
THIRD READING

Bill No: AB 2731
Author: Gloria (D), et al.
Amended: 8/27/20 in Senate
Vote: 21

SENATE ENVIRONMENTAL QUALITY COMMITTEE: 5-0, 8/14/20
AYES: Allen, Hill, Skinner, Stern, Wieckowski
NO VOTE RECORDED: Bates, Dahle

SENATE APPROPRIATIONS COMMITTEE: Senate Rule 28.8

ASSEMBLY FLOOR: 77-0, 6/10/20 (Consent) - See last page for vote

SUBJECT: California Environmental Quality Act: City of San Diego: Old
Town Center redevelopment

SOURCE: City of San Diego
San Diego Association of Governments

DIGEST: This bill provides that a specific environmental impact statement satisfies the requirements of the California Environmental Quality Act (CEQA) for a transit-oriented development project, within the Old Town Center site of San Diego; and creates special administrative and judicial review procedures for a specific transit and transportation facilities project, also located within the Old Town Center site, that requires the courts, to the extent feasible, to resolve specific CEQA actions against the project within 270 days.

Senate Floor Amendments of 8/27/20 require the environmental baseline for greenhouse gas (GHG) emissions be established based on the physical conditions for the project site at the time of notice of preparation for the project-level environmental impact report of the transit and transportation facilities project; and require that the offsets credits used to meet the GHG emissions reduction requirement reduce the emissions of criteria air pollutants or toxic air contaminants and are undertaken from sources in the community within which the project is located or adjacent communities.

Senate Floor Amendments of 8/25/20 make various technical changes to specified labor requirements that a project must meet to be eligible for this bill's proposed CEQA streamlining; and make other technical, but nominally substantive changes.

ANALYSIS:

Existing law:

- 1) Requires federal agencies, under the National Environmental Protection Act (NEPA), to assess the environmental effects of their proposed actions prior to making decisions. Actions include making decisions on permit applications, adopting federal land management actions, and constructing highways and other publicly-owned facilities. (42 United States Code §4321 et seq.)
- 2) Provides for the following, under CEQA:
 - a) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration, mitigated declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines). (Public Resources Code (PRC) §21000 et seq.)
 - b) Sets requirements relating to the preparation, review, comment, approval and certification of environmental documents, as well as procedures relating to an action or proceeding to attack, review, set aside, void, or annul various actions of a public agency on the grounds of noncompliance with CEQA. (PRC §21165 et seq.)

This bill:

- 1) Provides that the requirements of CEQA satisfied by a specific Environmental Impact Statement (EIS) for a transit-oriented development (TOD) project, as defined by the bill, that:
 - a) Is proposed within a transit priority area;
 - b) Is undertaken to implement and is consistent with the land use standards approved by the Navy and San Diego Association of Governments (SANDAG) for the Old Town Center (OTC) site and the site plan for which an EIR has been certified on or before December 31, 2022, and the site plan meets a vehicle miles traveled reduction of 25% below the regional average vehicle miles traveled identified in a sustainable communities strategy (SCS) or alternative planning strategy (APS);

- c) Is consistent with the general use designation, density, building intensity, and applicable policies specified in the OTC site in either a SCS or APS for which the State Air Resources Board (ARB) has accepted SANDAG's determination that the SCS or the APS would achieve the GHG emissions reduction targets; and
 - d) Complies with certain labor requirements specified by the bill.
- 2) Requires further environmental review of such projects, only, if:
- a) Substantial changes are proposed which will require major revisions to the EIR.
 - b) Substantial changes occur with respect to the circumstances under which the project is being undertaken will require major revisions in the EIR.
 - c) New information, which was not known and could not have been known at the time the EIR was certified, becomes available.
- 3) Defines "transit and transportation facilities" (TFF) to mean a multimodal regional transportation facility, including a central mobility hub located in the Old Town Center site and transportation linkages that connect the central mobility hub to the regional transportation system and that connect the central mobility hub to the San Diego International Airport.
- 4) Subjects a TFF project to certain environmental standards including that any facility that is part of the project obtains Leadership in Energy and Environmental Design gold certification for new construction within one year of project completion, that the project does not result in any net additional emission of GHGs, that the project has a transportation demand management program, and the project achieves at least 25% reduction in vehicle miles traveled as compared to the regional average vehicle miles traveled identified in a sustainable communities strategy or alternative planning strategy.
- 5) Requires Judicial Council, by January 1, 2022, to amend certain California Rules of Court that would apply to an action or proceeding brought to attack, review, set aside, void, or annul the certification of an EIR for the TFF project, or the granting of any project approvals, requiring lawsuits and any appeals to be resolved, to the extent feasible, within 270 business days of certification of the record of proceedings (which must occur within five days of the lead agency filing the notice of determination on the project).
- 6) Establishes special procedures for the preparation and certification of the record of proceedings for the TFF project including, among others, that the lead agency prepare the record of proceedings concurrently with the administrative

process, all documents in the record be posted on the lead agency's internet website, the lead agency make the draft EIR and documents relied on in the preparation of the EIR public, and any dispute arising from the record of proceedings be resolved by the superior court.

- 7) Establishes special procedures for public participation in CEQA review of the TTF project including, among others, that the project EIR include a specified notice, the lead agency conducts an informational workshop, the lead agency and project proponent participate in nonbinding mediation with parties that submits comments and request mediation, and the lead agency is permitted to ignore written comments submitted after the close of the public comment period.
- 8) Subjects the TTF project and TOD projects to specified labor requirements.

Background

- 1) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an environmental impact report (EIR).

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project.

- 2) *CEQA and NEPA.* NEPA is the federal equivalent of CEQA. If the project involves a "major federal action" with significant impacts, an EIS under NEPA may be required. Sometimes a joint EIR/EIS can be used to satisfy the requirements of both CEQA and NEPA.

When a project is subject to CEQA and NEPA, local and state agencies are encouraged to cooperate with federal agencies through joint planning processes, joint research and studies, joint public hearings, and joint environmental documents. CEQA allows a lead agency to use a federal document in the place of an EIR or ND if it believes that the federal document meets CEQA requirements.

- 3) *Streamlined administrative review*. CEQA provides for streamlined processes for preparing EIRs and other CEQA documents that enable public agencies to use various special types of EIRs to simplify preparation and avoid duplication. These various documents include “program” EIRs for a series of related actions that can be collectively characterized as a single project, “staged” EIRs for sequential projects, and “master” EIRs for community-level projects.

CEQA also provides for “tiering”—the process of analyzing general projects in a broad EIR, followed by focused review of subsequent environmental projects that are narrower in scope, thereby allowing an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval.

- 4) *AB 900 projects*. In addition to the above-described streamlining provisions, existing law provides a framework for expediting CEQA review of major projects. AB 900 (Buchanan, Ch. 354, Stats. 2011), the Jobs and Economic Improvement Through Environmental Leadership Act of 2011, established specified administrative and judicial review procedures for the review of the environmental review documents and public agency approvals granted for designated residential, retail, commercial, sports, cultural, entertainment, or recreational use projects. To qualify, the project must meet specified objective environmental standards. The Legislature has also applied similar expedited frameworks for specific sports stadiums that meet certain objective environmental standards.
- 5) *AB 900 lawsuits*. Of the projects that have been subject to AB 900, or similar expedited judicial review, four projects have been challenged under CEQA: (1) the Sacramento Kings Arena (*Adriana Gianturco Saltonstall et al. v. City of Sacramento*), (2) the Golden State Warriors Arena (*Mission Bay Alliance et al. v. Office of Community Investment and Infrastructure* and a separate non-CEQA lawsuit), (3) 8150 Sunset Boulevard Mixed Use Development which had 4 CEQA challenges to the project (*Los Angeles Conservancy v. City of Los Angeles*; *Fix the City, Inc. v. City of Los Angeles*; *JDR Crescent v. City of Los Angeles*; and *Manners v. City of Los Angeles*), and (4) the Los Angeles Clippers Arena (*Saulo Eber Chan; MSG Forum, LLC v. Gavin C. Newsom; Joint Legislative Budget Committee*). The first three challenges have demonstrated that expedited judicial review does not always guarantee a 270 day timeframe and cases can take longer to resolve due to, among other reasons, (1) ambiguity if the 270 days applies to business days or calendar days and if it includes appeals to the Supreme Court, (2) non-CEQA related actions which are not subject to the 270 day timeframe that are filed in addition to CEQA actions, or

(3) consolidation of many, and sometimes complicated, actions. The fourth action, against the Los Angeles Clippers Arena, is still pending.

Comments

- 1) *Purpose of Bill.* According to the author, “For decades, the San Diego region has explored ways to provide better connectivity to San Diego International Airport, the busiest single-runway airport in the nation. The airport anticipates an increase of 16 million annual passengers by 2050, which would result in a total of 40 million passengers annually. The projected increase in airport passengers is expected to exceed the capacity of current airport roadway connections. Due to the anticipated future growth combined with limited ground transit access to the airport, SANDAG, in partnership with the City of San Diego, the Port of San Diego, and the San Diego County Regional Airport Authority, has made it a chief priority to identify a solution for a direct transit connection to the airport. Optimally positioned near the airport, the OTC presents great potential to provide an enduring solution to the region’s longstanding challenge of airport connectivity and is one of several sites being considered for development of a Central Mobility Hub.

“On September 19, 2019, SANDAG and the Navy signed an initial agreement to explore options for redevelopment of the OTC. On January 23 of this year, SANDAG signed the Navy OTC Revitalization Agreement, which lays out a timeline for the Navy and SANDAG to explore the redevelopment of the OTC site to include a Central Mobility Hub. On January 24, the Navy began an environmental analysis of the intended revitalization project in accordance with NEPA. This analysis will enable the Navy to prepare an EIS outlining potential environmental impacts associated with the project. SANDAG will cooperate with the Navy to supplement this environmental analysis to be technically sufficient under the California Environmental Quality Act (CEQA.) SANDAG has committed \$50 million in funding for continued Central Mobility Hub analysis, which includes environmental analysis, preliminary engineering, and complete corridor planning.

“As proposed to be amended, AB 2731 will strengthen environmental mitigation efforts for both the redevelopment of the NAVWAR facilities and the Central Mobility Hub and will enhance public participation and government transparency while providing certainty of process to allow both projects to begin construction in relatively short order. In light of the COVID-19 pandemic, this project, and the resulting public comment that will follow, will be essential to San Diego’s economic recovery.”

- 2) *Project tiering for TOD projects.* AB 2731 permits the EIS, which is being prepared by the Navy, to be used as an EIR if the EIS complies with CEQA. Additionally, AB 2731 allows a TOD project to use that EIS as a program EIR, a process which is also consistent with existing CEQA streamlining provisions, if that TOD project meets certain criteria. To be eligible for tiering, the TOD must (1) implement and be consistent with land use standards approved by the Navy and SANDAG for the OTC site and the site plan for which an EIR has been certified before December 31, 2022, and (2) be consistent with the general use designation, density, building intensity, and applicable policies specified in the OTC site in either a SCS or APS that would achieve the GHG emission reduction targets. Neither of these documents have been approved or accepted yet.

Without having an approved site plan or SCS to refer to, it is difficult to know the exact type of project being streamlined. However, AB 2731 also requires, further environmental review of a TOD project if there are substantial changes or new information becomes available.

- 3) *Guaranteed Time Frames.* Current law requires the courts to give CEQA-related cases preference over “all other civil actions... so that the action or proceeding shall be quickly heard and determined” (PRC §21167.1). In addition to this existing mandate, AB 2731 requires the courts, to the extent feasible, to complete the judicial review process for the TTF project within 270 business days. Such mandates on a court delay access for other, unknown cases such as medical malpractice suits, wrongful death suits, or contract disputes, as well as potentially exacerbating a court’s backlog on civil documents such as filing a new civil complaint, processing answers and cross complaints, or processing a demurrer or summary judgement. Calendar preferences and guaranteed time frames create additional demands and burdens on courts that have very limited resources and a never-ending supply of cases to hear.
- 4) *Why the rush?* According to the bill’s sponsors, SANDAG, the need for this legislation is a timing issue. The bill’s sponsor is trying to take advantage of an opportunity to develop what would otherwise be federally-owned land and subject to NEPA. In exchange for SANDAG financing the revitalization of the NAVWAR facilities, the Navy will transfer to SANDAG what remains of the 70.5 acre site for development of TOD projects and the TTF project. The Navy will be able to proceed under normal NEPA requirements for the revitalization of its NAVWAR facilities should an agreement not be finalized between the Navy and SANDAG.

While there is nothing that would prevent the Navy and SANDAG from partnering in future years for the development of the OTC site, the sponsors feel that this is a unique opportunity for both the Navy and the City of San Diego to benefit.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT: (Verified 8/27/20)

City of San Diego (co-source)
San Diego Association of Governments (co-source)
Navy Region Southwest
San Diego Military Advisory Council
San Diego Regional Chamber of Commerce

OPPOSITION: (Verified 8/27/20)

California Judges Association
Plumbing-Heating-Cooling Contractors Association of California
Western Electrical Contractors Association

ASSEMBLY FLOOR: 77-0, 6/10/20

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Eggman, Quirk

Prepared by: Genevieve M. Wong / E.Q. / (916) 651-4108
8/28/20 13:18:48

**** END ****