

State Legislative Updates



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BPC Briefing: 2023-24 CEQA & Environmental Regulations Update

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Offshore Wind Permitting and Policy

SB 286 (Offshore Wind Expediting Act)

- Streamlines permitting process for offshore wind projects and is intended to help California meet goal of producing 5,000 MW of offshore energy by 2030
- Requires Coastal Commission to process a consolidated CDP for offshore wind energy projects

AB 3 (Offshore Wind Advancement Act)

- Requires preparation of a “second-phase plan and strategy for seaport readiness”
- Study is to identify opportunities for seaport development to accommodate offshore wind

Natural Resource-Related Legislation

SB 147 (Fully Protected Species Statute Amendments)

- Authorizes CDFW to issue permits for take of “fully protected species” protected by various “fully protected species” statutes
- Applies to specified projects, such as agency water, agency transportation, wind, and solar PV projects; NOTE, list does not include residential, office, or retail projects

SB 389 (Water Code Amendments)

- Sponsored by Planning and Conservation League to give State Board authority to investigate and ascertain whether a water right is valid
- Applies to both riparian and pre-1914 appropriative rights, which are not subject to State Board permits or licenses

Building Standards Legislation

SB 745 (Drought-Resistant Buildings Act)

- Requires development of building standards to reduce potable water use in new residential and non-residential buildings

SB 48 (Building Energy Savings Act)

- Requires Energy Commission to develop before July 1, 2026, a strategy for using energy usage data to track and manage energy usage and emissions of greenhouse gases of buildings over 50,000 square feet

Atmospheric Policy Legislation

AB 30 (Water Code Amendments)

- Renames climate program managed by Department of Water Resources: *Atmospheric Rivers Research and Forecast Improvement Program: Enabling Climate Adaptation Through Forecast-Informed Reservoir Operations and Hazard Resiliency Program*
- Requires DWR to evaluate methods to improve predictions of atmospheric rivers, and their impacts on water supply, flooding, post-wildfire debris flows, and environmental conditions
- Requires DWR to use this information to operate reservoirs to capture water generated by atmospheric rivers

Housing-Related Legislation

AB 1633 (Housing Accountability Act Amendments)

- Authorizes legal challenge under HAA against jurisdiction denying use of a CEQA exemption or requiring further environmental analysis rather than adopting or certifying a CEQA document
- Applies only to qualifying projects that meet “housing development project” definition, satisfy certain environmental sensitivity criteria, are proximal to certain “amenities,” etc.

SB 423 (Senate Bill 35 Amendments)

- Makes significant amendments to SB 35 (2017), which established streamlined ministerial approval process for qualifying projects
- Extends sunset to 2036, expands application of SB 35 to jurisdictions lacking compliant housing elements, modifies prevailing wage and skilled and trained workforce requirements, etc.

Housing-Related Legislation

AB 1287 (Density Bonus Amendments - Gov. Code §65915)

- Grants additional density and concessions and incentives if an applicant agrees to include additional low- or moderate-income units on top of the current density bonus maximum amount of units for lower, very low or moderate income units
- Must first maximize current density bonus, but where met, additional bonuses can be stacked. E.g., project with 25 percent very-low income units, can get 88.75% bonus; project with 59 percent moderate for-sale units can get 100 percent bonus
- Defines “base density” as the greatest number of units allowed under the zoning ordinance, specific plan or general plan land use element - no specific requirement that the zoning must be "inconsistent" for this to apply
- Requirement for applicant to provide reasonable documentation with request for incentive/concession or waiver of development standard now eliminated; and adds potential for up to five concessions in certain situations

CEQA-Related Legislation

SB 4 (Government Code §65913.6) -

- “Yes In God’s Backyard” -- “By right” approval of affordable housing by churches and nonprofit colleges
- Applies to 100% affordable projects owned by the church or college that meet various requirements, including distance from any oil and gas facilities
- Statute specifies that it operates as a CEQA exemption
- Remains in effect through January 1, 2036

AB 356 (Public Resources Code §21083.3)

- Extends provision that aesthetic impacts of refurbishment not a CEQA impact to 1/1/29

CEQA-Related Legislation

AB 43 (Health & Safety Code §38563.1(k))

- AB 43 modifies 2022 legislation that established a program and goals to reduce GHG emissions embodied in the manufacture of building materials. AB 43 adds an embodied carbon trading system to encourage development of building materials with a lower carbon footprint
- Section 38563.1(k) enacted to provide that adverse impacts of building materials shall not be attributed to the projects using those building materials - so CEQA documents for development projects should not evaluate GHG emissions that are embodied in the manufacture of the building materials used

AB 1307 (Public Resources Code §§21085, 21085.2)

- Effects of noise generated by project occupants and their guests on human beings is not a significant effect for residential projects (went into effect on 9/7/23)
- Specifies that colleges and universities need no consider alternatives to the location of residential housing if site is less than 5 acres, in urban area and was evaluated in an EIR in the campus' most recent LRDP

CEQA-Related Legislation

SB 149 (CEQA Amendments)

- Authorizes public agency to deny petitioner's request to prepare administrative record in litigation and for public agency or real party in interest to bear cost with no right to recovery of cost
- Extends Governor's right to certify projects for expedited judicial review legal challenge until 1/1/32, and establishes procedures for preparation of the record
- Went into effect on July 10, 2023

SB 423 (Senate Bill 35 Amendments)

- Makes significant amendments to SB 35 (2017), which established streamlined ministerial approval process for qualifying projects
- Extends sunset to 2036, expands application of SB 35 to jurisdictions lacking compliant housing elements, modifies prevailing wage and skilled and trained workforce requirements, etc.

CEQA-Related Legislation

SB 91 (Supportive Housing)

- Extends indefinitely CEQA exemption for projects related to conversion of hotel/motel to supportive or transitional housing (was to end 1/1/25)

AB 356 (Aesthetic impacts)

- Extends provision that waives consideration of aesthetic impacts for projects that refurbish or replace derelict buildings until 1/1/29; notice to OPR now required if waiver is used

SB 684 (Ministerial approval of 10 or fewer units)

- Requires ministerial approval of subdivision maps for urban projects with 10 or fewer housing units if certain qualifications are met re property size, multifamily zoning, urban area

CEQA-Related Legislation

AB 1449 (Affordable Housing CEQA Exemption, Pub. Res. Code §21080.40)

- **Statutory exemption for affordable housing projects if 100% low income, urban uses on three sides and either walking distance to transit, in very low vehicle travel area or meets other limiting criteria.**

Climate-Related Legislation

SB 272 (PRC §§30985 et seq)

- Requires coastal zones within BCDC jurisdiction to implement sea-level rise planning and adaptation by 2034. Local governments receiving approval for these projects will be prioritized for funding.
- Guidelines for the preparation of the planning and adaptation must be completed by December 31, 2024, in collaboration with Coastal Commission, BCDC, OPC and California Sea-Level Rise State and Regional Support Collaborative

AB 882 (PRC §31123)

- Gives State Coastal Conservancy authority to provide advance payments under its grant programs

Miscellaneous Legislation

AB 706 (Leasing of public lands for mining other than oil and gas)

- Deletes need for Attorney General approval of State Lands Commission prospecting permits and leases
- Requires payment of fair market value in annual rent and pay state 20% of the gross value of all minerals seured from the land included in the permit until permittee apples for a lease for the same land; no preferential right to renew lease (limited to term of 20 years or less)

SB 146 (infrastructure contracting)

- Extends and expands the Secretary of Transportation's authorization to assume responsibility of the US Secretary of Transportation under NEPA for any railroad, public transportation or multimodal project by state, regional or local agencies to 12/31/33
- Authorizes Dept of Water Resources and DOT to use design-build procurement process for specified public works projects
- Allows job order contracting rather competitive bidding for certain DOT projects
- Went into effect 7/10/23