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**SENATE COMMITTEE ON ENVIRONMENTAL QUALITY**

**Senator Allen, Chair**

**2021 - 2022 Regular**

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**Bill No:** SB 886  
**Author:** Wiener  
**Version:** 3/21/2022  
**Urgency:** No  
**Consultant:** Genevieve M. Wong

**Hearing Date:** 4/27/2022  
**Fiscal:** Yes

**SUBJECT:** California Environmental Quality Act: exemption: public universities: university housing development projects

**DIGEST:** Exempts faculty and staffing housing projects and student housing projects meeting specified requirements from CEQA.

**ANALYSIS:**

Existing law:

- 1) Under the California Environmental Quality Act (CEQA),
  - a) Requires lead agencies with the principal responsibility for carrying out or approving a proposed discretionary project to prepare a negative declaration (ND), mitigated negative declaration (MND), or environmental impact report (EIR) for this action, unless the project is exempt from CEQA (CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA guidelines). (Public Resources Code §21000 et seq.). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, the lead agency must prepare a draft EIR. (CEQA Guidelines §15064(a)(1), (f)(1))
  - b) Authorizes a master EIR to be prepared for certain types of projects, including a project that consists of smaller individual projects that will be carried out in phases or a rule or regulation that will be implemented by subsequent projects, and allows for the limited review of subsequent projects that were described in the master EIR, as specified. (PRC §§21157 et seq.)
  - c) Authorizes the use of a focused EIR for subsequent projects identified in a master EIR if the analysis in the master EIR of cumulative impacts, growth inducing impacts, and irreversible significant effects on the environment is adequate for the subsequent project. Requires a focused EIR to analyze

any significant effects on the environment where substantial new or additional information shows that the adverse environmental impact may be more significant than was described in the master EIR. (PRC §21158)

- d) Subjects the selection of a location for a particular campus and the approval of a long-range development plan (LRDP) to CEQA and requires the preparation of an EIR. (PRC §21080.09(b))
  - i) Defines “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. (PRC §21080.09)
  - ii) Defines “public higher education” as (a) the California Community Colleges, (2) the California State University, and each campus, branch, and function thereof, and (3) each campus, branch, and function of the University of California. (PRC §21080.09)
- e) Subjects the approval of a project on a particular campus or medical center of public higher education to CEQA but allows the approval in a tiered environmental analysis based on a LRDP EIR. (PRC §21080.09(c))

This bill:

- 1) Defines the following terms:
  - a) “University housing development” means a student housing project or a faculty and staff housing project that is not located, in whole, or in part, in certain environmentally-sensitive parcels.
  - b) “Faculty and staff housing project” means one or more housing facilities to be occupied by faculty or staff of one or more campuses, and owned by a public university, including dining, academic, and faculty and staff support service spaces and other necessary and usual attendant and related facilities and equipment.
  - c) “Student housing project” means one or more housing facilities to be occupied by students of one or more campuses, and owned by a public university, including dining, academic and student support service spaces, and other necessary and usual attendant and related facilities and equipment.
- 2) Exempts from CEQA university housing projects carried out by a public university on real property owned by the public university if all of the following are met:

- a) All contractors and subcontractors at every tier on the project will be required to pay prevailing wages. An entity cannot be prequalified or shortlisted or awarded a contract to perform work on the project unless the entity provides an enforceable commitment to the public university that the entity and its contractors and subcontractors, at every tier, will use a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation in the building and construction trades, except as specified.
  - b) The project is not located on a site that is any of the following:
    - i) Either prime farmland or farmland of statewide importance, as specified, or land zoned or designated for agricultural protection or preservation.
    - ii) Wetlands.
    - iii) Within a high or very high fire hazard severity zone.
    - iv) Either a listed hazardous waste site or designated hazardous substance release site, unless the site has been cleared for residential use or residential mixed uses, as specified.
    - v) Within a delineated earthquake fault zone unless the project complies with applicable seismic protection building code standards.
    - vi) Within a special flood hazard area subject to inundation by a 1% annual chance flood, as provided.
    - vii) Within a regulatory floodway, as provided.
    - viii) Lands identified for conservation in an adopted natural community conservation plan, habitat conservation plan, or other adopted natural resource protection plan.
    - ix) Habitat for species protected by the federal Endangered Species Act, California Endangered Species Act, or the Native Plant Protection Act.
    - x) Lands under conservation easement.
  - c) The lead agency files an NOE with OPR.
- 3) Does not apply this CEQA exemption to a university housing project that:
- a) Requires the demolition of certain types of housing or historic structures.
  - b) Is located on a site that was previously used for housing that was occupied by tenants and was demolished within 10 years before the public university submits an application pursuant to this exemption.
  - c) Is located on a site that contains housing units that are occupied by tenants and the housing units are offered for sale, were subsequently offered for sale, to the general public by a subdivider or subsequent owner of the site.

## Background

### 1) Background on CEQA.

- a) *Overview of CEQA Process.* CEQA provides a process for evaluating the environmental effects of a project, and includes statutory exemptions, as well as categorical exemptions in the CEQA guidelines. If a project is not exempt from CEQA, an initial study is prepared to determine whether a project may have a significant effect on the environment. If the initial study shows that there would not be a significant effect on the environment, the lead agency must prepare a ND. If the initial study shows that the project may have a significant effect on the environment, the lead agency must prepare an EIR.

Generally, an EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project.

- b) *What is analyzed in an environmental review?* An environmental review analyzes the significant direct and indirect environmental impacts of a proposed project and may include water quality, surface and subsurface hydrology, land use and agricultural resources, transportation and circulation, air quality and greenhouse gas emissions, terrestrial and aquatic biological resources, aesthetics, geology and soils, recreation, public services and utilities such as water supply and wastewater disposal, and cultural resources. The analysis must also evaluate the cumulative impacts of any past, present, and reasonably foreseeable projects/activities within study areas that are applicable to the resources being evaluated.
- c) *CEQA provides hub for multi-disciplinary regulatory process.* An environmental review provides a forum for all the described issue areas to be considered together rather than siloed from one another. It provides a comprehensive review of the project, considering all applicable environmental laws and how those laws interact with one another. For example, it would be prudent for a lead agency to know that a proposal to mitigate a significant impact (i.e. alleviate temporary traffic congestion, due to construction of a development project, by detouring traffic to an alternative route) may trigger a new significant impact (i.e. the detour may redirect the impact onto a sensitive resource, such as a habitat of an endangered species or near a hospital). CEQA provides the opportunity to

analyze a broad spectrum of a project's potential environmental impacts and how each impact may intertwine with one another.

- 2) *CEQA streamlining provisions*. CEQA has been amended over the years to provide several tools to expedite the review of, or altogether exempt from CEQA, various types of projects.

#### Projects Eligible for Exemptions

Numerous types of projects may be eligible for an exemption from CEQA review pursuant to either a statutory exemption or a “categorical” exemption in the CEQA Guidelines. Categorical exemptions are projects determined by the Secretary of the Natural Resources Agency to not have a significant effect on the environment. In general, if a project meets certain specified criteria, it is not subject to CEQA. See Comment 4 of this analysis for an overview of existing exemptions for which a university housing development project may already be eligible.

#### Streamlined Administrative Review

CEQA provides for streamlined processes for preparing EIRs and other CEQA documents that enable public agencies to use various special types of EIR's to simplify preparation and avoid duplication. These various documents include “program” EIRs for a series of related actions that can be collectively characterized as a single project, “staged” EIRs for sequential projects, and “master” EIRs for community-level projects. This streamlines the review of such projects and reduces the need to prepare repetitive studies.

CEQA also provides for “tiering”—the process of analyzing general projects in a broad EIR, followed by focused review of subsequent environmental projects that are narrower in scope, thereby allowing an agency to defer analysis of certain details of later phases of long-term linked or complex projects until those phases are up for approval.

- 3) *Planning for long-term development by institutions of higher education*. In California, public universities prepare planning documents that help guide the university in its physical development as well as the growth of student enrollment.

University of California (UC). Each campus and medical center of the UC periodically develops an LRDP that guides its physical development – based on academic goals and projected student enrollment levels – for an established

time horizon. Each plan identifies how a campus will accommodate the anticipated enrollment along with the faculty and staff needed to support that enrollment. Thus, an LRDP outlines a campus's priorities and guides future development. CEQA requires an EIR be prepared for the LRDP and requires the UC Board of Regents, as the lead agency, to certify the EIR before approving the LRDP. Since the LRDP includes multiple projects, the accompanying EIR is typically referred to as the "master" EIR or a "program-level" EIR. As each project covered by the LRDP is implemented, a project-level EIR is prepared. However, given the certification of a program-level EIR on the LRDP, these project-level EIRs are not required to be as detailed.

UC is constitutionally exempt from local land use control. In other words, the local government's planning commission does not have the jurisdiction to deny or oppose an LRDP or a specific project within the LRDP.

California State University (CSU). The CSU is the largest university system in the United States. Governed by the Board of Trustees, CSU's 23 campuses across the state collectively enroll 405,000 students and employ 44,000 faculty and staff. Each of the 23 CSU campuses develop a master plan that guides the future development of campus facilities based on its academic priorities and student enrollment projections. The physical plan is not subject to local land use regulations and usually covers a period of 10 years. As with UC, CEQA requires CSU campuses to complete an EIR for each master plan. The CSU Board of Trustees serves as the lead agency in the EIR process and has the responsibility of approving both the master plan and the EIR.

California Community College. Each community college district maintains a district-wide master plan, as well as a separate master plan for each college located in the district. The master plan serves as a comprehensive planning document encompassing all functions of the college or district for a period of 10 years. The master plan also includes a facilities component that evaluates existing land, infrastructure, and facility needs, and specifies the projects necessary to meet those needs. The various districts are exempt from local land use regulations. The district prepares an EIR that is subsequently reviewed and approved with the master plan by the district's board of trustees.

- 4) *Legislative Analyst Report finds LRDPs lack accountability, standardization, and clarity.* In 2007, the Legislative Analyst's Office (LAO) published the report, *A Review of UC's Long Range Development Planning Process*. That report reviewed the process used by UC to prepare LRDPs and analyzed whether the process adequately addressed impacts that campus growth has on surrounding communities. In general, the report found a lack of accountability,

standardization, and clarity in the current process, and noted that this creates tension between the university and local communities regarding campus growth and the mitigation of the environmental impacts related to the growth. The LAO findings can be summarized as:

- Lack of state accountability and oversight. Generally, the state neither approves the LRDP nor the implementation of the mitigation measures identified in the EIR.
- Lack of standardization in public participation leading to varying degrees of local community involvement.
- Minimal systemwide coordination in projecting enrollment for recent LRDPs.
- Campuses want to primarily expand graduate enrollment due to expected decline in number of California public high school graduates.
- Lack of clarity in CEQA requirements making its application uncertain and inconsistent.
- No campus has reached a “fair share” agreement with neighboring jurisdictions to contribute towards mitigating off-campus impacts.

While it is unclear if any systemwide changes have been made to LRDPs to address these concerns since the report was published, it does appear that some LRDPs have incorporated community advisory boards.

- 5) *What happened in Berkeley?* In April 2018, Save Berkeley’s Neighborhoods (SBN) filed suit against the UC Regents and the UC Berkeley campus for enrolling more than 6,600 students that were provided for in the 2020 LRDP and EIR, both which were adopted in 2005. The Court of Appeal found that UC must mitigate the environmental impacts of their growth and development. That decision was appealed to the California Supreme Court, which was denied review in September 2020.

In June 2019, in a separate case, SBN, along with the City of Berkeley, filed a suit against the UC Regents and the UC Berkeley campus challenging the UC’s adoption of the Upper Hearst Supplemental EIR (SEIR), a project which proposed to provide housing for faculty and graduate students. The SEIR was based on the 2020 LRDP EIR that the Court of Appeal found needed to be updated to evaluate and mitigate the effects of increased enrollment. The city settled in return for greater financial support from the university for impacts on public services from students.

In September 2021, the Alameda Superior court held that the university failed to analyze significant environmental impacts related to enrollment increases and, as part of a remedy, ordered the UC to freeze their enrollment levels at

2020-21 enrollment levels until the SEIR was revised to remedy the identified deficiencies and to ensure that the SEIR complies with CEQA (revise the SEIR to address the increased enrollment). According to the judgement filed for *Save Berkeley's Neighborhoods v. The Regents of the University of California*, the 2020 LRDP EIR, in 2005, had projected that student enrollment at UC Berkeley would stabilize at around 33,450 students. Instead, enrollment continued to increase and exceed those projections, with student enrollment in the 2017-2018 school year reaching 40,955 students, exceeding the 2020 LRDP by about 7,500 students.

In March 2022, SB 118 (Committee on Budget and Fiscal Review, Chapter 10, Statutes of 2022), a budget trailer bill, removed the requirement that environmental effects relating to changes in enrollment levels be considered in the LRDP's EIR and provided that enrollment or changes in enrollment, by themselves, do not constitute a project for purposes of CEQA. Additionally, the bill authorized the court to only enjoin increases in campus populations under certain conditions, applying retroactively to the Alameda Superior Court order.

## Comments

- 1) *Purpose of Bill.* According to the author, "Currently, California universities are facing a growing housing crisis as enrollment continues to grow, yet campus expansions and the available housing on and around campus fails to meet demand. To address this misalignment, SB 886 will provide a statutory exemption from the California Environmental Quality Act (CEQA) for student or faculty housing projects built on University of California (UC), California State University (CSU), and California Community College (CCC) campuses. Although CEQA is crucial for protecting our communities, each step of the CEQA process is subject to appeals and lawsuits that can increase project costs and create delays. It's not unusual for it to take three to four years and millions of dollars to resolve a single lawsuit, while appeals regularly take six months to resolve. In one instance, a proposed development by UC Berkeley that would've added 130 housing units to their campus was delayed for over two years due to CEQA lawsuits. These delays have real-life consequences including increasing homelessness: currently, 5% of UC, 10% of CSU, and 19% of CCC students are homeless. Faculty and staff on these campuses are left in similar circumstances, with 25% of part-time college faculty on some form of public assistance, in part due to the high costs of housing near their job sites.

“For those students and faculty able to secure housing, many are pushed far from campus to find units they can afford, resulting in increased commutes and associated greenhouse gas emissions. Projects streamlined under this bill will have inherent environmental benefits by addressing this issue, building campus infill and allowing students and faculty to live where they work or go to school. Additionally, these projects will still be reviewed by the array of environmental regulations facing the university systems, including long-range development plans and master plans, both of which develop comprehensive environmental impact reports.

“Stifling university access, particularly due to decreased university housing guarantees and skyrocketing housing costs, will only restrict opportunities for middle and working class families who rely on higher education as a means of socioeconomic growth. SB 886 ensures that the UC, CSU, and CCC systems remain one of California’s greatest assets – not just for those who can afford to live in the communities that house these universities, but for all who want to further their education.”

- 2) *Look before you leap.* Often groups will seek a CEQA exemption to expedite construction of a particular type of project and reduce costs. Providing an exemption, however, can overlook the benefits of environmental review: to inform decisionmakers and the public about project impacts, identify ways to avoid or significantly reduce environmental damage, disclose to the public reasons why an agency approved a project if significant environmental impacts are identified, and increase public participation in the environmental review and planning processes.

Environmental review includes more than just looking at the impacts on a wetland or a threatened species; it can look at things such as air quality, impacts to neighboring facilities such as hospitals and schools, traffic impacts, pressure on underlying infrastructure, and more, and analyzes those impacts in the context of one another.

CEQA is a process. It does not dictate the outcome of a project but rather is a disclosure mechanism that guarantees public involvement and transparency in the project approval process. A CEQA exemption takes away that guarantee. Absent CEQA, a project is assumed to be “fine as is,” without consideration of community concerns or the potential for improvement through public input. Absent CEQA, public participation can vary jurisdiction to jurisdiction and project to project, or sometimes, not be included at all. How can decisionmakers and the public be aware of impacts, mitigation measures, and alternatives of an exempt action? In the context of a university housing

development project, how does a local jurisdiction ensure that the underlying community infrastructure can properly support the increase in population? CEQA is the messenger that helps provide responsible, informed planning.

“CEQA operates, not by dictating pro-environmental outcomes, but rather by mandating that ‘decision makers and the public’ study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. . . . In other words, CEQA does not care what decision is made as long as it is an informed one.” (Citizens Coalition Los Angeles v. City of Los Angeles (2018) 26 Cal. App. 5th 561, 577.)

*The committee may wish to amend the bill to require a public university to hold at least one noticed public hearing to hear and respond to public comments prior to determining that a university housing development project is exempt.*

- 3) *Two percent of CEQA projects are litigated.* The only tool for enforcing CEQA is civil litigation and eliminating the possibility of litigation means taking away the ability to enforce the law. Without CEQA, a project with significant, unknown environmental impacts can proceed without any mitigation measures. CEQA helps groups such as environmental justice groups protect communities from being disproportionately impacted by unmitigated, avoidable, significant environmental impacts such as air pollution.

Some cite CEQA litigation as a problem but do not indicate the result of that litigation. For example, were significant impacts that were not initially evaluated ultimately addressed? What would have been the result if those impacts had not been mitigated (e.g. exposure of people to hazards, congestion, or inadequate public services)? Did the project improve as a result of the CEQA process?

The volume of CEQA litigation is low considering the thousands of projects subject to CEQA each year as well as the overall volume of civil litigation statewide. In its 2021 report, *CEQA: California’s Living Environmental Law*, The Housing Workshop found that about 2% of projects were subject to litigation between 2013-2019.

If a project is the subject of litigation, perhaps the cause of action has merit and CEQA ensures compliance with the law. While the impetus of this bill stems from a CEQA challenge against a university housing development project, that does not mean that all university housing development projects have been challenged under CEQA. If a university housing development project doesn’t

comply with CEQA and causes significant, unmitigated environmental impacts to the surrounding areas, shouldn't the law be complied with?

- 4) *Could an already existing exemption apply?* There are at least 12 CEQA housing exemptions, some of which may apply to a university housing development project depending on the scope, size, and individual characteristics of the project. These include:
- Residential development projects consistent with a specific plan. (GOV. C. §65457(a))
  - Transit priority projects. (PRC §21155.1)
  - Residential projects, employment center projects, and mixed-use development projects within a transit priority area. (PRC §21155.4)
  - Residential infill development. (PRC §21159.24)
  - Multifamily residential or mixed use projects in urbanized county areas. (PRC §21159.25)
  - Negligible expansions of existing public and private structures, facilities, mechanical equipment, or topographical features. (CEQA Guidelines §15301)
  - Infill development projects. (CEQA Guidelines §15332)
- 5) *Couldn't administrative streamlining apply?* As discussed above, existing law provides various streamlining processes to help expedite projects without sacrificing environmental review, including programmatic EIRs. A public university may utilize their LRDP or master plan EIR as a programmatic EIR, which then CEQA only requires the project-level EIR to cover environmental impacts not covered by the programmatic EIR.

Applying a CEQA exemption to university housing development projects eliminates the project-specific environmental review. This is especially concerning if the university housing development project is not part of, or is inconsistent with, an LRDP or master plan; in which case, no relevant environmental review will be performed at any level.

***The committee may wish to amend the bill to require that a university housing development project be consistent with a LRDP or master plan EIR that has been certified within 15 years of project approval.***

- 6) *The limit does not exist.* SB 886 exempts from CEQA a university housing development project of any size. The larger the project, the more likely there will be environmental impacts. It is unclear how big, on average, these university housing development projects could be.

- 7) *Other conditions imposed on housing-type exemptions.* Often CEQA exemptions will include certain restrictions or requirements to proactively mitigate or limit a project’s potential environmental impacts that would not otherwise be analyzed due to the application of an exemption.

***The committee may wish to amend the bill to include the following requirements:***

- Each building within the university housing development be LEED Platinum certified.
  - Be within ½ mile of a major transit stop; 15% lower per capita VMT; or within ½ mile of the campus boundary, as defined in the LRPD or Master Plan.
  - Includes a transportation demand management program.
  - No more than 33% of the project site is used for dining, academic or student support services spaces, or other attendant facilities and equipment.
  - Construction impacts are mitigated.
  - Does not result in any net additional greenhouse gas emissions.
- 8) *Sunset.* “Sunset” dates are often added to new CEQA exemptions to allow the Legislature a future opportunity to check on the exemption’s efficacy.

***The committee may wish to amend the bill to sunset its provisions after 7 years.***

- 9) *Committee amendments. Staff recommends the committee adopt the bolded amendments contained in comments 2, 5, 7, and 8, above.*

**SOURCE:** CA YIMBY, State Building & Construction Trades, UC Student Association, Student Senate for California Community Colleges, Student Housing Coalition, and California Faculty Association (co-sponsors)

**SUPPORT:**

Abundant Housing LA  
 Bay Area Council  
 Cal State Student Association  
 California Community Builders  
 California Faculty Association  
 California School Employees Association  
 California Yimby

California Young Democrats  
City Council Member Zach Hilton, City of Gilroy  
East Bay for Everyone  
Genup  
Greenbelt Alliance  
Housing Action Coalition  
Los Angeles Business Council  
San Francisco Bay Area Planning & Urban Research Association (SPUR)  
South Bay Yimby  
State Building & Construction Trades Council of California  
Sustainable Growth Yolo  
Sv@home Action Fund  
The Student Housing Coalition  
The Two Hundred  
University of California Student Association  
Yimby Action  
1 individual

**OPPOSITION:**

California Environmental Justice Alliance  
Communities for A Better Environment  
Leadership Counsel for Justice and Accountability  
Sea and Sage Audubon Society

**ARGUMENTS IN SUPPORT:** According to California YIMBY, “There is an extreme student and faculty housing shortage on UC, CSU, and CC campuses. UCs only have beds for 35% of their enrolled students, and CSUs only have beds for 14% of their students. Only 11 out of 116 community colleges in California provide housing. Students who do not receive housing end up on waitlists and must compete for housing in the surrounding communities. As many of California's biggest universities are in very high-cost housing markets, students often end up in substandard living conditions or far away from campus – or worse, homeless.

“On average, 5% of UC students and 11% of CSU students experienced homelessness during their past year at school. With over 280,000 students currently enrolled in UCs and 485,000 in CSUs, this translates to over 66,000 students at four-year universities in California being currently homeless.

“The housing crisis at California’s public universities is an eminent threat to the success of the next generation of Californians. However, the cost of housing not only makes a college education infeasible for many students, but it also makes it harder for college faculty and staff to support our world-renowned public

education system. High housing costs push university employees further away from campus, leading to longer commutes, displacement, and making it harder for the individuals to do their jobs.

**ARGUMENTS IN OPPOSITION:** According to a joint letter from California Environmental Justice Alliance and Leadership Counsel for Justice & Accountability, “[w]hile the bill supporters point out that the Long Term Development Plans (LRDP) for UCs and master plans for CSUs and CCs include Environmental Impact Reports (EIRs), these are not an adequate substitute for more detailed environmental reviews of individual projects. Without a requirement to review the impacts of each project and meaningfully engage the community, CEJA believes this bill will have unintended impacts for the communities surrounding our state universities. SB 886 does not limit the exemption to property on the university campus, which could facilitate environmentally undesirable sprawl development, particularly at suburban campuses, and exacerbate patterns of racial and economic segregation. The lack of affordability requirements could exacerbate a pattern of market rate development that drives up costs for the surrounding area, indirectly displacing vulnerable members in the community. Additionally, although the authors assert that on-campus housing is inherently environmentally beneficial and will lead to residents walking to school and work, potential traffic impacts such as delivery vehicles for supportive services in the buildings still must be studied to avoid negative and polluting impacts. And the bill provides no guarantee that LRDPs will actually ensure compact pedestrian-oriented housing development.

“The recent lawsuit against UC Berkeley has pushed CEQA into the news, and its opponents point to this as an example of CEQA as a barrier to development. While on the surface this bill may look like a promising remedy, we urge the Legislature to instead work toward policy solutions that address the true root of the student housing crisis - poor planning by universities to meet the needs of their growing campus populations, insufficient investment into affordable housing for low-income students and residents, and inadequate tenant protections. Students need safe, affordable and healthy housing, but [weakening] CEQA is not a magic bullet and will instead further deteriorate protections for our most vulnerable communities.”

-- END --