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PERSPECTIVE

Last minute CEQA bill offers quick fixes to procedural rules

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Just before ending the legislative session for 2013, the state Legislature unexpectedly passed Senate Bill 743, which makes some minor corrections to the California Environmental Quality Act, or CEQA, but is far from the comprehensive reform that is truly needed to reduce the hostile attitude towards development and business in California.

The 2013 legislative session opened with several legislators proposing major changes to how CEQA operates. As their bills failed to gain traction, much of the attention focused on SB 731, proposed by Senate leader Darrell Steinberg, which primarily sought to streamline the approval of infill development sites near major transit stops. However, as passage of SB 731 appeared to be losing steam, Steinberg took an even more limited tack, amending SB 743 to include streamlining provisions strictly limited to the development of the new basketball arena for the Sacramento Kings. In the last few days of the session, SB 743 was amended again to include some additional provisions that, while limited, may have some beneficial role in reducing the burden of CEQA review for certain projects. SB 743 was approved by the Senate and Assembly Sept. 12, but has not yet been signed by the governor.

In addition to the specific provisions relating to the Sacramento arena, SB 743 revises several provisions that were previously held unconstitutional. In the fall of 2011, Gov. Jerry Brown signed the Jobs and Economic Improvement through Environmental Leadership Act, Assembly Bill 900. AB 900 established procedures for the expedited CEQA review of projects designated by the governor as "leadership projects." These leadership projects must meet several criteria, most notably a minimum investment of \$100 million dollars. AB 900 re-

quired that any litigation challenging these projects under CEQA must be filed directly with the Court of Appeal and conclusively decided within 180 days. Earlier this year, a superior court judge in Alameda County held that this provision was unconstitutional in that it impermissibly infringed on the jurisdiction of the superior courts and state Supreme Court to hear these cases.

In the new bill, the Legislature has removed the requirement from AB 900 that any CEQA challenge to these leadership projects must be heard by the Court of Appeal. Instead, SB 743 requires that any challenge, including any appeals, must be decided within 270 days. The Judicial Council is directed to adopt a rule of court by July 1, 2014, setting forth procedures to meet this standard. SB 743 does not specify how litigants will be expected to resolve a CEQA challenge both before the superior court and the appellate court in less than nine months.

Although CEQA currently has judicial preference over most other civil actions, it can currently take over two years to obtain a final decision on a CEQA challenge brought before a superior court and then appealed. This is so even where both parties are working amicably and cooperating in moving towards the quick resolution of the matter.

A time limit of 270 days will greatly expedite the review of these cases. Some time will undoubtedly be saved by the electronic posting of the administrative record that was first put into place by AB 900. Under these provisions, local agencies are required to post the administrative record electronically and in a near-contemporaneous manner as it proceeds through the administrative process. Once the agency finally issues its approval of the project, the administrative record must be certified by the agency within five days. These procedures will likely shave several months of the typical CEQA case. Even so, the Judicial Council will likely have to tighten the

time limits currently set in place for CEQA challenges in order to obtain the additional time needed. Currently, a petitioner must request a hearing within 90 days after filing its petition, and the case is expected to be briefed within 90 days following this request, although these dates are frequently extended. The new rules of court will undoubtedly reduce these time limits.

SB 743 also includes several provisions taken from SB 731 that may reduce some unintended consequences from the CEQA review of infill development projects. CEQA takes into account any significant impact caused by a project on the environment even if the impact is only significant when viewed cumulatively. The cumulative impact rule is intended to ensure that the public and agency decision-makers have an accurate picture of the full impact of a project. For example, if several different projects are intended to commence in the near future, the environmental impact report should take into account whether these projects, taken cumulatively, will cause a significant impact to traffic or congestion. But the cumulative impact rule can have unintended consequences when considering infill development.

Modern civic planning has encouraged higher-density development around mass transit areas as a means to encourage transit ridership and reduce the use of private vehicles. However, courts applying CEQA have often taken a traditional view of development, treating as adverse impacts any reduction in traffic flow or parking availability immediately surrounding the project. SB 743 recognizes that an infill development project should not be subject to increased scrutiny just because the location already has bad congestion or limited parking. The bill provides that automobile delay or inadequate parking should not be sufficient to find a significant impact under CEQA for infill development projects near transit priority centers. Instead, the transportation impacts of

these projects should be measured by how they affect overall vehicle use, and not whether the projects add to any localized congestion. In enacting rules to apply these provisions, the Office of Planning and Research should be guided by this principle.

SB 743 is far from the comprehensive reform that is needed for CEQA. For example, opponents have previously found success in arguing that inadequate parking is not an impact in itself, but results in environmental impacts from increased air quality emissions caused by circling cars looking for parking spots. It is unclear whether this argument is affected at all by the limited scope of SB 743, especially given that the bill expressly states that it does not affect the analysis of other impacts related to air quality, noise or safety. These piecemeal changes may only create additional loopholes and complications that can be exploited by project opponents. Instead, CEQA needs a drastic overhaul that gets the statute closer to its intended purpose of simply identifying the possible environmental impacts of proposed projects. It should not be used as a tool to prevent development or to frustrate meaningful investment in this state.

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