

strict objective standards and are sites that are zoned for residential use or residential mixed-use development (SB 35 Developments).

This bill:

- 1) Makes a series of changes to the provisions of AB 2011, specifically:
 - a) Adds or amends the definitions applicable to developments subject to the provisions of AB 2011.
 - b) Amends the site location criteria that apply to both 100% affordable and mixed-income housing development projects eligible for ministerial approval as follows:
 - i) Clarifies that bicycle and pedestrian paths are in the same category as streets and highways and, therefore, do not interfere with a property being identified as adjoined by “urban uses.”
 - ii) Makes industrial sites eligible for streamlined ministerial review under specified circumstances.
 - iii) Aligns site location restrictions on streamlining within the sensitive sites in the coastal zone with site location restrictions that apply to SB 35 developments, as specified.
 - c) Amends the objective development standards that both 100% affordable and mixed-income housing development projects must meet to qualify for ministerial approval as follows:
 - i) Expands application of AB 2011 to developments that include housing located within 500 feet of a freeway, so long as these projects meet specified air filtration and air quality standards.
 - ii) Prohibits the imposition of new common open space requirements for AB 2011 projects that convert existing space from nonresidential buildings to residential uses.
 - d) Expands the types of sites that qualify for ministerial approval for mixed-income developments to include projects that will convert a regional mall, as defined, provided that the site of the regional mall is not greater than 100 acres, and establishes the following standards for a development project at a regional mall:
 - i) The average size of a block, as defined, shall not exceed three acres.
 - ii) At least 5 % of the site shall be dedicated to open space.

- iii) For a portion of the property that fronts a street that is newly created by the project, a building shall abut within 10 feet of the street for at least 60% of the frontage.
 - e) Makes the following changes to the process for public agencies to ministerially approve 100% affordable and mixed-income housing development projects:
 - i) Establishes a schedule for a local government to determine if a project is consistent with applicable standards within 60 or 90 days as specified.
 - ii) Establishes a schedule for a local government to approve a development it determined is consistent with applicable standards within 60 or 90 days as specified.
 - f) Requires a local government to provide a credit to the developer for any fee, as defined in the Mitigation Fee Act, for existing uses that are demolished as part of the development at the rate established by the local government for those existing uses, as specified.
 - g) Reduces the minimum density that a housing development project must meet in order to qualify for AB 2011 streamlining, as specified.
 - h) Makes a series of other changes and clarifications to the provisions of AB 2011.
- 2) Expand the sites eligible for housing development under SB 6 to include regional malls, as defined, if they are less than 100 acres in size.

COMMENTS:

- 1) *Author's Statement.* "AB 2243 amends the language of the Affordable Housing and High Road Jobs Act of 2022 (AB 2011, Wicks). These amendments facilitate implementation of AB 2011 by expanding its geographic applicability and clarifying aspects of the law that are subject to interpretation. Collectively, the changes in AB 2243 would improve AB 2011 and, in doing so, make it easier to build more housing in the right locations."
- 2) *Zoning Ordinances and CEQA.* CEQA establishes a process for evaluating the environmental effects of a project. Under CEQA, a local agency carrying out a discretionary project must first determine if the project may have a significant effect on the environment. Projects can include jurisdiction-wide efforts such as the update of a general plan, approval of jurisdiction-wide contracts (*e.g.*,

waste hauling contracts or water service), and zoning ordinance amendments. A project can also include individual development actions such as the approval of housing developments, stadiums, gas storage facilities, and other types of developments. In the case of any discretionary project, if a local agency finds that the potential for significant environmental impacts exists, CEQA requires the agency to prepare and certify the completion of an environmental impact report (EIR). While CEQA includes certain statutory and categorical exemptions, the provisions of CEQA explicitly apply to “discretionary projects proposed to be carried out or approved by public agencies, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.” (Emphasis added).

- 3) *Housing Development Projects and CEQA*. In light of the state’s ongoing housing crisis, the Legislature created several statutory exemptions from CEQA for specific types of housing development projects in order to increase the production of housing. The Legislature also created several statutory schemes that require local governments to approve specified housing development projects ministerially. Ministerial approvals remove a project from all discretionary decisions of a public agency, and thus are not subject to CEQA which only applies to discretionary approvals.

Bypassing CEQA can provide a tremendous benefit to property owners, developers, local governments and other parties involved in the approval of a project as it allows for the project to be completed in an expedited fashion. The Legislature balances the risk of allowing projects to proceed without a full environmental review by ensuring that these projects comply with scores of objective standards and criteria and that they are not located on environmentally sensitive sites. These standards and criteria are an expression of the state’s values and ensure that exempt projects do not result in harm to public health and safety and the environment.

- 4) *Authorizing Residential Development in Commercial Zones (AB 2011 and SB 6)*. In addition to streamlining CEQA review at the project level for specific types of housing developments, the Legislature recently enacted several bills to facilitate the production of more housing by increasing the sites available for residential development. Notably, AB 2011 (Wicks) --- the provisions of which are substantively amended by this bill --- and the Middle Class Housing Act of 2022 (SB 6, Caballero, Chapter 659, Statutes of 2022) both made certain types of housing developments an allowable use on land zoned for commercial uses; these bills effectively rezoned eligible parcels statutorily and increased the

stock of land that could be developed into housing in California. These bills obviated the need for a local government to conduct a CEQA review in order to rezone certain commercial parcels to allow housing development on these parcels.

Additionally, AB 2011 required local governments to ministerially approve housing developments on these parcels if they included specific levels of affordable housing and met other development criteria. Working in tandem, AB 2011's statutory rezoning of commercial parcels, and its requirement for local governments to approve affordable housing projects ministerially, can dramatically expedite the approval and development of much needed housing in California.

AB 2011 and SB 6 both authorized housing development on land zoned for commercial purposes generally, however each law provides different benefits to different projects. SB 6 applied to commercial land broadly by making housing development an allowable use on parcels zoned for office, retail or parking. In contrast, AB 2011 was more narrowly focused on sites zoned for office, retail, or parking that also abut commercial corridors. Essentially, SB 6 applied more broadly, but only made housing an allowable use. While AB 2011 applied to a narrower set of commercial properties but made housing developments eligible for ministerial approval on sites subject to AB 2011's provisions.

- 5) *Coming and Going.* AB 2243 was approved in this Committee on June 18, 2024 on an 8-0 vote. Senate Floor amendments of 8/27/28 trigger a re-referral to this Committee. The Senate Floor amendments:
- a) *Remove language expanding the definition of "commercial corridor" to include streets with a right-of-way as small as 50 feet.* This language would have expanded the scope of AB 2011 to allow its streamlined development provisions to apply to commercially zoned parcels that are currently only eligible for residential development under the provisions of SB 6.
 - b) *Remove language expanding the sites eligible for development under 2011 to include office buildings of at least 50,000 square feet, regardless of their proximity to a commercial corridor.* This language would have expanded the scope of AB 2011 to allow its streamlined development provisions to apply to commercially zoned parcels that are currently only eligible for residential development under the provisions of SB 6.
 - c) *Expand the sites eligible for development under SB 6 to include regional malls, as defined, if they are less than 100 acres in size.* This amendment extends the expansion the bill makes for mixed used housing development

projects eligible for streamlining under the provisions of AB 2011 to housing development projects eligible for development under SB 6.

AB 2243 as heard by this committee on June 18th already included provisions making housing developments eligible for streamlined ministerial approval on regional malls under the provisions of AB 2011. The Senate Floor amendments make housing developments an allowable use on regional malls under the provisions of SB 6 as well. Projects under SB 6 may still be subject to CEQA review. Additionally the Senate Floor amendments remove some of the provisions that would have expanded sites eligible for AB 2011 streamlining.

- 6) *Opposition.* Several environmental justice groups, writing in opposition, raise concerns with provisions of the bill that would allow AB 2011's streamlining provisions to include housing developments located within 500 feet of a freeway. This bill only allows these housing developments to access AB 2011's streamlining provisions if certain air quality mitigation measures are incorporated into the project. Specifically, the bill requires developments to: include high quality air filtration systems, orient air intakes away from the freeway, and design the structure in a way that all balconies are facing away from the freeway. Opponents would like to see the bill include, at a minimum all of the recommendations of the Los Angeles County Public Health Department (LACPHD) for new developments near freeways. Notably LACPHD recommends a buffer of at least 500 feet based on a 2005 California Air Resources Board Study. This is the standard that currently applies to AB 2011 projects, accepting this change would effectively revert the bill to current law. Additionally several cities write in opposition expressing concern that AB 2011 was only recently enacted and argue "that cities need the time and space to implement the dozens new housing laws that have been passed in recent years..."
- 7) *Freeways and housing.* Freeway adjacent housing currently exists in many jurisdictions and many local zoning codes allow residential development within 500 feet of a freeway. AB 2011 allows streamlined ministerial approval of housing developments, and this bill will allow AB 2011 projects to occur within 500 feet of a freeway, thus allowing freeway adjacent developments to bypass CEQA, if the bill's mitigation measures are incorporated. While this bill allows the development of housing near freeways without a CEQA review, this is not a new construct. Existing CEQA guidelines currently exempt single-family residences developed within a residential zone from CEQA.

CEQA requires public agencies to study and mitigate, to the extent feasible, the impact a proposed project (*i.e.*, a housing development) will have on the

environment. Opponents express concern that allowing AB 2011 housing developments near freeways could result in public health harm that could be avoided or mitigated through CEQA review. However, a CEQA analysis, and any associated mitigation measures stemming from the analysis are focused on the inverse; in other words, CEQA analyses focus on mitigating the impacts a project will have on the environment. Generally, the courts have found that CEQA is not a tool for assessing, and by extension mitigating, the impact the existing environment (*e.g.*, existing air pollution from a freeway) will have on a project. While opponents express a valid concern regarding the air quality impacts of freeways, housing developments that are not subject to a CEQA analysis are already allowed near freeways. Additionally, it is unclear what mitigation measures, if any, could be applied to these housing development projects if they were subject to CEQA. Requiring AB 2011 developments that bypass CEQA to include specific air quality mitigation measures in their projects within 500 feet of a freeway imposes stronger air quality requirements on freeway adjacent housing developments than current law requires.

RELATED LEGISLATION:

AB 2011 (Wicks, Chapter 647, Statutes of 2022) — required specified housing development projects to be a use by right on specified sites zoned for retail, office, or parking, as specified.

AB 2668 (Grayson, Chapter 658, Statutes of 2022) — added parameters for determining a project's compliance with the streamlined, ministerial process created by SB 35 (Wiener, Chapter 366, Statutes of 2017).

SB 6 (Caballero, Chapter 659, Statutes of 2022) — the Middle Class Housing Act of 2022, establishes housing as an allowable use on any parcel zoned for office or retail uses.

SB 9 (Atkins, Chapter 162, Statutes of 2021) — required ministerial approval of a housing development of no more than two units in a single-family zone (duplex), the subdivision of a parcel zoned for residential use into two parcels (lot split), or both.

AB 1174 (Grayson, Chapter 160, Statutes of 2021) — made several changes to the SB 35 process.

AB 831 (Grayson, Chapter 194, Statutes of 2020) — added a process for SB 35 projects to be modified after their approval.

AB 1485 (Wicks, Chapter 663, Statutes of 2019) — made various changes to SB 35 including allowing for streamlining of housing developments that include a percentage of low-income and/or moderate-income housing.

AB 2162 (Chiu, Chapter 753, Statutes of 2018) — streamlined affordable housing developments that include a percentage of supportive housing units and onsite services.

SB 35 (Wiener, Chapter 366, Statutes of 2017) — created a ministerial approval process for specified infill, multifamily housing development projects.

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

POSITIONS: (Communicated to the committee before 5:00 PM on
Wednesday, August 28, 2024.)

SUPPORT:

California Conference of Carpenters (Co-Sponsor)
Housing Action Coalition (Co-Sponsor)
21st Century Alliance
Abundant Housing LA
American Planning Association, California Chapter
California Apartment Association
California Business Properties Association
California Community Builders
California Housing Consortium
California School Employees Association
California YIMBY
Circulate San Diego
Civicwell
Fieldstead and Company
Generation Housing
Habitat for Humanity California
Housing Trust Silicon Valley
Inner City Law Center
LeadingAge California
Mercy Housing
Midpen Housing
People for Housing - Orange County
Sand Hill Property Company
SPUR
The Two Hundred

Western States Regional Council of Carpenters
YIMBY Action

OPPOSITION:

350 Bay Area Action
Asian Pacific Environmental Network
Beverly-Vermont Community Land Trust
Black Women for Wellness
California Environmental Justice Alliance (CEJA)
California Environmental Voters
California Nurses for Environmental Health & Justice
Catholic Charities of The Diocese of Stockton
Center for Biological Diversity
Center for Community Action and Environmental Justice
Center on Race, Poverty & the Environment
Central Valley Air Quality Coalition
City of Beverly Hills
City of La Habra
City of Lafayette
City of Lakewood CA
City of Newport Beach
City of Santa Ana
City of Santa Clarita
City of Thousand Oaks
Climate Equity Policy Center
Climate Health Now
Communities for A Better Environment
Courage California
Disability Rights California
East Bay Community Law Center
Environmental Health Coalition
Esperanza Community Housing Corporation
First Wednesdays San Leandro
Fossil Free California
Fractracker Alliance
Friends of The Earth
Greenpeace USA
Housing Equity & Advocacy Resource Team (HEART)
Labor Network for Sustainability
Labor Rise Climate Jobs Action
Leadership Counsel for Justice & Accountability

League of California Cities
Livable California
Mothers Out Front
No Coal in Oakland
Physicians for Social Responsibility - Los Angeles
Physicians for Social Responsibility - Sacramento Chapter
Physicians for Social Responsibility - San Francisco Bay Area Chapter
Poder
Sacred Heart Community Service
Stand.earth
Sunflower Alliance
Tenemos Que Reclamar Y Unidos Salvar LA Tierra - South LA (TRUST South LA)
Tri-valley Cities of Dublin, Livermore, Pleasanton, San Ramon, and Town of Danville
Voices in Solidarity Against Oil in Neighborhoods (VISION)
Voting 4 Climate & Health
Young Community Developers
1 Individual

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