



Date: February 4, 2015

To: Regional Planning Committee

From: Duane Bay, Assistant Planning and Research Director  
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Subject: Entitlement Efficiency for Land Use Approvals for Development Projects in  
Priority Development Areas

### **Executive Summary**

In a September 2013 report to the ABAG Executive Board, *Plan Bay Area Implementation Next Steps*, Priority Development Area (PDA) implementation was identified as one of four focus areas, along with housing production and affordability, economic development and open space and farmland preservation. In turn, ABAG's PDA implementation support would focus on strengthening subregional corridors, improving resilience to natural hazards, providing oversight and assistance to jurisdictions' OBAG PDA planning grant projects, and removing barriers to entitlement efficiency.

The memo framed the tasks related to entitlement efficiency as follows:

"Plan Bay Area set the stage for local jurisdictions to choose to increase the efficiency of the development process for transit-oriented projects consistent with the Plan and state legislation. California Senate Bills 375 and 226 allow jurisdictions to limit the level of environmental review required for projects that are consistent with a Sustainable Community Strategy (i.e., Plan Bay Area), meet specific density and transit proximity requirements, and are located in an area with an adopted programmatic Environmental Impact Report (EIR). Some eligible projects will not require additional CEQA analysis, while others can reduce the number of areas analyzed in an EIR and be subject to a more favorable standard of judicial review.

"ABAG will work with MTC to develop advisory guidelines that assist jurisdictions in determining whether a local programmatic EIR will support PDA projects in utilizing legislative incentives found in SB375 and other bills."

Today's session is a report-back on work in progress and proposed next steps. Regional Planner Mark Shorett will report our findings working with local jurisdictions over the last year and present a summary of the advisory memo on CEQA streamlining. Chris Calfee, Senior Counsel for the Governor's Office of Planning and Research, will report of the current status of streamlining guideline revision. A panel conversation will follow, in which developers and planners from Bay Area cities contextualize the entitlement efficiency issue with a discussion of the certainty/flexibility trade-off dilemma. RPC members will have ample opportunity to ask

questions and comment after the initial presentations, and again, to extend the panel conversation. The session will wrap up with solicitation of members' feedback on the proposed approach to expanding entitlement efficiency opportunity for PDAs.

### **Recommended Action**

ABAG staff requests that the Regional Planning Committee review and accept the proposed approach to providing technical assistance to jurisdictions that wish to increase entitlement efficiency in Priority Development Areas.

### **Background on Entitlement Efficiency**

Plan Bay Area sets a framework for what kind of growth we as a region need in order to achieve a sustainable future: primarily infill development in locally designated Priority Development Areas (PDAs) where local plans have been adopted following a robust community engagement process.

At its best a community process to adopt an area plan that has regulatory force (that is, a Specific Plan, Community Plan or Area Plan that is integrated into the local General Plan and Zoning Ordinance, not an *ad hoc* urban design exercise or developer-driven proposal) can be an opportunity to negotiate a community consensus on what will be built, how it can support community aspirations, who it will likely benefit and how. And the adopted plan enables development consistent with a clear, community-supported vision. At its worst the process can be divisive, expensive, inconclusive, and can fail to empower the community to articulate and achieve local aspirations.

The regional policy consensus, as expressed in Plan Bay Area, favors an approach in which: 1) public input and development standards of PDA Plans, including requisite environmental review, are as robust as reasonably possible; and 2) subsequent review of conforming projects is streamlined and transparent.

Discretionary review of proposed development projects with respect to use, form, adequacy of environmental impact study and mitigation, contributions for public works infrastructure and community benefits / social impact mitigations will tend to increase the public and private cost of the entitlement process as well as its duration, which consequently increases market-timing risks for developer and community alike. Market timing is critical for both developer and community to accomplish their respective financial and social objectives, and to realize together the built environment and resulting community vitality envisioned (and codified) in adopted plans.

*Entitlement efficiency* is an approach that provides local jurisdictions with regulatory methods to affect a suitable, locally determined balance between the opportunity for an envisioned built environment, once codified in publicly adopted plans and policies, to be developed expeditiously, and the opportunity for local government to apply discretion to accommodate ever dynamic market, political and pragmatic circumstances. Entitlement efficiency is an approach that says jurisdictions should have (a) the means and opportunity to understand and consider this crucial trade-off, as well as (b) effective, locally applicable regulatory tools to establish a

more streamlined approval process if they elect to do so, and (c) access to technical assistance to implement the degree and style of streamlining deemed locally appropriate.

Developers and the community may want relatively high certainty with respect to *use and form* of buildings. This could be accomplished with a form-based code and a ministerial (staff level) approval process. However, to some degree this will limit the community's ability to shape and refine the project, and will limit the developer's ability to respond to market conditions if adopted plans require uses or building types for which there is no current market.

Developers may also want relatively high certainty with respect to "*exactions*" for *community benefits* in order to "see if the project will pencil out" and to avoid project delay. If a set community benefits package (CBP) is in place—for example, local-source hiring, subsidized ground-floor retail for local small businesses, shuttle service, inclusionary housing and/or development impact fee, park in-lieu fees, school district impact fees—an informed buyer and seller of land to be developed will have to take these costs into account in determining the land value. But if the developer has already locked in the land cost, the developer will most likely want the flexibility to negotiate a CBP.

Effective tools exist to pursue aspects of entitlement efficiency mentioned above and ABAG will continue our efforts to bring viable options to jurisdictions' attention. *For 2015, ABAG's top workplan priorities related to entitlement efficiency are (1) to encourage and assist jurisdictions to adopt Specific Plans and (2) to enable and assist jurisdictions to fully utilize state-sanctioned CEQA streamlining.*

What ABAG staff has done to date, and plans to do in 2015 to help jurisdictions fully utilize streamlined environmental review for plan conformant projects is the focus of the rest of this memo and the study session today.

## **Entitlement Efficiency Opportunities and Trends**

During the past 10 years, the California legislature has changed state law in an effort to streamline the entitlement process for development projects that reduce Greenhouse Gas emissions, increase housing options and improve the cost-effectiveness of public infrastructure investments. Project eligibility criteria for these entitlement efficiency opportunities focus on transit proximity and consistency with locally adopted specific plans and regional Sustainable Communities Strategies such as Plan Bay Area.

Four pieces of recent legislation provide opportunities to simplify the entitlement process for transit-oriented infill development: Senate Bill (SB) 1196 (2006), SB 375 (2007), SB 226 (2011), and SB 743 (2013). The collective implications of these bills for PDA development are summarized below:

- Specific Plans Provide Strongest Framework for Entitlement Efficiency. As a result of SB 1196 and SB 743, under state law residential projects consistent with an adopted Specific Plan and Environmental Impact Report (EIR) are exempt from CEQA (i.e. no additional environmental review is necessary) unless they require major revisions to the

Plan's EIR.<sup>1</sup> An example of a project that requires major revisions to an EIR is a proposal to build more units than permitted in the Specific Plan and analyzed in its EIR. Office and mixed-use projects in areas with adopted Specific Plans are also exempt if they are within ½ mile of a transit station with service frequencies of 15 minutes or less during peak periods, are built to a floor area ratio of at least 0.75 and are consistent with a SCS (i.e. Plan Bay Area).<sup>2</sup>

- SB226 Provides Additional Options for Infill Projects in Areas without Specific Plans. While many Bay Area PDAs have adopted Specific Plans, others have less detailed plans in place such as Community Plans, Area Plans or detailed General Plan standards. For projects in these PDAs, SB 226 requires analysis only of *new* environmental impacts not: a) addressed in previous EIRs that cover the PDA's geographic area (e.g. General Plan or Community Plan); b) addressed by Uniformly Applicable Development Standards (UADS) applicable to projects in the PDA or larger areas of the jurisdiction. Projects without any new impacts are exempt from CEQA. Issues not addressed in an EIR or by UADS can be addressed through an abbreviated environmental document such as a negative declaration.
- Automobile Congestion-based Level of Service (LOS) Removed from CEQA. In addition to exempting many projects in PDAs from additional environmental review, SB743 requires that CEQA guidelines be modified to eliminate traditional Level of Service (LOS) standards measuring automobile traffic congestion as a potentially significant environmental impact. Consistent with the legislation, the state Office of Planning and Research released revised guidelines in 2014 and will be completing its full update for update in 2015.
- SB375 Includes Most Stringent Requirements for Achieving Entitlement Efficiency. In addition to introducing Sustainable Communities Strategies, SB 375 provides complete or partial CEQA exemptions to projects that are consistent with Plan Bay Area and meet extensive affordability, environmental sustainability, density, and project size standards. These standards are more stringent and applicable to a smaller range of projects than the legislation discussed above.

Consultation with Bay Area planners since the adoption of Plan Bay Area indicates that, in general, jurisdictions are hesitant to draw upon the entitlement efficiency opportunities created by recent legislation. The streamlining provisions included in the highest profile legislation, SB375, are considered too onerous. SB226 is generally viewed as the most user-friendly and strong interest exists in gaining clarity about, and potentially utilizing, SB743. In many jurisdictions seeking to draw upon SB226 and SB743 to streamline project review, however, legal counsel has cautioned planning staff against modifying an established environmental review process until the provisions in these bills have been more widely utilized and withstood legal scrutiny. Across the region, adjustments to transportation impact analysis requirements—

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<sup>1</sup> CA Government Code 65457

<sup>2</sup> CA CEQA Guidelines 15183.3

currently dominated by Level of Service (LOS) standards—are anticipated to potentially address what is often identified as a primary obstacle to infill development.

A handful of jurisdictions have drawn upon recent legislation to simplify the environmental review process. Berkeley, San Francisco and Oakland have utilized the provisions of SB226 to expedite projects consistent with adopted local plans, the SCS, and/or clear development standards. San Francisco has also utilized SB743. Other jurisdictions, such as Redwood City, have been successful in using detailed development standards in tandem with adopted plans to create development consistent with a community vision.

In response to interest from local planning staff and elected officials, ABAG prepared an advisory document for increasing entitlement efficiency for projects in PDAs. This document, included in the packet as Attachment 1, draws upon all recent legislation to provide a simple process for identifying the eligibility of projects for CEQA exemptions and other streamlining opportunities. The document also provides guidance on filing exemptions, including relevant citations from legislation and court decisions.

### **Today's Workshop on the Certainty/Flexibility Dilemma in Practice**

The very premise that entitlement efficiency is desirable is sometimes called to question. Advocates for or against a particular proposed policy, plan or project may encourage or eschew more “certainty” or more “flexibility” depending on circumstance. A *favorable* requirement (e.g., upper or lower limit of some physical feature, fee waiver or exaction, degree of discretionary review) is considered a comfortable *certainty*, while an unfavorable requirement is considered and unreasonable *constraint*. A *welcome* ability to modify a requirement (i.e., negotiation, customization, community review) may be characterized as *flexibility*, but when *unwelcome* it is *ambiguity* at best and an invitation for back-room deal-cutting at worst.

Some streamlining measures, however, are not very controversial, for example: (a) transparency of the development approval process, (b) reduction of tax-payer supported staff time to administer the entitlement system through office automation or parallel human processing of multiple sub-permits (e.g., sewer, water, fire), (c) or semi-automation of first-drafts for mandatory responses to a last-minute deluge of semi-automatically generated public comments to a draft EIR.

Against this complex backdrop, it is ABAG's policy perspective, based on general principles of local land control, fiscal prudence, bias toward actual implementation of locally adopted plans, and “complete communities” as the practical meaning of that phrase is refined over time, that:

- the State should provide jurisdictions with regulatory tools and options well-suited to implementation of State policy intent (e.g., GHG reduction, preservation of agricultural and open-space land, deconcentration of poverty, resource conservation, as codified in Housing Element law) in the context of local land use authority;
- local jurisdictions should know of, and know how to apply these tools and options to realize community aspirations reflected in locally adopted policies and plans;

- ABAG should, within locally adopted Priority Development Areas, promote and support enhancement of efficiency with respect to the determination of allowable use and acceptable form, the level of financial contribution to local infrastructure as well as ancillary community benefits, and the entitlement process itself;
- and therefore, that ABAG, as the regional Council of Governments, should diligently pursue these goals in order to the support local implementation efforts that can, in aggregate, result in sustainable and equitable regional growth.

In today's workshop, these issues will be framed and discussed by a panel of for-profit and non-profit developers and local planning directors. After the panel presentation, the Committee will be invited to join the conversation.

The purpose of the workshop is to provide context for some of the very technical aspects of entitlement efficiency presented earlier by ABAG and OPR staff, and context for the discussion of the proposed 2015 scope of work that will follow.

### **2015 Entitlement Efficiency Approach**

The proposed scope of work for ABAG staff during 2015 designed to support local jurisdictions' efforts to increase entitlement efficiency is as follows:

- A. Distribute Advisory Memo (See Attachment 1)
- B. Update and distribute Advisory Memo following finalization of BAAQMD guidelines and CEQA Guidelines, especially as related to new transportation analysis guidelines and use of Uniform Applicable Development Standards to address air quality requirements.
- C. In collaboration with California Office of Planning & Research, provide targeted technical assistance to "field test" full implementation of new streamlining measures in 6 to 12 volunteer pilot jurisdictions in order to demonstrate efficacy and/or identify opportunities for improvement.
- D. Facilitate forum or working group with local planners, developers and state policymakers to discuss opportunities to utilize streamlining legislation and tools (including lessons learned and successful approaches).
- E. Create a web-based tool to identify PDAs that have a high level of regulatory readiness. For example, this could be an added data element to the PDA Showcase or a map-based portal that identifies areas that meet transit service criteria and have adopted specific plans and programmatic EIRs

### **Committee Feedback**

ABAG Planning & Research staff invites RPC members to comment on the PDA entitlement efficiency workplan as presented. In particular, staff seeks input on the following questions:

- 1) How useful would it be to create a web-based tool to identify the degree of entitlement efficiency, by objective measures, in Specific Plan areas within PDAs?
- 2) How useful would it be for RPC to form a working group on entitlement efficiency?
- 3) If a working group is formed, what should its focus be (e.g., policy input, process improvement, publicizing and promoting most-effective practice)?

**Attachments**

1. Entitlement Efficiency Advisory for Priority Development Area