

CEQA: New Strategies for Streamlining Environmental Review

by Shaye Diveley

Q: Have you heard about the environmental impact report that took seven years?

A: That's no joke.

And it's not funny. Over the past 47 years, the California Environmental Quality Act (CEQA) has required local and state agencies to analyze and identify environmental impacts before approving projects. For nearly as long, developers, local governments and others have sought reforms to make the CEQA process more efficient and less costly and time-consuming.

Many of these efforts (such as those seeking ministerial approvals of projects and enforceable time frames on review) have been merely pipe dreams, and the core of

CEQA — public disclosure of information about the potential environmental impacts of projects — has remained the same. In recent years, however, legislative changes, court decisions and greater utilization of existing provisions in the law have shown real results in streamlining the CEQA process. These options include expanded use of exemptions, “fast-track” legislation and “tiering off” existing environmental impact reports (EIRs). A few of these options are discussed here. Agencies should keep these and other strategies in mind as such options have

the potential to meaningfully reduce the time and cost associated with environmental review.

Avoiding the Dreaded EIR

The EIR: Those three letters can strike fear in planners and developers operating under tight time constraints, and for good reason — when a project requires the preparation of an EIR due to potential impacts on the environment, the costs and time required increase significantly. However, several available options can

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Shaye Diveley is an attorney with the law firm of Meyers Nave and can be reached at sdiveley@meyersnave.com.

help avoid the need to prepare a full EIR for certain projects, particularly when a prior environmental document has already analyzed environmental impacts.

Two types of CEQA exemptions, statutory and categorical, can eliminate the need to prepare an environmental analysis for qualifying projects. Statutory exemptions expressly provide that certain projects do not need to comply with CEQA. For example, several exemptions under CEQA are available for infill projects that meet certain conditions. Residential projects that are consistent with a Specific Plan can qualify for an exemption (under Government Code Section 65457) that would eliminate the need to prepare any CEQA document. Similarly, residential, employment center or mixed-use projects in transit priority areas can qualify for an exemption (under Public Resources Code Section 21155.4) if they are consistent with certain plans and policies.

Categorical exemptions allow for entire classes of projects to avoid the need to comply with CEQA because the state has determined that these categories of activities do not have a significant effect on the environment (CEQA Guidelines Section 15300). These exemptions are often best used for minor development projects (small structures, single-family homes, alterations to existing buildings and some infill) because the presumption of no environmental impact can be rebutted if there is evidence of potential impacts. However, the 2015 California Supreme Court decision in *Berkeley Hillside Preservation v. City of Berkeley* provides more certainty for agencies looking to rely on such exemptions.

Another way to avoid the need to prepare an EIR for a project is by examining opportunities to “tier” off a prior environmental document. Tiering generally refers to instances where an earlier, broader

environmental document covers the general impacts of a program or larger-scale project, so that subsequent environmental documents for a related individual project can be narrow and focused on any unique or unanalyzed issues. CEQA encourages the use of tiered environmental documents to reduce time and excessive paperwork in the review process by eliminating repetitive analyses of issues that were addressed in the program EIR. Though tiering was formerly more limited to master plans and similar documents, the Legislature enacted SB 375 (Steinberg, Chapter 728, Statutes of 2008) to enable certain qualifying projects to tier off Sustainable Communities Strategies or Alternative Planning Strategies developed to meet California’s climate-change goals.

Finally, Public Resources Code Section 21166 allows for the use of an addendum to a prior EIR or Negative Declaration

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where only minor changes or additions are necessary and there is no change to the analysis in the prior documents. Addenda do not need to be circulated for public comment and can significantly streamline the CEQA process.

The Need for Speed

Preparation of the EIR is not the only element of the process that can contribute to delay. One of the most time-consuming aspects of the CEQA process can be litigation challenging the environmental review and project approvals, which has become increasingly commonplace for many projects.

In SB 743 (Steinberg, Chapter 386, Statutes of 2013), the Legislature enacted fast-track options for certain projects that are certified as Environmental Leadership Development Projects, which minimize these causes of delay. This includes a 270-day period for judicial review of any legal challenge to the project's approval through the court of appeal (a process that typically takes two or more years). The law also requires the agency to concurrently prepare the administrative record during the CEQA process, so that the public has access to records, and to avoid delay if a lawsuit is challenged. These provisions can have significant time-saving benefits, as was evident in the CEQA challenge to the Sacramento Kings arena project.

Several available options can help avoid the need to prepare a full EIR for certain projects.

SB 743 also enacted a streamlining provision for residential, mixed-use residential or employment center projects in infill sites within transit priority areas. This provision eliminates the need to analyze the aesthetic and parking impacts of such projects. While not specifically a fast-tracking provision, this provision can potentially streamline the CEQA process for such projects.

Home Remedies

Even if a specific legislative provision is not available for a certain project, it is possible to "borrow" some streamlining aspect for

the review process. For example, the concurrent preparation of the administrative record can provide significant time-saving benefits and help identify evidentiary issues early in the process, thus reducing the time, costs and risk of litigation. Posting environmental documents, comments and other project documents on websites not only furthers CEQA's public disclosure goals, but also reduces the likelihood of public complaints about access to information and the potential for delay. ■

Annual Conference Session Explores This Topic in More Detail

Are you interested in learning more about this subject? Join your colleagues at the League of California Cities 2017 Annual Conference & Expo to hear a panel of experts speak on "CEQA: New Strategies for Streamlining the Environmental Review Burden." The session will be held Thursday, Sept. 14, from 2:45 to 4:00 p.m. See the conference program for location details.

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jbarrera@crcre.com
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925-866-1300

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www.crcre.com