Session: Housing Approvals and Density Mandates

Abundance Meets Approval: The Nuts and Bolts of AB 130 and SB 131

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INTRODUCTION

On June 30, 2025, two budget trailer bills — Assembly Bill 130 (AB 130) and Senate Bill 131 (SB 131) — were signed by Governor Newsom and went into effect *immediately*. In addition to significant modifications to the California Environmental Quality Act (CEQA), AB 130 made numerous changes to California's already complex housing laws, including, most notably, the Permit Streamlining Act (PSA). SB 131 enacted a number of new CEQA statutory exemptions, as well as a new more narrow CEQA review process for projects that narrowly miss qualifying for a statutory or categorical exemption. By attaching these provisions to the budget, the Governor was able to swiftly move these changes through the legislative process. These changes were so critical that we understand the Governor applied a budget contingency clause to ensure their passage (meaning that if AB 130 and SB 131 did not pass, the entire state budget would have been inoperative).

The Governor's office characterized the trailer bills as "a comprehensive streamlining package that breaks down long-standing development barriers, modernizes CEQA review for critical housing and infrastructure, and creates new tools to speed up production, reduce costs, and improve accountability across the state." The challenge with this approach is that cities were tasked with implementing these bills without any lead time — the provisions took effect immediately. Developers immediately began pushing cities for answers on how they could use these new tools, and cities were quickly trying to catch up. This paper is intended to provide a comprehensive analysis of the changes and guidance on how to implement the significant provisions in the trailer bills.

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KEY TAKEAWAYS

- AB 130 makes significant changes to the PSA as applied to housing projects. As a result of the bill:
  - *Ministerial.* Ministerial entitlement permits for certain qualifying housing projects are now subject to the PSA.
    - Cities must act on these ministerial actions within 60 days of submittal of a complete application, or they will be deemed approved.
  - *Discretionary.* Housing projects that qualify for a new infill housing CEQA exemption created by AB 130 must be approved or denied within 30 days from the later of (a) the date that tribal consultation (as required by AB 130) is complete, or (b) the deadline for a determination of consistency with objective standards under the Housing Accountability Act — or they will be deemed approved.
    - The advanced-notice and cure provisions of the PSA are removed, creating ambiguity and meaning that arguably, a project could be automatically deemed approved if the city fails to meet the statutory deadlines.
- AB 130 creates a new statutory CEQA exemption for infill housing developments that meet certain conditions. As noted above, projects qualifying for this exemption must be approved within 30 days under the amended PSA.
- SB 131 establishes a new streamlined CEQA process for evaluating housing development projects that fail to qualify for statutory or categorical CEQA exemptions due to a single disqualifying condition.
- SB 131 also establishes several new statutory CEQA exemptions, including an exemption for rezoning actions to implement provisions of a housing element, exemptions for new agricultural employee housing meeting certain criteria, and others.
- AB 130 prevents cities from making local modifications to building codes that would affect residential units, with certain limited exceptions.
- AB 130 eliminates several former sunset provisions that applied to existing housing law, making them permanent.
- AB 130 imposes a new requirement that cities and counties annually inspect homeless shelters in their jurisdictions.

1. PERMIT STREAMLINING ACT CHANGES

The PSA, originally passed in 1977, has long been intended "to ensure clear understanding of the specific requirements which must be met in connection with the approval of development projects and to expedite decisions on such projects."[2] AB 130's key PSA amendments are summarized below. Most relevant to cities, AB 130:

1. Brings ministerial entitlement approvals under the PSA for qualifying housing projects,

2. Establishes new, shorter deadlines for approving or denying housing projects, and

3. Arguably, shortcuts the "deemed approved" process by removing the public-notice requirement.

And generally, the bill eliminates several former sunset provisions of housing law, making them permanent (discussed in more detail below).[3]

1.1 Ministerial Housing Now Subject to PSA

The PSA's applicability depends on whether a project qualifies as a "development project." The PSA defines this term as "any project undertaken for the purposes of development … includ[ing] a project involving the issuance of a permit for construction or reconstruction but not a permit to operate."[4] Historically, this only applied to discretionary projects; the definition of "development project" specifically excluded ministerial projects — but no longer.

AB 130 changes this by amending the "development project" definition to now include any "*housing* development project that requires an entitlement from a local agency, regardless of whether the process for permitting the entitlement is discretionary *or ministerial*."[5] This is a major change: A ministerial housing project (e.g., one that involves no personal judgment or subjective decision making, such as projects under SB 35/423 or SB 4) were not subject to the PSA before, but now they are.

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[2] Gov. Code § 65921.

[3] *See* AB 130, sec. 12 (eliminating repeal date for Gov. Code § 65905.5 [five-hearing limit]), sec. 13 (for § 65913.10 [determination of historic site]), sec. 16 (for § 65940 [compilation of complete-application checklist]), sec. 18 (for § 65941.1 [preliminary applications]), sec. 19 (for § 65943 [deemed complete]), sec. 21 (for § 65950 [deemed approved]).

[4] Gov. Code § 65928, as it read before June 30, 2025.

[5] Gov. Code § 65928(b)(1)(B), as it reads following AB 130 (emphasis added).

Note that this new inclusion of ministerial approvals under the PSA is specific to *housing* development projects; it does not apply to projects without residential uses. And note too that *not all* housing projects are ministerial; many housing projects still require discretionary approvals such as a tentative map, a zone change or general plan amendment, a conditional use permit, a site plan approval, or design approval. The PSA still applies to discretionary approvals.

As explained in the following sections, broadening the "development project" definition to cover ministerial housing projects significantly impacts how these applications will need to be processed moving forward. But there is a limit to this expanded scope of "development project." AB 130 clarifies that a "development project" under the PSA does *not* include post-entitlement phase permits covered by Government Code section 65913.3. As a practical matter, by specifically excluding post-entitlement phase permits for housing projects from the PSA, AB 130 establishes two distinct development-permit phases: (1) the entitlement permit phase covered by the PSA, and (2) the post-entitlement permit phase covered by Government Code section 65913.3.

1.2 No More Notice-and-Cure before "Deemed Approved"

The PSA has long had a deemed-approved provision under which a project is automatically deemed approved if the city "fails to act to approve or disapprove a development project within the time limits" required by the PSA. But there was a significant safety valve, a chance for the city to avoid that outcome in most cases: Before the application was deemed approved, the applicant first had to give the city advance notice that the applicant would provide public notice of the automatic approval … and the city had 60 days to act to avoid the automatic approval. Additionally, if faced with a writ of mandate to compel the city to hold the hearing, as a practical matter the city could notice and *hold the hearing* before the applicant-petitioner could get a ruling from a court, thus mooting the writ. The reason this safety valve existed was because other neighboring property owners had their own due-process rights to receive notice and an opportunity to be heard before a project was approved. Under AB 130, that safety valve was removed.

AB 130 deletes the entire advanced-notice and cure-period portion of the statute, leaving just the automatic deemed-approved provision (which appears to conflict with the long-recognized principle that neighboring property owners have due-process rights that must also be considered).[6] So now if a city fails to act (approve or deny the project) by any of the PSA's deadlines (the existing CEQA-based deadlines for discretionary projects, the new 60-day one for ministerial housing projects, or the new 30-day one for discretionary housing projects that qualify for the new statutory CEQA exemption, discussed below in more detail), the project could be automatically deemed approved.

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[6] Gov. Code § 65956(b).

The statute still provides that if the project requires a public notice or a public hearing and the city fails to provide notice or a hearing at least 60 days before expiration of the deadlines, the remedy (for the lack of notice or hearing) is for the developer to petition the court to require the city to give the notice and hold the hearing. And yet, the Legislature has now removed language that allowed the applicant to provide the notice if the city refused to do so. Before, once the applicant provided notice, the city had a certain amount of time to take action before the project would be deemed approved. But now, there is no provision for the applicant to provide the notice. In short, AB 130's changes create ambiguity about the relationship between a failure to notice and hold the hearing and the project being deemed approved. Whether or not an applicant brings an action to compel notice and hearing, the project could be deemed approved by operation of law if the city delays.

Oddly, even after AB 130, the statute is clear that the PSA does not alleviate the city's obligation to provide notice and a hearing. So for discretionary projects, the existing CEQA-based deadlines (Gov. Code section 65950) still apply and run from when the CEQA is approved, and the CEQA determination is still made by the review authority.

Nevertheless, understanding the interplay between the PSA and CEQA is now even more critical. City staff should familiarize themselves well with timelines for processing environmental review set out in CEQA.[7] While the timelines are directory, with provisions for extensions and extraordinary delays, they provide a roadmap for demonstrating that the City is proceeding in a timeline required by law.[8] Projects that are discretionary, exempt from CEQA review, but approved at the staff level present unique timing challenges and the PSA is less clear on when they must be approved. Here is the most reasonable timeline that we have identified. CEQA provides that the City must determine within 30 days of deeming an application complete whether it intends

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[7] The deadlines for acting on an application run from the date of certification of an EIR, adoption of a negative declaration, or a determination that the project is exempt. Gov. Code § 65950. The lead agency must approve or disapprove a development project within the following timelines:

- 180 days from the date of certification of the EIR;
- 120 days from the date of certification for certain development projects (Gov. Code § 65950(c));
- 90 days from the date of certification of the EIR for certain affordable housing projects;
- 60 days from the date of adoption of the negative declaration;
- 60 days from the determination that the project is exempt from CEQA;
- 60 days from the date of receipt of a complete application if the project is subject to ministerial review by the public agency; or
- 30 days from the conclusion of the process outlined in Pub. Res. Code §21080.66(b), if the project is exempt from CEQA. Gov. Code § 65950.

[8] See 14 Cal. Code Regs. 15100, et seq.

to proceed with a Negative Declaration or EIR.[9] This suggests that the City should also determine if it intends to proceed with a CEQA exemption within that same 30-day period. Given the ambiguity between the PSA (after AB 130) and CEQA, it would be prudent to follow this schedule for CEQA exempt projects to avoid arguments of delay. Keep in mind that the CEQA-triggered PSA deadlines can run from the determination that the project is exempt. While the other PSA deadlines are triggered by the review authority's decision to *adopt* a negative declaration or *certify* an EIR, there is no case law explaining whether, for an exempt project, the 60-day deadline runs from the date that the city *determines* that it will proceed with an exemption under CEQA regulation 15102 or the date that the review authority actually approves the project with the exemption. With no other guidance on this point, the safest approach is to act on exempt, staff-approved projects no later than 90 days after an application is deemed complete (30 days to determine whether a negative declaration or EIR will be required and 60 days from that determination).[10] A 90-day mutual extension is allowed under the PSA.

1.3 New Deadlines to Approve or Deny Ministerial and Discretionary Housing Projects

Government Code section 65950 in the PSA has long established deadlines for a city to approve or deny a project, but historically these deadlines received attention only rarely because (a) the PSA only applied to discretionary projects, (b) discretionary projects require CEQA review, and (c) all the deadlines in section 65950 ran from CEQA determinations — and as a practical matter, approval (or denial) of a project almost always happens concurrently with the CEQA determination, at the same meeting. The same general framework is still in place, but now there are two new extremely significant deadlines for which cities must be aware.

1.3.1 Ministerial Housing: 60 Days

With the PSA's definition of "development project" now expanded to include ministerial housing approvals, and with CEQA not applying at all to ministerial actions, the CEQA-based deadlines in Government Code section 65950 have no application. AB 130 addresses this by adding a new 60-day deadline to approve or deny a housing project that is subject to ministerial review.

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[9] 14 Cal. Code Regs. §15102.

[10] If the city is waiting on the applicant to submit information that is required as part of the application or for CEQA review and the clock is running, Government Code Section 65956(c) does provide grounds to base a denial ("Failure of an applicant to submit complete or adequate information pursuant to Sections 65943 to 65944, inclusive, may constitute grounds for disapproving a development project"). CEQA contains a similar provision to suspend deadlines or deny a project if the applicant is creating unreasonable delay.14 Cal. Code Regs. § 15109.

This deadline applies to all housing projects subject to ministerial review, except for housing in commercial zones under AB 2011.[11] This is noteworthy because several ministerial housing statutes, such as Government Code sections 65913.4 (SB 35/423) and 65913.16 (SB 4), provide longer deadlines to approve or deny projects. *AB 130's across-the-board 60-day deadline overrides and replaces those deadlines*,[12] so city staff should not rely on those other deadlines.

The 60-day clock starts running on the date that the city receives a complete application — not 60 days from when the city *confirms* or gives *notice* that the application is complete. It is 60 days from when the complete application was submitted to the city. If the initial submittal was incomplete, the 60 days runs from the date that the applicant submits the last piece of the complete-application puzzle (again, *not* from when the city might later confirm that that last piece completes the puzzle).

As a practical matter, with only a short 60 days to get all the way to project approval or denial, city staff must make completeness determinations as soon as possible upon receiving an application for a ministerial approval because every day that the city delays in confirming completeness is one day fewer to evaluate the project to make a decision. This is especially tricky for cities that accept applications electronically, as the clock can start to run if an application is submitted outside business hours and sits for a few days before a member of staff actually receives the application.

This 60-day deadline has other practical implications, as well. The 60-day deadline does not stop when the city gives the applicant comments on corrections that need to be made before the project is compliant and approvable; the clock continues to run while the applicant mulls over the needed changes, and if the applicant waits to respond, the project could be deemed approved after 60 days. City staff can go back and forth with an applicant multiple times about *completeness* (always within 30 days of a submittal) — but once a complete application has been submitted, the clock is running to approve or deny.

Lastly, with a 60-day clock running from the date the complete application is submitted, cities should make sure that they have posted a complete-application checklist that includes everything that the city needs in order to make its decision within 60 days. That means *all* information needed by *all* city departments. This also means all third-party-agency approvals (e.g., fire, water, sewer, and school districts). Whatever the city needs to see from other agencies should

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[11] New paragraph (6) of Gov. Code § 65950(a). But note that ministerial housing in commercial zones under AB 2011 still have their own, sometimes longer, deadlines ("except as provided in subdivision (a) of Section 65912.114 and subdivision (a) of Section 65912.124 …"). The rest of the discussion that follows about implications of the deadline apply to the longer deadlines, too.

[12] Gov. Code § 65953(b).

either be included in the city's complete-application checklist, or the City can approve the ministerial project subject to subsequent third-party-agency approval.

1.3.2 Discretionary Housing Under New CEQA Exemption: 30 Days

As noted above, when it comes to discretionary housing projects, the long-standing CEQA-driven deadlines remain largely intact and untouched. But there is one new, potentially significant exception for a certain kind of discretionary process.

AB 130 creates a new statutory CEQA exemption, which is discussed at length below. But for the purposes of discussing the PSA, the CEQA exemption requires a city, acting as the lead agency, to approve or deny a qualifying project within 30 days from the later of two specified application-processing events.

At the outset, the new AB 130 CEQA exemption requires the city to initiate tribal consultation within 14 days after the "application for the project" is "deemed complete" under the Housing Accountability Act (HAA).[13] And "deemed complete" under the HAA means either: "that the applicant has submitted a preliminary application … or, if the applicant has not submitted a preliminary application, has submitted a complete application [under] Section 65943."[14] So "deemed complete" in this context includes, among other things, submittal of just a preliminary application.

"Deemed complete" triggers tribal consultation, which has its own timelines:

- 14 days from submittal of the "application for the project" to give notice to tribes
- 60 days for tribes to request consultation
- 14 days to initiate consultation upon request from tribe
- 45 days to conclude consultation once initiated, subject to 15-day extension by tribe

— for a total ranging from 74 days (if no tribe requests consultation) to 148 days (if tribe requests consultation and extension).

[13] Pub. Res. Code § 21080.66(b)(1)(A)(i), referencing HAA's definition of *deemed complete* in § 65589.5(h)(5).

[14] Gov. Code § 65589.5(h)(5).

In early September 2025, the Legislature passed SB 158.[15] Among other things, SB 158 further amends the PSA to require the city to approve or deny a project that qualifies for AB 130's CEQA exemption within 30 days from the later of:

- The conclusion of AB 130's tribal consultation process or
- The "expiration of the applicable time limit in paragraph (2) of subdivision (j) of [Government Code] Section 65589.5."[16]

Government Code section 65589.5 is the HAA, and subdivision (j)(2) is the provision that requires cities to notify applicants whether a proposed project is "inconsistent, not in compliance, or not in conformity" with "an applicable plan, program, policy, ordinance, standard, requirement, or other similar provision" (e.g., objective general plan, zoning, subdivision and design standards criteria).[17] This notification must be made in writing and occur within 30 days (if the project contains less than 150 units) or 60 days (if more than 150 units) from the "date that the application for the housing development project is determined to be complete." So, following SB 158, a project that qualifies for AB 130's CEQA exemption must be approved or denied within 30 days from the *later* of:

- o the date that the AB 130 tribal-consultation process concludes; or
- o the date that is 30 days (if fewer than 150 units) or 60 days (if more than 150 units) from the date that the city finds the project's full development project application is complete.

Whichever date occurs *last* triggers the 30-day deadline to approve or deny the project. For example, if tribal consultation concludes on May 30, 2026, and the HAA inconsistency determination is due by June 30, 2026, the 30-day deadline to approve or deny the project would start on June 30, 2026 (as that date is *after* May 30, 2026).

Given these new deadlines, each city must meticulously watch the calendar: It must mind the above deadlines because if the city fails to act, one way or the other, to approve or deny, the project might just be deemed approved. To the extent that timely approval or denial of a project poses a challenge, an city can mitigate its risk by entering into one tolling agreement for up to 90

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[15] As originally enacted, AB 130 required the city to approve or deny a qualifying project within 30 days from the end of the tribal consultation process, all potentially based on only a "preliminary application" (that spare instrument created by SB 330 for the sole purpose of establishing early and superior vesting). See Gov. Code §§ 65589.5(o) and 65941.1 generally. This presented a real complication because the applicant might not even have submitted a full application by the time the city was required to make a final decision on the project: state law gives the applicant up to 180 days from submittal of a valid preliminary application to submit the actual "application for [the] development project" with all that is required of a full application. Gov. Code § 65941.1(e)(1).

[16] Gov. Code § 65950(a)(7), as amended by SB 158.

[17] Gov. Code § 65589.5(j)(2)(A).

days[18] with a cooperative applicant (developer applicants may often be open to it, and may even ask for it, to avoid compressing the timeline to the point of increasing the chance of an adverse decision). But, cities should not let the 30-day deadline pass without approving or denying the project or entering into a tolling agreement.

2. CEQA CHANGES

2.1 New Infill Housing Development Exemption[19]

As noted above, AB 130 creates a new statutory CEQA exemption for qualifying housing development projects under Gov. Code § 65589.5. The exemption applies to projects that meet each of the following conditions:

- The site must not exceed 20 acres in size, except for a builder's remedy site,[20] which cannot be more than four acres;[21]
- The project must be located in an incorporated city or urban area, as defined by the United States Census Bureau;[22] [23]
- The project site must meet one of the following criteria:
    - site previously developed with an urban use,
    - 75 percent or more of the site perimeter adjoins parcels developed with urban uses,
    - 75 percent or more of the area within a quarter-mile of the site is developed with urban uses, or

[18] Gov. Code § 65957.

[19] To support infill development and land use planning, SB 131 directs the Office of Land Use and Climate Innovation to develop, define, and publish a statewide map of eligible "urban infill sites" by July 1, 2027, following public review and input from local governments. (Pub. Res. Code § 21083.03.)

[20] A "builder's remedy project" is a housing development proposed in a city or county that lacks a state-compliant housing element, where the project includes affordable housing and is entitled to proceed even if it conflicts with local zoning, provided it meets specific density and location criteria set forth in Government Code § 65589.5(h)(11).

[21] Pub. Res. Code § 21080.66(a)(1), as amended by AB 158. Previously under AB 130, builder's remedy projects could be up to five acres. Following SB 158, these projects are limited to four acres.

[22] To qualify as an urban area, the area must encompass at least 2,000 housing units or have a population of at least 5,000.

[23] Pub. Res. Code § 21080.66(a)(2).

- for sites with four sides, three of the four sides are developed with urban uses and at least two-thirds of the site perimeter adjoins parcels developed with urban uses.[24]

- The project must be consistent with the applicable general plan and zoning ordinance, as well as any applicable specific plan and local coastal program;[25]

- The project must meet minimum residential density requirements:

    - 5 units per acre in unincorporated nonmetropolitan counties,[26] or
    - 10 units per acre in suburban jurisdictions, or
    - 15 units per acre in metropolitan jurisdictions.[27]

- The project site must not be located on specified hazardous or sensitive lands, including:

    - parcels in the coastal zone that are

        - not zoned for multifamily housing,
        - lack a certified local coastal program, or
        - are vulnerable to five feet of sea level rise;
    - prime farmland, farmland of statewide importance, grazing land, or land designated for agricultural preservation by local ballot;
    - wetlands;
    - very high fire hazard severity zones or state responsibility areas without required mitigation;
    - hazardous waste sites, *unless* remediated or approved for residential use;
    - delineated earthquake fault zones, *unless* compliant with seismic safety standards;
    - 100-year floodplains or regulatory floodways ,*unless* compliant with FEMA standards;

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[24] Pub. Res. Code § 21080.66(a)(3)(A)–(D).

[25] *Id*., at (a)(4)(A). If the zoning and general plan are not consistent with one another, a project is deemed "consistent with both if the project is consistent with one." (*Id*., at (a)(4)(B).) Additionally, approval of a density bonus, concessions/incentives, waivers or reductions in development standards, and a reduced parking ratio under state density bonus law is not grounds for finding the project inconsistent with the zoning ordinance, general plan, or local coastal program. (*Id*., at (a)(4)(C).)

[26]Pub. Res. Code § 21080.66(a)(5)'s provisions concerning density reference Government Code § 65583.2, which establishes minimum density standards for sites that local governments identify as suitable for lower-income housing in their Housing Element, and specifies the required densities based on jurisdiction type.

[27] Pub. Res. Code § 21080.66(a)(5).

- lands under conservation easements or designated for conservation in habitat or natural resource protection plans; or
- habitat for protected, sensitive, or special-status species under federal or state law.[28]

- As noted above, the project must comply with the tribal-consultation process set forth in Public Resources Code section 21080.66(b). Specifically:

  - The city must notify all California Native American tribes traditionally and culturally affiliated with the project site within 14 days of the project application being "deemed complete"[29] or, for projects whose applications were "deemed complete" before July 1, 2026, within 14 days "of notifying the local government that the project is eligible to be exempt."

  - Tribes have 60 days to request consultation, and if a request is made, the city must begin consultation within 30 days.

  - Consultation must conclude within 45 days, with a one-time 15-day extension allowed.

  - The process must be conducted in good faith and result in binding mitigation conditions to avoid significant impacts to tribal cultural resources, unless waived by the tribe.

  - Unless otherwise agreed, the conditions of project approval must, among other related items, require tribal monitoring during all ground-disturbing activities, avoid tribal cultural resources where feasible, and comply with protocols for the discovery of human remains or burial grounds.[30]

- The project must not require demolition of a historic resource that was placed on a national, state, or local historic register before the date a preliminary application was submitted for the project under Government Code section 65941.1 (i.e., an "SB 330 application");[31]

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[28] *Id*., at (a)(6).

[29] Gov. Code § 65589.5 subdivision (h), paragraph 5.

[30] *See id*., at (b)(1)–(5).

[31] *Id*., at (a)(7).

- If the project was deemed complete on or after January 1, 2025, it cannot include any transient lodging (e.g., hotel, motel, or bed and breakfast inn);[32]

- The project must include a condition of approval requiring a phase I environmental assessment for hazardous substance releases, with mitigation requirements based upon results;[33]

- The project must comply with specific environmental hazard and air filtration standards if located within 500 feet of a freeway; and

- The project must comply with labor requirements, including payment of prevailing wage for 100 percent affordable projects and use of a skilled and trained workforce for buildings exceeding 85 feet in height.[34, 35]

2.2 Limited CEQA Review for "Near Miss" Projects

SB 131, discussed in more detail below, establishes a CEQA process for housing development projects that narrowly fail to qualify for a statutory or categorical CEQA exemption due to a single disqualifying condition.[36] In those situations, the new law limits CEQA review to just those environmental effects that are caused solely by that condition and the law waives the need for analysis of project alternatives, cumulative impacts, and growth-inducing effects. This near-miss provision does not apply to builder's remedy projects that exceed four acres, to projects with multiple disqualifying conditions, or to projects that involve distribution centers or oil and gas infrastructure, or that are located on natural and protected lands, as defined in Public Resources Code Section 21067.5.[37]

SB 131 defines a "condition" as a "physical" or "regulatory" feature of the project or its "setting" or an effect upon the environment caused by the project.[38] These are new concepts. The scope and depth of analysis that is required will vary depending on the nature of the disqualifying condition. However, if the disqualifying condition is not due to an environmental impact, but

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[32] *Id.*, at (a)(8).

[33] *Id.*, at (c)(1).

[34] *Id.*, at (d)(1)–(2).

[35] Following SB 158, a lead agency that determines that a project is exempt from CEQA under Public Resources Code section 21080.66 and approves the project must file a notice of exemption with the county clerk and state clearinghouse in accordance with the requirements of Public Resources Code section 21080.66(f).

[36] Pub. Res. Code § 21080.1(b).

[37] *See id.*, at (b)(4). Builder's remedy projects are excluded via (b)(4)(E)(i)-(ii), which was added by SB 158.

[38] *Id.*, at (b)(5)(A).

instead is "physical" or "regulatory," or relates to the "setting," SB 131 does not address how the limited CEQA review should be conducted.

2.3 New Statutory Exemptions (SB 131)

SB 131 establishes several new statutory CEQA exemptions, several of which are highlighted here:[39]

- **Rezoning to Implement Housing Elements**: Exempts rezoning actions that implement the provisions of a housing element that were adopted in accordance with Government Code section 65583(c), so long as the rezoning does not authorize distribution centers[40], oil and gas infrastructure[41], or development located on natural and protected lands, as defined in Public Resources Code Section 21067.5.[42]

- **Wildfire risk reduction projects**: Exempts certain small-scale vegetation management and fire resilience activities if they comply with all other applicable laws and meet defined criteria. This includes:

    - Prescribed burns or fuel reduction projects (less than 50 contiguous acres) near residential subdivisions, with environmental and tribal protections;
    - Defensible space clearance up to 100 feet from public roadways used as evacuation routes;
    - Residential home hardening or defensible space activities within 200 feet of homes in high or very high fire hazard severity zones;
    - Fuel breaks up to 200 feet from structures, clearing flammable vegetation and trees under 12 inches in diameter.[43]

- **Public park and non-motorized trail projects funded by the 2024 bond measure**: Exempts activities and approvals related to the planning, acquisition, design, construction, operation, or maintenance of public park or trail facilities funded in whole

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[39] Additional exemptions include: Disadvantaged community water system projects. Pub. Res. Code § 21080.48; Updates to the state's climate adaptation strategy. Pub. Res. Code § 21080.55; Agricultural employee housing. Pub. Res. Code § 21080.44; High-Speed Rail Maintenance and Station Projects. Pub. Res. Code § 21080.70.

[40] Public Resources Code § 21060.4 defines "Distribution center" as "warehouse distribution center, as defined in Section 2100 of the Labor Code, that is 50,000 square feet or larger."

[41] Public Resources Code § 21064.8 defines "Oil and gas infrastructure" as "a facility used for the production, processing, transmission, storage, or distribution of petroleum or natural gas."

[42] Pub. Res. Code § 21080.085.

[43] Pub. Res. Code § 21080.49.

or part by the 2024 Safe Drinking Water, Wildfire Prevention, Drought Preparedness, and Clean Air Bond Act.[44]

- **Certain essential services and industrial use projects**: Exempts narrowly defined projects that consist exclusively of one of the following uses but does not apply to any project located on "natural and protected lands," as defined in Public Resources Code section 21067.5.[45]
  - Day care centers (as defined in Health & Saf. Code § 1596.76) located outside residential areas;
  - Rural health clinics or federally qualified health centers less than 50,000 square feet in size;
  - Nonprofit food banks or food pantries located on sites zoned exclusively for industrial uses; and
  - Advanced manufacturing facilities (as defined in Public Resources Code § 26003) that are located on sites zoned exclusively for industrial use.

2.4 Procedural Changes

SB 131 requires that the state CEQA Guidelines must be updated by January 1, 2027, and every two years thereafter to improve clarity, address vague terminology, and reduce litigation risk over city (acting as lead agency) determinations.[46]

Finally, in the event of litigation, SB 131 provides that, for projects not involving a distribution center or oil and gas infrastructure, the administrative record no longer includes internal electronic communications, such as emails that were not presented to the final decision-making body unless such emails or documents were reviewed prior to project approval by the lead agency executive, a local agency executive (as defined in Government Code § 3511.1(d)), or another supervisory-level official involved in reviewing the project. Further, the city retains discretion to include other materials not specifically required.[47]

3. LIMITS ON LOCAL BUILDING CODE AMENDMENTS

Every three years, new versions of the California Building Standards Code (Title 24, California Code of Regulations) are approved by the California Building Standards Commission ("Commission"). By operation of state law, these new building codes go into effect in every

[44] Pub. Res. Code § 21080.57.

[45] Pub. Res. Code § 21080.69.

[46] Pub. Res. Code § 21094.5.5(c).

[47] *See* Pub. Res. Code § 21167.6(e)(10).

jurisdiction in California 180 days after adoption by the Commission.[48] Accordingly, all local amendments to the California Building Standards Code must be readopted every three years when the new statewide codes go into effect. Historically, cities were only allowed to make modifications to the state building codes to address local climatic, geological, or topographical conditions, and adoption of local amendments requires specific findings in the adopting ordinances, which must be filed with the Commission after adoption.[49]

In addition to the existing limitations above, AB 130 provides that effective October 1, 2025, through June 1, 2031, Health and Safety Code section 17958(b) and Health and Safety Code section 17958.7(c) now prevent local jurisdictions from making modifications to building codes <u>*that would affect residential units*</u>, unless one of the following *also* applies:

- The modifications (that would affect residential units) are substantially equivalent to local amendments previously filed with the Commission and in effect as of September 30, 2025.
- The Commission deems the modifications necessary "as emergency standards to protect health and safety."
- The modifications relate to "home hardening" (which changes may be proposed by a fire-protection district under Health and Safety Code section 13869.7).
- The modifications are local amendments "adopted to align with a general plan [that is] approved on or before June 10, 2025, and that permits mixed-fuel residential construction consistent with federal law while also incentivizing all-electric construction as part of an adopted greenhouse gas emissions reduction strategy."
- The changes or modifications are related to administrative practices, are proposed for adoption during the intervening period between code cycles, and exclusively result in any of the following:
    - Reductions in time for a city to issue a postentitlement permit.
    - Alterations to a city's postentitlement fee schedule.
    - Modernization of, or adoption of, new permitting platforms and software utilized by the city.
    - Reductions in cost of internal operation for a city.

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[48] Health & Safety Code § 17958.

[49] Health & Safety Code § 17958.7.

- Establishment, alteration, or removal of local programs related to enforcement of building code violations or complaints alleging building code violations.

Health and Safety Code section 17958.7(c) now also provides that the Commission "shall" reject building code modifications affecting *residential* construction unless one of the above conditions is satisfied. Given the new statutory authority, we expect that local amendments will be subject to increased scrutiny, particularly if adopted as "emergency standards to protect health and safety." In its Informational Bulletin No. 25-03[50]to local building departments, the Commission states that any emergency standards need to be adopted as emergency or urgency measures, with all findings required under state law to adopt an urgency ordinance.

With regards to existing local amendments, cities are allowed to re-adopt their local amendments for the 2025 Building Standards Code cycle as long as they are "substantially equivalent." However, this is not defined in the statute, and the Informational Bulletin No. 25-03, the Commission states that the local amendments readopted under this authority must not have any "material change in regulatory effect."

4. CHANGES TO SB 4 (2023) – AFFORDABLE HOUSING ON CHURCH AND SCHOOL LAND

AB 130 also makes minor modifications and clarifications to SB 4, the "Affordable Housing on Faith and Higher Educations Lands Act of 2023," which established a new streamlined, ministerial approval process for qualifying affordable housing projects located on land owned by an independent institution of higher education or a religious institution on or before January 1, 2024.

SB 4 provided that an affordable-housing development does not qualify as a "use by right" if it is adjoined to any site where more than one-third of the square footage on the site is dedicated to "light industrial use."[51] AB 130 clarifies that the definition of a "light industrial use" is an industrial use that is not subject to permitting by an air pollution control district or air quality management district, whereas SB 4 as originally adopted defined a "light industrial use" to include any use (rather than clarifying that this limitation only applied to industrial uses not permitted by the applicable districts).[52]

AB 130 also clarifies that childcare centers are allowed as ancillary uses included within the affordable-housing project without limitation on the number of children in all zoning districts

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[50] Information Bulletin 25-03: AB 130 Impacts, https://www.dgs.ca.gov/BSC/News/Page-Content/Building-Standards-Commission-News-List-Folder/IB-25-03-AB-130.

[51] Gov. Code § 65913.16(c)(5)(A).

[52] *Id*., at (b)(7).

within a jurisdiction.[53] SB 4 previously established a limitation on parking requirements for any religious institutional use or other use that that was previously existing on the site, that was included in the affordable-housing development project that is eligible as a use by right. Under the prior version of the law, the parking requirement for nonresidential space on the site could not exceed the lesser of the amount of existing parking or the amount required under a conditional use permit. AB 130 eliminated that requirement and instead provides that the parking requirement for the total project, including the religious institutional or other previously existing use, shall not exceed one space per residential unit.[54]

Finally, SB 4 originally provided that development projects that were permitted as a use by right under this law would be permitted as a height of one story above the maximum height otherwise applicable to the parcel. AB 130 clarifies that the project may be developed at a height of one story or 11 feet above the maximum height that would otherwise be applicable to the parcel.[55]

5. CHANGES TO SB 684/1123 – MINISTERIAL 10-LOT SUBDIVISIONS AND 10-UNIT PROJECTS

AB 130 refines the ministerial subdivision and project approval process under SB 684. SB 684, as modified by SB 1123 commencing in 2025, requires cities to ministerially approve (1) a subdivision resulting in 10 or few parcels for certain housing development projects and (2) a housing development project consisting of 10 or fewer units on a parcel resulting from a subdivision under the applicable law. Among other provisions to help facilitate development of these subdivisions, the law provides that for developments on parcels that are not identified in a jurisdiction's housing element for the current planning period, proposed developments that are to be subdivided under this law need only result in the greater of either: (a) at least 66 percent of the maximum allowable residential density as specified by local zoning or (b) at least 66 percent of the applicable residential density under Government Code section 65583.2, subdivision (c)(3)(B).[56]

AB 130 allows that when utilizing this law to subdivide property into 10 or fewer residential parcels, the proposed subdivision may designate a remainder parcel that retains existing land uses or structures, does not contain any new residential units, and is not exclusively dedicated to serving the housing development project.[57] The remainder parcel is not counted against the 10-

[53] *Id*., at (h)(1)-(2).

[54] *Id*., at (k)((1).

[55] *Id*., at (j).

[56] Gov. Code § 66499.41(a)(5)(B).

[57] *Id*., at (a)(1)(B).

parcel maximum, and it is excluded from the calculation of residential density for purposes of determining the allowable density on parcels not identified in the jurisdiction's housing element for the current planning period.[58]

6. SUNSET DATES REMOVED

AB 130 made permanent certain provisions in the Housing Crisis, Housing Accountability and Permit Streamlining Acts that formerly had sunset dates. These changes signal the permanence of the recent state housing laws, and that creation of housing will continue to be critically important to the Legislature for the foreseeable future. The bill also repeals the expiration provisions of the Housing Crisis Act of 2019 and eliminates the limitation that certain provisions of the Act only applied to projects that submit a preliminary application before January 1, 2030.

While these revisions do not change the status quo for how housing projects are currently handled today, they do eliminate a degree of uncertainty about the permanence of these processes. For example, the following provisions are now permanent:

- The five hearing limit for housing projects;[59]
- The requirement to determine whether the site of a proposed housing development project is an historic site at the time the application is deemed complete;[60]
- The ability for applicants to submit a preliminary application and the requirement that a housing development project can only be subject to the ordinances, policies, and standards in effect when a preliminary application was submitted;[61]
- The Housing Accountability Act definitions for "objective" and what it means for a project to be "deemed complete" and "determined to be complete;"[62] "
- The requirement to replace residential units (no net loss);[63]

[58] *Id*., at (a)(1)(B), (a)(5)(B)(iii).

[59] Gov. Code § 65905.5(a).

[60] Gov. Code § 65913.10(a).

[61] Gov. Code §§ 65941.1, 65589.5(o)(1).

[62] *Id*., at (h)(9)[objective], (h)(5)[deemed complete], (h)(10)[determined to be complete].

[63] AB 130 repealed Government Code section 66301, which previously contained a January 1, 2034 sunset date for Government Code section 66300 et seq.

- The requirement to electronically publish lists of the information required for a housing development project to be deemed complete (application checklists).[64]

7. MISCELLANEOUS

AB 130 and SB 131 also include a few miscellaneous but notable provisions.

First, the Legislature updated the process for determining the methodology for regional housing needs assessment (RHNA).[65] While this does not require any action or implementation on the part of cities or counties it is worth noting.

Second — and this does require action by cities and counties — is the new requirement to annually inspect homeless shelters in their jurisdiction. The inspections may be announced or unannounced. Cities with populations under 100,000 may partner with their county to conduct the inspection. The requirements can be found Health and Safety Code Section 17974.1.

Following the annual inspection, the city or county must issue a notice to correct within 10 days of identifying a substandard condition during the inspection. AB 130 also includes requirements for shelters to display occupant-right information[66] and a requirements that the city or county's annual report to the state Housing and Community Development Department (HCD) now include the number of complaints received each year that a shelter is substandard.[67]

HCD will withhold state funding if the city or county fails to comply with reporting requirements or fails to take action to correct a violation at a shelter.[68] These provisions appear intended to improve the shelter system and provide accountability to those who oversee shelters, as shelters are critical component of moving people off the street and addressing the housing crisis holistically.

8. CONCLUSION

There is a lot in these two last-minute budget-rider bills to take in. We hope this summary provides helpful guidance to practitioners like us who had to figure out how to implement these changes essentially overnight.

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[64] Gov. Code § 65943.

[65] Gov. Code § 65584.04.

[66] Health & Safety Code § 17974.1.5.

[67] Health & Safety Code § 17974.5.

[68] *Ibid*.