CEQA Works: SB 607 Group Letter

March 18, 2025
Via Electronic Mail Only

The Honorable Mike McGuire
President Pro Tempore of the California State Senate
1021 O Street, Ste. 8518
Sacramento, CA 95814

The Honorable Catherine Blakespear
Chair, Senate Environmental Quality Committee
Members of the Senate Environmental Quality Committee
1021 O Street, Ste. 7603
Sacramento, CA 95141

Re: SB 607 (Wiener) – Oppose

Dear Senator McGuire, Senator Blakespear, and Members of the Senate Environmental Quality Committee:

The undersigned conservation, land use, and environmental justice organizations write to oppose Senate Bill 607 (Wiener). SB 607 is being portrayed as making "technical changes" to clarify CEQA, streamline review for projects like infill housing, clean energy, and childcare centers, and implement recommendations from the Little Hoover Commission. This is deeply misleading. The bill is not narrowly focused on specific beneficial projects, but applies to nearly all private and government projects. The bill's main proposals were never even considered, much less endorsed, by the Little Hoover Commission. And the replacement of provisions that have existed in the law for over 50 years with a broad, new legal framework is certain to lead to more, rather than less, litigation as well as confusion over compliance and legal standards of review.

SB 607 would gut CEQA across the board. While the bill makes a narrow exception for distribution centers and oil and gas infrastructure, it weakens CEQA for all other projects. These include, for example, freeways, airports, railyards, shipping terminals, office buildings, shopping malls, sports complexes, dams, sewage plants, mining, incinerators, power plants, prisons, and massive mixed-use developments on farmland, sensitive habitat, or in high wildfire danger zones. Indeed, the changes proposed in the bill have been characterized as "monumental" and "disruptive" by pro-development CEQA watchers. The bill is drafted in such a way that it is hard to tell whether its harmful effects are intentional or thoughtless; in either case, the result will be less transparent environmental review, agency confusion, and more litigation.

For over 50 years, CEQA, like its federal counterpart NEPA, has protected our health and safety and preserved our wildlife, farmland, coastlines, forests, and rivers. CEQA acts as an environmental bill of rights, giving Californians access to critical information that affects their communities. At a time when environmental protections, including those provided by NEPA and federal air and water quality laws, are under assault at a national level, we urge you to reject this extreme, ill-conceived bill.

A. SB 607 would reverse the longstanding presumption in favor of in-depth environmental review for projects that may have significant impacts.

SB 607's proposed amendments to Public Resources Code section 21080.1 would radically alter the long-standing presumption favoring preparation of environmental impact reports (EIRs) where a project may have significant environmental impacts. Currently, an EIR must be prepared whenever there is fair argument, based on substantial evidence, of a potentially significant impact. The reason for this "fair argument" test is clear. When an agency is deciding whether to prepare an EIR, it has not undertaken a detailed analysis of the project's impacts and potential mitigation or alternatives. Nor has the analysis been vetted through rigorous public review. Accordingly, the agency's conclusions are entitled to less deference than after it has gone through the EIR process.

SB 607 would reverse the presumption favoring EIRs by requiring that an agency's decision not to prepare an EIR be upheld as long as substantial evidence supports its decision. This change would effectively eliminate the current "fair argument" test. Notably, the "substantial evidence" standard requires deference to an agency's determination where there is conflicting evidence in the record. As a result, conflicting information regarding the potential for significant impacts would be resolved against in-depth environmental review, rather than for it. For example, even if there is solid, credible evidence that a project would cause significant public health impacts from air pollution or harm protected wildlife, the agency might avoid preparing an EIR by pointing to other evidence tending to show that these impacts would not be significant. This would deprive the public of the opportunity even to fully assess these impacts and to determine if they had been mitigated effectively.

While the press release for SB 607 asserts that the bill does not relax the standard of environmental review, this is obviously untrue. Indeed, developer interests have singled out the proposal to eradicate the "fair argument" test as "truly monumental." The bill makes it easier for agencies to avoid preparing EIRs and harder to show why they are necessary. SB 607 doesn't just speed up the approval process; it allows agencies to avoid in-depth environmental review altogether. Even CEQA's sharpest critics during the Little Hoover Commission hearings did not go this far. As one

prominent critic specifically assured the Commission, “I'm not suggesting that we change the fair argument standard. … that’s not my suggestion at all.” Notably, eliminating the fair argument test would reverse five decades of established California Supreme Court precedent that has served to protect the state.

Allowing agencies to avoid preparing EIRs, and rely instead on less comprehensive analysis, will hurt communities. It will give the public less information on a project, provide fewer opportunities for local groups to raise their concerns to their elected representatives, and result in less mitigation to reduce environmental and public health harm. SB 607’s proposed elimination of the “fair argument” standard is irreconcilable with the core values and purpose behind CEQA, as confirmed by decades of case law, and should be rejected.

B. SB 607 adopts entirely unworkable rules for CEQA exemptions.

SB 607 includes two provisions that attempt to expand the application of CEQA exemptions. The bill amends section 21080.1 to state that if a project meets all but one condition of a categorical exemption, the scope of the EIR would be limited to the condition that disqualifies the project from exemption. It also adds a new section, section 21165.5, stating that if a challenge to a categorical or statutory exemption is successful, subsequent environmental review can be limited to the “facts the action or proceeding relied upon that disqualified the project from the statutory or categorical exemption.” Both proposals are unworkable and reflect a basic misunderstanding of how exemptions work.

First, the modifications to section 21080.1 appear to be modeled on the exemption for infill development (Guidelines § 15332)—which applies if five specified “conditions” are met—and wrongly assumes most categorical exemptions are structured in this way. In fact, most categorical exemptions do not contain a list of enumerated “conditions”; only three categorical exemptions in the Guidelines explicitly list “conditions” at all: sections 15312, 15322 and 15329. Most exemptions are simply descriptive. See, e.g., id. § 153030 (“construction and location of limited numbers of new small facilities or structures”); § 15308 (“actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment”). Some exemptions, like section 15316, contain two requirements and explicitly state that “either” is adequate for an exemption. Many other exemptions consist largely of “examples.” See, e.g., §15304(h) (the “creation of bicycle lanes on existing rights-of-way” is an “example” of an exempt minor alteration to land). The bill’s proposed language simply makes no sense as applied to the vast majority of categorical exemptions.

Second, many conditions related to categorical exemptions are not "environmental" and thus do not lend themselves to the truncated EIR the bill envisions. To take one example, minor land divisions are exempt if they do not require a variance and the parcel was not involved in a division of a larger parcel within the previous two years. If the land division does not meet one of these conditions, how is the "scope" of an EIR's analysis supposed to be limited? What is the "impact" of not being subject to a variance or involved in a recent land division?

Third, the proposed amendment to section 21080.1 would lead to "piecemealing." Even in situations where one could identify a single, coherent "disqualifying condition," if the lead agency can limit environmental review to only those impacts related to the disqualifying condition, the analysis would likely address only one element of the project, not the "whole of [the] action" as CEQA requires. The provision would thus present an agency with conflicting mandates. Moreover, the limited scope of review would allow the agency to entirely ignore potentially serious environmental issues and improperly curtail its consideration of cumulative impacts, as well as alternatives and mitigation to reduce environmental harm caused by the whole project—features that are at the heart of the value CEQA provides to the public.

Fourth, the proposed amendment to section 21080.1 both undermines the very basis for categorical exemptions and erroneously suggests the only other option is an EIR. Where a categorical exemption lays out mandatory conditions, the Natural Resources Agency has determined that all of these conditions must be met to ensure minimal harm. But where the conditions are not met, this does not mean the agency must always prepare an EIR, as the proposed amendment incorrectly presumes. It simply means the agency must go through the normal CEQA steps: preparing an initial study and then determining what further review is appropriate. If a project really has only minor environmental impacts, these can be addressed in a negative declaration (if no impacts are significant) or a mitigated negative declaration (if impacts can be reduced to a level of insignificance).

Fifth, it makes no sense to limit the scope of CEQA review where a court finds an agency has improperly relied on an exemption, as the new section 21165.5 proposes. An EIR is required where an agency identifies any significant impacts, and it must address all potential impacts. Categorical and statutory exemptions are often adopted with no review whatsoever, not even an initial study. Improper reliance on an exemption should not give an agency a pass to ignore issues that did not arise in the litigation. As the California Supreme Court recognizes, where an agency has undertaken no CEQA review, "virtually any postulated indirect environmental effect will be 'speculative' in a legal sense … because little or no factual record will have been developed."

Moreover, the proposed new section 21165.5 raises the same problems of interpretation as section 21080.1. To give just one example, a frequently invoked statutory exemption is the one for "ministerial" projects. If a court finds that an agency violated CEQA because it erroneously concluded a project was ministerial rather than discretionary, how is future CEQA review to be "limited"? Once again, applying the language of SB 607 to likely situations is simply confounding and nonsensical.

In short, in scenario after scenario, the bill's language makes no sense. If the Legislature wants to modify the rules for a specific exemption, it should do so directly or direct the Office of Land Use and Climate Innovation (LCI), which is responsible for drafting and promulgating exemptions, to do so. It should not try to adopt a blanket rule for all categorical exemptions that is entirely unworkable and can only result in confusion and more litigation.

C. SB 607 would make rezoning exempt from CEQA.

The bill adds a new section to CEQA, section 21080.08, stating that CEQA "does not apply to a rezoning that is consistent with an approved housing element." This provision is overly broad and nearly impossible to make sense of.

The housing element includes a mix of policies and inventories of land suitable for housing, along with a schedule for actions to achieve the jurisdiction's housing goals. It is focused exclusively on residential housing and does not address development standards or myriad other topics included in other general plan elements—commercial and industrial development, farmland, roads, conservation, open space, public safety or public services and infrastructure. General plans have been called "[t]he fundamental constitution of all local land-use policy, governing future growth and development." A rezoning project must be consistent with all policies of the general plan, not just the housing element.

SB 607 makes no mention of these other general plan elements. Thus, developers are likely to argue that a rezoning is "consistent with" the housing element—and exempt from CEQA—as long as it does not directly conflict with a housing element's policies. For example, developers could argue that a rezoning from agricultural or open space to industrial or commercial is "consistent with" the housing element if its policies do not expressly forbid such a change. Even where a developer is actually proposing housing on a site as designated in the housing element, developers could include other changes in the same rezoning, like major commercial development, and then insist the entire rezoning is exempt from CEQA. This is contrary to CEQA, which provides that rezoning typically requires environmental review.

Even if SB 607's language were redrafted to provide that the exemption applies solely to residential rezoning that implements an approved housing element, it should be rejected as unnecessary and overly confusing. Since housing elements are already subject to CEQA, the proponents of a rezone for a housing project that implements the housing element can already rely on or tier off existing CEQA review. Further, many housing projects are already exempt from CEQA—even where they need rezoning to conform to the general plan. Importantly, these exemptions come with important safeguards: prior broad-level CEQA review; assurances of adequate public services; and exceptions for sites with sensitive resources (like wetlands) or safety issues (like hazardous waste or high-wildfire risks). Exempt projects must also typically provide some affordable housing and constitute urban infill, as opposed to luxury sprawl development. These safeguards, absent from SB 607, were adopted to support the kind of housing California needs while protecting other values, like public safety and farmland preservation. They should not be summarily eliminated.

In short, new section 21080.08 is not focused on speeding up the housing California needs most, and it could potentially exempt from CEQA review a wide range of rezonings that have little to do with housing and where environmental review is critical.

D. SB 607's proposed modifications to the infill exemption go too far.

While we support California's efforts to streamline certain development in urban infill areas, SB 607's broad expansion of the categorical exemption for Class 32 infill projects (Guidelines § 15332) in proposed section 21083.03 does more harm than good. First, subdivision (c) eliminates the general requirement that categorical exemptions do not apply where significant environmental harm might result due to "unusual circumstances." Although this exception is rarely applied, it recognizes that a regulation cannot anticipate every possible scenario. While a typical project subject to a categorical exemption should not cause significant harm, there may be "unusual circumstances" where this is not the case. The public should have a chance to make this showing for infill development, just as it can for other types of projects.

Second, subdivision (d) mirrors the bill's problematic amendments to section 20800.1 by stating that if an infill project is not eligible for the categorical exemption, only the reasons for the ineligibility are subject to CEQA review. This leads to the same confounding problems of interpretation discussed above. One condition for the infill exemption, for example, requires that "[t]he proposed development occur[] within city limits on a project site of no more than five acres substantially surrounded by urban uses." If this condition is not met, how would an EIR analyze "only" the environmental impacts related to the reason for ineligibility? There is no "impact" per se in being outside of city limits or of being partially surrounded by urban uses. Likewise, if a

parcel is disqualified from the exemption because it is 6, rather than 5, acres, is the EIR only supposed to analyze 1 acre? Or is it somehow supposed to analyze the "impact" of being 6 acres?

Finally, the bill's declaration that areas should be considered "infill" even if they are not "substantially surrounded by urban uses" is contrary to the basic meaning of "infill" development. SB 607 directs LCI to map eligible urban infill, but this approach would put in place a top-down planning process without ensuring necessary input from the impacted communities. Similarly, directing LCI to establish significance thresholds for infill development for all potential impacts—a huge undertaking—would undercut local agencies' adoption of standards that reflect the needs of their communities, particularly in areas like traffic and noise.

E. SB 607's vague administrative record provisions will motivate agencies to cherry-pick documents for the administrative record.

This letter focuses on the most radical elements of SB 607. But as the above analysis shows, the bill is filled with seemingly minor changes that, on careful inspection, are also problematic. For instance, it is unclear what purpose is served by the ambiguous changes to section 21167.6, which allow agencies to exclude from the administrative record internal communications that are "tangential" to decision-making. Communications among agency technical staff, for example, may provide crucial evidence about impacts, yet an agency may conclude those communications are "tangential" and attempt to exclude them. CEQA intentionally contains a broad definition of what documents constitute the administrative record in litigation in order to fully include and assess evidence considered by the agency, and courts are fully capable of disregarding irrelevant or tangential communications. Agencies should not be allowed to cherry-pick which staff communications can be excluded from the record under SB 607's ambiguous language.

CONCLUSION

SB 607 is not a "good government" bill and will not clarify CEQA or streamline only "environmentally friendly and environmentally neutral" projects, as the author's press release claims. The bill adds confusing new provisions that will confound public agencies and the courts. Even worse, by weakening CEQA and the requirements for EIRs, the bill would undermine the public's right to meaningful review of projects across the state and eliminate critical protections for environmental resources and public health. We respectfully urge you to stop SB 607 now.

If you have any questions regarding our concerns, please do not hesitate to contact Matthew Baker of Planning and Conservation League at matthew@pcl.org or J.P. Rose of Center for Biological Diversity at jrose@biologicaldiversity.org.

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