THE MANY WAYS TO SKIN A CAT

CEQA STREAMLINING IN PRACTICE
YOUR SPEAKERS

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OUR PURPOSE TODAY

Streamlining 101

Streamlining in Real Life

Debunking Streamlining Myths

How You Can Streamline
STREAMLINING 101
STREAMLINING 101

• CLASS 32 INFILL EXEMPTION [CEQA GUIDELINES §15332]
• AFFORDABLE HOUSING [CCR §SECTION 15194(B)-(D)]
• RESIDENTIAL PROJECTS CONSISTENT WITH A SPECIFIC PLAN [CCR §65457]
• PROJECTS CONSISTENT WITH A SPECIFIC PLAN [CCR §21155.4(2)]
• PROJECTS CONSISTENT WITH A COMMUNITY PLAN [PRC §21083.3]
• INFILL EXEMPTION CHECKLIST [CEQA GUIDELINES §15183.3]
• TRANSIT PRIORITY PROJECTS [PRC §21153.1]
CATEGORICAL EXEMPTIONS

• CATEGORICAL EXEMPTIONS ON THE BOOKS (CEQA GUIDELINES SECTION 15300)

• COMMON SENSE EXEMPTION (CEQA GUIDELINES SECTION 15061)
INFILL EXEMPTION VS. INFILL CHECKLIST

**CLASS 32 EXEMPTION**
- MUST MEET ALL 5 CRITERIA
- NONE OF THE “EXCEPTIONS TO THE EXEMPTION” APPLY
- BEST USE: “CUT & DRY” INFILL PROJECTS

**INFILL CHECKLIST**
- MUST MEET APPENDIX M CRITERIA
- GO THROUGH APPENDIX N CHECKLIST
- USEFUL WHERE EXCEPTIONS APPLY
- HOW IS THIS STREAMLINING?
EXEMPTION FOR MIXED USE PROJECTS CONSISTENT WITH SPECIFIC PLAN

• PREVIOUSLY APPLICABLE TO RESIDENTIAL PROJECTS SPECIFIC PLAN
  • DUBLIN CITIZENS CASE UPHELD

• AMENDED IN 2018 TO INCLUDE RESIDENTIAL, COMMERCIAL AND MIXED USE PROJECTS NEAR TRANSIT
EXEMPTION FOR MIXED USE PROJECTS CONSISTENT WITH SPECIFIC PLAN

QUALIFYING CRITERIA

• A RESIDENTIAL OR MIXED-USE PROJECT, OR A PROJECT WITH A FLOOR AREA RATIO OF AT LEAST 0.75 ON COMMERICIALLY-ZONED PROPERTY, INCLUDING ANY REQUIRED SUBDIVISION OR ZONING APPROVALS, IS EXEMPT IF THE PROJECT SATISFIES THE FOLLOWING CRITERIA:

  • (A) IT IS LOCATED WITHIN A TRANSIT PRIORITY AREA AS DEFINED IN PUBLIC RESOURCES CODE SECTION 21099(A)(7);
  • (B) IT IS CONSISTENT WITH A SPECIFIC PLAN FOR WHICH AN ENVIRONMENTAL IMPACT REPORT WAS CERTIFIED; AND
  • (C) IT IS CONSISTENT WITH THE SCS.
AB 1804 – INFILL EXEMPTION FOR COUNTIES

- EXEMPTION FOR RESIDENTIAL MIXED USE PROJECTS IN UNINCORPORATED AREAS OF A COUNTY (PUB. RES. CODE SECTION 21159.25)
- ADOPTED IN 2018
- SIMILAR TO INFILL EXEMPTION FOR PROPERTIES IN CITY BOUNDARIES
AB 1804 – QUALIFYING CRITERIA

• CONSISTENT WITH GP AND ZONING

• DENSITY IS GREATER THAN
  • (A) THE AVERAGE DENSITY OF THE RESIDENTIAL PROPERTIES THAT ADJOIN, OR ARE SEPARATED ONLY BY AN IMPROVED PUBLIC RIGHT-OF-WAY FROM, THE PERIMETER OF THE PROJECT SITE, IF ANY,
  • (B) THE AVERAGE DENSITY OF THE RESIDENTIAL PROPERTIES WITHIN 1,500 FEET OF THE PROJECT SITE, OR
  • (C) SIX DWELLING UNITS PER ACRE

• THE RESIDENTIAL PORTION OF THE PROJECT IS A MULTIFAMILY HOUSING DEVELOPMENT THAT CONTAINS 6 OR MORE UNITS
AB 1804 – QUALIFYING CRITERIA

• The proposed development occurs within an unincorporated area of a county on a project site of no more than 5 acres substantially surrounded by qualified urban uses
• No value as habitat for endangered, rare, or threatened species
• No significant effects relating to transportation, noise, air quality, greenhouse gas emissions, or water quality
AB 1804 – QUALIFYING CRITERIA

- PROJECT SITE CAN BE ADEQUATELY SERVED BY ALL REQUIRED UTILITIES AND PUBLIC SERVICES
- THE SITE IS LOCATED ON A SITE THAT IS A LEGAL PARCEL OR PARCELS WHOLLY WITHIN THE BOUNDARIES OF AN URBANIZED AREA OR URBAN CLUSTER
- DISQUALIFYING CRITERIA – EXCEPTIONS APPLY
SUSTAINABLE COMMUNITIES EXEMPTION AND ENVIRONMENTAL ASSESSMENT FOR TRANSIT PRIORITY PROJECTS

• ADOPTED IN 2008 UNDER SENATE BILL 375 BUT USED ONLY RECENTLY

• IN NEW CASE *SACRAMENTANS FOR FAIR PLANNING v. CITY OF SACRAMENTO*, NO. C086182, (CAL. CT. APP. JULY 3, 2019), THE CALIFORNIA COURT OF APPEAL REJECTED CHALLENGES TO THE LAND USE APPROVALS FOR A 15-STORY, 134-UNIT HOUSING/MIXED USE PROJECT LOCATED IN MIDTOWN SACRAMENTO, CALIFORNIA. THIS IS THE FIRST COURT OF APPEAL DECISION TO ADDRESS ENVIRONMENTAL REVIEW USING A SCEA.

• AVAILABLE FOR TRANSIT PRIORITY PROJECTS (TPP), WHICH MUST:
  • CONSISTENT WITH SUSTAINABLE COMMUNITIES STRATEGY
  • CONTAIN AT LEAST 50% RESIDENTIAL USE
  • PROVIDE A MINIMUM NET DENSITY OF AT LEAST 20 DU/AC
  • BE WITHIN ½ MILE OF A MAJOR TRANSIT STOP OR HIGH QUALITY TRANSIT CORRIDOR
TPP STREAMLINING OPTIONS

1) EXEMPTION (SEE PUB. RES. CODE 21155.1) – NO MORE THAN 200 UNITS

2) SUSTAINABLE COMMUNITIES ENVIRONMENTAL ASSESSMENT (PUB. RES. CODE 21155.2(B))
   • STRUCTURED LIKE A INITIAL STUDY
   • INCORPORATES ALL FEASIBLE MITIGATION MEASURES, STANDARDS AND CRITERIA IN PRIOR EIRS
   • BENEFITS FROM SUBSTANTIAL EVIDENCE STANDARD

3) SUSTAINABLE COMMUNITIES EIR (PUB. RES. CODE 21155.2(C))
   • NOT REQUIRED TO ANALYZE
     • GROWTH INDUCING IMPACTS
     • IMPACTS FROM CAR/TRUCK TRIPS GENERATED BY THE PROJECT ON GLOBAL WARMING OR THE REGIONAL TRANSPORTATION NETWORK
     • OFF-SITE ALTERNATIVES
SB 35 – BY RIGHT APPROVAL PROCESSING FOR AFFORDABLE, INFILL PROJECTS

• BY RIGHT SB 35 OF 2017 (WIENER) "BY RIGHT" APPROVAL PROCESSING. THIS LAW STREAMLINES THE APPROVAL PROCESS FOR INFILL DEVELOPMENTS IN LOCAL COMMUNITIES THAT HAVE FAILED TO MEET THEIR REGIONAL HOUSING NEEDS.

• QUALIFYING CRITERIA
  • CONSISTENT WITH OBJECTIVE STANDARDS
  • AFFORDABLE HOUSING – 10% OR 50% LOW-INCOME (DEPENDING ON LOCALITY’S RHNA COMPLIANCE)
  • PREVAILING WAGES AND USE OF “SKILLED AND TRAINED WORKFORCE”
  • OTHER CRITERIA DESIGNED TO CAPTURE INFILL PROJECTS

• PROCESSING VALUE
  • NO CEQA
  • MINISTERIAL APPROVAL PROCESSING WITHIN 90 OR 180 DAYS
AB 2162 – BY RIGHT PROCESSING FOR SUPPORTIVE HOUSING

- ADOPTED IN 2018
- PROVIDES FOR BY RIGHT PROCESSING AND TIMEFRAMES FOR COMPLETING APPLICATION REVIEW.
- QUALIFYING CRITERIA
  - UNITS WITHIN THE DEVELOPMENT ARE SUBJECT TO A RECORDED AFFORDABILITY RESTRICTION FOR 55 YEARS.
  - 100% OF UNITS, EXCLUDING MANAGERS’ UNITS, ARE DEDICATED TO LOWER INCOME HOUSEHOLDS AND ARE RECEIVING PUBLIC FUNDING TO ENSURE AFFORDABILITY OF THE HOUSING TO LOWER INCOME CALIFORNIANS.
  - AT LEAST 25 % OF THE UNITS IN THE DEVELOPMENT OR 12 UNITS, WHICHEVER IS GREATER, ARE RESTRICTED TO RESIDENTS IN SUPPORTIVE HOUSING
  - THE DEVELOPER PROVIDES THE PLANNING AGENCY WITH A SUPPORTIVE HOUSING PLAN.
  - REQUIREMENTS FOR NONRESIDENTIAL SUPPORTIVE SERVICES
STREAMLINING IN SAN LEANDRO

✓ USE SECTION 15183 [CONSISTENCY] STRATEGICALLY:
  ✓ 2016 GENERAL PLAN AND ZONING CODE UPDATE EIR
  ✓ 2018 BAY FAIR TOD SPECIFIC PLAN EIR
  ✓ 2015 SHORELINE SPECIFIC PLAN EIR
  ✓ 2007 DOWNTOWN TOD STRATEGY PLAN EIR
✓ INFILL CHECKLISTS UNDER 15183.3
✓ CATEGORICAL EXEMPTIONS

👎 DESPITE ALL THE TOD, SAN LEANDRO HAS NEVER USED TRANSIT PRIORITY PROJECT STREAMLINING ENABLED UNDER SB 375
A BRIEF HISTORY OF TOD IN SAN LEANDRO

SEPTEMBER 27, 1972: NIXON BOARDS A SHINY NEW “TRAIN OF THE FUTURE” IN SAN LEANDRO, JUST TWO DAYS AFTER THE BART SYSTEM OPENS FOR PASSENGERS.
A Brief History of TOD in San Leandro

Fast forward to 2007: AC Transit’s first Bus Rapid Transit (BRT) Line is Approved

- Initial phase 9.5 mile “light rail on wheels” connecting downtown Oakland with downtown San Leandro
- Dedicated bus lanes, signal priority and station platforms in the center median
- Service to begin in early 2020
A Brief History of TOD in San Leandro

Also in 2007: Downtown Transit Oriented Development Strategy Plan is Adopted

- Laid groundwork to concentrate residential density in downtown
- Parcel-specific development standards
- 3,466 new residential units projected
- 303,000 sqft retail, 767,000 sqft office space
- EIR provides CEQA tiering for future projects
A Brief History of TOD in San Leandro

2016: General Plan and Zoning Code Update Adopted

• Implements the 2007 Downtown TOD Plan
• Laid out development standards for TOD projects
• Increased density, reduced parking requirements
• Projected additional units in Downtown TOD Area
• General Plan EIR further refined and provided new tiering for anticipated TOD projects
A Brief History of TOD in San Leandro

2018: Bay Fair TOD Specific Plan Adopted

• Provides a vision for a transit-oriented village with a diversity of land uses
• Supports housing, retail, offices, entertainment and civic uses
• 2,540 new residential units
• 300,000 sqft of new office space
• EIR provides CEQA tiering
899 ALVARADO STREET (MAXIMUS)

- 687 UNIT MULTI-FAMILY RESIDENTIAL DEVELOPMENT ON 5.7 ACRES
- PROJECT COMPLIES WITH THE ZONING CODE, PARKING REQUIREMENTS
- 1 BLOCK FROM BART & TERMINUS OF NEW AC TRANSIT BRT LINE
- 1 BLOCK FROM SAN LEANDRO TECH CAMPUS (550,000 SQFT)
- PROJECT CONTRIBUTES 30% OF SAN LEANDRO’S RHNA ALLOCATION
- RELOCATES EXISTING NON-PROFIT MUSIC CONSERVATORY (FILARMONICA ARTISTA AMADOR DE SAN LEANDRO OR FAASL) ACROSS THE STREET INTO A NEW BUILDING.
687 rental apartment homes
1.23 spaces per unit
847 resident parking spaces
45 visitor and café parking spaces
520 bike parking spaces

~550 sf café
130K+ sf indoor/outdoor amenity space
899 ALVARADO STREET (MAXIMUS)

- DID NOT QUALIFY FOR CATEGORICAL EXEMPTION
- DID NOT QUALIFY AS A TRANSIT PRIORITY PROJECT FOR STREAMLINING UNDER SB375/PRC § 21155.1 (TOO MANY STRINGS ATTACHED, TOO BIG)
- CONSISTENT WITH THE 2016 GENERAL PLAN UPDATE AND 2007 DOWNTOWN TOD STRATEGY PLAN...
- YOU CAN’T GET MUCH MORE TRANSIT FRIENDLY THAN THIS
- COMPLIES WITH DOWNTOWN AREA ZONING DEVELOPMENT STANDARDS
- BEST COURSE OF ACTION? CEQA INFILL CHECKLIST UNDER 15183.3
899 Alvarado Street (Maximus)

- Not your typical public hearing
- 19 public speakers - 18 in support, one against
- 41 page document dump submitted at 6:20pm before the hearing
- Board of Zoning Adjustments Approved
- No appeal to City Council was filed
Is this really streamlining?

Pros:
• 196 days from application to approval (no special expediting)
• Approved by Board of Zoning Adjustments (no City Council review)
• Reduced window for legal challenges / legal defensibility

Cons:
• 200 page Infill Checklist supported by 1,000± pages of appendices
• 160 Planning staff hours, 384 CEQA consultant hours, attorney hours
• Substantial legal defensibility review, basically the same as an EIR
DEBUNKING STREAMLINING MYTHS
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• EXEMPTION DOES NOT MEAN NO CEQA
• STREAMLINING DOESN’T NECESSARILY MEAN CHEAPER
• STREAMLINING DOESN’T NECESSARILY MEAN SMALLER DOCUMENTS
• SOMETIMES A PROJECT LOOKS LIKE A GOOD CANDIDATE FOR STREAMLINING, BUT IT’S NOT.
GOOD THINGS TO KNOW WHEN FILING WITH THE COUNTY CLERK AFTER AN INFILL CHECKLIST PROJECT APPROVAL

• YOUR LOCAL COUNTY CLERK-RECORDER MAY NEVER HAVE SEEN THIS BEFORE
• CEQA GUIDELINES 15183.3(D)(2)(A) CALL FOR THE FILING A NOTICE OF DETERMINATION FOR AN ADOPTED INFILL CHECKLIST
• 899 ALVARADO MADE 3 ATTEMPTS TO FILE THE NOD WITH THE COUNTY CLERK FOLLOWING PROJECT APPROVAL
• WAS INITIALLY TOLD TO FILE A NOTICE OF EXEMPTION (DON’T DO IT!)
• CLERKS REQUESTED WE COME BACK WITH COPIES OF NODS & FISH AND GAME FILING FEE RECEIPTS FROM 2016 GENERAL PLAN EIR & 2007 TOD EIR FILINGS (!)
• SAGE ADVICE: BE NICE, DON’T ARGUE WITH THE CLERK’S STAFF, BRING ALL YOUR DOCUMENTS & DON’T EVER FILE THE WRONG CEQA NOTICE
HOW YOU CAN STREAMLINE
PLAN YOUR CEQA STRATEGICALLY

• WHEN CRAFTING YOUR CEQA ANALYSIS FOR PROGRAMMATIC DOCUMENTS, CREATE OPPORTUNITIES FOR STREAMLINING
• ESTABLISH STANDARD CONDITIONS OF APPROVAL AND BMPS IN ADVANCE
• A NEW GENERAL PLAN IS GOLDEN FOR STREAMLINING
PLAN YOUR CEQA STRATEGICALLY

• PRIOR TECHNICAL STUDIES CAN HELP YOU DETERMINE ELIGIBILITY
• BE MINDFUL OF TRAFFIC. VMT ♥ TOD
• USE AN ECONOMIC DOWNTURN TO YOUR ADVANTAGE. DON’T ASSUME THE DOLDRUMS WILL LAST FOREVER
• CEQA STREAMLINING CAN BE AN INCENTIVE FOR FUTURE DEVELOPMENT
HOW YOU CAN STREAMLINE

• UPDATE YOUR CATEGORICAL EXEMPTIONS, PARTICULARLY CLASS 32: REMOVE “ALL” FROM CONSISTENCY WITH GENERAL PLAN AND ZONING

• USE THE “GENERAL RULE” EXEMPTION (AKA “COMMON SENSE” EXEMPTION)

• ADOPT STANDARD CONDITIONS OF APPROVAL THAT MITIGATE BASIC ENVIRONMENTAL IMPACTS (E.G., NESTING BIRD SURVEYS PRIOR TO REMOVING TREES, ARCHEO MONITORS FOR UNDISCOVERED RESOURCES, ETC.)

• INTEGRATE GENERAL PLAN POLICIES WITH STANDARD MITIGATION MEASURES THAT APPLY TO ALL PROJECTS
QUESTIONS??

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