Entitlement Efficiency Advisory for Priority Development Areas

Introduction

This document outlines an approach to simplifying the process for entitling development projects in Priority Development Areas (PDAs) with adopted Specific Plans.[1] PDAs are the framework for implementing the land use strategy in Plan Bay Area, which meets the Greenhouse Gas emissions reduction target adopted for the San Francisco Bay Area's Sustainable Communities Strategy (SCS) by the California State Air Resources Board (ARB).[2] PDAs are places with frequent transit service identified by local jurisdictions for future housing and job growth. Each PDA was voluntarily nominated by a local jurisdiction and adopted by the ABAG Executive Board. Jurisdictions selected a Place Type for each PDA that provides a range of densities, building intensities, and land uses.[3] Development projects in PDAs included in Plan Bay Area are consistent with the Plan if they are within the range of densities and building intensities specified for the Place Type designated for each PDA.[4]

This advisory focuses on opportunities to reduce the time, cost and legal risk required to entitle these kinds of projects in PDAs with locally adopted land use plans that have undergone thorough environmental review and extensive community involvement.[5] Local jurisdictions will decide if and how they will apply the recommended practices according to local conditions.This is not an exhaustive discussion of entitlement efficiency opportunities. Additional resources are provided at the end of the document.

Recommended Practice for Priority Development Area Entitlement Efficiency

To support the development of sustainable communities and achieve Greenhouse Gas emissions reduction targets, recently adopted state law provides an exemption from the requirements of CEQA for certain residential, commercial and mixed-use development projects in Priority Development Areas if they are consistent with an adopted Specific Plan and a Sustainable

[1] Many Precise Plans, Master Plans, Village Plans and Area plans meet these standards, listed in California Government Code 65451 (http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65450-65457)

[2] Plan Bay Area was accepted by the Air Res

[3] The Place Type of each PDA is listed in the Plan Bay Area Final Forecast of Jobs, Population and Housing: http://onebayarea.org/pdf/final_supplemental_reports/FINAL_PBA_Forecast_of_Jobs_Population_and_Housing.pdf The range of densities, intensities, and land uses for each place type is found on pp. 14-15 and 18-19 of the Station Area Planning Manual: http://www.mtc.ca.gov/planning/smart_growth/stations/Station_Area_Planning_Manual_Nov07.pdf The station area total jobs and housing targets in the manual are not applicable.

[4] See note above regarding designated place types and criteria.

[5] *Concerned Dublin Citizens et al vs. City of Dublin et al*

Communities Strategy.[6] The required scope of environmental analysis is reduced for many PDA projects that are not fully exempted. Among recent legislation, SB743 provides an arguably less onerous process than SB375 for qualifying for CEQA exemptions by introducing simpler, less extensive criteria than the Transit Priority Project requirements. To avoid confusion, it is worth noting that the Transit Priority Project concept and associated criteria is not applicable to projects seeking the exemptions created by SB743.

The sections below recommend approaches for: simplifying the entitlement efficiency process for projects in PDAs with adopted Specific Plans; amending existing Specific Plans to simplify the project review process; and implications of pending changes to CEQA for new Specific Plans and future infill development projects.

Recommended Approach: Projects in PDAs with Adopted Specific Plans

Step One: Review Project Eligibility for Exemption

- ☐ Within a locally nominated Priority Development Area (PDA) included in Plan Bay Area
- ☐ Within an area with an adopted specific plan or equivalent for which an environmental impact report has been certified
- ☐ Consistent with specific plan regulations and policies (i.e. zoning, design standards, mitigations, etc)
- ☐ The project consists of residential, commercial or mixed uses
- ☐ For commercial or mixed-use projects: Minimum Floor Area Ratio (FAR) of 0.75
- ☐ Within ½ mile of transit service with peak service frequencies of 15 minutes or less (a Transit Priority Area)[7],[8]
- ☐ None of the following events have occurred:
    - The project creates a substantial new, or substantially worse, impact than what was predicted to occur as part of implementation of the Specific Plan buildout based on information not known (and not knowable) at the time.[9]
    - Substantial changes in the circumstances under which the project takes place since the certification of the Specific Plan EIR that will require major revisions in the EIR (e.g., a major earthquake has taken place) due to new or more severe

[6] The residential exemption is found in CA Government Code Section 65457 (http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65450-65457).
The office and mixed-use exemption is found in CA Public Resources Code Section 21155.4 (http://www.leginfo.ca.gov/cgi-bin/displaycode?section=prc&group=21001-22000&file=21155-21155.4)
[7] This requirement does not apply if the project is 100% residential.
[8] *Transit Priority Areas* are distinct from *Transit Priority Projects*. Transit Priority Areas are geographic areas that meet specific transit service criteria. Transit Priority Projects, introduced through the provisions of SB375, are individual development projects that meet both transit service criteria *and* a more extensive set of requirements related to project size, environmental performance, affordability, and other factors. Projects seeking the exemption described in this advisory *do not* need to meet these more extensive Transit Priority Project requirements.
[9] Aesthetics and parking will not trigger new review if the project is on an infill site

significant impacts. *Implementation of the specific plan is not itself a substantial change.*

Step Two: File Notice of Exemption

File notice of exemption indicating that the project is exempt from CEQA under Public Resources Code Section 21155.4 as a project that: a) is within a Transit Priority Area; b) implements and is consistent with a specific plan for which an EIR has been certified, and c) "is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in a sustainable communities strategy for which the State Air Resources Board has accepted a metropolitan planning organization's determination that the sustainable communities strategy would, if implemented, achieve the greenhouse gas emissions reduction targets."[10]

Projects Not Fully Exempt: Additional Entitlement Efficiency Opportunities

Projects that are within PDAs but do not meet all of the exemption criteria may still be eligible for limited environmental review, such as an infill EIR as described in Section 15183.3 of the State CEQA Guidelines. Use the checklist in State CEQA Streamlining for Infill Guidelines (Attachment B to this document) to identify the eligibility of a project for these provisions. Also use the checklist for projects in areas without adopted Specific Plans for which a plan (e.g. Community Plan or General Plan) and EIR has been adopted addressing development on individual parcels.

Recommended Approach to New Specific Plans

The design of Specific Plans and EIRs can heavily influence the entitlement process for future projects in the plan area. Specific Plans can increase the potential of projects to capitalize on entitlement efficiency opportunities by: a) addressing a full range of environmental issues; b) completing area-wide analyses to and avoid required future project-level analyses; c) providing flexibility in the permitted development capacity of individual parcels; d) adopting performance standards that can be met through multiple approaches (as opposed to less flexible mitigations); and e) creating a checklist for CEQA exemptions and streamlining.

[10] Projects that are 100% residential and do not meet transit proximity requirement should file a notice of exemption indicating that the project is exempt from CEQA under Government Code 65457 as a residential project for which an EIR has been certified.

DRAFT

Recommended Amendments and Addenda to Adopted Specific Plans

Many Specific Plans can be updated periodically by addenda and/or amendments addressing issues for which comprehensive policies may not have originally been developed. One example is a uniformly applicable development standard. These standards, adopted citywide, can be used to address complex challenges such as sea level rise or air quality issues related to proximate distance to major roadways.[11] The development standard can be presented to City Council in a staff report requesting: a) citywide adoption of the standard; and b) an addendum to the Specific Plan incorporating this standard. Addenda can also be adopted for individual projects to address specific issues while avoiding or minimizing additional environmental analysis; examples include voluntary measures such as installing air filters. Project applicants can quality for an addendum if the project does not result in a new or worse significant adverse impact.

Implications of Pending Changes to CEQA for New Specific Plans and Infill Projects

In addition to providing the exemptions discussed above, recently adopted legislation requires the state Office of Planning and Research (OPR) to update CEQA guidelines to modify the potential impacts EIRs for plans and projects in infill areas—excluding those fully exempted from CEQA—must address. This focuses on shifting transportation analysis from the existing Level of Service measure to a more multi-modal approach. When these changes are completed, ABAG will work with OPR and MTC to provide guidance to local jurisdictions.

DRAFT

Resources

- **State CEQA Streamlining for Infill Guidelines Streamlining Guidelines**
  - CEQA Guideline Section 15183.3 (included as Attachment A)
    weblink: http://opr.ca.gov/s_sb226.php

- **CEQA Exemption Citations**
  - Projects consistent with adopted specific plan, certified EIR, and Sustainable Communities Strategy (i.e. Plan Bay Area):
    California Public Resources Code Section 21155.4
    weblink: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=prc&group=21001-22000&file=21155-21155.4

    full text:
    (a) Except as provided in subdivision (b), a residential, employment center, as defined in paragraph (1) of subdivision (a) of Section 21099, or mixed-use development project, including any subdivision, or any zoning, change that meets all of the following criteria is exempt from the requirements of this division:
    (1) The project is proposed within a transit priority area, as defined in subdivision (a) of Section 21099.
    (2) The project is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified.
    (3) The project is consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in either a sustainable communities strategy or an alternative planning strategy for which the State Air Resources Board, pursuant to subparagraph (H) of paragraph (2) of subdivision (b) of Section 65080 of the Government Code, has accepted a metropolitan planning organization's determination that the sustainable communities strategy or the alternative planning strategy would, if implemented, achieve the greenhouse gas emissions reduction targets.
    (b) Further environmental review shall be conducted only if any of the events specified in Section 21166 have occurred.

  - Residential projects consistent with adopted Specific Plan and certified EIR, but not within ½ mile of transit with 15 minute peak headways:
    California Government Code 65457
    weblink: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65450-65457

DRAFT

full text:

(a) Any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified after January 1, 1980, is exempt from the requirements of Division 13 (commencing with Section 21000) of the Public Resources Code. However, if after adoption of the specific plan, an event as specified in Section 21166 of the Public Resources Code occurs, the exemption provided by this subdivision does not apply unless and until a supplemental environmental impact report for the specific plan is prepared and certified in accordance with the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code. After a supplemental environmental impact report is certified, the exemption specified in this subdivision applies to projects undertaken pursuant to the specific plan.

(b) An action or proceeding alleging that a public agency has approved a project pursuant to a specific plan without having previously certified a supplemental environmental impact report for the specific plan, where required by subdivision (a), shall be commenced within 30 days of the public agency's decision to carry out or approve the project.

- **Specific Plan Definition and Guidance**
  - Legal Requirement for Specific Plans *(projects in areas with differently titled plans meeting these criteria may be eligible for the same exemptions as those in specific plan areas):*
    California Government Code 65451
    Weblink: http://www.leginfo.ca.gov/cgi-bin/displaycode?section=gov&group=65001-66000&file=65450-65457
  - Office of Planning and Research Guide to Specific Plans (includes discussion of common challenges to meeting legal adequacy requirements):
    Weblink: http://ceres.ca.gov/planning/specific_plans/sp_part1.html

- **Key Entitlement Efficiency Legislation**
  - Senate Bill 1196 (Section 18 established CEQA exemption for residential projects consistent with specific plans, amending Government Code Section 65457)
    weblink:
    http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200520060SB1196&search_keywords=

- Senate Bill 743 (Section 6 established CEQA exemption for employment center and mixed-use projects consistent with a SCS and additional density and transit criteria, adding Public Resources Code Section 21155.4)
  weblink:
  http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB743
- Senate Bill 226 (established limited environmental review processes for infill projects consistent with a SCS and additional criteria related to environmental review, project size, density, transit service, and resource efficiency, making numerous amendments to the Public Resources and Government Codes)
  weblink:
  http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB226&search_keywords=
- Senate Bill 375 (Sections 14 and 15 established CEQA exemptions or limited environmental review processes for projects consistent with a SCS and density, project size, transit service, affordability, open space and resource efficiency criteria, making numbers amendments to the Public Resources and Government Codes)
  weblink:
  http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200720080SB375&search_keywords=

- **Legal decision upholding exemption from CEQA for residential project consistent with a specific plan**
  - *City of Dublin vs Dublin Concerned Dublin Citizens*
    Weblink: http://www.courts.ca.gov/opinions/nonpub/A135790.DOC

DRAFT