

- a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
 - b) The residential portion of the project is an infill, multifamily housing development that contains six or more residential units.
 - c) The project site has no value as a habitat for endangered, rare, or threatened species.
 - d) Approval of the project would not result in any significant effects relating to transportation, noise, air quality, greenhouse gas emissions, or water quality, and the site can be adequately served by all required utilities and public services.
- 4) Provides that a project is not eligible for an AB 1804 (Berman) CEQA exemption if any of the following conditions exist:
- a) The cumulative impact of successive projects of the same type in the same place over time is significant.
 - b) There is a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
 - c) The project may result in damage to scenic resources, including, but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.
 - d) The project is located on a site, which is included on the “Cortese” list (*i.e.*, hazardous waste sites).
 - e) The project may cause a substantial adverse change in the significance of a historical resource.
- 5) Sunsets the CEQA exemption contained within AB 1804 (Berman) on January 1, 2032.

This bill:

- 1) This bill extends the sunset AB 1804 (Berman) projects until January 1, 2032.
- 2) Amends the AB 1804 (Berman) CEQA exemption to specify that projects are ineligible for the exemption if they cause substantial adverse impact to tribal cultural resources, as specified.

COMMENTS:

- 1) *Author’s statement.* “The California Environmental Quality Act (CEQA) provides a categorical exemption for infill development projects only in cities. As counties have urbanized, it made sense to utilize an exemption to promote

infill development in counties as well. Existing law, until January 1, 2025, provides a statutory CEQA exemption for infill residential and mixed-use housing projects occurring within an unincorporated area of a county. This infill housing exemption incorporated the same narrow conditions as the categorical exemption for projects in cities, as well as provided further limitations to promote infill while preventing sprawl.

As California continues to face a housing crisis, infill development is critical to accommodating housing needs in our communities, including in our counties. AB 2199 would extend this existing tool until January 1, 2035 to promote residential and mixed-use housing projects within urbanized areas in our counties and, as a result, help address California's housing crisis without adversely impacting the environment.”

- 2) *CEQA*. CEQA was enacted by the Legislature and signed into law by Governor Ronald Reagan in 1970. While it has evolved into a very complex Act over the past 53 years, at its core the basic principles of CEQA are relatively simple. It 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 applies when a development project requires discretionary approval from a local government agency. When a local agency has the discretion to approve a development project, the agency's CEQA evaluation begins with deciding whether an activity qualifies as a project subject to CEQA review. If the proposed activity is deemed a “project” for the purposes of CEQA review, the agency first decides whether it is exempt from compliance with CEQA under either a statutory exemption or categorical exemption.

- 3) *CEQA exemptions*. Statutory exemptions are activities the Legislature has excluded from CEQA despite potential environmental impacts, including Caltrans activities, the adoption of coastal plans and programs, as well as emergency projects. If a project is statutorily exempt, the project can be implemented without a CEQA evaluation. In addition to statutory exemptions, the Legislature specifically directed the Secretary of the California Natural Resources Agency to designate categorical exemptions from CEQA. Categorical exemptions include projects that do not have a significant impact on the environment, as deemed by the Secretary. The CEQA Guidelines set forth 33 categorical exemptions covering a wide range of projects from minor alterations of existing facilities to the construction of certain types of buildings. As with statutory exemptions, if a project is categorically exempt, no formal

evaluation is required, and the project can be implemented without a CEQA evaluation.

If a project is not statutorily or categorically exempt, the agency must determine whether the project may have a significant effect on the environment through an Initial Study. The study looks at environmental considerations such as biology, greenhouse gas emissions, and air and water quality, as well as the project's impact on traffic, noise, and public infrastructure. The study must also consider the cumulative impacts from other ongoing projects.¹

Most housing projects that require an approval where a local government exercises discretion must also complete CEQA review. Development opponents can appeal many of individual decisions related to the CEQA review to the planning commission and to the city council or board of supervisors. Finally, litigation over approvals is also common. The building industry points to environmental reviews and other permitting hurdles as a hindrance to housing development. They argue that the high cost of building and delays in the approval process reduce builders' incentives to develop housing.

- 4) *Recent land use reforms that facilitate more housing supply.* A variety of causes have contributed to the lack of housing production, including: (a) restrictive zoning ordinances such as single family zoning and restrictions on development intensity, (b) local permitting processes that provide multiple avenues to stop a project, and (c) fiscal incentives associated with development decisions. Recent reforms to address these challenges have included expediting and simplifying the approval process at the pre-entitlement, entitlement, and post-entitlement phases. Clear timelines for affordable housing permitting is particularly critical as affordable developers often require between 8 and 12 different sources of funding to make an affordable housing development pencil financially, and any delays risk the loss of available public funds.
- 5) *Infill CEQA exemptions definition.* The statutory exemption created in AB 1804 was modeled closely off of a long-standing categorical exemption for infill projects (also known as a Class 32 Categorical Exemption). The Class 32 exemption consists of environmentally benign infill projects that are consistent with local general plans and zoning requirements.

AB 1804 differs from the Class 32 Categorical exemption by including a much broader area for potential infill projects, while establishing additional density requirements. AB 1804 includes a broader infill definition, which expands the geographic scope of the long-standing categorical exemption. At the same

¹ Janet Smith-Heimer et al., *supra* note 1, at 6.

time, AB 1804 sets density criteria for projects to get this infill exemption, requiring multi-family projects of at least six units to have the same or higher density compared to the surrounding area.

- 6) *Sunrise, sunset.* This bill would extend the sunset for AB 1804 (Berman) projects until January 1, 2032. It would also specify that projects are ineligible for the exemption if they cause substantial adverse impact to tribal cultural resources.
- 7) *Opposition.* Writing on a prior version of the bill, CleanEarth4Kids.org opposes exempting multifamily residential mixed-use projects from CEQA. They are concerned about the environmental impacts of the application of the bill and reduction of public input in the development process.
- 8) *Incoming!* This bill passed out of the Senate Environmental Quality Committee on June 5 on a 7-0 vote.

RELATED LEGISLATION:

AB 1804 (Berman Chapter 670, Statutes of 2018) — created a statutory exemption for infill development residential and mixed-use housing projects occurring within an unincorporated area of a county and that includes density requirements for the project specifying that the residential portion of a project must be at least six dwelling units per acre and must be a multifamily housing development that contains six or more residential units.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

POSITIONS: (Communicated to the committee before noon on Wednesday, June 19, 2024.)

SUPPORT:

Urban Counties of California (UCC) (Sponsor)
American Planning Association California Chapter
Associated General Contractors of California
Association of Environmental Professionals
Bay Area Council
California Apartment Association
California Housing Partnership Corporation
California State Association of Counties

Council of Infill Builders
County of Los Angeles

OPPOSITION:

CleanEarth4Kids.org

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