Governor Signs Third CEQA Reform Bill

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On October 4, 2011, California Governor Jerry Brown signed Senate Bill 226 (“SB 226”), in an attempt to help improve the state’s economy, create jobs and increase tax revenues for the state. SB 226 includes a number of amendments to CEQA, the most significant of which are the following: 1) allowing qualified urban infill projects that meet new statewide performance standards to undergo limited California Environmental Quality Act (“CEQA”) review; 2) exempting from environmental review effects which solely relate to increases in greenhouse gas emissions; and 3) as the Governor stated in announcing his signing of the bill, “avoid[ing] costly and repetitive permitting for certain renewable power projects.”

SB 226 is the third piece of CEQA legislation signed by the Governor this year. Last month, Governor Brown approved Assembly Bill 900, which expedites judicial review for development projects that incorporate various environmental features, and Senate Bill 292, which establishes administrative and judicial review procedures for the proposed football stadium in downtown Los Angeles. We described these new laws in a Client Alert dated September 28, 2011, entitled Governor Signs CEQA Reform Into Law, [http://www.paulhastings.com/publicationDetail.aspx?publicationId=2011].

Tiered Environmental Review for Urban Infill Projects

Under SB 226, if an environmental impact report (“EIR”) has been certified for a planning level decision by a city or county (a “planning level decision” means the enactment or amendment of a general plan, community plan, specific plan or zoning code), then environmental review of an infill project may be limited to impacts on the environment that are specific to the project or the project site and that were not addressed as significant impacts in a prior EIR. In addition, if there are such significant impacts specific to an infill project or project site, the bill provides that environmental review may exclude the consideration of alternative locations, densities, building intensities, and growth inducing impacts of the project.

SB 226 also broadens the CEQA definition of an “infill project” to include any project that both (1) contains a use which is considered residential, retail or commercial, or a transit station, school or public office building; and (2) is located within an urban area on a site that has been previously developed, or on a vacant site where at least 75 percent of the perimeter of the site adjoins, or is separated only by an improved public right-of-way from, parcels that are developed with qualified urban uses. “Urban areas” are defined as areas with populations of at least 100,000 people with population densities greater than or equal to densities of surrounding cities. This definition of “urban area” will supersede the holding in Tomlinson v. County of Alameda (2010), 188 Cal.App.4th 1406, that the categorical exemption for infill development applies only to projects within the limits of an incorporated city.

SB 226 also directs the Office of Planning and Research to prepare guidelines for the Natural Resources Agency to establish statewide standards for infill projects.

SB 226 will therefore streamline environmental review of infill projects, which should lead to faster and simpler processing of environmental review for these projects.
CEQA Exemptions for Effects Solely Due to Greenhouse Gas Emissions

Under prior law, if a lead agency determined that a project might cause a significant increase in greenhouse gas emissions, the project was not eligible for a CEQA exemption, and the lead agency was required to conduct additional environmental analysis (e.g., prepare an EIR or mitigated negative declaration). In contrast, SB 226 provides that a project’s greenhouse gas emissions will not, in and of themselves, invalidate a CEQA categorical exemption so long as the project complies with statewide, regional, or local greenhouse gas plans.

Under SB 226, therefore, many projects not previously eligible for a CEQA categorical exemption due to greenhouse gas emissions might now qualify for a categorical exemption. Increased CEQA exemptions could expedite project approvals and stimulate job growth in California.

Streamlining Procedures Related to Certain Solar Energy Facilities

In general, the California Energy Commission’s exclusive jurisdiction over the permitting and CEQA review process for certain power generating facilities does not encompass solar power generating facilities using photovoltaic technology, but it does encompass solar thermal power facilities. SB 226 would authorize the California Energy Commission to use an accelerated process to revise permits already granted to a limited number of solar thermal power plants so that those power plants may convert to photovoltaic technology. In the governor’s signing message, he emphasized that this provision “does not otherwise limit any of the Commission’s authority to permit renewable energy projects, including the ability to relicense a facility that was not specifically described in this bill.” The California Energy Commission is currently considering whether it has authority under existing law to license any class of non-thermal projects that voluntarily submit to its jurisdiction.

SB 226 will also exempt from the requirements of CEQA the installation of a solar energy system, including associated equipment, on the roof of an existing building or an existing parking lot meeting specified conditions. Projects requiring certain environmental permits, such as species take permits, streambed alteration agreements, waste discharge requirements, or permits under section 401 or 404 of the federal Clean Water Act, are not eligible for this exemption.

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