

Date of Hearing: May 13, 2020

ASSEMBLY COMMITTEE ON NATURAL RESOURCES

Laura Friedman, Chair

AB 2323 (Friedman and Chiu) – As Amended May 4, 2020

**SUBJECT:** California Environmental Quality Act: exemptions

**SUMMARY:** Expands the application of California Environmental Quality Act (CEQA) exemptions for housing and other specified projects by (1) permitting community plans, as defined, to serve as the basis for exemption of residential, mixed-use and employment center projects near transit, (2) permitting specified exemptions to be claimed on former toxic sites that have been cleared for residential use by the Department of Toxic Substances Control (DTSC), and (3) eliminating the exclusion of sites within the boundaries of a state conservancy from existing exemptions for affordable agricultural housing, affordable urban housing, and urban infill housing.

**EXISTING LAW:**

- 1) CEQA requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines).
- 2) Exempts from CEQA any residential development project, including any subdivision, or any zoning change that is undertaken to implement and is consistent with a specific plan for which an EIR has been certified after January 1, 1980, unless substantial changes or new information require the preparation of a supplemental EIR for the specific plan, in which case the exemption applies once the supplemental EIR is certified.
- 3) Exempts from CEQA specified residential housing projects which meet detailed criteria established to ensure the project does not have a significant effect on the environment. [SB 1925 (Sher), Chapter 1039, Statutes of 2002] The SB 1925 exemptions are available to:
  - a) Affordable agricultural housing projects not more than 45 units within a city, or 20 units within an agricultural zone, on a site not more than five acres in size;
  - b) Urban affordable housing projects not more than 100 units on a site not more than five acres in size; and,
  - c) Urban infill housing projects not more than 100 units on a site not more than four acres in size which is within one-half mile of a major transit stop.
- 4) Requires metropolitan planning organizations (MPOs) to include a sustainable communities strategy (SCS), as defined, in their regional transportation plans, or an alternative planning strategy (APS), for the purpose of reducing greenhouse gas (GHG) emissions, aligns planning for transportation and housing, and creates specified incentives for the implementation of the strategies, including CEQA exemption or abbreviated review for residential or mixed-use residential "transit priority projects" if the project is consistent with

the use designation, density, building intensity, and applicable policies specified for the project area in either an approved SCS or APS. [SB 375 (Steinberg), Chapter 728, Statutes of 2008]

- 5) Establishes abbreviated CEQA review procedures for specified infill projects, where only specific or more significant effects on the environment which were not addressed in a prior planning-level EIR need be addressed. An EIR for such a project need not consider alternative locations, densities, and building intensities or growth-inducing impacts. Infill projects may include residential, retail, commercial, transit station, school, or public office building projects located within an urban area. [SB 226 (Simitian), Chapter 469, Statutes of 2011]
- 6) Exempts from CEQA residential, mixed-use, and "employment center" projects, as defined, located within "transit priority areas," as defined, if the project is consistent with an adopted specific plan and specified elements of an SCS or APS adopted pursuant to SB 375. [SB 743 (Steinberg), Chapter 386, Statutes of 2013]
- 7) Establishes a ministerial approval process (i.e., not subject to CEQA) for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs. [SB 35 (Wiener), Chapter 366, Statutes of 2017]
- 8) Authorizes a city or county to establish a Workforce Housing Opportunity Zone (WHOZ) by preparing an EIR and by adopting a specific plan. Once a WHOZ is established, and for five years thereafter, requires approval of eligible housing developments within a WHOZ within 60 days without requiring the preparation of an EIR or negative declaration under CEQA. [SB 540 (Roth), Chapter 369, Statutes of 2017]
- 9) Authorizes a city or county to create a "housing sustainability district" (HSD) to complete upfront zoning and environmental review in order to receive incentive payments for residential and mixed-use development projects with an affordable housing component. Requires the city or county to prepare an EIR when designating an HSD, then "housing projects" within, and consistent with, a designated HSD are exempt from CEQA. [AB 73 (Chiu), Chapter 371, Statutes of 2017]
- 10) Exempts from CEQA multi-family residential and mixed-use housing projects on infill sites within cities and unincorporated areas that are within the boundaries of an urbanized area or urban cluster. [AB 1804 (Berman), Chapter 670, Statutes of 2018]

**FISCAL EFFECT:** Unknown

**COMMENTS:**

**1) Authors' statement:**

AB 2323 is intended to help address California's housing and climate crises by ensuring that CEQA streamlining for housing projects works as intended, and that well-planned housing near transit and jobs is not delayed unnecessarily. AB 2323, in its current form and with pending amendments, aims to make the existing housing exemptions more consistent, objective and aligned with housing and climate goals.

- 2) **CEQA exemptions for housing.** CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines, for housing projects. For example, any residential development project, including any subdivision, or any zoning change that is consistent with an adopted specific plan is exempt from CEQA pursuant to a statute enacted in 1984.

In 2002, SB 1925 established CEQA exemptions for certain residential projects providing affordable urban or agricultural housing, or located on an infill site within an urbanized area, and meeting specified unit and acreage criteria.

Since SB 1925, additional legislation has provided CEQA exemptions and streamlining for residential (including, but not limited to, affordable housing) and certain other projects in infill areas. SB 375 provided a CEQA exemption for a narrow set of eligible residential projects in infill areas adjacent to transit. SB 226 provided abbreviated CEQA review procedures for a broader set of urban infill projects, including retail, commercial, and public buildings. SB 743 established a new exemption for residential, mixed-use and "employment center" projects located within one-half mile of a major transit stop, if the project is consistent with an adopted specific plan and specified elements of an SB 375 strategy. SB 743 also required the Office of Planning and Research (OPR) to propose revisions to the CEQA Guidelines for transportation impacts to better support infill development.

In 2017, the Legislature passed three bills to streamline the CEQA process for affordable housing projects. SB 35 established a ministerial approval process (i.e., not subject to CEQA) for certain multifamily affordable housing projects that are proposed in local jurisdictions that have not met regional housing needs. SB 540 authorizes a city or county to establish a WHOZ by preparing an EIR and by adopting a specific plan. Once a WHOZ is established, and for five years thereafter, eligible housing developments within a WHOZ must be approved within 60 days without requiring the preparation of an EIR or negative declaration under CEQA. AB 73 authorizes a city or county to create an HSD to complete upfront zoning and environmental review in order to receive incentive payments for residential and mixed-use development projects with an affordable housing component. Once the city or county has prepared an EIR for the HSD, then housing projects within, and consistent with, a designated HSD are exempt from CEQA.

In 2018, AB 1804 codified an existing categorical exemption for infill projects, expanding the exemption to apply to multi-family residential and mixed-use housing projects on infill sites in unincorporated urbanized areas or urban clusters.

Since 1978, CEQA has included statutory exemptions for housing projects. There are now 12 distinct CEQA exemptions for housing projects. Three are specific to projects with an affordable housing fraction, the rest are available to affordable and market-rate projects alike. Each exemption includes a range of conditions, including requirements for prior planning-level review, as well as limitations on the location and characteristics of the site. These conditions are intended to guard against the approval of projects with significant environmental impacts that go undisclosed and unmitigated – endangering workers, residents and the greater environment.

However, as these exemptions have been added in bills over the past 40 years, and in particular since SB 1925 in 2002, the conditions in each bill have varied and evolved. Some, particularly SB 1925, included conditions which are excessively restrictive and subjective, making the exemptions difficult to use. More recent exemptions have been less restrictive, more objective, and have emphasized production of housing in urban areas near transit.

- 3) **Opposition concerns.** Five of the existing statutory housing exemptions, as well as all categorical exemptions prepared by OPR and adopted by the Secretary of the Natural Resources Agency, prohibit exempting projects on sites included on the “Cortese List.” The Cortese List is a planning document used by agencies and developers to provide information about the location of hazardous materials release sites. DTSC is responsible for a portion of the information contained in the Cortese List. Other state and local agencies, including the state and regional water boards and Department of Public Health, are required to provide additional hazardous material release information for the Cortese List. The Cortese List is required to be updated annually.

When SB 35 passed in 2017, it included a similar Cortese List exclusion, but provided an exception if the site had been cleared for residential use by the appropriate agency. This bill includes a more limited version of the SB 35 exception, permitting clearance only by DTSC. Building trades and environmental justice advocates have expressed opposition or concerns about these exceptions, based primarily on the difficulty obtaining clear evidence that a former toxic site has in fact been cleaned up to a standard that makes it safe for workers and residents, as well as concerns about the quality of DTSC’s process and decisions in certifying cleanup of Cortese List sites.

The authors recognize these concerns and propose to work with all parties to develop an approach that provides a reliable and objective standard to ensure that sites are in fact safe for construction and residential use.

- 4) **Additional pending amendments.** The authors are developing additional amendments to address the following issues:
- a) For the exemptions that require sites to be located within one-half mile of a major transit stop, add an alternative that would also allow sites in “very low vehicle travel areas” (i.e., sites where vehicle miles traveled is 15% or more below the regional average, as mapped by OPR).
  - b) Standardize the environmental site limitations across existing exemptions, with an emphasis on conditions that can be objectively determined and mapped.
  - c) Remove the Cortese List exceptions, pending development of a less controversial approach.
  - d) Develop clear, consistent definitions of “infill site” and “urbanized area.”
  - e) Consider increases to existing unit and acreage limits for urban infill housing projects.
  - f) Consider alternative project conditions to support climate goals, such as building energy efficiency, electric-only or electric-ready buildings, electric vehicle charging, and unbundled parking.

The bill should return to this committee for review and concurrence should these amendments be added to the bill.

- 5) **Related legislation.** AB 1907 (Santiago), pending in this committee, establishes a new exemption for “any agency activity in furtherance” of providing affordable housing, without reference to any of the existing exemptions and without any limitations on the location or conditions of the project site.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

American Planning Association, California Chapter  
Associated Builders and Contractors Northern California Chapter  
Association of Environmental Professionals  
Bay Area Council  
Bay Area Housing Advocacy Coalition  
California Building Industry Association  
California League of Conservation Voters  
California Yimby  
Council of Infill Builders  
Los Angeles Business Council  
Mayor Eric Garcetti, City of Los Angeles  
Rural County Representatives of California  
San Francisco Bay Area Planning and Urban Research Association (SPUR)  
San Francisco Housing Action Coalition  
Silicon Valley Leadership  
Yimby Action

### **Opposition**

State Building and Construction Trades Council

**Analysis Prepared by:** Lawrence Lingbloom / NAT. RES. /