

Transit-Served, Urban Infill Projects Gain CEQA Benefits

SB 743 and CEQA - A Practitioner's Summary September 2013

Some media and internet opinion pieces have expressed disappointment about the outcome of this year's round of CEQA "modernization" efforts. The primary CEQA bill that emerged from the process appeared, at first anyway, to be focused only on creating special procedures for a single project, the downtown Sacramento arena.

We offer a different, more encouraging view of the outcome.

To supporters of transit-served, urban infill development, the Legislature and Governor have delivered meaningful CEQA improvements. [SB 743](#), introduced by Senate Pro Tem Darrel Steinberg, was approved by the Legislature at the end of session and signed into law by Governor Brown. While originally drafted to streamline CEQA for Sacramento's downtown arena, it also became a vehicle for providing opportunities to ease the path of qualifying urban infill development near major transit stops in metropolitan regions statewide and, perhaps, provided some guideposts for future CEQA enhancements.

Although time will tell, from an environmental practitioner's perspective, SB 743's approach to CEQA streamlining of transit-served, urban infill projects may be the most practical and useful one enacted to date, especially where Sustainable Communities Strategies (SCS) have been adopted that meet greenhouse gas (GHG) reduction targets, pursuant to 2008's SB 375 (also introduced by Senator Steinberg).

CEQA Enhancements for Qualifying Urban Infill Projects

The CEQA changes in SB 743 are focused on either (1) transit-oriented infill projects, which are projects that consist of a residential use, mixed use, or commercially zoned employment center use (with a floor area ratio of at least 0.75) and that are located on an infill site within a transit priority area, or (2) for certain amendments, projects within a transit priority area in general. The bill does not alter CEQA for projects outside of transit priority areas (except that the Office of Planning and Research [OPR] has the discretion to develop alternative transportation impact metrics and thresholds in the CEQA guidelines – see below).

The bill offers practical definitions of "infill site" and "transit priority areas" that are not overly laden with conditions, as has been the case in some past efforts to streamline CEQA for urban infill. An infill site is defined as a lot in an urban area that has been previously developed or a vacant site where at least 75 percent of the perimeter adjoins or is separated only by an improved public right-of-way (e.g., a public street) from parcels developed with qualified urban uses. A transit priority area is the area located within ½ mile of an existing major transit stop or one planned in the Regional Transportation Plan (RTP) for implementation in the adopted Transportation Improvement Program (TIP), i.e., the near-term phase of RTP implementation. The definition of major transit stop is in existing law at CEQA Section 21064.3; it includes a rail transit station, ferry terminal served by bus or rail, and a bus stop with two or more lines that provide transit service at 15 minute intervals or better during peak commute periods.

The most interesting CEQA revisions are described below (with our commentary in italics) and presented in the following table:

- ▶ For transit-oriented infill projects, aesthetic and parking impacts are not significant effects on the environment.
This can be a big help, because both issues have been used in past CEQA lawsuits on infill projects.
- ▶ For projects in a transit priority area, OPR is required to develop CEQA guidelines revisions to establish alternative transportation thresholds of significance, recognizing the multi-modal character of urban areas and a priority to reduce GHGs. Such CEQA guidelines revisions could also apply to projects in general, although OPR is able to restrict the changes to transit priority areas. The draft guidelines must be circulated by July 1, 2014.
If they are well crafted, the alternative transportation thresholds may help reinforce the importance of multi-modal urban mobility enhancements (e.g., transit, bicycle-pedestrian facilities), rather than just roadway and intersection expansions.
- ▶ When the guidelines revisions go into effect, traffic level of service (LOS) or similar measures of vehicular capacity or traffic congestion will no longer be considered significant environmental effects for projects in a transit priority area.
The role of LOS in CEQA documents has been heavily debated in recent years.
- ▶ The most intriguing and potentially effective streamlining strategy relates to a new exemption opportunity for infill projects that meet certain qualifications (which, in this case, appear to be practical and achievable). A transit-oriented infill project can be exempt from CEQA if it is consistent with a specific plan for which an EIR was prepared, and is also consistent with the use, intensity, and policies of an SCS or APS that is certified by the Air Resources Board as meeting its GHG reduction targets. Also, in an amendment to the Government Code regarding Congestion Management Plans, a city or county may designate an “infill opportunity zone” by resolution, if it is consistent with the general plan and any applicable specific plan, and is a transit priority area within the adopted SCS or APS. This zone becomes exempt from LOS standards in the congestion management plan (allowing more flexible and multi-modal planning for mobility).
What this means is within metropolitan regions where the SCS is complete (which should be all the major metropolitan areas within a couple years), a jurisdiction can adopt a specific plan with an EIR covering development in its transit priority areas, then entirely exempt infill projects that are consistent with the specific plan from further CEQA documentation and from the need to meet LOS standards. CEQA’s existing Section 21166 applies, however, as a reasonable safety net in the event that the project features or circumstances change in a way that requires major revisions in the EIR (e.g., new or substantially more severe environmental effects).
- ▶ The bill makes it clear that lead agencies must still consider the air quality, GHG, noise, safety, and other environmental effects associated with transportation, except that parking shall not support a significant impact finding. Also, historic or cultural resources must still be considered (i.e., they are not exempted as being in the definition of “aesthetic impacts”).
While already covered in existing law, these provisions are helpful reminders that the environmental effects of transportation are still within the purview of CEQA.
- ▶ Lead agencies may adopt thresholds that are more protective of the environment.
Some argue this allows a lead agency to reinstate aesthetic and parking impacts, but at least it requires an affirmative action of adopting thresholds to do so.

Key CEQA Streamlining Opportunities in SB 743, Statutes of 2013

CEQA Amendment Provision:	Applicable to:	Qualifying Factors:
Aesthetics and parking are not significant impacts.	Transit-oriented infill projects.	<ul style="list-style-type: none"> ✓ Proposed for residential, mixed use, or employment center use (the latter, at least 0.75 FAR). ✓ Located on an infill site. ✓ Located in transit priority area, i.e., within ½ mile of a major transit stop (existing or planned for near term implementation)
Alternative transportation thresholds of significance in CEQA guidelines. Once adopted, LOS and similar vehicular capacity measures are not significant effects.	Transit priority areas (mandatory) and possibly outside these areas (at OPR's discretion)	<ul style="list-style-type: none"> ✓ Located in transit priority area, i.e., within ½ mile of a major transit stop (existing or planned for near term implementation). ✓ Depending on OPR-prepared guidelines and criteria, projects outside transit priority areas may also qualify. ✓ Alternative thresholds must prioritize multi-modal transportation and GHG reduction.
Complete CEQA exemption for qualifying infill projects	Transit-oriented infill projects	<ul style="list-style-type: none"> ✓ Proposed for residential, mixed use, or employment center use (the latter, at least 0.75 FAR). ✓ Located on an infill site. ✓ Located in transit priority area, i.e., within ½ mile of a major transit stop (existing or planned for near term implementation). ✓ Located in metropolitan planning areas where an SCS or APS has been adopted pursuant to SB 375, Statutes of 2008. ✓ Must be consistent with a specific plan for which an EIR was certified. ✓ Must be consistent with an SCS or APS that ARB has concurred will meet GHG reduction targets. ✓ Subject to the PRC Section 21166 safety net in existing law, if circumstances or project descriptions change enough to cause major EIR revisions.

SB 743 also made it clear that general plans, zoning codes, conditions of approval, thresholds, or other planning requirements may still be adopted to address any police power or other existing authority (including those related to transportation). Lead agencies may still consider aesthetics in local design review ordinances or based on other discretionary powers.

Sacramento Downtown Arena

If you are not interested in the Sacramento's proposed downtown arena, you can stop reading here...except that some of the CEQA provisions for the arena may have broader significance, if the Legislature were to apply them to "general CEQA" in the future.

SB 743 appears to try to balance reducing the time necessary for project approval and implementation with maintaining environmental protection and public input.

Requirements for the downtown Sacramento arena are established for minimizing traffic congestion, minimizing air quality impacts, maintaining carbon neutrality, reducing vehicle miles travelled for NBA event attendees, and reducing GHG emissions. Also, various public notice, information, and comment requirements are imposed. Notably, at the start of the Draft EIR circulation period, the City must make documents on which the Draft EIR relied available to the public in a readily accessible electronic format.

In return, streamlining of the public comment and litigation processes is authorized. For instance, the City need not consider written comments submitted after the close of public comment periods, unless they apply to new information introduced by the City, new information that could not have been reasonably known, or project changes after the public comment period. Also, non-binding mediation may be requested by any commenter on the Draft EIR, which is intended to provide an opportunity to resolve disagreements and deter litigation. If CEQA litigation occurs, it must be resolved within 270 days of the date the administrative record is certified, and project construction cannot be stayed or enjoined, unless there is an imminent threat to public health or safety or important, unforeseen cultural resources are encountered and would be permanently, adversely affected.

From the practitioner's view point, certain of these arena-specific provisions would have streamlining value without reducing public input or environmental protection, if applied to CEQA more generally. Perhaps something for the Legislature to consider next year...

If you have questions about SB 743, or other CEQA "current events," please feel free to contact:

Curtis E. Alling, AICP
Principal
Ascent Environmental, Inc.- Sacramento
916.930.3181
curtis.alling@ascentenvironmental.com

Gary D. Jakobs, AICP
Principal
Ascent Environmental, Inc. - Sacramento
916.930.3182
gary.jakobs@ascentenvironmental.com