SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

SB 611 (Richardson)
Version: April 7, 2025
Hearing Date: May 6, 2025
Fiscal: No
Urgency: Yes
AM

SUBJECT

Planning and zoning: community plans: review under the California Environmental Quality Act

DIGEST

This bill prohibits a court that issues an order to remedy an updated community plan's noncompliance with the California Environmental Quality Act (CEQA) from including in that order a remedy, based on that noncompliance, against certain development project approvals or applications that were completed before the issuance of the court order. The bill repeals these provisions on January 1, 2036.

EXECUTIVE SUMMARY

In 2019, the Legislature passed AB 1515 (Friedman, Ch. 269, Stats. 2019) to immunize certain development projects that are in the approval process from being jeopardized in litigation against a community plan update under CEQA. AB 1515 was repealed on January 1, 2025. This bill seeks to reenact AB 1515 until January 1, 2036. The bill is sponsored by Los Angeles City Mayor Karen Bass and supported by the California Apartment Association. The bill is opposed by New Livable California. The bill is an urgency statute. The bill passed the Senate Local Government Committee on a vote of 7 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

1) Establishes CEQA, which requires a public agency to prepare, or cause to be prepared, and to certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect. (Pub. Res. Code § 21100 et seq.)

2) Provides for enforcement of CEQA through judicial review of CEQA actions taken by public agencies, following an agency's decision to approve or carry out a project. Requires that challenges alleging that a determination that a project will not have a significant effect on the environment was improper, or alleging that an EIR does not comply with CEQA, be filed in the Superior Court within 30 days of filing of the notice of approval. (Pub. Res. Code § 21167.) Requires courts to give CEQA actions "preference over all other civil actions." (Pub. Res. Code § 21167.1(a).)

3) Provides that during a challenge to an EIR or a negative declaration for noncompliance with CEQA, responsible agencies are required to act as though the EIR or negative declaration complies with CEQA and continue to process the application for the project under applicable timeframes. (14 Cal. Code Regs. § 15233; see also Pub. Res. Code § 21167.3.)

4) Provides that a court may require the agency to set aside its CEQA determinations, findings, or decisions; to set aside its determination to approve the project; to suspend specific project activities; to order specific actions needed to comply with CEQA; or to combine these remedies as appropriate. (Pub. Res. Code § 21168.9(a).) Provides that the court's order must be limited to mandates necessary to achieve compliance with CEQA and may include only those specified project activities in noncompliance with CEQA. (*Id.* at (b).) States that these provisions do not require the court to exercise its discretion in any particular manner and do not limit the court's equitable powers. (*Id.* at (c).)

5) Establishes the Planning and Zoning Law (Gov. Code § 65000 et seq.), which requires cities and counties to prepare, adopt, and amend general plans and elements—including the land use element—of those general plans in accordance with specified requirements. (Gov. Code § 65350.) Additionally requires that a general plan consist of a statement of development policies and include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. (Gov. Code § 65302.) Recognizes community plans as valid master land-use planning documents, but does not specifically set forth requirements governing the content and formation of these documents.

Former state law:

1) Prohibited a court from invalidating a development approval that was granted based on a community plan that meets specified criteria, if either of the following applies:
   a) the development project is approved before the court issues a stay in connection with the action or proceeding or an order or writ requiring the challenged environmental impact report or community plan update to be rescinded or set aside; or

   b) the application for the development project is deemed complete, pursuant to Section 65943 of the Government Code, before the court issues a stay, order, or writ described ia). (former Gov. Code § 65458.1)

2) Specified that its provisions did not do either of the following:
   a) affect or alter the obligation for the approval of a development project that is consistent with an approved community plan to comply with CEQA; and
   b) preclude or limit separate CEQA litigation against the approval of a development project that is consistent with an approved community plan. (former Gov. Code § 65458.2)

3) Defined "community plan" for the purposes of 6), above, to mean a plant that meets all of the following:
   a) The plan was adopted by a city, including a charter city, or county for a defined geographic area within its jurisdictional boundaries.
   b) The plan serves as the land use element, pursuant to subdivision (a) of Section 65302 of the Government Code, for the area covered by the plan.
   c) The plan has not been updated for more than 10 years before the operative date of this article.
   d) The plan includes two or more transit priority areas, as defined in Section 21099 of the Public Resources Code.
   e) The city or county that adopts the plan has adopted, on or after January 1, 2015, a circulation or mobility element as a part of the general plan.
   f) The city or county that adopts the plan has a housing element that includes housing capacity to sufficiently accommodate regional housing needs projects as set forth in Section 65584.01 of the Government Code.
   g) The city or county that adopts the plan has adopted a vehicle miles traveled threshold of significance for the area covered by the plan in compliance with Section 15064.3 of Title 14 of the California Code of Regulations.
   h) The area covered by the plan update is located within an urbanized area, as defined by Section 21071 of the Public Resources Code.
   i) The city or county that adopts the plan has also adopted any required ordinances or regulations related to either of the following:
      i. The designation of very high fire hazard severity zones pursuant to Section 51179.
      ii. Flood plain management in accordance with the National Flood Insurance Program, pursuant to Part 60 (commencing with Section 60.1) of Subchapter B of Chapter I of Title 44 of the Code of Federal Regulations. (former Gov. Code § 65458(a))

4) Defined "development project" to mean any project undertaken for the purpose of development. "Development project" includes a project involving the issuance

of a permit for construction or reconstruction but not a permit to operate. “Development project” does not include any ministerial projects proposed to be carried out or approved by public agencies. (former Gov. Code § 65458(b).)

5) Defined “update” to mean a comprehensive amendment to a community plan that is intended to bring the community plan up to date with the most current land use policies and that includes amendments to both the plain text and plan land use map, as well as the adoption or amendment of any zoning ordinances necessary to bring zoning into consistency with the community plan. (former Gov. Code § 65458(c).)

6) Repealed this prohibition on January 1, 2025. (former Gov. Code § 65458.3(a).)

7) Provided that the repeal of these provisions does not affect any right or immunity granted to a project. (former Gov. Code § 65458.3(b).)

This bill:

1) Reenacts the prohibition described in the Former state law, above, until January 1, 2036.

2) Changes from the definition of community plan above, that the plan has not been updated for more than 10 years from the date the plan was adopted or last updated, whichever is later, instead of the plan not having been updated for more than 10 years before the operative date of the former law described above.

3) Specifies that the bill’s provisions apply to a development project for which an application had been filed with, and accepted as complete by, the local jurisdiction on or before January 1, 2036.

4) Provides that the Legislature finds and declares all of the following:
   a) CEQA requires that the environmental impacts, if any, of updated community plans be identified and, where feasible, mitigated. The act also guarantees the public an opportunity to review and comment on the environmental impacts of a project and to participate meaningfully in the development of mitigation measures for potentially significant environmental impacts.
   b) In many parts of the state, the city or county general plans cover so much geographic territory that local jurisdictions also adopt community plans that cover parts of that geographic territory. These community plans allow for tailored and responsive land use planning at the neighborhood level.
   c) While most jurisdictions update the land use element of their general plan as part of their general plan update, those with multiple community plan areas update these documents individually, requiring community plans to

be reviewed through separate reviews pursuant to the act. In some jurisdictions with multiple community plans, these plans have not been updated in recent years to reflect changing local priorities as well as efforts to improve air quality, reduce climate pollution, increase transit ridership, reduce vehicle miles traveled, and provide more affordable housing.

d) One significant obstacle to updating these plans is the uncertainty that results if the environmental review document prepared pursuant to the act for the community plan update is challenged in a court. During the litigation process, it is unclear whether the community plan or the update will be in effect, causing developers and planners great uncertainty and potentially delaying all development in that community plan area and affecting the ability to obtain the needed housing intended by the community plan update.

5) States that Legislature finds and declares that the expedited approval of development projects to address the state's ongoing housing and homelessness crisis and to provide economic opportunities is a matter of statewide concern and is not a municipal affair as that term is used in Section 5 of Article XI of the California Constitution. Therefore, this article applies to all cities, including charter cities.

6) Provides that this act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are that the state's ongoing housing and homeless crisis requires the approval of development projects as soon as possible.

COMMENTS

1. Stated need for the bill

The author writes:

> SB 611 ensures the timely execution of community development projects by restoring legal protections that prevent court challenges under CEQA from invalidating approved projects. By extending these protections until 2036, SB 611 provides certainty for developers and communities, ensuring that legally permitted projects can proceed even when broader community plans are contested. This bill is particularly critical in cities like Los Angeles, where housing shortages and homelessness remain urgent concerns. The reinstatement of these provisions aligns with California's broader goals of increasing housing supply and streamlining development. By preventing costly and time-consuming legal battles from halting essential projects, SB 611 supports economic growth, job creation, and the development of sustainable communities.

2. CEQA challenges to community plans

a. CEQA generally

Enacted in 1970, CEQA requires state and local agencies to follow a set protocol to disclose and evaluate the significant environmental impacts of proposed projects and to adopt feasible measures to mitigate those impacts. CEQA itself applies to projects undertaken or requiring approval by public agencies, and, if more than one agency is involved, CEQA requires one of the agencies to be designated as the "lead agency." The environmental review process required by CEQA consists of: (1) determining if the activity is a project; (2) determining if the project is exempt from CEQA; and (3) performing an initial study to identify the environmental impacts and, depending on the findings, preparing either a Negative Declaration (for projects with no significant impacts), a Mitigated Negative Declaration (for projects with significant impacts but that are revised in some form to avoid or mitigate those impacts), or an EIR (for projects with significant impacts).

An EIR must accurately describe the proposed project, identify and analyze each significant environmental impact expected to result from the proposed project, identify mitigation measures to reduce those impacts to the extent feasible, and evaluate a range of reasonable alternatives to the proposed project. Before approving any project that has received environmental review, an agency must make certain findings pertaining to the project's environmental impact and any associated mitigation measures. If mitigation measures are required or incorporated into a project, the public agency must adopt a reporting or monitoring program to ensure compliance with those measures. To enforce the requirements of CEQA, a civil action may be brought under several code sections to attack, review, set aside, void, or annul the acts or decisions of a public agency for noncompliance with the act.

"CEQA operates, not by dictating proenvironmental outcomes, but rather by mandating that 'decision makers and the public' study the likely environmental effects of contemplated government actions and thus make fully informed decisions regarding those actions. … In other words, CEQA does not care what decision is made as long as it is an informed one." (Citizens Coalition Los Angeles v. City of Los Angeles (2018) 26 Cal. App. 5th 561, 577.)

b. CEQA litigation

Unlike other environmental laws specific to air resources, water resources, or the control of toxic substances, there is no statewide bureaucracy charged with enforcement of CEQA. Rather, it is enforced through citizen participation and litigation if necessary. Arguably, this makes the implementation of CEQA more efficient and expeditious than if a state agency were created to administer the law. Thus, CEQA litigation—which

occurs at very low rates —could more appropriately be characterized as mere enforcement.

In general, the time period for filing a CEQA action is very short compared to other statutes of limitation. "CEQA provides unusually short statutes of limitations on filing court challenges to the approval of projects under the act." (14 Cal. Code Regs. § 15112(a).) Although the applicable limitations period depends on the type of agency decision, these periods are generally 30 or 35 days. (See id. at (c); Pub. Res. Code § 21167(b)-(e).) If a challenge to an EIR is not commenced within the applicable time period, the project is conclusively presumed to comply with CEQA, unless there is substantial change in circumstances or new information becomes available. (Pub. Res. Code §§ 21166 & 21167.2.)

During a challenge to an EIR or a negative declaration for noncompliance with CEQA, responsible agencies are required to act as though the EIR or negative declaration complies with CEQA and continue to process the application for the project under applicable timeframes. (14 Cal. Code Regs. § 15233; see also Pub. Res. Code § 21167.3.) If an injunction or stay is granted pending the final determination of the issue of compliance, the responsible agency may only disapprove the project or grant a conditional approval, which constitutes permission to proceed only if the court action results in a final determination that the EIR or negative declaration complies with CEQA. (Pub. Res. Code § 21167.3 (a).) If no injunction or stay is granted pending the final determination of the issue of compliance, the responsible agency must assume that the EIR or negative declaration fully meets the requirements of CEQA; however, an approval granted constitutes permission to proceed with the projects at the applicant's risk pending the final determination of the action or proceeding. (Id. at (b).) "The evident intent of section 21167.3 is to expedite CEQA review where a lawsuit contesting CEQA documentation is pending by designating one forum for resolution of claims of unlawful documentation and by requiring project review to proceed while the claims are resolved." (City of Redding v. Shasta County Local Agency Formation Com. (1989) 209 Cal.App.3d 1169, 1181.)

Public Resources Code section 21168.9(a) provides courts with a range of remedies to fashion appropriate solutions to cure CEQA violations: a court may require the agency to set aside its CEQA determinations, findings, or decisions; to set aside its determination to approve the project; to suspend specific project activities; to order specific actions needed to comply with CEQA; or to combine these remedies as appropriate. The court's order must be limited to mandates necessary to achieve compliance with CEQA and may include only those specified project activities in noncompliance with CEQA. (Id. at (b).) However, these provisions do not require the court to exercise its discretion in any particular manner and do not limit the court's equitable powers. (Id. at (c).)

Importantly, under these provisions, a court has discretion to allow project activities to proceed pending CEQA compliance. For example, in *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, the court ruled that the Air Resources Board violated CEQA in adopting low carbon fuel standards (LCFS) and set aside the regulations embodying those standards. Nevertheless, the court, interpreting section 21168.9, held that "our decision to void the premature approval of the LCFS regulations does not require us to suspend the operation of the regulations." (*Id*. at 760.) "Thus, under section 21168.9, subdivision (c), courts retain the inherent equitable power to maintain the status quo pending statutory compliance, which permits them to allow a regulation, ordinance or program to remain in effect." (*Id*. at 761.) The court stated that "CEQA should be interpreted in a manner that affords the fullest possible protection to the environment within the reasonable scope of the statutory language. [Citation.]" (*Id*. at 762.) The court concluded that suspending the regulations would cause more environmental harm than allowing them to remain in effect, and thus ordered that they remain operative pending corrective action. (*Id*. at 761-762.)

c. Community plans

The Planning and Zoning Law provides for the comprehensive regulation of zoning and land use. (Gov. Code § 65000 et seq.) The keystone of this framework is the general plan, which has been described as a local government's "constitution" for development. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) A general plan must consist of a statement of development policies and must include a diagram or diagrams and text setting forth objectives, principles, standards, and plan proposals. (Gov. Code § 65302.) Cities and counties are required to prepare, adopt, and amend general plans and elements of those general plans in accordance with specified requirements. (Gov. Code § 65350.) A city or county's land use decisions, including development permitting, must be consistent with the general plan. (*See DeVita v. County of Napa* (1995) 9 Cal.4th 763, 772.) An update to a land use planning document such as a general plan constitutes a "project" that is subject to CEQA. (*See Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 578; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 409.)

After the adoption of a general plan, localities may prepare "specific plans" for the systematic implementation of the general plan for all or part of the area covered by the general plan. (Gov. Code § 65450.) A specific plan must be related to the general plan (Gov. Code § 65451), and must be prepared, adopted, and amended in the same manner as a general plan, except as specified. (Gov. Code § 65453.) Furthermore, a specific plan may not be adopted or amended unless the proposed plan is consistent with the general plan. (Gov. Code § 65454.) CEQA does not apply to residential development projects consistent with a specific plan for which an EIR has been certified after January 1, 1980. (Gov. Code § 65457(a).)

Community plans, although mentioned in various statutes (see e.g., Gov. Code § 57426), do not appear to be creatures of statute. They have been characterized as components of, or means of amending, general plans. (See *Citizens Coalition Los Angeles v. City of Los Angeles* (2018) 26 Cal. App. 5th 561, 571 [describing General Plan of the City of Los Angeles and the Hollywood Community Plan as two general plans, in contradistinction to the Vermont/Western Transit Oriented District Specific Plan]; *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180, 197.)

This bill's findings and declarations state that "[i]n many parts of the state, the city or county general plans cover so much geographic territory that local jurisdictions also adopt community plans that cover parts of that geographic territory. These community plans allow for tailored and responsive land use planning at the neighborhood level." The bill states that jurisdictions that have multiple community plan areas update their general plan by updating these community plans.

3. <u>This bill seeks to reenact AB 1515 (Friedman, Ch. 269, Stats. 2019)</u>

In 2019, the Legislature passed AB 1515 (Friedman, Ch. 269, Stats. 2019) to immunize certain development projects that are in the approval process from being jeopardized in litigation against a community plan update. The bill does not otherwise provide a safe harbor for such projects: they must still comply with CEQA and will continue to be subject to potential CEQA challenges separate from the litigation against the updated community plan. These provisions were repealed on January 1, 2025.

This bill seeks to reenact AB 1515 until January 1, 2036. This bill the definition of community plan from AB 1515 by providing that the plan has not been updated for more than 10 years from the date the plan was adopted or last updated, whichever is later, instead of the plan not having been updated for more than 10 years before the operative date of AB 1515. Additionally, the bill specifies that its provisions apply to a development project for which an application had been filed with, and accepted as complete by, the local jurisdiction on or before January 1, 2036. The bill states it is an urgency statute and that itis a matter of statewide concern and is not a municipal affair.

4. <u>Statements in support</u>

The California Apartment Association writes in support, stating:

> […] While most jurisdictions update the land use element of their general plan as part of their general plan update, those with multiple community plan areas update these documents individually, requiring community plans to be reviewed through separate reviews under CEQA. One significant obstacle to updating these plans is the uncertainty that results if the environmental review document prepared pursuant to CEQA for the community plan update is challenged in court. During the litigation process, it is unclear whether the community plan or

> the update will be in effect, causing developers and planners great uncertainty and potentially delaying all development in that community plan area and affecting the ability to obtain the needed housing intended by the community plan update. SB 611 is critical to help ensure that housing is not stopped or slowed because of an inappropriate court challenge. […]

5. Statements in opposition

Livable California writes in opposition, stating:

> AB 1515 was intended to temporarily insulate the County of Los Angeles from the damaging effects of having allowed its community plans, plans that supplement the general plan for various portions of the county, to become outdated. It prevented a successful challenge to the EIR for an updated community plan from also invalidating the approvals of projects relying on the updated community plan.
>
> While LC agrees that essentially shutting down development until the EIR for the updated plan passes muster would be draconian, simply extending what was intended to be a temporary waiver of the required consistency for another ten years would only reward continued delay.
>
> LC believes a better approach would be to allow the County to announce its intent to update a community plan. That would trigger a five-year "grace period" for preparation, approval, and possible litigation on the validity of the revised plan. The provisions of §65458 et seq. would apply during that time. With the expiration of the five years, the community plan would be expected to be completed and valid. This would give the County an incentive to complete revisions expeditiously.

SUPPORT

Los Angeles City Mayor Karen Bass (sponsor)
California Apartment Association

OPPOSITION

Livable California

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation: AB 1515 (Friedman, Ch. 269, Stats. 2019) prohibited, until January 1, 2025, a court from invalidating a development approval that was granted based on a community plan that meets specified criteria, if the development was approved or had a complete application prior to the community plan being invalidated.

PRIOR VOTES:

Senate Local Government Committee (Ayes 7, Noes 0)

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