SENATE COMMITTEE ON LOCAL GOVERNMENT

Senator María Elena Durazo, Chair
2025 - 2026 Regular

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Author:	Weber Pierson	**Fiscal:**	Yes
Version:	4/16/26	**Consultant:**	Favorini-Csorba

CALIFORNIA ENVIRONMENTAL QUALITY ACT: ENVIRONMENTAL IMPACTS: BUILDING HEIGHT

Provides the impacts related to building height for projects meeting specified conditions are not a significant effect on the environment.

Background

The California Constitution allows cities and counties to "make and enforce within its limits, all local, police, sanitary and other ordinances and regulations not in conflict with general laws." It is from this fundamental power (commonly called the police power) that cities and counties derive their authority to regulate behavior to preserve the health, safety, and welfare of the public—including land use authority.

Every county and city must adopt a general plan with seven mandatory elements: land use, circulation, housing, conservation, open space, noise, and safety. General plans must also either include an eighth element on environmental justice, or incorporate environmental justice concerns throughout the other elements.

The general plan must be "internally consistent," which means the various elements cannot have conflicting information or assumptions. Additionally, cities' and counties' major land use decisions—including zoning ordinances and development permitting—must be consistent with their general plans.

The California Environmental Quality Act. Enacted in 1970, the California Environmental Quality Act (CEQA) requires California's state and local agencies to evaluate, disclose, and where feasible, mitigate the potential environmental effects of their actions before they approve projects. Statute establishes CEQA's fundamental purposes to include informing government decision-makers and the public about potential environmental effects, identifying ways to avoid or significantly reduce environmental damage, preventing significant avoidable impacts by adopting feasible mitigation measures or alternatives, and publicly disclosing the rationale for approving projects with unavoidable significant impacts.

CEQA process. Since cities and counties exercise land use authority in their jurisdictions, they are often "lead agencies"—the state or local agency with the principal responsibility for carrying out or approving a project—for purposes of CEQA. CEQA requires a lead agency to first determine whether an action constitutes a "project" under CEQA. A project is a discretionary activity that a public agency proposes to be carried out or approved that could have a foreseeable impact on the physical environment. If an action isn't a project, or is non-discretionary (ministerial), CEQA does not apply.

Exemptions. Some actions are exempt from CEQA's requirements because they fall within one of numerous exemptions listed in statute or in the CEQA Guidelines developed by the Office of Planning and Research (recently renamed to the Office of Land Use and Climate Innovation, or "LCI") that identify classes of projects that do not have a significant effect on the environment (categorical exemptions). A categorical exemption still may not apply to a project if there are "unusual circumstances" or "cumulative impacts" that might cause a significant environmental impact.

Negative declaration. If a project under CEQA isn't exempt, the lead agency must perform an initial study to determine whether an environmental impact report (EIR) or negative declaration (ND) must be prepared.

If the project will not have a significant effect on the environment, the lead agency can prepare a ND. A lead agency can instead prepare a specific type of ND, known as a "mitigated negative declaration" (MND) for a project when the initial study has identified potentially significant effects on the environment, but:

- The project applicant proposed or agreed to changes to the project that would mitigate the effects to a point where clearly no significant effect on the environment would occur; and
- There is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Environmental Impact Report. If the lead agency can't prepare an ND or MND, or chooses not to, they must prepare an EIR. As articulated by the California Supreme Court,[1] a lead agency must prepare an EIR whenever substantial evidence in the administrative record supports a "fair argument" that a proposed project "may have a significant effect on the environment," even if there is other substantial evidence that the project will not have a significant effect.

An EIR provides thorough environmental review of a proposed project, analyzing the significant direct and indirect impacts of a proposed project on a long list of environmental factors, including water quality, transportation, air quality and greenhouse gas emissions, land use, wildfire risk, and many others. The EIR also includes proposed mitigation measures for any significant effects that it identifies. It also requires a consideration of alternatives to the proposed project, and a consideration of cumulative and growth-inducing impacts.

Courts consider the EIR "the 'heart of CEQA.' Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[2]

EIRs involve very comprehensive analyses of a wide variety of environmental impacts. For example, the City of Los Angeles Planning Department identifies 16 categories of impacts to be examined in an EIR, including: aesthetics; agricultural resources; air quality; biology; cultural resources; geology and soils; greenhouse gas emissions; hazards and hazardous materials; hydrology and water quality; land use and planning; mineral resources; noise; population, housing, and employment; public services and recreation; transportation/circulation; tribal cultural resources; and utilities/service systems.

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[1] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68

[2] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553.

An EIR that fails to adequately analyze an impact may be ruled invalid by a court, jeopardizing the project for which the EIR was prepared.

Midway Rising. Midway Rising is a proposed development in the City of San Diego that covers 49 acres of City-owned land at the San Diego Sports Arena site in the Midway-Pacific Highway community. The project is envisioned to include a 16,000-seat sports arena, 14 acres of parks and public space, a mixed use entertainment, arts, and cultural district, and 4,250 housing units (2,000 of which will be affordable at 80% below area median income). The project is intended to replace an older stadium and associated parking lots. When built, Midway Rising will include one of the largest mixed-income and affordable housing projects in California. The project is also expected to generate roughly 21,900 temporary construction jobs and 3,100 permanent positions in entertainment, hospitality, and retail, and is subject to a project labor agreement with the San Diego County Building and Construction Trades Council.

The path to permitting Midway Rising has not been smooth. The project is located within an area of San Diego that is subject to San Diego's Coastal Height Limit Overlay Zone, which generally limits building heights to 30 feet. In 2018, the City completed a program environmental impact report (PEIR) for the land use plans governing the area to enable development of the project. Because aspects of the project exceeded the 30-foot height limit, the City submitted a ballot measure to voters to raise the height limit for the project area in 2020. The City relied on the PEIR as the environmental analysis for the project. However, the Fourth District Court of Appeals invalidated that ballot measure because the PEIR did not consider potential environmental impacts of removing the height limit. While that appeal was pending, in 2022 the City prepared a supplemental environmental impact report (SEIR) and approved a second ballot measure to remove the height limit from the same area. The Fourth District also invalidated the second ballot measure for similar reasons. The Court noted:

> "The 2022 draft SEIR recognized removal of the Coastal Zone height limit was a changed circumstance from the 2018 PEIR. Yet, for almost every category of potential environmental impacts the initial study addressed, it said the PEIR adequately examined potential impacts because the project 'would be limited to the [Midway Rising] area footprint and land use, density, and zoning analyzed in the 2018 PEIR.'"[3]

The Court went on to identify a litany of impacts that could be related to building height that were not examined in the PEIR. The City of San Diego wants to streamline the CEQA process for the Midway Rising project.

Proposed Law

Senate Bill 958 provides that the environmental impacts of a project that are associated with increased building height alone cannot be considered significant impacts on the environment if the project meets all of the following conditions:

- The use and density of the project is otherwise analyzed in a certified EIR;
- The project is on a previously graded infill site;
- There are no sensitive biological resources physically present on the site;

[3] *Save Our Access v. City of San Diego*, 115 Cal. App. 5th 388

- The project is not an industrial use; and
- For a project that is proposed to be constructed on a site that is greater than 40 acres that has an estimated construction valuation that exceeds $100 million and that is subject to a project-specific EIR, the project creates high-wage, highly-skilled jobs that pay prevailing wages and living wages, employ a skilled and trained workforce, and provide construction jobs and permanent jobs for Californians.

Comments

1. Purpose of the bill. According to the author, "The Midway Rising Project will transform nearly 50 acres of underused, blighted City-owned land into a vibrant, modern district that directly addresses our region's housing shortage while delivering lasting economic and community benefits. It will deliver more than 4,000 homes, including 2,000 affordable and income-restricted, a state-of-the-art sports and entertainment venue, and more than 14 acres of parks and open space.

"SB 958 moves this transformational project forward after years of planning, extensive environmental review, and voter approval through two separate ballot measures. The bill upholds environmental accountability and requires the certification of the final Environmental Impact Report already completed by the City of San Diego.

"Once completed, Midway Rising is projected to generate millions in local economic impact, create thousands of permanent jobs, support new businesses, utilize a highly-skilled and trained workforce, and produce long-term economic opportunities and tax revenue for the City and County of San Diego.

"Proposed to be the largest affordable housing project in the western United States, Midway Rising carries significant statewide importance and promise. At a time when California faces an urgent housing crisis, SB 958 advances a meaningful solution for San Diego and the state."

2. Sure, but will it work? The requirements for preparing an EIR are complex and have grown over time. Because of the scope of analysis that must be conducted, an EIR for a project may miss impacts, with the possible outcome of delaying a project approval, as happened in the case of Midway Rising. SB 958 attempts to address the shortcomings of the PEIR for that project by deeming impacts related to building height not a significant effect on the environment, overturning the Court's decision. However, future approvals related to the project may continue to experience CEQA challenges. SB 958 may not be sufficient to fully insulate the project and allow it to proceed to completion.

3. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because SB 958 imposes new duties on local governments, Legislative Counsel says it imposes a new state mandate. SB 958 disclaims the state's responsibility for providing reimbursement by citing local governments' authority to charge for the costs of implementing the bill's provisions.

4. Incoming! The Senate Rules Committee has ordered a double referral of SB 958: first to the Committee on Environmental Quality, which approved the bill at its April 15th hearing on a vote of 7-0, and second to the Committee on Local Government.

Support and Opposition (4/17/2026)

Support: Mayor Todd Gloria; City of San Diego (Sponsor)
Councilmember Jennifer Campbell; City of San Diego

Opposition: None Submitted

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