

CEQA and Infill: A Good Year in California

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Yes, the last-minute CEQA bills that Rick detailed were controversial. Yes, the bills carving out an expedited process for a sports stadium and \$100 million projects, as Eric discussed, make many people question the process. But for those who care about climate change and infill, these bills will likely lead to better environmental outcomes than the traditional CEQA process would have produced. And they certainly offer more for environmentalists than critics seem to acknowledge.

Let's start with the most controversial bill, SB 292, which is the carve-out for the proposed AEG football stadium in downtown Los Angeles. In exchange for a fast-tracked environmental review, AEG, the stadium developer, will ensure that there will be zero net greenhouse gas emissions from spectators traveling to the stadium. In addition, AEG must ensure that that trip ratios (total annual private car trips to the stadium divided by annual spectators) must be 90% or less of the NFL stadium with the lowest trip ratio in the country. Mitigation measures to achieve this outcome could include developer funding for shuttle buses and improved public transportation, among other methods. Meanwhile, any carbon offsets purchased by AEG for the project must be from within the South Coast Air Basin. Overall, we can debate fairness issues and process with this legislation, but to me these conditions appear to be remarkably stringent and could result in significant transit investments that would benefit all of downtown Los Angeles, a prime infill area for the region. The key will be aggressive enforcement by the lead agency in Los Angeles.

Next up is AB 900, a bill that Eric criticized, which also fast-tracks CEQA review by placing legal challenges to environmental review within the Court of Appeals and providing a strict timeline for judicial action. This bill has some constitutional and technical issues that will need to be cleaned up, but let's look at the details. Critics focus on the potential cronyism of the \$100 million investment threshold, which limits the application to sports stadiums, hospitals, large office towers, and other big projects. But a more significant condition from an environmental perspective is that the projects must result in no net increases in greenhouse gas emissions. This will be a challenging condition to meet for projects of this size and will result in substantial mitigation measures. In addition, these projects must be infill in nature to qualify (as well as certain types of clean energy projects) and must have energy and transit efficiency measures baked in. As a result, they could lead to badly-needed investment in downtown areas in California, which would provide more opportunities for infill in general. Perhaps as consolation for those who dislike this bill, it will sunset in 2015. And given the poor financial climate in the real estate investment market, there are not many developers that can find financing right now for projects this size anyway.

Last but not least is SB 226, which is potentially the most significant CEQA amendment for infill that the state has seen. Rick discussed its myriad provisions, but the most important for infill are Sections 6 and 7. Basically, the bill allows qualified infill projects that meet new statewide performance standards to more easily avoid environmental review for impacts that local governments have already analyzed in their prior planning efforts or have mitigated through local development standards. The state already has "tiering" provisions to allow this sort

of streamlined analysis from prior programmatic review, but the tiering provisions are not commonly used due to conflicting legal precedent and fear that they will not insulate projects from litigation. SB 226 tightens these provisions and provides a higher legal standard for challenges to projects that invoke tiering.

More importantly, SB 226 applies to a wide range of infill projects. Previous infill exemptions under CEQA have been overly restrictive in their criteria for eligible projects (the list to qualify a project under the SB 375 exemptions, for example, would make even a seasoned CEQA attorney nod off). As a result, they're rarely used (the partial exception being regulatory exemptions for infill, promulgated over a decade ago, called a "categorical exemption"). But the definition in SB 226 is much more expansive, allowing a wider type of uses while still limiting the projects to developed, urbanized areas.

The rubber will hit the road on this bill, assuming the governor signs it, when it comes to developing the performance standards. The Governor's Office of Planning and Research will oversee this process with public input. The standards must further the state's AB 32 greenhouse goals, as well as SB 375 objectives, among other environmental conditions. Ideally, these standards will set a high bar to allow exceptional infill projects to qualify and simultaneously to encourage mediocre projects to improve their environmental performance. The challenge will be to create standards that are stringent yet realistic.

As with any legislation, these three CEQA bills involve trade-offs. Some stakeholders may be at a disadvantage with the new rules, such as neighborhood groups and perhaps environmental justice advocates worried about gentrification and other impacts on low-income communities in infill areas. However, the bills still allow the CEQA process to continue on the specific infill projects at issue, but the process is now either fast-tracked or weighted toward advance environmental review. Ultimately, if the state's goal is to decrease carbon emissions and ensure that new development goes inward and not outward, these CEQA bills, particularly SB 226, represent a positive step in that direction.