

Date of Hearing: June 2, 2020

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Lorena Gonzalez, Chair

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

Policy Committee: Natural Resources

Vote: 7 - 2

Urgency: No

State Mandated Local Program: Yes

Reimbursable: No

SUMMARY:

This bill updates existing California Environmental Quality Act (CEQA) housing exemptions. Specifically, this bill expands the application of CEQA exemptions for housing and other specified projects by:

- 1) Permitting community plans to serve as the basis for exemption of residential, mixed-use and employment center projects near transit.
- 2) Permitting exemptions to be claimed on former toxic sites that have been cleared for residential use by the Department of Toxic Substances Control (DTSC).
- 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.

FISCAL EFFECT:

No additional state costs.

COMMENTS:

- 1) **Background and Purpose.** CEQA includes various statutory exemptions, as well as categorical exemptions for housing projects in the CEQA Guidelines. 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.

SB 1925, Chapter 1039, Statutes of 2002, 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 provided CEQA exemptions and streamlining for residential (including, but not limited to, affordable housing) and certain other projects in infill areas.

SB 375, Chapter 728, Statutes of 2008, provided a CEQA exemption for a narrow set of eligible residential projects in infill areas adjacent to transit. SB 226, Chapter 469, Statutes of 2011, provided abbreviated CEQA review procedures for a broader set of urban infill projects, including retail, commercial and public buildings. SB 743, Chapter 386, Statutes of 2013, 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, Chapter 366, Statutes of 2017, established a ministerial approval process (i.e., not subject to CEQA) for certain multifamily affordable housing projects proposed in local jurisdictions that have not met regional housing needs.

SB 540, Chapter 369, Statutes of 2017, authorizes a city or county to establish a workforce housing opportunity zone (WHOZ) by preparing an environmental impact report (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, Chapter 371, Statutes of 2017 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. 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, Chapter 670, Statutes of 2018, 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.

There are now 12 distinct CEQA exemptions for housing projects. Three are specific to projects with affordable housing, 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.

According to the author:

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) **Negotiations Continue.** The authors continue to work with both proponents and opponents on amendments to address the following specific 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.

- 3) **The Cortese List.** 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.

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 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 committee may wish to remove the provision allowing an exemption on former toxic sites while the author continues negotiations on the other issues.