
SENATE COMMITTEE ON ENVIRONMENTAL QUALITY

Senator Allen, Chair

2023 - 2024 Regular

Bill No: AB 1449

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Urgency: No

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Hearing Date: 6/21/2023

Fiscal: Yes

SUBJECT: Affordable housing: California Environmental Quality Act: exemption

DIGEST: Exempts from the California Environmental Quality Act (CEQA), until 2033, the planning, funding, and development of affordable housing projects, as defined, that meet specified location and labor requirements established in AB 2011.

ANALYSIS:

Existing law:

- 1) Under CEQA, a lead agency determines whether a project is exempt from CEQA, or if it must do an initial study to determine if a project will have significant effects on the environment. If a project has no effect on the environment or effects that can be mitigated, the lead agency prepares a negative declaration (ND) or mitigated ND (MND). If the project will have significant impacts, the lead agency prepares an environmental impact report (EIR) to evaluate and propose mitigation measures for any effects on the environment, including impacts or likely impacts to land, air, water, minerals, flora, fauna, ambient noise, and historic or aesthetic significance. (Public Resources Code (PRC) §§21000 et seq.)
- 2) Creates numerous exemptions for residential projects, including:
 - a) Small residential housing projects with low environmental impact and that are for affordable agriculture, urban, or urban infill housing projects. (PRC § 21159.20-21159.24)
 - b) Mixed-use, and "employment center" projects located within "transit priority areas," if the project is consistent an adopted specific plan or other planning documents that align transportation and housing elements to reduce greenhouse gas emissions. (PRC § 21155.4)

- c) Multi-family residential and mixed-use housing projects on infill sites within cities and unincorporated areas that are within urbanized areas or urban clusters. (PRC § 21159.25)
- 3) Creates an exemption in CEQA for infill development projects that are consistent with a general plan and zoning, are substantially surrounded by urban uses and do not impinge on habitat or result in any significant effects relating to traffic, noise, air quality, or water quality; and can be adequately served by utilities and public services. (CEQA Guidelines §15332)
 - 4) Establishes a ministerial approval process (i.e., not subject to CEQA) for certain multifamily affordable housing projects in local jurisdictions that have not met regional housing needs. Eligibility is contingent on labor standards and site specifics. (GC § 65913.4)
 - 5) Establishes a ministerial approval process for affordable housing projects in commercial zones. Requires eligible projects to pay prevailing wage to construction workers and requires projects of 50 units or more to participate in an apprenticeship program and make specified healthcare contributions for construction workers. (GC § 65912.100 et seq., added by AB 2011 (Wicks), Chapter 647, Statutes of 2022)
 - 6) Creates a statutory CEQA exemption for emergency shelters and supportive housing projects approved or carried out within the City of Los Angeles by City of Los Angeles and by other local eligible public agencies, which sunsets Jan 1, 2025. (PRC § 21080.27)

This bill:

- 1) Exempts from CEQA a public agency's entitlement, lease, conveyance, purchase, financial assistance or encumbrance for an affordable housing project. It further exempts any action to facilitate those actions and exempts rezoning, specific plan amendments, or general plan amendments required for constructing of an affordable housing project. This exemption sunsets Jan 1, 2033.
- 2) Defines "affordable housing project" as a project with 100% lower income households that meets the labor requirements in "AB 2011."
- 3) Requires the affordable housing project to meet all of the following requirements:

- a) The affordable housing project is subject to a recorded California Tax Credit Allocation Committee (TCAC) regulatory agreement for at least 55 years upon completion of construction, is consistent with TCAC regulations, and is funded in whole or in part by TCAC;
 - b) The affordable housing project site can be adequately served by existing utilities or extensions;
 - c) A public agency confirms that the site does not have value as wildlife habitat, does not impact protected species, is not within a high or very high fire hazard severity zone as specified, and is not in a flood, landslide, or tsunami risk zone or hazardous substance zone.
- 4) Requires the lead agency to file a notice of exemption with the Office of Planning and Research and the relevant county clerk.

Background

- 1) *The A, B, C's of CEQA.* CEQA is designed to (a) make government agencies and the public aware of the environmental impacts of a proposed project, (b) ensure the public can take part in the review process, and (c) identify and implement measures to mitigate or eliminate any negative impact the project may have on the environment. CEQA is enforced by civil lawsuits that can challenge any project's environmental review. Nonprofits, private individuals, public agencies, advocacy groups, and other organizations can all file lawsuits under CEQA.
- 2) *CEQA exemptions.* A project is exempt from CEQA if it is ministerial (i.e., it does not involve discretionary decisions), or if there is a specific statutory or categorical exemption that applies to the project. Statutory exemptions are created by the Legislature and apply even if a project has the potential to significantly affect the environment. In contrast, categorical exemptions, which are listed in the CEQA guidelines, generally do not apply if there are significant environmental impacts associated with the project.
- 3) *Numerous CEQA Exemptions Apply to Affordable Housing.* Recent legislation (SB 35, Wiener, 2017 and AB 2011 Wicks, 2022) has established a ministerial approval processes for affordable housing projects, in which CEQA review is waived for housing projects that meet high labor requirements and are located outside of specified sensitive sites.

In addition to ministerial processes, there are over a dozen CEQA exemptions for housing projects, including:

- a) Affordable housing projects;
- b) Residential projects;
- c) Urban resident or mixed-use housing projects in unincorporated counties;
- d) transit-priority and residential projects; and
- e) Residential, movement center, or mixed-use development project in a transit priority area.

Affordable housing, as a subset of housing, could be eligible for any of these exemptions so long as the project meets the specific criteria for a given exemption. There are also categorical and statutory exemptions specifically for affordable housing. These exemptions come with their own eligibility criteria, including that projects meet certain urban density and size requirements, avoid impacts on sensitive habitat, wildlife, and the environment, and are not on sensitive sites.

- 4) *What is infill?* There are a number of CEQA exemptions for various infill development projects. The current definition of infill site is one that has been previously developed for qualified urban uses or one where at least 75 percent of the perimeter of the site adjoins parcels that are developed with qualified urban uses and that was not created within the past 10 years. However, numerous CEQA exemptions use criteria that differ in specifics from this definition to get at urban density and infill. Generally, the eligibility criteria for applicable urban density CEQA exemptions include requirements that the project be substantially surrounded by urban uses and be within an urban cluster.

Comments

- 1) *Purpose of Bill.* According to the author, “Although the CEQA process was established with good intentions and serves an important function in mitigating the environmental impact of government-led projects, it often hinders development and growth in the state, especially as it relates to housing. Although the silver bullet does not exist to resolve CEQA-related issues, AB 1449 is an important step to curb some of the excesses of CEQA while increasing affordable housing development. It also strikes a balance that streamlines affordable housing projects without sacrificing labor and environmental qualities. If we grant CEQA exemptions for billionaires building stadiums, we should be able to give the same exemption for affordable housing projects in underserved communities.”
- 2) *Process Over Project.* Unlike the numerous CEQA exemptions for affordable housing projects discussed in the background section, the CEQA exemption in

AB 1449 only applies to the decisions that lead up to planning the project, not the project itself. This includes exemptions for amending general plans, leasing the project, or financing projects. According to information provided by the author, while these decisions are discretionary, they have only recently been brought under CEQA review with any frequency. Because a project itself is still subject to CEQA review, adding CEQA review to many of the decisions that lead up to the decision to actually build the project may slow down the review process without having as significant additional environmental benefits. Given the housing crisis in California, it may be reasonable to limit CEQA review for decisions that lead up to the project planning, especially if certain environmental criteria are baked into the exemption, as they are in AB 785.

- 3) *Redefining Infill Criteria for Affordable Housing.* AB 1449 creates a new and broader definition of urban infill for CEQA exemptions. The current statutory exemption for affordable housing projects requires that the projects be on parcels that are 75 percent adjacent to urban areas. The new exemption that would be established by AB 1449 would require that three sides of a parcel be surrounded by urban use. This criteria is (slightly) more permissive than 75 percent—consider a case where a parcel of land is a rectangle, and only one long side of the rectangle is adjacent to urban areas: this parcel would meet the infill criteria in AB 1449, but not the 75 percent criteria existing law.

At the same time as it creates a broader definition of infill by perimeter, AB 1449 also adds some other parameters to its urban density requirement, specifying that the project must be in urban clusters, within walking distance to either a high-quality transit corridor or a major transit stop and be in a very low vehicle travel area, among others. These criteria serve a dual purpose: they add important guardrails to ensure that the more permissive definition of urban infill does not result in increased Vehicle Miles Traveled (VMTs) and makes it easier to identify which geographic areas are eligible for this exemption. This last piece is possible because the Office of Planning and Research (OPR) maintains a “site check” mapping tool that identifies, among other variables, areas of the state that meet the very-low VMT threshold.

DOUBLE REFERRAL:

If this measure is approved by the Senate Environmental Quality Committee, the do pass motion must include the action to re-refer the bill to the Senate Housing Committee.

Related/Prior Legislation

AB 785 (Santiago, 2023) creates a CEQA exemption for transitional and affordable housing projects carried out by the City of Los Angeles, County of Los Angeles, or specified eligible public agencies in the City of Los Angeles until 2033.

AB 2011 (Wicks, Chapter 647, Statutes of 2022) establishes a ministerial approval process, not subject to CEQA, for multifamily affordable housing projects in commercial zones, as long as those projects meet specified objective environmental, affordability and labor standards. The labor standards in AB 2011 are the same as that are in this bill.

AB 1907 (Santiago, 2020) would have created a CEQA exemption for emergency shelters, supportive housing, or affordable housing. Died in the Assembly Committee on Natural Resources

SOURCE:

California Housing Consortium
California Housing Partnership
Housing California

SUPPORT:

American Planning Association, California Chapter
California Housing Consortium
California Housing Partnership
East Bay Yimby
Eden Housing
Grow the Richmond
Housing California
How to Adu
Mountain View Yimby
Napa-solano for Everyone
Northern Neighbors
Peninsula for Everyone
People for Housing Orange County
Planning and Conservation League
Progress Noe Valley
Resources for Community Development
San Francisco Yimby
San Jose; City of
Santa Cruz Yimby
Santa Rosa Yimby

Slo County Yimby
South Bay Yimby
Southside Forward
Supportive Housing Alliance
The Pacific Companies
Urban Environmentalists
Ventura County Yimby
Yimby Action

OPPOSITION:

State Building and Construction Trades Council of CA

ARGUMENTS IN SUPPORT: According to the California Housing Consortium: “Despite the well-established need, affordable and supportive housing projects face vocal opposition across the state, making these projects more difficult to site, more time-consuming to approve, and more costly to build. Current law provides numerous protections for proposed affordable and supportive housing developments seeking local approval, including many by right approvals or CEQA exemptions for certain affordable housing projects.

Unfortunately, the existing tools have many limitations and prevent access to CEQA streamlining for many 100% affordable housing developments. AB 1449 would exempt from CEQA 100% affordable housing projects that meet rigorous labor standards and comply with specified environmental requirements. This bill balances the need of California’s two most pressing issues in housing and homelessness with the environmental and labor concerns to ensure more affordable homes are built quickly for those most in need.”

ARGUMENTS IN OPPOSITION: According to the State Building and Construction Trades Council of CA: “With any streamlining bill, we believe that worker protection and training standards must include both prevailing wage coverage and skilled and trained workforce requirements to adequately protect the workforce and the public. While we acknowledge the inclusion of wage theft protections and prevailing wage coverage in the bill (under Government Code Sections 65912.130 and 65912.13 cited in the bill), this section of law unfortunately also contains provisions that are problematic. AB 1449 relies on labor and safety protections for workers in the residential sector that are unproven and likely run afoul of federal law, the Employee Retirement Income Security Act of 1974 (ERISA). This “labor” language was first used in AB 2011 (Wicks – 2022), and while that bill was signed into law, does not go into effect until July 2023.

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