AB 609 Analysis: Assembly - Floor Analysis 5/15/2025

ASSEMBLY THIRD READING
AB 609 (Wicks, et al.)
As Amended May 5, 2025
Majority vote

SUMMARY

Establishes a California Environmental Quality Act (CEQA) exemption for housing projects on sites up to 20 acres, which are on or adjoining current or former urban uses, and within an incorporated city or town of any population, or an unincorporated community with at least 5,000 residents or 2,000 housing units.

Major Provisions

1) Provides that CEQA does not apply to a housing development project (i.e., single- or multi-family residential, mixed-use, transitional, supportive, or farmworker housing) that meets the following conditions:

   a) The project site is not more than 20 acres.

   b) The project site meets either of the following criteria:

      i) Is located within the boundaries of an incorporated municipality.

      ii) Is located within a Census Bureau-defined "urban area" (i.e., a settlement, including unincorporated areas, of at least 5,000 residents, distinct from the existing CEQA definition of "urbanized area," which is individual or contiguous cities, or unincorporated communities, of at least 100,000 residents).

   c) The project site meets either of the following criteria:

      i) Has been previously developed with an "urban use" (defined distinct from the existing CEQA definition of "qualified urban use" to also include sites of parks surrounded by urban uses, previous residential or commercial development, and parking lots or structures),

      ii) At least 75% of the perimeter of the site adjoins parcels that are developed with urban uses.

   d) The project is consistent with the applicable general plan and zoning ordinance, as well as any applicable specific plan and local coastal program. For purposes of this section, a housing development project shall be deemed consistent with the applicable general plan zoning ordinance, and any applicable specific plan and local coastal program if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent. If the zoning and general plan are not consistent with one another, a project shall be deemed consistent with both if the project is consistent with one.

   e) The project will be at least one-half of the applicable "Mullin" density (ranging from five units per acre for an unincorporated area in a nonmetropolitan county, 10 units per acre in a suburban jurisdiction, and 15 units per acre in a metropolitan county).

   f) The project satisfies the requirements specified in paragraph (6) of subdivision (a) of Section 65913.4 of the Government Code (i.e., the SB 35 list of environmental site exclusions).

g) For a site not developed with urban uses, the project site does not contain tribal cultural resources, found pursuant to existing CEQA tribal consultation and mitigation procedures that otherwise apply only to non-exempt projects.

h) The project does not require the demolition of a historic structure that was placed on a national, state, or local historic register.

2) Requires the local government to require the development proponent to complete a phase I environmental assessment, as defined.

a) If a recognized environmental condition is found, the development proponent shall complete a preliminary endangerment assessment, prepared by an environmental assessor to determine the existence of any release of a hazardous substance on the site and to determine the potential for exposure of future occupants to significant health hazards from any nearby property or activity.

b) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any effects of the release shall be mitigated to levels required by current federal and state statutory and regulatory standards before the local government issues a certificate of occupancy.

c) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to levels required by current federal and state statutory and regulatory standards before the local government issues a certificate of occupancy.

3) Requires, for any housing on a site located within 500 feet of a freeway, all of the following:

a) Centralized heating, ventilation, and air-conditioning (HVAC) system.

b) The outdoor air intakes for the HVAC system face away from the freeway.

c) Air filtration media for outside and return air that provides a minimum efficiency reporting value of 16, replaced at the manufacturer's designated interval.

d) No balconies facing the freeway.

4) Requires exempt housing developments to be eligible for a density bonus, incentives or concessions, waivers or reductions of development standards, and parking ratios, as specified.

5) Defines "urban use" as any current or previous residential or commercial development, public institution, or public park that is surrounded by other urban uses, parking lot or structure, transit or transportation passenger facility, or retail use, or any combination of those uses.

COMMENTS

Existing housing exemptions:

CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines, for a wide range of residential projects. Since 1978, CEQA has included statutory exemptions for housing. There are now at least 15 distinct CEQA exemptions for housing projects. The majority of residential projects are approved via exemption or negative declaration under CEQA, or through ministerial permits where CEQA does not apply.

A few existing CEQA exemptions 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. More recently, bills such as SB 35 (Wiener), Chapter 366, Statutes of 2017, and AB 2011 (Wicks), Chapter 647,

Statutes of 2022, have established ministerial approval for multi-family housing projects, where local discretionary review, including CEQA, is replaced with construction labor requirements and exclusion of specified sensitive sites.

The CEQA Guidelines have included categorical exemptions for housing projects for decades, allowing projects with no significant environmental impacts to proceed to approval without environmental review. These exemptions are well-known and widely used for small housing projects of one to six units, as well larger housing projects in incorporated areas, on infill sites up to five acres, with no limit on the number of units.

This bill:

This bill is much broader than the array of CEQA housing bills previously enacted by the Legislature, each of which was passed with intentions to reward lead agencies and/or developers for planning-level review; redevelopment; transit-oriented development; multi-family and/or affordable housing; and/or payment of prevailing wages to construction workers.

This bill eclipses these existing exemptions with an exemption that applies to larger projects, in less-populated areas, with fewer and less-stringent conditions, and a tenuous connection to any prior planning-level review. The result includes large, single-family, market-rate projects at densities as low as five units per acre in or near remote small towns, provided they are on, or bordered on three sides by, urban uses, which includes public parks of any size.

For reference, 20 acres is equivalent to 8-10 city blocks, 15 football fields, or six typical Costcos. California communities that meet the "urban" standard in this bill include Big Bear Lake, Bishop, Needles, Willits and Yreka.

Comparison to AB 2011:

This bill borrows several provisions from AB 2011, including the 20 acre site limit. However, the bill also lacks many of AB 2011's conditions. Compared to this bill, AB 2011:

a) Requires 28-100% of project units to be affordable, depending on project type.

b) Requires projects to be multi-family housing of at least five units.

c) Requires projects to be equal to or greater than the "Mullin" densities (i.e., at least twice the density of this bill).

d) Permits residential projects in areas zoned for office, retail, or parking.

e) Requires projects to be adjacent to existing commercial corridors.

f) Prohibits projects on or adjacent to industrial uses.

g) Requires hazardous substances to be mitigated to a level of insignificance.

h) Prohibits projects that would demolish affordable, rent-controlled, or other existing rental housing.

i) Excludes vacant sites within very high fire hazard severity zones (VHFHSZs).

j) Prohibits projects within 3,200 feet of oil or natural gas extraction or refining.

k) Requires developers to pay prevailing wages to construction workers, and for projects with 50 or more units, participation in apprenticeship programs and healthcare contributions.

l) Sunsets January 1, 2033.

Wildfire risk:

Rather than exclude vacant sites in VHFHSZs like AB 2011, this bill relies on a provision in Government Code 65913.4 which nominally excludes VHFHSZs, but includes an exception which is the rule, making the exclusion functionally meaningless. Under this provision, sites that have adopted fire hazard mitigation measures pursuant to existing building standards or state fire mitigation measures applicable to the development are eligible for exemption. Essentially, this says any project that follows the law for building code and defensible space can be approved by exemption in a VHFHSZ.

However, compliance with prevailing building standards and defensible space requirements does not address basic wildfire safety issues beyond the four corners of the project site, such as whether there is adequate fire service or emergency evacuation routes. The lessons of wildfire disasters over the past several years show that many subdivisions do not have adequate fire service and/or evacuation routes.

While cities and counties can and should address fire risk at the planning level, this bill permits reliance on general plans that may be very outdated regarding fire risk, and it allows the exemption even if the project is inconsistent with the general plan.

Tribal consultation:

Existing CEQA requirements to consider tribal cultural resources are predicated not only on conducting consultation with tribes that are traditionally and culturally affiliated with a project site, but also having a CEQA review process and environmental document (e.g., mitigated negative declaration or EIR) that can consider and adopt measures to avoid or mitigate impacts identified via the consultation.

These mechanisms don't exist with an exemption. The exemption process doesn't provide the time or process that would accommodate legitimate tribal consultation, or any means to adopt and enforce avoidance or mitigation measures if impacts on tribal cultural resources are identified. With an exemption, the affected tribe(s) may not find out about the project until a notice of exemption is filed, at which point, it's too late.

To the extent tribal cultural resources are intended to be considered in an exemption, it calls for a different approach. One approach, added to the SB 35 process by AB 168 (Aguiar-Curry), Chapter 166, Statutes of 2020, is a detailed custom consultation process. Another approach used in several prior exemption bills, is requiring the lead agency to find there are no significant impacts on tribal cultural resources, based on the principle that if there are impacts, the project shouldn't be exempt.

This bill uses a tribal consultation provision from AB 2011, which is untested, but doesn’t appear on paper to be equipped to adopt or enforce mitigation or avoidance.

Testing and cleanup standards:

This bill requires a Phase I environmental assessment, which is a routine survey often conducted during real estate transactions. A Phase I assessment may consist of a visual inspection of the site and examination of available public records, but does not require sampling or testing. The cost may be in the range of $1,000-$10,000 depending on the size, conditions and prior uses of the site. The objective is to determine if there may have been prior releases of hazardous substances affecting the site. While the bill makes a Phase I assessment a condition of development approval, it’s not clear that it has to be completed prior to determining that the project is eligible for exemption.

If the Phase I assessment discovers a "recognized environmental condition," the developer must then complete a preliminary endangerment assessment (PEA). This is more detailed review, which includes sampling and testing, to determine the existence and risk of hazardous substances on the site. The cost of a PEA may be upwards of $100,000, again depending on site characteristics.

This PEA requirement is familiar, as it has been included in several housing bills dating back to 2002, including AB 2011. However, AB 609 includes a different cleanup standard than the prior bills.

This is the cleanup standard used in the prior bills [SB 1925 (Sher, 2002), SB 375 (Steinberg, 2008), AB 2011 (Wicks, 2022), and AB 1449 (Alvarez, 2023)]:

> (A) If a release of a hazardous substance is found to exist on the site, the release shall be removed, or any significant effects of the release shall be mitigated to *a level of insignificance* in compliance with current state and federal requirements.
>
> (B) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to *a level of insignificance* in compliance with current state and federal requirements.

This is the cleanup standard in AB 609:

> (B) If a release of a hazardous substance is found to exist on the site, the release shall be removed or any effects of the release shall be mitigated to *levels required by current federal and state statutory and regulatory standards* before the local government issues a certificate of occupancy.
>
> (C) If a potential for exposure to significant hazards from surrounding properties or activities is found to exist, the effects of the potential exposure shall be mitigated to *levels required by current federal and state statutory and regulatory standards* before the local government issues a certificate of occupancy.
>
> (Emphasis added)

In cases where hazardous substances are discovered, it's not clear who determines that the hazard has been removed or mitigated to "federal and state statutory and regulatory standards." Presumably, the city or county would oversee cleanup, and perhaps if they are diligent, involve the local Certified Unified Program Agency (CUPA). However, there is no requirement to consult the relevant state or federal agencies, no provision to address hazardous substances that lack a clear state or federal cleanup standard, and no process for oversight or public involvement.

The functional deadline for completing site analysis and remediation is the issuance of a certificate of occupancy, which is after construction is complete and well after the determination the project is exempt from CEQA and entitled. As a result, it's not clear there is any recourse for the public if the testing and/or cleanup is inadequate.

According to the Author
AB 609 would make it much easier to build environmentally friendly housing in California. It would do so by exempting individual projects from CEQA if they comply with local objective standards, are in an infill location, and are not located on environmentally sensitive or hazardous sites. By making it much easier to build this housing, AB 609 can play a major role in increasing affordability for all Californians in a way that helps protect our environment.

Arguments in Support
According to the California Home Building Alliance, "(w)hile CEQA effectively prevents negative environmental impacts, it is not designed to facilitate projects that are inherently beneficial to the environment. Infill housing near jobs, schools, and amenities—proven to reduce per capita greenhouse gas emissions—faces the same regulatory hurdles as sprawl developments that increase pollution and congestion. AB 609 removes this roadblock by exempting environmentally friendly housing projects from CEQA, provided they are in infill locations and not on environmentally sensitive or hazardous sites. These projects must still comply with local general plans, zoning ordinances, and objective standards—all of which have already undergone CEQA review."

According to the California Conference of Carpenters, "AB 609's CEQA streamlining will remove a significant bureaucratic impediment to the development of in-fill housing in undeveloped or underutilized urban land, focusing on increased housing development in areas with existing infrastructure."

Arguments in Opposition
According to a coalition of environmental justice and housing justice organizations, "(w)e strongly support the development of safe, healthy and deeply affordable housing in communities experiencing disparate health impacts caused by hazardous industries and cumulative burdens. Although the bill purports to promote housing in "environmentally beneficial" areas, this bill does not, in fact, contain sufficient land use or environmental justice protections to prevent negative impacts on public health and the environment."

According the State Building and Construction Trades Council, "AB 609 eviscerates environmental review of housing projects on up to 20 acres in urban areas without adequate protections for public health and the environment, the construction workforce, lower income families and proper planning for our communities throughout the state. Unlike other recent permitting and CEQA streamlining legislation – such as AB 2011, SB 6, and SB 423 / SB 35 – which facilitate housing production while maintaining such guardrails, AB 609 would simply exempt most housing in urban areas from environmental review and mitigation. AB 609 exploits the state's real need for housing by sacrificing working-class families and our environment for profit."

FISCAL COMMENTS

According to the Assembly Appropriations Committee, negligible state costs.

VOTES

ASM NATURAL RESOURCES: 12-0-2
YES: Bryan, Alanis, Ellis, Flora, Garcia, Haney, Hoover, Kalra, Muratsuchi, Schultz, Wicks, Zbur
ABS, ABST OR NV: Connolly, Pellerin

ASM HOUSING AND COMMUNITY DEVELOPMENT: 11-0-1
YES: Haney, Patterson, Ávila Farías, Caloza, Garcia, Kalra, Lee, Quirk-Silva, Ta, Wicks, Wilson
ABS, ABST OR NV: Tangipa

ASM APPROPRIATIONS: 15-0-0
YES: Wicks, Sanchez, Arambula, Calderon, Caloza, Dixon, Elhawary, Fong, Mark González, Hart, Pacheco, Pellerin, Solache, Ta, Tangipa

UPDATED

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