Spillway construction in Folsom

SENATE BILL 607 FAQ

What does Senate Bill 607 do?

SB 607, authored by Sen. Scott Wiener, would narrow the circumstances in which an environmental review and public decision-making process would take place for most types of development proposals in California. Currently, the California Environmental Quality Act follows the precautionary principle, meaning that if there is evidence that a project *may* cause significant environmental harm, the reviewing agency should study potential impacts, allow for public participation and input, consider alternatives, and adopt appropriate measures to lessen environmental harm. SB 607 turns that framework upside down and mandates that a lead agency is only required to prepare an environmental impact report (EIR) if there is "substantial evidence" that the project will cause significant environmental harm. This creates a catch-22—community and environmental advocates need evidence of significant harm to get an EIR, but because the agency has not yet collected, analyzed, or disclosed in-depth information as required in an EIR, that information is unlikely available.

This means that if a consultant hired by the project proponent concludes that a proposed project will probably not have any environmental impact, then that would be legally sufficient to bypass an in-depth environmental study and decision-making process. This combined with recently passed state laws such as AB 1633 would expose cities or counties to litigation by developers if they did try to conduct a full environmental review. The end result of SB 607 will be less environmental review and public transparency in decisions that may cause environmental harm to communities.

Why does environmental review matter?

CEQA improves development proposals, presents mitigation measures, and reduces pollution and other harms to communities. For vulnerable communities, CEQA is often the only tool available to provide input on the environmental and public health impacts of development proposals and ensure consideration of alternatives and mitigation measures to limit harm. Shortening and narrowing environmental review as envisioned by SB 607 will result in community members having less information on a project and its potential impacts, fewer opportunities to raise their concerns to decision-makers, and likely reduced mitigation to address the project's impacts to the environment and community.

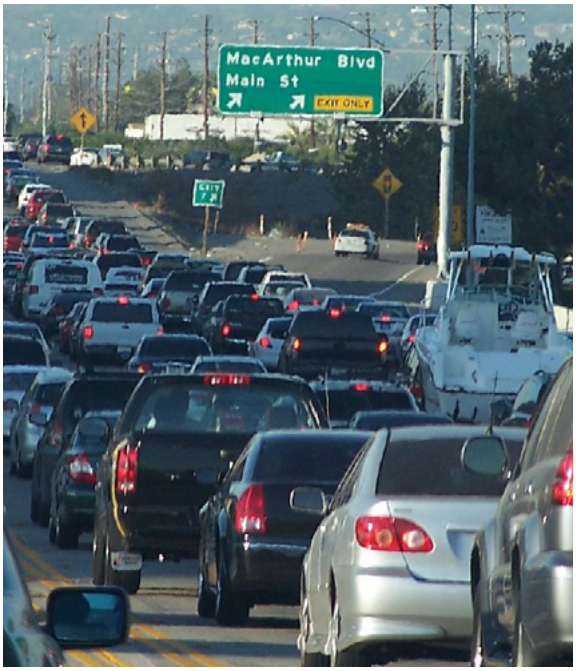
Environmental review is often derisively dismissed as "red-tape" or "permitting." However, communities and decision-makers often are unaware of the harms or risks of a project until it is studied. For instance, we can't quantify the amount of pollution produced by a mining operation unless it is studied, we can't know if there are endangered wildlife or plants on a project site unless it is surveyed, and we can't know if a project has sufficient evacuation routes from wildfire unless an analysis is conducted. Environmental review prioritizes knowledge over ignorance, and informed decision-making over a "build first, ask questions later" approach. SB 607 would shift the balance in favor of uninformed decision-making.

Doesn't SB 607 only apply to "environmentally-friendly" or "environmentally-neutral" projects?

No. SB 607 narrows the circumstances in which an environmental review process is required for *all* types of projects except a "distribution center or oil and gas infrastructure." Depending upon how the vague language in SB 607 is interpreted by the courts, this could potentially mean severely constrained environmental review for freeways, railyards, and shipping terminals, which are frequently proposed near disadvantaged communities. SB 607 would also potentially narrow or eliminate a thorough environmental review for mining projects, heavy manufacturing, incinerators, power plants, dams, sewage plants, and water conveyance projects.

Is CEQA a significant barrier to housing?

No. The latest empirical study on CEQA found that only 1.9% of all projects requiring an environmental review face legal challenge. While there are occasionally high-profile instances publicized in the media of CEQA being leveraged for non-environmental purposes, the vast majority of CEQA processes happen behind the scenes and simply encourage and direct agencies to consider and reduce the environmental consequences of projects.



Traffic congestion photo by SkyDiveOne

What are some solutions to the affordable housing crisis?

There are many solutions to the affordable housing crisis that do not involve ignoring or downplaying the environmental risks of projects in the name of "permitting reform." These include permanently protecting all existing affordable housing, solidifying legally-binding anti-displacement policies, regulating short-term rentals to reduce the conversion of residential units to de-facto hotels, upzoning urban infill areas; and eliminating in-lieu fees for developers to ensure affordable housing is built on-site.

What is an "administrative record", and how does SB 607 change it?

The "administrative record" or "record of proceedings" is a legal phrase for all documents relating to an agency's decision to consider a project and its potential environmental damage. It includes agency staff emails, as well as communications and emails of agency consultants. SB 607 changes CEQA to exclude from the administrative record any communications that were not presented to the final decisionmaker. Agency staff or consultants, as well as the project proponent's staff, attorneys and consultants are often the primary people who draft, negotiate over, and ultimately determine the contents of environmental documents, which county supervisors or city council members officially "sign-off" on if or when they approve a project. In practice this means that if a project's environmental review is challenged in court, the project proponent and agency can *withhold* all communications that did not involve the board of supervisors or city council, which will be many of the substantive behind-the-scenes communications.

For example, if a project's mitigation measures are challenged in court, project proponents under SB 607 would not be required to disclose any behind-the-scenes communications from experts that advocate for stronger mitigations measures. SB 607 allows project proponents to cherry pick the communications to be included in the administrative record, undermining public transparency and allowing flawed environmental documents to escape judicial scrutiny.

Will SB 607 result in less environmental review and mitigation of projects in high-risk wildfire areas?

Yes. CEQA requires analysis of wildfire risk for new large-scale development in high-risk fire areas. This analysis is important given that between 95 to 97 percent of contemporary wildfires in California are caused by human sources, such as the catastrophic wildfires in Los Angeles earlier this year. Even with CEQA's current requirements, some cities and counties continue greenlighting risky projects without adequate consideration of increased ignition risk or evacuation planning, which led the California Attorney General's office to join multiple cases challenging environmental reviews for such developments. SB 607 would narrow the universe of projects to which the environmental review process even applies, leading to less opportunities to make projects safer or hold local jurisdictions accountable when they ignore the best available science. An attempt last year to reduce mitigation in wildfire zones failed. SB 610, also authored by Wiener and was supported by the building industry, would have reduced mitigation and safety measures for new development in certain high-risk areas. The bill, which did not move forward after 150 organizations opposed it, claimed that such measures unnecessarily "impos[e] costly building standards [and] increased disaster planning and mitigation requirements."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