
SENATE COMMITTEE ON HOUSING
Senator Scott Wiener, Chair
2023 - 2024 Regular

Bill No: AB 1307 **Hearing Date:** 7/10/2023
Author: Wicks
Version: 6/26/2023
Urgency: Yes **Fiscal:** Yes
Consultant: Alison Hughes

SUBJECT: California Environmental Quality Act: noise impact: residential projects

DIGEST: This urgency bill provides that, for purposes of the California Environmental Quality Act (CEQA), the effects of noise generated by project occupants and their guests on human beings is not a significant effect on environment, as specified.

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 could have significant impacts, the lead agency prepares an environmental impact report (EIR) to evaluate and propose mitigation measures for any effects on the environment.
- 2) Identifies noise as one of eighteen environmental factors to be consider under CEQA review.
- 3) Defines “significant effect on the environment” as a substantial, or potentially substantial adverse change in the environment.
- 4) Defines a “long-range development plan” (LRDP) as a physical development and land use plan to meet the academic and institutional objectives for a particular campus or medical center of public higher education.

- 5) Defines “residential or mixed-use housing project” as a project consisting of multifamily residential uses only or a mix of multifamily residential and nonresidential uses, with at least two-thirds of the square footage of the development designated for residential use.
- 6) Defines “tiered” or “tiering” as the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program, or ordinance followed by narrower or site-specific environmental impact reports, which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report.
- 7) CEQA requires lead agencies with the principal responsibility for carrying out or approving a project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for the project, unless the project is exempt from CEQA. If a project may have a significant effect on the environment, the lead agency must prepare a draft EIR.
- 8) States selecting a location for a public higher education campus and the approval of an LRDP are subject to CEQA and require an EIR to be prepared.
- 9) States approval of a public higher education campus is subject to CEQA and can be address via a tiered environmental analysis based upon an LRDP’s EIR.
- 10) States that using an LRDP EIR complies with CEQA’s requirements as long as the academic and campus population plans don’t take effect until after the environmental effects have been analyzed in an LRDP’s EIR or tiered analysis based upon that EIR. Enrollment or changes in enrollment, by themselves, do not constitute a project.
- 11) Defines “public higher education” as (1) the California Community Colleges (CCC), (2) the California State University (CSU), and each campus, branch, and function thereof, and (3) each campus, branch, and function of the University of California (UC).

This urgency bill:

- 1) Specifies that noises from occupants in residential projects does not count as a significant effect under CEQA.

- 2) Provides that any institution of higher education shall not be required, in an EIR for a residential or mixed use housing project, to consider alternatives to the location of the housing project if both of the following requirements are met:
 - a) The housing project is located on a site that is no more than five acres and is substantially surrounded by qualified infill uses.
 - b) The housing project has already been evaluated in the EIR for the most recent LRDP for the applicable campus.

COMMENTS:

- 1) *Author's statement.* "AB 1307 would remove the potential for litigants to challenge residential development based on the speculation that the new residents will create unwanted noises. It would also reestablish existing precedent that minor and intermittent noise nuisances, such as from unamplified human voices, be addressed through local nuisance ordinances and not via CEQA. As such, no longer could CEQA consider 'people as pollution.'"
- 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 is self-executing statute that is enforced by civil lawsuits that can challenge any project's environmental review. Public agencies, as well as private individuals and organizations, can file lawsuits under CEQA.

- 3) *CEQA Speak.* Like many areas of California law, CEQA has its own terminology. Generally speaking, an EIR is the document that reflects how a particular project will affect the environment, both in its construction and operationally for years to come, but EIRs come in multiple flavors. A project EIR, which is used most often, looks in depth at the environmental impacts of all phases of a specific development project (*e.g.*, an office building or an apartment complex, etc.). A program or programmatic EIR is a larger document that looks at a project, which contains a number of sub-projects. For example, it may include some office buildings, apartment complexes, and retail shops – all of which may or may not be built at the same time – and it is not as in-depth as a project EIR, though it is broader.

A lead agency reviewing a project under CEQA takes three progressive steps of environmental review. First, a lead agency looks the footprint of the project to determine if it can be exempted from CEQA. If it is not exempt, the lead agency then conducts an initial study, which examines 18 different environmental factors to determine if the project might have significant effects on the environment. If there are no significant environmental impacts or those impacts can be fully mitigated, the lead agency prepares an ND or MND. If there are environmental impacts that cannot be mitigated, the lead agency proceeds with the most extensive level of environmental review --a full EIR. Noise is one of the 18 environmental factors that lead agencies must consider in an initial study. Noise effects can include both the noise associated with construction and day-to-day operation of the project. For residential projects, analyses often consider how the project might conflict with local noise ordinances, but noises made by residents themselves are not considered as an effect for CEQA review.

A tiered EIR is one that is “tiered” off the programmatic EIR and focuses on the specific project within the larger project, operating much like a project EIR. For example, if the programmatic EIR was done for a housing project, a tiered EIR might be required when it comes time to build the retail portion of the larger project. The tiered EIR would look more in-depth at the proposal and would consider changes that may have taken place since the larger programmatic EIR was adopted. According to specified findings and declarations, tiering of environmental impact reports are intended to “promote construction of needed housing and other development projects by (1) streamlining regulatory procedures, (2) avoiding repetitive discussions of the same issues in successive environmental impact reports, and (3) ensuring that environmental impact reports prepared for later projects, which are consistent with a previously approved policy, plan, program, or ordinance concentrate upon environmental effects, which may be mitigated or avoided in connection with the decision on each later project.”

3) *UC Berkeley’s LRDP and student housing shortage.* Each UC is required to adopt an LRDP, which is a high level planning document that helps guide decision on land and infrastructure developments. An LRDP is used by the UC, CSU, and CCC and functions as a combination programmatic EIR and general land use plan. UC Berkeley provides housing for only 23% of its students, which is by far the lowest of any UC. Enrollments have outpaced student housing development. The prior LRDP, adopted in 2005, called for the construction of 2,600 beds through 2021, which was 10,000 beds short of the projected enrollment increase. The university only produced 1,119 of those

bed, while simultaneously increasing enrollment beyond what was planned for in the LRDP. The most recent LRDP, adopted in 2021, proposes to build 11,731 beds.

- 4) *Make a UC a Good Neighbor v. Regents of UC*. At issue in this case is whether Regents of UC adequately considered alternative locations for a student housing and supportive housing project located on People's Park, a UC owned property, in the City of Berkeley, and whether UC adequately assessed potential noise impacts from students. In that case, UC Berkeley analyzed the LRDP and the People's Park project together in a single EIR. Even though substantial evidence of social noise impacts was presented during the project's CEQA review, UC decided to not analyze potential noise from future residents and determine if the impacts were significant or not. Following the certification of the EIR, "Make a UC a Good Neighbor" and others challenged the approvals for various violations under CEQA. These arguments were rejected by the Alameda County Superior Court. On appeal, however, the First District Court of Appeals held that defendants failed to "analyze any alternative locations". According to the defendants, alternative sites were already analyzed in the programmatic EIR (*i.e.* UC Berkeley's LRDP EIR), including the People's Park development. Additionally, the Court directed UC to assess potential noise impacts from student parties. According to the opinion:

"(UC) failed to assess potential noise impacts from loud student parties in residential neighborhoods near the campus, a longstanding problem that the EIR improperly dismissed as speculative... The Regents must analyze the potential noise impacts relating to loud student parties. Their decision to skip the issue, based on the unfounded notion that the impacts are speculative, was a prejudicial abuse of discretion and requires them now to do the analysis that they should have done at the outset... We express no opinion on the outcome of a noise analysis. The Regents must determine whether the potential noise impacts are in fact significant, and, if so, whether mitigation is appropriate; ultimately, CEQA provides discretion to proceed with a project even if some impacts cannot be mitigated."

This ruling establishes a new precedent that noise from residents in projects should be an environmental factor considered under CEQA. Since all residences have residents and all residents make some amount of noise in their day-to-day lives, the result may be that all residential housing projects would need to conduct an EIR and specifically examine the impacts of the voices and living noises of residents in the project and surrounding areas. This could significantly slow down the CEQA process for residential buildings.

This bill states that for residential projects, the effects of noise generated by the occupants and the guests cannot be considered a significant effect on the environment under CEQA. By making this change, this bill would remove the potential for litigants to challenge residential development based on the speculation that the new residents will create unwanted noises.

This bill also includes a narrow exemption from CEQA’s required alternative sites analysis for university-built residential projects that were already evaluated in the university’s long-range development plan. This change will enable UC Berkeley to move forward expeditiously with its People’s Park project.

5) *Here, there, and everywhere.* This bill was heard in the Environmental Quality Committee on June 21 and passed on a 7-0 vote.

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

POSITIONS: (Communicated to the committee before noon on Wednesday, July 5, 2023.)

SUPPORT:

- California Housing Consortium (Co-Sponsor)
- California Housing Partnership Corporation (Co-Sponsor)
- Housing California (Co-Sponsor)
- California Lieutenant Governor Eleni Kounalakis
- American Planning Association, California Chapter
- Amg & Associates, LLC
- Association of Environmental Professionals
- California Apartment Association
- California Association of Realtors
- California Building Industry Association
- California State Association of Counties
- California YIMBY
- CRP Affordable Housing and Community Development
- East Bay for Everyone
- East Bay YIMBY
- Eden Housing
- Greenlining Institute
- Grow the Richmond
- Housing Action Coalition
- How to ADU
- Linc Housing

Merritt Community Capital Corporation
Midpen Housing Corporation
Mountain View YIMBY
Napa-Solano for Everyone
Non-profit Housing Association of Northern California (NPH)
Northern Neighbors
Northern Neighbors SF
Peninsula for Everyone
People for Housing Orange County
Progress Noe Valley
Resources for Community Development
San Francisco Bay Area Planning and Urban Research Association (SPUR)
San Francisco YIMBY
San Luis Obispo YIMBY
Santa Cruz YIMBY
Santa Rosa YIMBY
Satellite Affordable Housing Associates
Slo County YIMBY
South Bay YIMBY
Southside Forward
Supportive Housing Alliance
The John Stewart Company
The Pacific Companies
University of California
Urban Environmentalists
Ventura County YIMBY
YIMBY Action

OPPOSITION:

None received.

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