As this year's legislative session comes to a close, I want to highlight legislative action that I hope happens in the next session. I noted earlier that AB 130 and AB 131 both were important steps to advance infill housing in California by creating exemptions for infill housing from the California Environmental Quality Act (CEQA). As discussed in that post, and in prior co-authored work, such exemptions make sense from the perspective of ensuring that environmental review statutes are beneficial for environmental protection: The goal of environmental review statutes is to force the production of information that would be useful in improving environmental outcomes. But for some types of projects – such as urban infill housing – the vast majority of projects are environmentally beneficial. So imposing a requirement to produce more information on the environmental impacts of those projects is not helpful for the environment – the environmental (and other) costs of more information are high, especially by delaying or deterring infill housing that would benefit the environment. Those costs likely are much larger than any utility we would get from producing information about infill housing, information that might be helpful for only the very limited number of infill housing projects which might not be environmentally beneficial.

But this rationale does not apply when a housing project might be sited in a location where we know there are, or likely might be, important environmental resources we want to protect. And thus, for a range of other housing streamlining statutes, the state has excluded from streamlining locations with endangered species, wetlands, and other important natural resources. Unfortunately, as I noted in the post, AB 131's efforts to provide similar protections were very underinclusive. The protections that were listed were pretty useless – areas that would not or could not be developed in any case – and many resources (such as wetlands) that do warrant protection were not identified in AB 131. I called for follow-up legislation – what is often called "clean-up" legislation in the state legislature – to fix the problem.

There's another aspect of AB 131 that warrants similar clean-up. It adds Section 21080.69 to the Public Resources Code, and 21080.69(a)(4) creates a CEQA exemption for "advanced manufacturing" on areas that are zoned for industrial uses. Advanced manufacturing is defined in Section 26003 to include semiconductor production, nanotechnology, and biotechnology, among other fields. These are all important areas of innovation and technological development. Many may produce environmental benefits. But it is also true that semiconductor manufacturing in Silicon Valley has produced a legacy of toxic contamination of groundwater. Whether a particular facility in a particular location is net environmentally beneficial is not nearly as clear cut as urban infill housing. So there's really no reason to create a CEQA exemption for such projects, at least based on a theory

that the benefits of environmental review are outweighed by the costs in terms of the value of the information produced. It's an overreach in what is an otherwise excellent piece of legislation. I hope the state legislature moves to clean-up this provision too.

(There's one . . . interesting follow-up. Section 21080.69 cross references Public Resources Code Section 26003 for the definition of advanced manufacturing. However, the version of Section 26003 that includes such a definition sunsets on January 1, 2026 – the version of Section 26003 that comes into force on January 1, 2026 has no such definition. Which raises the question of whether Section 21080.69(a)(4) also becomes ineffective on January 1 as well. Does the cross-reference survive the sunsetting of the prior version of 26003, because that is the version in effect at the time Section 20180.69(a)(4) was enacted, making clear the legislature's intent? Or was the legislature's intent, in cross-referencing a sunsetting statute, to only apply the exemption for a very limited period of time? A non-trivial question of statutory interpretation, unless I'm missing something. UPDATE: SB 86 which passed a week ago, extended the expiration of the current version 26003 to Jan 1, 2028, which solves the mystery. Though that is also a very short period of time for the CEQA exemption to apply, if it does indeed disappear when 26003 sunsets.)