
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2019 - 2020 Regular

Bill No: AB 2731
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Urgency: No
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Fiscal: Yes

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

DIGEST: Deems a specific environmental impact statement to meet the requirements of CEQA for a transit-oriented development project, including a residential, employment-center, or mixed-use 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 would require the courts, to the extent feasible, to resolve specific CEQA actions against the project within 270 days.

ANALYSIS:

Existing law:

- 1) Under the National Environmental Protection Act (NEPA), requires federal agencies 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) Under the California Environmental Quality Act (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) Requires, if a project requires both an EIR and an environmental impact statement (EIS), the lead agency to use the EIS as the EIR, as specified. Requires the lead agency to consult with the federal agency that is required

to prepare the EIS and to notify that federal agency of any scoping meeting for the proposed project. (PRC §21083.7)

- c) 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.)
 - i) Requires courts to give CEQA-related actions or proceedings preference over all other civil actions so that the action or proceeding is quickly heard and determined. (PRC §21167.1)
- d) Establishes the Jobs and Economic Improvement Through Environmental Leadership Act of 2011 (AB 900, Buchanan, Gordon, Chapter 354, Statutes of 2011), which establishes CEQA administrative and judicial review procedures for an "environmental leadership" project. (PRC §21178 et seq.)

This bill:

- 1) Establishes findings related to the Naval Base Point Loma's Old Town Center (OTC) and the City of San Diego.
- 2) Defines the following terms:
 - a) "Old Town Center site" to mean the approximately 70.5 acres comprising the Naval Base Point Loma's OTC.
 - b) "Transit-oriented development project" to mean a project for the redevelopment of the OTC site that substantially conforms to the description of the proposed action for the Navy Old Town Campus Revitalization at Naval Base Point Loma, California, set forth in a specific notice of intent to prepare an environmental impact statement.
 - c) "Transit and transportation facilities" 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. Provides that a transit and transportation facility does not include a transit station or hub that is located outside of the Old Town Center site.

- i) Subjects a transit and transportation facilities 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 greenhouse gases, 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.
- 3) Deems the requirements of CEQA satisfied by a specific environmental impact statement prepared by the Navy for a TOD project 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 OTC site and the site plan for which an EIR has been certified on or before December 31, 2021, 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 greenhouse gas emissions reduction targets; and
 - d) The project proponent certifies that the project will comply with certain labor requirements specified by the bill.
 - 4) Only requires further environmental review of such projects if any of the following occur:
 - 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 while 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.

- 5) Requires Judicial Council, by June 30, 2021, 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 transit and transportation facilities (TTF) 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 TTF project:
 - a) Requires the lead agency to prepare the record of proceedings concurrently with the administrative process.
 - b) Requires all documents and other materials placed in the record of proceedings to be posted on, and downloadable from, an internet website maintained by the lead agency.
 - c) Requires the lead agency to make available to the public the draft EIR and all other documents submitted to, or relied on by, the lead agency in the preparation of the draft EIR.
 - d) Requires a document prepared by the lead agency or submitted by the applicant after the release of the draft EIR that is a part of the record of proceedings to be made available to the public within five business days after the document is released or received by the lead agency.
 - e) Requires the lead agency to encourage written comments on the project be submitted in a readily accessible electronic format, and requires the lead agency to make any comment available to the public within five days of its receipt. Requires the lead agency to convert any comment that is not in an electronic format into a readily accessible electronic format within 14 days of receipt and to make it available to the public.
 - f) Provides that documents submitted to or relied on by the lead agency that were not prepared specifically for the project and are copyright protected are not required to be made readily accessible in an electronic format. Requires the lead agency to make an index of copyright-protected documents, as specified.

- g) Requires the lead agency to certify the final record of proceedings within five days after filing the notice that the agency has approved or has determined to carry out the project.
 - h) Requires any dispute arising from the record of proceedings be resolved by the superior court. Requires a party disputing the content of the record of proceedings to file a motion to augment the record of proceedings at the time it files its initial brief.
 - i) Requires the lead agency, if it fails to certify an EIR for the transit and transportation facilities project before January 1, 2025, to notify the Secretary of the State.
- 7) Establishes special procedures for public participation in CEQA review of the TTF project:
- a) Require the project EIR to include a specified notice that the EIR is subject to the provisions of the chapter added by this bill.
 - b) Require the lead agency to conduct an informational workshop within 10 days of release of the Draft EIR and hold a public hearing within 10 days before close of the public comment period.
 - c) Require the lead agency and applicant to participate in nonbinding mediation with any party who submitted comments on the Draft EIR and requested mediation within 5 days of the close of the public comment period, with the cost to be paid by the applicant. Requires mediation to end within 35 days of the close of the public comment period.
 - d) Require the lead agency to adopt any measures agreed upon in mediation. Prohibits a commenter from raising an issue addressed by that measure in a lawsuit.
 - e) Permit the lead agency to ignore written comments submitted after the close of the public comment period, with specified exceptions for materials addressing new information released after the close of the public comment period.
 - f) Require the lead agency to provide all EIR documents and comments in an electronic format (with the exception of certain copyright-protected documents), certify the record within 5 days of filing the notice of determination, provide the record to a party upon written request, and

provide the record to the superior court within 10 days of the filing of a petition for review.

- 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 there would not be a significant effect on the environment, the lead agency must prepare a negative declaration (ND). 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. Prior to approving any project that has received environmental review, an agency must make certain findings. If mitigation measures are required or incorporated into a project, the agency must adopt a reporting or monitoring program to ensure compliance with those measures.

- 2) *CEQA and NEPA.* NEPA is the federal equivalent of CEQA. If the project involves a “major federal action” with significant impacts, an environmental impact statement (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) *Old Town Campus Revitalization at Naval Base Point Loma.* Pursuant to NEPA, the Navy is currently preparing an EIS to evaluate the potential environmental effects associated with revitalization of the OTC site at Naval Base Point Loma to support Naval Information Warfare Systems Command’s

(NAVWAR) current and future operational readiness. The site is approximately 70.5-acres, upon which the Navy proposes to demolish and construct buildings, utilities, and infrastructure to provide mission capable facilities for NAVWAR. Because it is a naval facility and on federally-owned land, any development project contemplated for the OTC site would not generally be subject to CEQA and would instead be subject to NEPA.

In September 2019, the Navy entered into an agreement with SANDAG to conduct a planning process intended to lead to the redevelopment of the OTC site, which, in addition to the NAVWAR facilities, would potentially include mixed-use development and a Transit Center. If SANDAG and the Navy do not agree to move forward with the development of the site, the Navy may still proceed with revitalizing the OTC site to meet NAVWAR's facility requirements.

- 4) *CEQA Streamlining*. CEQA provides several tools to expedite the approval process of a project, including exemptions, streamlined administrative review, and streamlined judicial review.
 - a) 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 EIR's 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. Additionally, CEQA Guidelines section 15183(a) provides that "CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive studies."

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."

b) Streamlined judicial review. Several provisions streamline judicial review of challenges to projects under CEQA, including:

- amendments to provisions governing litigation and mediation;
- discovery is generally not allowed, as CEQA cases are generally restricted to review of the record;
- concurrent preparation of the record of proceedings to enable judicial review to occur sooner;
- counties with a population of over 200,000 must designate one or more judges to develop expertise on CEQA and hear CEQA cases;
- both the Superior Court and the Court of Appeal must give CEQA lawsuits preference over all other civil actions; and
- if feasible, the Court of Appeal must hear a CEQA appeal within one year of filing.

Many of these changes have created efficiencies in the environmental review process overall and have expedited the process for the types of projects encouraged by the state.

- 5) *AB 900 projects*. In addition to the above-described streamlining provisions, existing law also 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, known as Environmental Leadership Development Projects (ELDP). To qualify as an ELDP, 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.
- 6) *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) *This bill.* There are three main components of this bill: the revitalization of the NAVWAR facilities at OTC, the construction of various residential, employment center, and mixed-use development projects located at OTC, and the construction of a transit and transportation facilities project – a multimodal regional transportation facility that includes a central mobility hub and transportation linkages that connect the central mobility hub to the San Diego regional transportation system and to the San Diego International Airport.
- 3) *Project tiering for TOD projects.* Consistent with CEQA provisions, 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 tier off of that EIS, a process which is also consistent with existing CEQA streamlining provisions, if that TOD project meets certain criteria.

It is noted two of the criteria that the TOD project must meet to be eligible for tiering off of the broader EIR are (1) it implements and is consistent with land use standards approved by the Navy and SANDAG for the OTC site and the site plan for which an EIR was been certified before December 31, 2021, and (2) 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 ARB has accepted SANDAG’s determination that the SCS or APS would achieve the GHG emission reduction targets. Neither of these documents have been approved or accepted yet. The SCS is currently being updated and the site plan, which AB 2731 requires to meet a vehicle miles traveled (VMT) reduction of 25 percent based on the regional VMT identified in the SCS or APS, has not been developed.

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.

- 4) *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 for certain CEQA-related actions or proceedings. As a consequence, 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 our courts that have very limited resources and a never-ending supply of cases to hear.

- 5) *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 is currently in the process of drafting its EIS for its NAVWAR facilities and will be able to proceed under normal NEPA requirements should an agreement not be reached between the Navy and SANDAG.

Sponsors of the bill feels this will be a missed opportunity for San Diego if AB 2731 is not enacted this year. 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.

- 6) *Double referral.* Due to the COVID-19 Pandemic and the unprecedented nature of the 2020 Legislative Session, all Senate Policy Committees are working under a compressed timeline. This timeline does not allow this bill to be referred and heard by more than one committee as a typical timeline would allow. In order to fully vet the contents of this measure for the benefit of Senators and the public, this analysis includes information from the Senate Judiciary Committee.

“This bill provides for expedited judicial review of CEQA challenges to a specified transit and transportation facilities project and thus implicates the jurisdiction of the Senate Judiciary Committee, which has historically disfavored such provisions.

“For a small handful of major projects—particularly, large “environmental leadership” projects and a few sports stadiums—existing law provides that, to the extent feasible, courts must resolve CEQA challenges to those projects within 270 days of the filing of the record of administrative proceedings. These provisions were the subject of protracted policy deliberations over concerns regarding the burden on courts, access to justice for other litigants, and the sufficiency of environmental review. This year, the Legislature is considering several bills that would extend such provisions to additional classes of projects.

“The widespread application of expedited review arguably magnifies the concerns described above. Additionally, it could have diminishing returns for project applicants: at some point, if the burden is too great, courts could fail to meet the 270-day deadline or even ignore it altogether. In fact, under separation of powers principles, the Legislature cannot constitutionally mandate that courts resolve cases on any particular timeframe. (See *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 855-856 [upholding a similar 270-day expedited review provision for the Sacramento Kings arena only because it contained a “to the extent feasible” proviso].)

- 7) *Additional author’s amendment.* The author would like to amend the bill to give Judicial Council an additional 6 months to amend the California Rules of Court, making the timing consistent with Judicial Council’s current rule-making calendar. Traditional committee process is to have such amendments be taken after a bill has been approved by the committee members and has been approved out of the committee. However, given the unique circumstances and tight timeframes, members of the committee may wish to make an exception.

The committee may wish to amend the bill to require Judicial Council to amend the Rules of Court by January 1, 2022.

SOURCE: San Diego Association of Governments & City of San Diego
(Co-sponsors)

SUPPORT:

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

OPPOSITION:

California Judges Association
Plumbing-heating-cooling Contractors Association of California
Western Electrical Contractors Association

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