

(Without Reference to File)

ASSEMBLY THIRD READING

AB 2323 (Friedman and Chiu)

As Amended June 4, 2020

Majority vote

**SUMMARY:**

Expands the application of California Environmental Quality Act (CEQA) exemptions for housing and other specified projects by permitting community plans, as defined, to serve as the basis for exemption of residential, mixed-use and employment center projects near transit and 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.

**Major Provisions**

- 1) Permits community plans, as defined, to serve as the basis for exemption of residential, mixed-use and employment center projects near transit.
- 2) Eliminates 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.

**COMMENTS:**

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.

SB 1925 (Sher), 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 has provided CEQA exemptions and streamlining for residential (including, but not limited to, affordable housing) and certain other projects in infill areas. SB 375 (Steinberg), 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 (Simitian), 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 (Steinberg), 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 (Wiener), Chapter 366, Statutes of 2017 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 (Roth), 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 (Chiu) 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.

AB 1804 (Berman), 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.

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.

**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.

**Arguments in Support:**

Housing advocates, environmental groups, local governments, planners, and environmental professionals support the bill because it makes existing CEQA streamlining for housing projects more practical, usable, and consistent with both housing and climate goals. For example, according to the Association of Environmental Professionals (AEP), California law provides numerous opportunities for streamlining or exempting infill housing projects from review under the California Environmental Quality Act (CEQA). However, these many options are often vague, overly complicated, and inconsistent, limiting their usage by lead agencies. AB 2323 seeks to clarify and align several of these measures to help lead agencies understand and determine when and how they can be applied.

**Arguments in Opposition:**

The State Building and Construction Trades Council (SBCTC) and other affiliated labor unions objected to the bill's prior provision, which was removed by the June 4 amendments, permitting some exemptions for housing projects on sites included on the Department of Toxic Substances Control (DTSC) "Cortese List," if the site had been cleaned up and cleared for residential use. With the removal of those provisions, and an additional clarifying amendment, SBCTC indicates to the author they will adopt a "support if amended" position.

**FISCAL COMMENTS:**

According to the Assembly Appropriations Committee, no additional state costs.

**VOTES:****ASM NATURAL RESOURCES: 7-2-2**

**YES:** Friedman, Flora, Chau, Eggman, Limón, Mathis, McCarty

**NO:** Cristina Garcia, Mark Stone

**ABS, ABST OR NV:** Brough, Muratsuchi

**ASM APPROPRIATIONS: 16-0-2**

**YES:** Gonzalez, Bigelow, Bloom, Bonta, Calderon, Carrillo, Chau, Megan Dahle, Diep, Eggman, Fong, Eduardo Garcia, Petrie-Norris, McCarty, Robert Rivas, Voepel

**ABS, ABST OR NV:** Bauer-Kahan, Gabriel

**UPDATED:**

VERSION: June 4, 2020

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