

This is the seventh in a series of blog posts [on the California Chamber of Commerce's proposed ballot initiative](#) amending the California Environmental Quality Act (CEQA). The first blog post is [here](#). The second blog post is [here](#). The third blog post is [here](#). The fourth blog post is [here](#). The fifth blog post is [here](#). The sixth blog post is [here](#).

The initiative covers a surprisingly broad range of projects. It is not just about constructing housing (even sprawling greenfield housing) or renewable energy. The initiative covers freeways, dam and irrigation projects, and logging projects. It may also cover data centers and associated infrastructure, including stand alone powerplants for those data centers. And it is plausible that it covers any development project on any undeveloped natural site in the state.

The initiative only applies to covered “essential projects.” The initiative, in proposed new Section 21028, defines what “essential projects” are included. There are eight categories of projects. I will go through each of them one by one to explore their potential scope. In determining the potential scope of these provisions, it is always important to keep in mind that the initiative, in proposed new Section 21029, instructs courts to interpret the initiative provisions “to afford the fullest possible weight to the interest of, and the approval and realization of, essential projects” – in other words, to provide an expansive understanding of the scope of the initiative and to facilitate approval of projects.

1. The first category is “essential broadband Internet access project,” defined in the initiative as:

“a project to provide massmarket retail service by wire service, wireless service, or radio to customers in this state that provides the capability to transmit data to, and receive data from, all or substantially all Internet endpoints, including, but not limited to, any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service.”

Proposed new Section 21028(i)(1).

This provision initially seems just be about laying broadband wire to connect

communities, and thus unobjectionable. But note the additional language of “including, but not limited to, any capabilities that are incidental to and enable the operation of the communications service.” What kinds of projects might that entail? What about artificial intelligence services that are accessed through the internet? Is that “incidental to” and does it “enable the operation of” the communications service? One could make a plausible argument to that effect – again remembering the injunction in Section 21029 to broadly interpret the initiative. And would that not also include the data centers that are themselves “incidental to” and “enable the operation of” artificial intelligence? And what about stand-alone powerplants that operate and serve those datacenters, even if they are natural gas? Those projects might also fall within this category. In fact, proposed new Section 21028(m)(1)(B) includes within the scope of an essential project “all related and ancillary public, private, and utility infrastructure and public service facilities required by a utility or public agency, or included in an essential project application as part of the “whole of the project,” to serve a project.”

2. The second category is “essential clean energy project.” These projects must “support[] California’s climate, energy efficiency, reliability, electrification, sustainability, or clean energy objectives.” Proposed new Section 21028(j)(1). The category includes a large range of energy generation projects, including solar and wind, but also “digester gas, municipal solid waste conversion, landfill gas, ocean thermal, or tidal current.” It also includes any “transmission line that is required for the interconnection or delivery of electricity from a facility.” It includes “clean hydrogen, which is not derived from a fossil fuel feedstock,” but it does exclude nuclear power. It also includes carbon capture, and transmission lines “identified in a transmission planning process.” This category probably has limited scope for expansion given the way that it is defined, though the infrastructure provision of Section 21028(m)(1)(B) may well allow substantial increase in the footprint of what is covered.

3. The third category is “essential education facility project,” which is simply defined as “the acquisition, construction, expansion, remodeling, renovation, improvement, furnishing, or equipping of an educational facility.” Proposed new Section 21028(k)(1). Educational facility is in turn defined as a facility “owned or operated . . . by one or more California educational institutions for educational purposes.” There may be slippage in both what counts as an “educational institution” and “educational purpose” since neither are defined in the initiative.

4. The fourth category is “essential housing project.” Here the initiative draws

heavily on the definition of housing projects under other components of state law that have sought to facilitate the construction of new housing. The most expansive potential scope in this provision is the inclusion of “mixed-use development” within the category. Mixed-use development is in turn defined in proposed new Section 21028(y), and it allows a project to contain up to between 1/3 to 1/2 non-residential uses in the project (depending on a range of conditions). The non-residential uses cannot include “heavy industrial, extractive, port, refinery, or hazardous materials uses or designations,” but that presumably includes “light industrial” uses, which are not otherwise defined in the legislation. And there are certainly jurisdictions that could allow distribution centers in light industrial use categories (see, for example, [Hayward’s zoning code](#), which allows such uses in light industrial zones). And proposed new Section 21028(m)(1)(B), noted above, provides for including supporting infrastructure of components of an essential project, and might well allow a range of significant infrastructure (including potentially stand alone power plants or other similar facilities) for those light industrial uses.

5. The fifth category is “essential public health project,” which is defined as a “medical treatment facility,” which in turn is defined with cross-references to other provisions of state law for “health facilities” and “clinics,” as well as an undefined term “medical office building.” Again, the main issue here may be the supporting infrastructure under proposed new Section 21028(m)(1)(B), which could include stand-alone power plants, for instance.

6. The sixth category is “essential public safety project,” a term that seems fairly innocuous. And it includes two type of projects: a first responder facility and a wildfire risk reduction project. The first category includes fire stations and police stations, but excludes detention facilities. Proposed new Section 21028(t). But the other category, wildfire risk reduction project is defined much more broadly as

“an activity that reduces wildfire risks to a residential or commercial structure, or both. . . . [and] includes, but is not limited to, the following: replacing, hardening, or undergrounding electric utility lines, roads, and infrastructure; vegetation management;” fuel reduction; home hardening; creating or maintaining fuel breaks and access roads; and reducing fuel loading.”

Proposed new Section 21028(gg).

Again, drawing on the liberal interpretation mandated under Section 21029(a), this should include literally any project “that reduces wildfire risks” to any “residential or commercial structure.” Presumably removing all the vegetation from a site would reduce wildfire risks (at least in the very short term). Thus, any logging project should qualify. Even better would be paving over the site as a parking lot, or as some form of development project. Surely conversion to agricultural uses or to a golf course would count as well.

Moreover, this is California. During the dry season almost every undeveloped area of the state is vulnerable to fire. And fires can get big – so any project on the landscape, even if it is miles from the nearest development, would at least marginally or trivially reduce the risk of fire spreading towards that development.

In other words, liberally interpreted (as section 21029(a) instructs), this provision covers *all conversion of all natural lands within the state to development*. It is truly a sweeping provision. And note that the list of examples (which is much more limited) is designated in the statute as not exclusive.

7. The seventh category is “essential transportation project.” Proposed new Section 21018(p)(1) simply cross-references the projects “described in subdivision (a) or subdivision (b) of Section 2 of Article XIX of the California Constitution,” as well as an “[e]lectric vehicle charging and refueling infrastructure. So what projects are described in Article XIX, Section 2 of the state constitution?

“(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.

(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power

systems and mass transit passenger facilities, vehicles, equipment, and services.”

In short: all roads, including freeways, as well as all forms of railways or bus rapid transit. And again, note the supporting infrastructure provision under Section 21028(m)(1)(B), which would presumably mean maintenance facilities for highways and rail lines, as well as the electrical supporting infrastructure for those rail lines, would be covered.

8. The last category is “essential water project”, which is broadly defined to include “any project or action to construct, expand, repair, replace, improve, or augment any of the following”: public water systems, “a system that directly or indirectly provides water to a public water system,” or “a system which is generally described and within the scope of the State’s Water Resilience Portfolio.” Proposed new Section 21028(q)(1). The second element here is probably the broadest, and again, with the liberal construction pursuant to Section 21029(a), this should include any dam, irrigation facility, pumping station, reservoir, or water pipeline in the state. The breadth of the provision is underscored by an exemption the initiative drafters included, excluding the “Delta conveyance facilities” from coverage under the initiative. (The Delta conveyance facilities are the proposals for large scale water diversions from the Sacramento River above Sacramento, proposals that are highly controversial; they are presumably excluded from the initiative in order to reduce political opposition from Delta residents.) That exemption would not be necessary if the provision was a narrow one.

Finally, none of these categories of projects have any carveouts or limitations if they are located on sensitive lands, such as endangered species habitat, flood plains, or high fire hazard areas.