



She Doesn't Look Like a Bombthrower

“Legislative bombthrower” is one of those clichéd – and thus overused – metaphors. And California State Assemblymember Buffy Wicks (D-Richmond) has no reputation as one. But with her latest effort, [AB 609](#), it seems like she is enjoying her Molotov cocktail shaken, not stirred.

Wicks’ bill – now cosponsored with several other Assemblymembers – is actually pretty straightforward and is not long. It states that CEQA does not apply to a housing development project (defined as residential, transitional, or mixed-use with 2/3 of square footage devoted to housing), as long as:

- (1) The project site is not more than 20 acres.*
- (2) The project site meets either of the following criteria:*
 - (A) Is located within the boundaries of an incorporated municipality.*
 - (B) Is located within a census urbanized area.*
- (3) The project site meets any of the following criteria:*
 - (A) Has been previously developed with an urban use.*
 - (B) The parcels immediately adjacent to the site are developed with*

qualified urban uses.

(C) At least 75 percent of the perimeter of the site adjoins parcels that are developed with urban uses. For purposes of this section, parcels that are only separated by a street, pedestrian path, or bicycle path shall be considered to be adjoined.

(4) (A) The project is consistent with the applicable general plan and zoning ordinance, as well as any applicable specific plan and local coastal program as defined in Section 30108.6. For purposes of this section, a housing development project shall be deemed consistent with the applicable general plan zoning ordinance, and any applicable specific plan and local coastal program if there is substantial evidence that would allow a reasonable person to conclude that the housing development project is consistent.

(5) The project will be at least one-half of the applicable density specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 of the Government Code.

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If passed in its present form, it could be quite an explosive thrown into CEQA. It potentially would make all urban developments – and even a very substantial number of suburban housing developments – exempt from the statute.

Note the “if passed in present form” language. AB 609 is not a long bill: it’s a placeholder, which itself replaces another bill that Wicks decided to pull. And there will be a lot of pushing and pulling on this. When Scott Wiener (a co-sponsor on this bill) introduced his first zoning reform package ([SB 827](#)) in 2018, it required cities to allow 4-to-8 story apartment buildings in “transit-rich areas,” defined as a half-mile from a transit stop (including bus lines). When I saw it, I immediately thought, “well, **that’s** going nowhere.” And it didn’t. But that isn’t the point. It was laying down a marker. So is AB 609.

And that marker is important here. Under current law, it isn’t clear at all what precisely CEQA even means under current law. The [Housing Accountability Act](#), which took its current form in 2017, and acquired legal teeth in the [CARLA v San](#)

[Mateo](#) decision in 2021, requires all land use regulations only to have “objective” provisions for housing development projects, for the purpose of making them “ministerial.” Importantly, the determination of objectivity is essentially de novo: the lead agency gets no deference about it (similar to Part 4A in Wicks’ bill, which blocks local governments from falsely claiming that a project does not conform to local zoning). CEQA only applies to “discretionary” projects: there is little point in assessing environmental impacts, courts have noted, if decisionmakers could not meaningfully change the scope of a project. And they cannot change the scope of the project if there are only objective factors to determine whether it gets a permit. It either qualifies or it doesn’t.

This is what has made CEQA law so odd since the HAA passed. Although theoretically, CEQA should not apply to housing development projects, the HAA itself says that it does not in any way remove CEQA protections and CEQA analysis is necessary. This of course makes no sense for the reasons stated above.

In one sense, then, AB 609 is just a clean-up bill.

But not so fast. If lead agencies nevertheless must prepare CEQA documents when giving permits for housing development projects, then they can be *sued* on those documents. And thus, they must take the time to prepare the documents. Quite literally, under current law, lead agencies must prepare documents that cannot change their decision but under which they face liability – and importantly, if the documents are legally inadequate, then the project approval is overturned.

So in another, very serious sense, AB 609, by getting rid of the CEQA requirement for housing development projects, can be very significant indeed. And it is significant purely because of a CEQA requirement that by its very nature cannot protect the environment concerning an application, because the lead agency has no discretion. True – preparing the environmental documents can provide a political pushback over project approval, and perhaps that is the best way to justify the HAA’s substantive provisions. But doing it this way is the embodiment of a “kludge” viz. a makeshift solution that is clumsy, inelegant, inefficient, difficult to extend, and hard to maintain. [Political scientist Steven Teles has argued](#), with a good deal of force, that much American government has become a “kludgeocracy,” where a substantial amount of all American public policy relies on kludges.

At the federal level, with its multiple veto points (eg the filibuster) and a nihilistic plutocratic Republican Party, getting rid of kludges requires a sort of institutional

reform that may well be impossible. But there is no such excuse in California, where there is no filibuster, and practically no Republican Party.

The Legislature must make a choice: empowering local NIMBY groups, or allowing housing to be built. AB 609 forces that choice.