

Green Building & Energy Technology

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MAY 2012

To our clients and friends:

We are pleased to present you with our May issue of Mintz Levin's Green Building Newsletter.

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AB 1103 Update: Revised Draft Regulations Postpone Compliance with California's Nonresidential Building Energy Use Disclosure Program

BY [GABRIEL SCHNITZLER](#) AND [CHRISTIAN W. TERMYN](#)

New proposed regulations will postpone compliance with California's energy performance rating disclosure for nonresidential buildings until at least January 1, 2013, according to the California Energy Commission (CEC).

Under Assembly Bill 1103, owners and operators of nonresidential buildings are required to disclose energy benchmarking data and ratings for a 12-month period to prospective buyers, lenders, and lessees of an entire building. [See our prior coverage of AB 1103 here.](#) Assembly Bill 531 subsequently clarified that the disclosure program will be implemented according to a compliance schedule established by the CEC.

Under the [March 2012 draft regulations](#), the energy benchmarking disclosure requirements will take effect in three phases: on January 1, 2013, for a building with total floor area measuring more than 50,000 square feet; on July 1, 2013, for a building with a total floor area measuring more than 10,000 square feet and up to 50,000 square feet; and on January 1, 2014, for a building with a total floor

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area measuring at least 5,000 square feet and up to 10,000 square feet.

The CEC previously scheduled a hearing for May 9, 2012, to consider whether to adopt the draft regulations, but has postponed the date for a hearing to approve the proposed regulations. We will provide an update as soon as more information on the regulations is available.

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Recent CEQA Legislation Streamlines Review for Green Building and Renewable Energy Projects

BY [GABRIEL SCHNITZLER](#) AND [CHARLES E. JAGOLINZER](#)

The California Environmental Quality Act (CEQA) was originally adopted with the goal of disclosing and weighing the environmental impacts of discretionary actions by state agencies and local governments. While CEQA has certainly resulted in greater consideration of the environmental impacts of development, a common complaint is that CEQA has become a powerful tool for NIMBYism, slowing down projects with substantial environmental benefits, such as dense urban development, based on concerns only tangentially related to the environment.

Recent legislation has resulted in modest efforts to refocus CEQA. SB 375, passed in 2008, promotes greater coordination of regional transportation plans with regional greenhouse gas reduction goals. It also provides targeted CEQA relief for transit-oriented development, as well as relief from considering growth inducing or traffic impacts for certain residential or mixed-use projects consistent with local transportation plans. SB 226, passed last fall, builds on SB 375 by providing CEQA exemptions for rooftop and parking lot solar, and CEQA streamlining for infill development. AB 900, also passed last fall, provides streamlined judicial review for large renewable and infill projects that meet certain environmental performance standards.

SB 226: Exemptions for Rooftop and Parking Lot Solar, and Streamlining for Infill Development

[SB 226](#) exempts from CEQA review most solar energy installations and associated equipment on the roof of an existing building or on an existing parking lot. The exemptions apply to both solar electricity and solar hot water, though some restrictions apply. For example, a parking lot solar system must not involve the removal of a tree required to be planted or maintained by local, state, or federal law. This CEQA exemption for solar is a good — but limited — step in support of Governor Brown's goal of 12,000 megawatts of local renewable energy by 2020. [Read more here](#) about the technical and policy challenges for meeting that goal. While a welcome step, the practical benefits of this CEQA exemption may be limited as most rooftop and parking lot solar installations would not require a discretionary governmental approval (such as a use permit), which would trigger CEQA review.

SB 226 also streamlines review for certain infill projects so that environmental effects considered at a more general level in the planning process do not need to be revisited for the infill project: "If an environmental impact report was certified for a planning level decision of a city or county, the application of this division to the approval of an infill project shall be limited to the effects on the environment that (A) are specific to the project or to the project site and were not addressed as significant effects in the prior environmental impact report or (B) substantial

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new information shows the effects will be more significant than described in the prior environmental impact report.”

To receive the benefits of streamlined review, the infill project must satisfy the performance standards to be adopted pursuant to SB 226, and must be (1) consistent with a sustainable communities strategy or alternative planning strategy under SB 375; (2) a “small walkable community project”; or (3) a project with a residential density of at least 20 units per acre and a floor area ratio of at least .75 if located in a jurisdiction that has yet to adopt a sustainable communities or alternative planning strategy.

The bill also directs the state Office of Planning and Research (OPR) to prepare draft CEQA guidelines containing the required performance standards for infill projects by July 1, 2012. The [current draft regulations](#) are posted on OPR’s website and are open for comment until June 1, 2012. SB 226 requires that the performance standards to be codified in the CEQA guidelines support several green building goals, including implementation of SB 375, reduction of greenhouse gas emissions, reduced water use, and greater energy efficiency.

AB 900: Streamlined Judicial Review of CEQA Challenges to Infill, Renewable Energy Production and Manufacturing

[AB 900](#), passed last September, took inspiration from SB 292, which created a special review process for CEQA challenges to Anschutz Entertainment Group’s Los Angeles football stadium project. AB 900 provides streamlined judicial review of CEQA challenges for a broader class of “leadership projects,” including:

- Infill projects certified as LEED Silver or better by the USGBC that achieve “a 10-percent greater standard for transportation efficiency than comparable projects.” These projects may be “residential, retail, commercial, sports, cultural, entertainment, or recreational.”
- Wind and solar renewable energy generation.
- Clean energy manufacturing projects that manufacture “products, equipment, or components used for renewable energy generation, energy efficiency, or for the production of clean alternative fuel vehicles.”
- Application must be made to the Governor for certification of the leadership project, and the Governor must confirm that certain requirements are satisfied before certifying a proposed project, most importantly:
 - That the project will result in at least one hundred million dollars in investment in California.
 - That there will be no net additional emission of greenhouse gases.
 - That the project “creates high-wage, highly skilled jobs that pay prevailing wages and living wages and provide construction jobs and permanent jobs for Californians, and helps reduce unemployment.”

A “leadership project” which is certified by the Governor and is not disapproved by the Joint Legislative Budget Committee receives streamlined judicial review of CEQA challenges. A judicial challenge to a project on CEQA grounds would ordinarily be heard in the local superior court, whose decision could be subject to further appeals. Challenges to leadership projects are instead heard by the Court of Appeals, which is required to issue a decision within 175 days of an action being filed.

The benefits from AB 900 are temporary. The legislation only applies to projects

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with a certified environmental impact report dated June 1, 2014, or sooner, and the law expires on January 1, 2015.

AB 900 also faces an uncertain future. The Planning and Conservation League (an environmental nonprofit) and its executive director, Bruce Reznik, recently sued the State of California and Controller John Chiang to have AB 900 declared unconstitutional, and to enjoin California and its controller from spending state money to implement it. The group claims the law is unconstitutional because it shifts CEQA challenges from the state trial courts to the court of appeals, and the group also argues that AB 900 makes it more difficult to challenge approvals on CEQA grounds. The Judicial Council of California (the policymaking body of California courts) has also objected to AB 900.

Bellwether for Future CEQA Reforms?

SB 375, SB 226, and AB 900 evidence a clear and welcome trend in favor of reducing the CEQA review burden for infill and transit-oriented development, as well as renewable energy projects. Hopefully this legislation will be a bellwether for future reform, as ample opportunities remain for refocusing CEQA. Aside from the straightforward exemptions under SB 226 for rooftop and parking lot solar, the CEQA streamlining set forth in SB 375, SB 226, and AB 900 is targeted, limited in scope, and complex. As an example, even if the one hundred million dollar investment standard did not apply to leadership projects under AB 900, only the largest developers would have the resources and political savvy to navigate an application to the Governor for certification. Consequently, recent CEQA reform legislation will likely benefit only large projects that can bear considerable investment in attorneys and consultants. More can and should be done to lighten the CEQA burden on smaller- and medium-sized projects that deploy renewable energy, reduce vehicle miles travelled, are energy efficient, or add density to urban areas.

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In the Spotlight: OutSmart Power Systems

From our friends at OutSmart:

[OutSmart Power Systems](#), launched in 2008 and based in Natick, MA, provides a complete system for low-cost, comprehensive energy and equipment monitoring in commercial and industrial buildings — down to a circuit level. Using highly integrated, low-cost hardware, OutSmart can aggregate thousands of measurement points from any building into a single interactive web application for an entire building portfolio.

OutSmart begins with specialized sensors and ends with software applications and analytics delivered through the cloud. At the heart of OutSmart is the EnergyMate, a proprietary, low-cost sensor that sits adjacent to existing breakers and turns each one into a smart node. Data from EnergyMates is transmitted from each electrical panel using existing wiring and pushed to the cloud, where it can be securely accessed from any web browser.

In September of 2011 Underwriters Laboratories approved the OutSmart system and, in December 2011, commercial deployments began. While the need for granular energy monitoring, circuit-level equipment diagnostics, and electrical infrastructure monitoring is present in all industries, OutSmart's initial market strategy is focused on serving supermarkets, data centers, and laboratory/medical environments. Success in an initial grocery store pilot resulted

in program expansion and recent installations have been completed in a data center, quick-serve restaurant, and the headquarters of one of the world's leading diversified manufacturers of motion and control technologies and systems.

“What makes OutSmart unique is its ability to combine information about energy with a detailed understanding of the equipment that uses it and the infrastructure that delivers it. This has an enormous impact on capital and maintenance planning, avoiding downtime and optimizing energy consumption across a portfolio of buildings,” says OutSmart CEO [Kevin Johnson](#).

For more information, please contact [Leo Ryan](#), Vice President of Business Development for OutSmart, at LRyan@outsmartinc.com.

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Recent Articles & News

[Few Seize on a U.S. Bond Program Backing Green Energy, *New York Times*, 5.7.2012](#)

[Energy Department Announces Funding to Develop “Plug-and-Play” Solar Energy Systems for Homeowners, *Energy.gov*, 4.24.2012](#)

[Southern California hailed as model of sustainability, *Los Angeles Times*, 4.17.2012](#)

[What We Talk About When We Talk About the Decentralization of Energy, *the Atlantic*, 4.16.2012](#)

[Just a Fraction More White Roofs Could Have a Huge Global Impact, *the Atlantic*, 4.16.2012](#)

[Greening an Entire Block Instead of Just One Building, *the Atlantic*, 4.16.2012](#)

[Can a Sustainable Town Be Built From Scratch in the Middle of Nowhere?, *the Atlantic*, 4.5.2012](#)

[The impending urban water crisis, *The Salon*, 3.31.2012](#)

[Why Energy Use Is Really Water Use, *the Atlantic*, 3.27.2012](#)

[DOE Releases Green Lease Website, and More Musings on the Split Incentive “Problem”, *Green Building Law*, 3.20.2012](#)

[National Renewable Energy Lab Bets On Black Silicon Solar Power, *Talking Points Memo*, 3.15.2012](#)

[Twin Creeks promises thinner, cheaper solar cells, *SF Gate*, 3.13.2012](#)

[Skyline Innovations Sees Bright Future For Solar Hot Water Heating In U.S., *Talking Points Memo*, 3.8.2012](#)

[California's Transition to Local Renewable Energy: 12,000 Megawatts by 2020, *The Center for Law, Energy and the Environment at Berkeley Law*, 3.6.2012](#)

[LEED Backlash, *Urban Land Magazine*, 2.22.2012](#)

[House fit for a green: Sustainable home construction booms, *Grist*, 2.10.2012](#)

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