

April 29, 2014

To: Measure D Working Group

From: Jeff Bond

Subject: Analysis of CEQA Review of Amendments to Measure D Parking

The California Environmental Quality Act requires municipalities to evaluate the environmental impacts of proposed projects and policies prior to making a final decision. The purpose of the memorandum is to outline the CEQA review process associated with consideration of amendments to the residential parking provisions of Measure D.

The CEQA law consists of the statutes approved by the legislature and governor; the CEQA Guidelines prepared by the State Department of Natural Resources, which provides guidance on the preparation of CEQA documents; and court rulings that result in refinements to the preparation of environmental review documents.

In summary, CEQA compliance involves a multi-step process:

1. Determination if the proposed action is a project;
2. If the action is a project, does the action qualify for an exemption from CEQA;
3. If the project is not exempt, an Initial Study is prepared, resulting in a document called a negative declaration or a mitigated negative declaration.
4. If the project has impacts, and mitigations will not address the impacts, an environmental impact report is prepared.

Definition of "Project"

Under CEQA, a project is an activity directly undertaken by public agency. Project includes approval of private development projects, public improvements, as well as legislative policy decisions including amendments to zoning ordinances and general plans. In CEQA, a "project" is defined very broadly and includes all components and phases of an activity. An amendment to the residential parking provisions of Measure D will clearly be a "project" under CEQA.

Exemptions from CEQA Review

There are two types of exemptions in CEQA. The first type is a "statutory" exemption, which apply whether or not the proposed action will have environmental impacts. The statutory exemptions typically apply to very specific types of projects, and in this case, are not applicable to an amendment to Measure D.

The second type is a categorical exemption, which apply to a broader range of actions and are intended to apply to circumstances where an action is expected to have minimal adverse environmental impacts. There are 33 categorical exemptions detailed in the CEQA Guidelines. For most new residential development projects, the infill exemption is the most applicable. From the CEQA Guidelines, the Infill exemption is defined as follows:

15332. IN-FILL DEVELOPMENT PROJECTS - Class 32 consists of projects characterized as in-fill development meeting the conditions described in this section.

- a. The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- b. The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- c. The project site has no value as habitat for endangered, rare or threatened species.
- d. Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- e. The site can be adequately served by all required utilities and public services.

Most but not all potential multi-family residential development sites are located on parcels less than five acres. Thus, to use the In-fill exemption, some form of zoning overlay district of parcels less than five areas could be created to fine-tune the locations in which changes to parking standards would be considered.

Even if a project fits within a categorical exemption, however, the exemption cannot be used when there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances. Thus, it is common for categorical exemptions to include an objective analysis for the record substantiating the use of the exemption. The initial study checklist can be used as the framework for this type of analysis.

Initial Study Checklist

The “Initial Study” checklist is an appendix to the CEQA Guidelines and consists of 91 questions across 17 subject areas. Practitioners use the initial study checklist as the basic framework for preparation of an environment review. Amendments to the initial study checklist are made by the State of California every few years. Recent notable changes include removing any mention of parking impacts from the checklist. CEQA review, however, is not limited to the questions included in the initial study checklist. Additional environmental issues not expressed in the checklist, but pertinent to the project, may need to be considered.

Impact of Court Rulings

There is no governmental agency that reviews CEQA documents for adequacy or enforce CEQA compliance. Therefore, the primary remedy to individuals or groups that believe an environmental

review is inadequate is to pursue legal action asking the Courts to order municipalities to reverse CEQA approvals. With respect to parking, there have been two important Court rulings. First, in a 2002 case, *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco (2002) 102 Cal.App.4th 656*, the Court of Appeal concluded that the “social inconvenience” of having to look for parking is not an environmental impact as long as the extra driving during the search for parking is mitigated. In 2013, in the case *Taxpayers for Accountable School Bond Spending, v. San Diego Unified School District (2013)*, the appellate court reversed the school district’s approval of a football field in part because the District environmental review did not respond to public comments that there were going to be parking impacts. Because of this more recent ruling, irrespective of the initial study checklist, a parking impact could be raised in response to a categorical exemption or environmental review document. As a result, the conservative approach to CEQA document preparation would be to conduct a parking analysis in advance.

Senate Bill 743

SB 763 became effective in January 2014. Among other things, the legislation states that parking impacts of development in a transit priority area shall not be considered significant on the environment. Transit priority area is subsequently defined as an area within ½ mile of an intersection of two or more bus routes with 15-minute service intervals at peak hours.

No formal determination of transit priority areas have been published by ABAG or AC Transit, but it is likely that the intersections of San Pablo and Solano (Lines 18 and 72), and Monroe and San Pablo (Lines 52 and 72) could be found to be major transit stops. (There currently is no high frequency bus line that intersects with Line 18 on Solano Avenue.) In addition, the residential area north of Brighton Avenue is within ½ mile of the El Cerrito Plaza BART station. Thus, San Pablo Avenue and adjacent portions of Solano Avenue could be considered as transit priority areas.

For projects and policy initiatives in the transit priority area in which the In-fill categorical exemption is appropriate, the new SB 763 statutes eliminate parking as a potential environmental impact. Thus, parcels within the transit priority area would be less vulnerable to a parking impact challenge such as raised in the San Diego Unified School District case.

Conclusion

The use of an infill categorical exemption from CEQA is potentially applicable if proposed amendments to Measure D residential parking standards are limited to sites that are (a) on less than five areas and thus meet In-fill exemption; and (b) within transit priority areas near San Pablo Avenue and north or Brighton Avenue, and thus use SB 743 provisions. Changes to the residential portion of Measure D applicable to portions of the City outside this area could be vulnerable to a challenge to the appropriateness of a categorical exemption, and conservative professional practice would be to undertake additional CEQA review.