



Streamlining Infill in the CEQA Guidelines (SB 226)



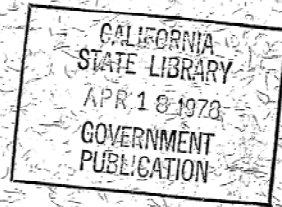
Strategic Growth Council: Identifying Infill Barriers

- Looking within state agencies to reduce conflicts and promote successful programs
- Working with federal, regional and local partners to develop strategies for urban and rural areas
- Bringing strategies to the Council beginning in September, more throughout the year
- Goals:
 - Understand the differences of infill and greenfield
 - Revise programs and policies to simplify infill development
 - Broad understanding of the need for infill to advance sustainability
 - Durable communication channels and integrated policy thinking

May 17, 2012



AN URBAN STRATEGY FOR CALIFORNIA



- **General Goals**
 - Protect natural resources and improve quality of life by directing new growth to existing cities and suburbs
- **Action Item #2**
 - CEQA exemption for housing in built up areas

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Does CEQA Promote Infill?

§ 21159.21. CRITERIA TO QUALIFY FOR HOUSING PROJECT EXEMPTIONS

A housing project qualifies for an exemption from this division pursuant to Section 21159.22, 21159.23, or 21159.24 if it meets the criteria in the applicable section and all of the following criteria:

- (a) The project is consistent with any applicable general plan, specific plan, and local coastal program, including any mitigation measures required by a plan or program, as that plan or program existed on the date that the application was deemed complete and with any applicable zoning ordinance, as that zoning ordinance existed on the date that the application was deemed complete, except that a project shall not be deemed to be inconsistent with the zoning designation for the site if that zoning designation is inconsistent with the general plan only because the project site has not been rezoned to conform with a more recently adopted general plan.
- (b) Community-level environmental review has been adopted or certified.
- (c) The project and other projects approved prior to the approval of the project can be adequately served by existing utilities, and the project applicant has paid, or has committed to pay, all applicable in-lieu or development fees.
- (d) The site of the project does not contain wetlands, does not have any value as a wildlife habitat, and the project does not harm any species protected by the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.) or by the Native Plant Protection Act (Chapter 10 (commencing with Section 1900) of Division 2 of the Fish and Game Code), the California Endangered Species Act (Chapter 1.5 (commencing with Section 2050), of Division 3 of the Fish and Game Code), and the project does not cause the destruction or removal of any species protected by a local ordinance in effect at the time the application for the project was deemed complete. For the purposes of this subdivision, "wetlands" has the same meaning as in Section 328.3 of Title 33 of the Code of Federal Regulations and "wildlife habitat" means the ecological communities upon which wild animals, birds, plants, fish, amphibians, and invertebrates depend for their conservation and protection.
- (e) The site of the project is not included on any list of facilities and sites compiled pursuant to Section 65962.5 of the Government Code.
- (f) The site of the project is subject to a preliminary endangerment assessment prepared by a registered environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.
 - (1) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to a level of insignificance in compliance with state and federal requirements.
 - (2) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to a level of insignificance in compliance with state and federal requirements.
- (g) The project does not have a significant effect on historical resources pursuant to Section 21084.1.
- (h) The project site is not subject to any of the following:
 - (1) A wildland fire hazard, as determined by the Department of Forestry and Fire Protection, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a wildland fire hazard.
 - (2) An unusually high risk of fire or explosion from materials stored or used on nearby properties.
 - (3) Risk of a public health exposure at a level that would exceed the standards established by any state or federal agency.
 - (4) Within a delineated earthquake fault zone, as determined pursuant to Section 2622, or a seismic hazard zone, as determined pursuant to Section 2696, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of an earthquake fault or seismic hazard zone.
 - (5) Landslide hazard, flood plain, flood way, or restriction zone, unless the applicable general plan or zoning ordinance contains provisions to mitigate the risk of a landslide or flood.
- (i) (1) The project site is not located on developed open space.
- (2) For the purposes of this subdivision, "developed open space" means land that meets all of the following criteria:
 - (A) Is publicly owned, or financed in whole or in part by public funds.
 - (B) Is generally open to, and available for use by, the public.
 - (C) Is predominantly lacking in structural development other than structures associated with open spaces, including, but not limited to, playgrounds, swimming pools, ballfields, enclosed child play areas, and picnic facilities.
- (3) For the purposes of this subdivision, "developed open space" includes land that has been designated for acquisition by a public agency for developed open space, but does not include lands acquired by public funds dedicated to the acquisition of land for housing purposes.
- (j) The project site is not located within the boundaries of a state conservancy.

§ 21159.24. INFILL HOUSING EXEMPTION

(a) Except as provided in subdivision (b), this division does not apply to a project if all of the following criteria are met:

- (1) The project is a residential project on an infill site.
 - (2) The project is located within an urbanized area.
 - (3) The project satisfies the criteria of Section 21159.21.
 - (4) Within five years of the date that the application for the project is deemed complete pursuant to Section 65943 of the Government Code, community-level environmental review was certified or adopted.
 - (5) The site of the project is not more than four acres in total area.
 - (6) The project does not contain more than 100 residential units.
 - (7) Either of the following criteria are met:
 - (A) (i) At least 10 percent of the housing is sold to families of moderate income, or not less than 10 percent of the housing is rented to families of low income, or not less than 5 percent of the housing is rented to families of very low income.
 - (ii) The project developer provides sufficient legal commitments to the appropriate local agency to ensure the continued availability and use of the housing units for very low, low-, and moderate-income households at monthly housing costs determined pursuant to paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code.
 - (B) The project developer has paid or will pay in-lieu fees pursuant to a local ordinance in an amount sufficient to result in the development of an equivalent number of units that would otherwise be required pursuant to subparagraph (A).
 - (8) The project is within one-half mile of a major transit stop.
 - (9) The project does not include any single level building that exceeds 100,000 square feet.
 - (10) The project promotes higher density infill housing. A project with a density of at least 20 units per acre shall be conclusively presumed to promote higher density infill housing. A project with a density of at least 10 units per acre and a density greater than the average density of the residential properties within 1,500 feet shall be presumed to promote higher density housing unless the preponderance of the evidence demonstrates otherwise.
- (b) Notwithstanding subdivision (a), this division shall apply to a development project that meets the criteria described in subdivision (a), if any of the following occur:
- (1) There is a reasonable possibility that the project will have a project-specific, significant effect on the environment due to unusual circumstances.
 - (2) Substantial changes with respect to the circumstances under which the project is being undertaken that are related to the project have occurred since community-level environmental review was certified or adopted.
 - (3) New information becomes available regarding the circumstances under which the project is being undertaken and that is related to the project, that was not known, and could not have been known, at the time that community-level environmental review was certified or adopted.
- (c) If a project satisfies the criteria described in subdivision (a), but is not exempt from this division as result of satisfying the criteria described in subdivision (b), the analysis of the environmental effects of the project in the environmental impact report or the negative declaration shall be limited to an analysis of the project-specific effect of the projects and any effects identified pursuant to paragraph (2) or (3) of subdivision (b).
- (d) For the purposes of this section, "residential" means a use consisting of either of the following:
- (1) Residential units only.
 - (2) Residential units and primarily neighborhood-serving goods, services, or retail uses that do not exceed 15 percent of the total floor area of the project.

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Background on SB 226

- CEQA does not apply to effects that either:
 - Were previously analyzed in a programmatic EIR for a planning level decision; or
 - Are substantially mitigated by uniformly applicable development policies
- Development Certainty and Quicker Process
 - No New Review if:
 - All effects previously analyzed or addressed by development policies
 - New review if:
 - New or more significant effect, but focused
 - Off the table: previously analyzed, addressed by development policies
 - Limited Scope EIR where new effects are significant
 - No growth inducing analysis
 - Limited alternatives analysis

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What Projects Are Eligible?

- Project Location
 - Project site previously developed, or surrounded on 3 sides
 - Within incorporated cities and dense “islands”
- Project Type
 - Residential
 - Commercial and retail (Minimum FAR 0.5)
 - Public office buildings
 - Transit stations
 - Schools
- Requirements
 - Consistent with Sustainable Communities Strategy / APS
 - Implements statewide performance standards for infill



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Developing the Performance Standards

❑ Objective

- Maximize environmental benefit

❑ Approach

- Keep it simple for infill that realizes the greatest environmental benefit
- VMT as an umbrella metric

❑ Options

- Locate in low VMT areas
- Design project to reduce driving (i.e., near transit or consumers)

* Promote Infill

↓ GHG

↓ VMT (SB 375)

↓ Energy Use

↓ Water Use

↑ Transit supportive communities

* Protect public health

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Key Points

- Better planning = more streamlining
 - Regional
 - Local
- VMT matters
- Beyond CEQA



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Thank you!

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