Governor Newsom is pushing for CEQA reform as part of approval of the state budget, and the result is two budget trailer bills, AB 130 and AB 131, that together provide some of the most significant changes to CEQA in many years.

Overall, these are good bills. The changes are focused on facilitating development where it is on net beneficial to the environment, and not in places where it would harm important natural resources. The facilitation of urban infill in AB 130 is paired with a mapping system in AB 131 that hopefully will make much clearer to the public, project proponents, and local governments where CEQA applies and where it does not apply for housing projects.

AB 131 also provides some broader streamlining. It allows housing infill projects that would otherwise not qualify for a CEQA exemption because of a failure to meet a single condition, then only that single condition need be analyzed through CEQA. And rezonings consistent with a local government's housing element do not require CEQA review. These are generally beneficial changes.

However, as I noted in my prior post on AB 609, there is potential for mischief in allowing rezonings consistent with a housing element to avoid CEQA – some local governments may seek to use their housing element process to facilitate development in ways that might facilitate development in environmentally sensitive lands. And while housing element themselves must go through CEQA, there can be differences between what is proposed in the housing element and what actually occurs in the rezoning. For instance, housing element CEQA review might postpone detailed analysis until the rezoning stage, which would now be exempt.

AB 131 tries to address this issue by creating a list of "natural and protected areas" for which the bill's provisions generally do not apply. This list is a mixed bag. It includes national parks and national monuments – which is kind of meaningless since these are federal lands over which the state has limited land-use control in any case. It includes conservation easements and state parks – lands that should not be available for development because of property law limits on development in any case. The same applies to ecological reserves or wildlife management areas.

The only items on this list that really add anything are: protections against building on hazardous waste sites; prohibitions against building in floodways, on wetlands, in environmentally sensitive coastal zone areas, or lands identified for protection for endangered species under state or federal law; prohibitions against building in high fire risk areas; and protections for prime farmland.

However, this list is underinclusive in three important ways that might undermine the state's environmental and climate goals.

First, it does not include a range of lands important for protection of endangered and sensitive species. The bill as written only covers lands

protected as preserve areas or reserve lands pursuant to an adopted natural community conservation plan pursuant to the Natural Community Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3 of the Fish and Game Code) or habitat conservation plan pursuant to the federal Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.)

But this is only a fraction of lands that require protection for endangered and sensitive species. (And as noted above, it probably isn't legal to build on these lands anyway, so it's not clear what their inclusion on the list adds.) Protections should at least also apply to lands designated as critical habitat for listed species under the federal Endangered Species Act and lands identified as important for mitigation under the state's Regional Conservation Investment Strategies program. That will still likely be underinclusive – ideally, the provision would not apply for habitat for listed and candidate species for protection under the state and federal Endangered Species Acts. Unfortunately, we still do not have comprehensive lists of that habitat, although the state's Natural Diversity Database could be a starting point for identifying additional places that should not be open for development. There is a tradeoff here between trying to avoid imposing a time-consuming information-gathering requirement on important infill projects, and the limited information we have about endangered species.

Second, there are examples of open space protections that are imposed through local zoning that provide important recreational and resource protections. These should continue to be protected. Again, there is a tension here – open space zoning can be used as a tool by jurisdiction to prevent needed housing. One approach might be to only include open space zoning that has been present before a certain time frame.

Third, some jurisdictions may use their housing element to facilitate development that increases vehicle miles traveled (VMT), which would undermine the state's climate goals. This is the most challenging problem to fix, since it doesn't neatly fit into a list of natural and protected lands.

However, this problem could be addressed if the CEQA exemption for housing element rezoning was limited to areas within the urban infill map that AB 131 requires the state to

develop. Right now, the bill does not make clear exactly what the role of the map would be. But that map could identify where we think housing construction will presumptively be environmentally beneficial in general – including from a VMT perspective. The problem is that it will take time (the statute sets a deadline of July 1, 2027) for the state's Office of Land Use and Climate Innovation to get around to producing those maps, and we need to facilitate that housing production now. However, it is unlikely that local governments that went through the past housing cycle strategically used their housing element to avoid environmental review, since the law is only now being changed. Thus, little will be lost, and much will be gained, if a limitation to urban infill areas for the CEQA exemption only applies to rezones pursuant to housing elements enacted in the future.

It's unclear if any amendments will occur to the bills in the limited time before they have to be enacted at the end of Monday. I hope the legislature does take a little more care with these exemptions – or perhaps some subsequent amendments will be required – to ensure that they truly advance more housing production in California in an environmentally sustainable way.