost-efficient alternative to litigation. Metropolitan should support such efforts. However, there are some problems with the bill which should be corrected. First, CEQA already has a provision requiring that the parties meet and discuss

settlement at the outset of litigation. To avoid any interpretation of the bill as creating a separate duplicative procedure, it should be amended to provide that mediation will satisfy the settlement meeting requirements of CEQA.

Second, the report which the mediator is required to make to the court may prejudice the governmental agency when the case is litigated on its merits. The standard of review which is generally to be applied in CEQA actions is whether any substantial evidence supports the government agency's decision. This is a standard that is favorable to the agency. In contrast, the mediator's role is only to seek a compromise, and his or her report will be based on the settlement efforts and proposals made by the parties. The report will likely focus on the mediator's perception of what a reasonable compromise would be and could influence the decision-making process of the court. This problem can easily be resolved by amending the bill to provide that the judge hearing the action on its merits shall not consider the mediator's report. The bill already provides that the judge hearing the matter shall not be the same judge who conducts the settlement conference. In the alternative, the bill may be amended to limit the mediator's report to a statement of the issues which have been settled and those that remain to be resolved, without stating any recommendation.

With these or similar amendments, Metropolitan should support the bill.

Board Committee Assignments

This letter is referred for action to:

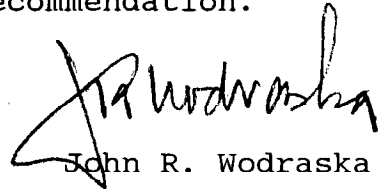
The Special Committee on Legislation because of its authority to review and make recommendations regarding legislation pursuant to Administrative Code section 2571 (a) and (b).

The Executive Committee because of its authority to study, advise and make recommendations on legislation affecting the District pursuant to Administrative Code section 2417 (a).

Recommendation

SPECIAL COMMITTEE ON LEGISLATION AND EXECUTIVE COMMITTEE FOR ACTION.

It is recommended that the Board of Directors express their support of Senate Bill 517 if it is amended to provide that mediation satisfies the settlement meeting provisions of CEQA, and that the mediator's report to the court if there is no settlement, be limited to a statement of the issues which have been settled and those that remain to be resolved, without stating any recommendation.



John R. Wodraska

AMENDED IN SENATE JUNE 23, 1993

AMENDED IN SENATE MAY 17, 1993

AMENDED IN SENATE MAY 10, 1993

AMENDED IN SENATE APRIL 12, 1993

SENATE BILL

No. 517

Introduced by Senator Bergeson

March 1, 1993

An act to add Chapter 9.3 (commencing with Section 66030) to Division 1 of Title 7 of the Government Code, relating to land use.

LEGISLATIVE COUNSEL'S DIGEST

SB 517, as amended, Bergeson. Land use: mediation and resolution of land use disputes.

(1) Existing law contains numerous provisions relating to the use of land: ~~Numerous provisions of existing law authorize including provisions authorizing the bringing of actions in the superior court relating to disputes arising over the use of land use disputes.~~

This bill would express specified findings and declarations of the Legislature relating to litigation arising out of land use disputes. The bill would also express legislative intent in this regard, including a statement that it is not the intent of the Legislature to interfere with litigants' ability to pursue court remedies. The bill would; ~~notwithstanding any other provision of law, require any action brought in the superior court relating to any of several specified land/use/related topics to be subject to a mediation proceeding provide that specified land use actions brought in superior court may be subject to a mediation proceeding, as specified, conducted, with specified exceptions, by the council of governments~~

having jurisdiction in the county where the dispute arose; ~~and . The bill would establish procedures for initiating the mediation process, and for selecting mediators, as specified a mediator. The bill would require the mediator to file a report, as specified, within a specified time; and would establish mediation cost waiver provisions for indigent parties. The bill It would authorize the Judicial Council or courts to adopt rules, procedures, and guidelines as necessary to implement the chapter. Because the bill would create new duties for councils of governments, the bill would impose a state/mandated local program.~~

~~(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes no. State-mandated local program: yes no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 9.3 (commencing with Section
2 66030) is added to Division 1 of Title 7 of the Government
3 Code, to read:

4
5 CHAPTER 9.3. MEDIATION AND RESOLUTION OF LAND
6 USE DISPUTES
7

8 66030. (a) The Legislature finds and declares all of
9 the following:

10 (1) Current law provides that aggrieved agencies,
11 project proponents, and affected residents may bring suit
12 against the land use decisions of state and local
13 governmental agencies. In practical terms, nearly anyone
14 can sue once a project has been approved.

15 (2) Contention often arises over projects involving
16 local general plans and zoning, redevelopment plans, the
17 California Environmental Quality Act (Division 13
18 (commencing with Section 21000) of the Public

1 Resources Code), development impact fees, annexations
2 and incorporations, and the Permit Streamlining Act
3 (Chapter 4.5 (commencing with Section ~~65920~~ 65920)).

4 (3) When a public agency approves a development
5 project that is not in accordance with the law, or when
6 the prerogative to bring suit is abused, lawsuits can delay
7 development, add uncertainty and cost to the
8 development process, make housing more expensive, and
9 damage California's competitiveness. This litigation
10 begins in the superior court, and often progresses on
11 appeal to the Court of Appeal and the Supreme Court,
12 adding to the workload of the state's already
13 overburdened judicial system.

14 (b) It is, therefore, the intent of the Legislature to help
15 litigants resolve their differences by establishing formal
16 mediation processes for land use disputes ~~as a requisite~~
17 ~~step before land use litigation may proceed in the~~
18 ~~Superior Court.~~ In establishing these mediation
19 processes, it is not the intent of the Legislature to
20 interfere with the ability of litigants to pursue remedies
21 through the courts.

22 66031. (a) Notwithstanding any other provision of
23 law, any action brought in the superior court relating to
24 any of the following subjects ~~shall~~ may be subject to a
25 mediation proceeding conducted pursuant to this
26 chapter:

27 (1) The approval or denial by a public agency of any
28 development project.

29 (2) Any act or decision of a public agency made
30 pursuant to the California Environmental Quality Act
31 (Division 13 (commencing with Section 21000) of the
32 Public Resources Code).

33 (3) The failure of a public agency to meet the time
34 limits specified in Chapter 4.5 (commencing with Section
35 65920), commonly known as the Permit Streamlining
36 Act, or the Subdivision Map Act (Division 2
37 (commencing with Section 66410)).

38 (4) Fees determined pursuant to Chapter 5
39 (commencing with Section 66000).

40 (5) The adequacy of a general plan or specific plan

1 adopted pursuant to Chapter 3 (commencing with
2 Section 65100).

3 (6) The validity of any sphere of influence, urban
4 service area, change of organization or reorganization, or
5 any other decision made pursuant to the Cortese-Knox
6 Local Government Reorganization Act (Division 3
7 (commencing with Section 56000) of Title 6).

8 (7) The adoption or amendment of a redevelopment
9 plan pursuant to the Community Redevelopment Law
10 (Part 1 (commencing with Section 33000) of Division 24
11 of the Health and Safety Code).

12 (b) Within 20 days of filing an action, the court ~~shall~~
13 ~~may~~ invite the parties to ~~recommend to the court~~
14 ~~consider resolving their dispute by selecting~~ a mutually
15 acceptable person, organization, or agency to serve as a
16 mediator. ~~If the court determines that the person,~~
17 ~~organization, or agency can serve as a mediator, the court~~
18 ~~shall designate that person, organization, or agency to~~
19 ~~perform the functions described in this chapter.~~

20 ~~(c) If the parties do not recommend a person,~~
21 ~~organization, or agency to serve as a mediator or if the~~
22 ~~court determines that the person, organization, or agency~~
23 ~~recommended by the parties cannot serve as a mediator,~~
24 ~~the court may designate a mediator.~~

25 ~~(d)~~

26 (c) In selecting a person, organization, or agency to
27 serve as a mediator, the ~~court~~ parties shall consider the
28 following:

29 (1) The council of governments having jurisdiction in
30 the county where the dispute arose.

31 (2) Any subregional or countywide council of
32 governments in the county where the dispute arose.

33 (3) The Office of Permit Assistance within the Office
34 of Planning and Research, pursuant to its authority in
35 Article 1 (commencing with Section 65920) of Chapter
36 4.5.

37 (4) Any other person, organization, or agency with
38 experience or training in mediation.

39 66032. (a) Notwithstanding any provision of law to
40 the contrary, all time limits with respect to an action shall

1 be tolled while the mediator conducts the mediation,
2 pursuant to this chapter.

3 (b) Mediations conducted by a mediator pursuant to
4 this chapter shall not be considered meetings of a
5 legislative body pursuant to the Ralph M. Brown Act
6 (Chapter 9 (commencing with Section 54950) of Part 1 of
7 Division 2 of Title 5), nor shall they be considered
8 meetings of a state body pursuant to the Bagley-Keene
9 Open Meeting Act (Article 9 (commencing with Section
10 11120) of Chapter 1 of Part 1 of Division 3 of Title 2),
11 provided that this subdivision shall not be construed to
12 permit an "action taken" by either a legislative body or
13 a state body in a closed session.

14 66033. (a) At the conclusion of the mediation, but no
15 longer than 60 days after the commencement of the
16 mediation, the mediator shall file a report with the court
17 including each of the following:

18 (1) The legal and factual contentions raised by each
19 party.

20 (2) The contentions that were settled or otherwise
21 agreed upon and the nature of that agreement.

22 (3) The efforts made by each party to settle the
23 unresolved issues.

24 (4) The list of participants in the mediation.

25 (5) Any other matters that the mediator believes will
26 assist the court in resolving the action or implementing
27 the results of the mediation.

28 (b) Any decision by a public agency to implement the
29 results of the mediation shall be taken in accordance with
30 law or in accordance with the order of the court.

31 ~~(c) The mediator may recommend to the court a fair~~
32 ~~assessment of fees to cover the actual costs of the~~
33 ~~mediation. After considering the recommendation of the~~
34 ~~mediator, the court may assess fees on the parties. Upon~~
35 ~~an application for waiver of additional court fees and~~
36 ~~costs, the amount of actual mediation costs assessed any~~
37 ~~indigent party shall be waived, pursuant to Rule of Court,~~
38 ~~Rule 985(j)(6).~~

39 66034. ~~(a) Failure of any party to participate in a~~
40 ~~mediation conducted pursuant to this chapter, without~~

1 good cause, may result in an imposition of sanctions by
2 the court.

3 (b) Failure of the petitioner or plaintiff to participate
4 in a mediation conducted pursuant to this chapter,
5 without good cause, shall result in dismissal, with
6 prejudice, of the action.

7 ~~66035.~~

8 66034. If the mediation does not resolve the action, the
9 court may, in its discretion, schedule a settlement
10 conference before a judge of the superior court. If the
11 action is later heard on its merits, the judge hearing the
12 action shall not be the same judge who conducted the
13 settlement conference, except in counties with only one
14 judge of the superior court.

15 ~~66036.~~

16 66035. The Judicial Council or any court may adopt
17 rules, procedures, or guidelines necessary to implement
18 this chapter.

19 ~~66037.~~

20 66036. By January 1, 2000, the Office of Permit
21 Assistance within the office of Planning and Research, in
22 cooperation with the Judicial Council, shall report to the
23 Legislature regarding the implementation of this
24 chapter. The office shall consult with persons and interest
25 groups with knowledge of the mediation process, and
26 affected public agencies, including, but not limited to,
27 councils of governments. The report may recommend
28 the extension of the chapter, changes to the chapter, or
29 the repeal of the chapter.

30 ~~66038.~~

31 66037. No action filed on or after January 1, 2001, shall
32 be subject to this chapter unless a later enacted statute
33 which is chaptered before January 1, 2001, deletes or
34 extends this date.

35 SEC. 2. No reimbursement is required by this act
36 pursuant to Section 6 of Article XIII B of the California
37 Constitution because the local agency or school district
38 has the authority to levy service charges, fees, or
39 assessments sufficient to pay for the program or level of
40 service mandated by this act. Notwithstanding Section

1 17580 of the Government Code, unless otherwise
2 specified in this act, the provisions of this act shall become
3 operative on the same date that the act takes effect
4 pursuant to the California Constitution.