

Senate Bill 743: Legislature Sends CEQA Amendments to Governor

Following a week of intense negotiations, the Legislature has sent Governor Brown a set of CEQA amendments. [Senate Bill 743](#) replaces – at least for now -- Senate Bill 731, which had become an unwieldy mass of 15 separate CEQA revisions. (See our April 26 post [CEQA Modernization? Not really.](#)) Although it adds detailed provisions for an NBA arena, SB 743 strips away much of the clutter from SB 731; it focuses on encouraging infill development and re-thinking traditional approaches to the analysis of traffic impacts under CEQA.

If signed into law, the new bill would:

- Streamline CEQA review, including potential judicial review, of a new arena for the Sacramento Kings. Expanding on 2011's Assembly Bill 900 (which provided litigation streamlining for "environmental leadership development projects"), SB 743 would prioritize reduction of air pollution emissions, allow the lead agency to ignore most "late hit" comments on the Draft EIR, and require the lead agency to hold specified public meetings, among other features. It appears likely that if these provisions are applied to the arena project, they will be treated as a test case for applying the same provisions to a broader range of CEQA projects in the future.
- Amend AB 900 to restore superior court, as well as appellate court, review of environmental leadership projects, but generally require both rounds of review to be completed within 270 days. AB 900 had eliminated superior court review of environmental leadership projects in favor of direct review in the courts of appeal; a superior court judge had ruled that provision unconstitutional. The amendments also extend the date for certification of an EIR on an environmental leadership project to January 1, 2016, and extend the sunset date for the statute to January 1, 2017.
- Revive "infill opportunity zones" – which must also be "transit priority areas" (see below) -- and allow local governments to opt out of Congestion Management Plan automobile level of service (LOS) standards in these zones.
- In provisions (like those for infill opportunity zones) transferred from SB 731, create special CEQA rules for "transit priority areas," defined as areas within one-half mile of an existing or planned transit stop. The bill calls for new CEQA Guidelines criteria for determining the significance of transportation impacts of projects within transit priority areas. The bill states that once the CEQA Guidelines establish these new criteria, automobile delay "shall not support a finding of significance" pursuant to CEQA. SB 743 also provides that aesthetic and parking impacts of residential, mixed use residential, and employment center projects on infill sites within transit priority areas "shall not be considered significant impacts on the environment." However, the bill then undermines these protections by expressly permitting agencies to continue to set their own thresholds.
- Create a new CEQA exemption for residential, mixed-use and employment center projects, including subdivisions and zoning changes, that:

1) are within transit priority areas; 2) are undertaken to implement, and are consistent with, a specific plan for which an EIR was certified; 3) are consistent with basic elements of an SB 375 sustainable communities strategy or alternative planning strategy; and 4) do not trigger subsequent CEQA review under the standards of CEQA section 21166.

- For projects that are *outside* transit priority zones, authorize CEQA Guidelines establishing non-LOS metrics for analysis of transportation impacts.

By focusing on encouraging infill development through an overhaul of CEQA's traditional traffic impact analysis metrics, and through a straightforward CEQA exemption for certain projects in transit priority areas, SB 743 offers the possibility of useful, if limited, CEQA reform. Perhaps more importantly, SB 743 rejects – for now – the proposals in SB 731 that would have added layers of new CEQA procedures and substantive requirements.

Authors



Julie Jones

Partner

JJones@perkinscoie.com [415.344.7108](tel:415.344.7108)

Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)