California has enacted a major reform for CEQA, creating a substantial exemption for infill urban housing. I've written why this is, on balance, beneficial for housing and the environment. But I also want to highlight a pitfall as the state continues looking at future reforms for CEQA. California has long relied on CEQA as a gap-filler for its other environmental laws. As the state pares back CEQA, it should look at where it needs to update other state environmental laws to fill in gaps, where appropriate.

State Senator Scott Wiener and Assemblymember Buffy Wicks have been the main leaders in the state legislature in pushing for updating CEQA to facilitate housing and building a clean energy infrastructure. In this interview, Senator Wiener emphasizes that he thinks the environmental downsides of CEQA reform are relatively minimal because:

First of all, outside of CEQA, California has very strong environmental laws, like it's protecting clean air and clean water, endangered species. We have really strong statutes. We have strong agencies that issue strong regulations. We have all sorts of regulations they have to comply with.

There is much truth to this statement. But it is also true that California has legislated and developed its environmental laws in part based on the background principle that CEQA was present. Here is one key example, drawn from an article I wrote a few years ago about reforming the California Endangered Species Act (CESA), one of the strongest of its kind in the country. However, unlike the federal Endangered Species Act, CESA does not impose a duty on government actors to avoid jeopardizing the existence of listed species – those actors only must avoid taking members of listed species. One would think that jeopardy is a more significant standard, the most fundamental protection we could provide to species, and that California state government should meet that standard. But CESA does not provide for that. Instead, CEQA generally fills that role: A government action that would jeopardize a listed CESA species would surely qualify as a significant impact that required feasible mitigation under CEQA. (Though note that this standard is still weaker than the standard that applies under the federal ESA.)

But if we are paring back CEQA, we should consider whether there are ways in which we may need to expand CESA in order to backfill those gaps. I noted this point in my earlier blog post on the enactment of AB 131, which exempts certain local rezoning actions from CEQA: The lack of protections for endangered species habitat in that legislation was a major gap, and one that is exacerbated by the lack

of protection under CESA.

Thus, as we consider changes to CEQA to facilitate housing and clean energy, we also need to closely reexamine the overall suite of California environmental law to ensure that in making CEQA work better, we aren’t unintentionally creating loopholes in our existing environmental protections in California.