AB 130: Full CEQA Exemption for Infill Housing Projects (PRC §21080.66)

AB 130 streamlines the CEQA review process by creating an exemption for housing-rich infill projects. The bill is similar to, but much broader than, the "Class 32" categorical exemption from CEQA (§15332), a popular exemption for infill housing developments. However, AB 130 creates a much firmer framework for challenging the exemption by outlining the exact qualifying and disqualifying characteristics of the project. In contrast, Class 32 is often challenged by opponents arguing that the project involves unusual circumstances, requiring the project to be analyzed further in an environmental document.

Eligibility: Projects that are located on a site of up to 20 acres (or up to 5 acres for builder's remedy projects [SB 330]) and meet the following criteria are exempt from CEQA review (PRC § 21080.66):

- The project is located in an incorporated **city** or **urban area** and either **previously developed** or **surrounded by urban uses**
- The project is consistent with the applicable **general plan** and **zoning ordinances** or any specific plan or local costal programs
- The project must meet **minimum residential density** requirements of five units per acre in unincorporated non-metropolitan counties, 10 units per acre in suburban jurisdictions, or 15 units per acre in metropolitan jurisdictions (Gov. Code §65583.2(c)(3)(B))
- The project must not include any **transient lodging** (hotel, motel, or bed and breakfast inn)
- The project must not require demolition of a **historic structure**
- The project must avoid **hazardous sites** and include a condition of approval requiring a **Phase I ESA** to be completed and mitigation measures, if applicable
- The project must avoid **sensitive lands** (protected farmland, wetlands, etc.)
- The project must complete **tribal consultation** and include mitigation measures, if applicable
- Projects within **500 ft** of a freeway must meet **air filtration and ventilation** requirements
- **100% affordable housing** projects or projects over **85 feet in height (above grade)**, the Project must meet specific **labor compliance** (prevailing wage and skilled workforce rules)

Documentation: Requirements for local agencies include confirming zoning conformity, Phase I ESA completion, tribal consultation records, remediation status, and searches for historic and sensitive biological resources.

Timelines: The Permit Streamlining Act has been expanded to cover all housing projects, both ministerial and discretionary. Agencies have 30 days post-completion of applications and consultations to approve discretionary projects; failure to act results in automatic approval. A strict 60-day deadline for ministerial permit decisions is also included.

Legal challenge: Legal challenges to exemptions must be filed within 35 days and face a high evidentiary standard, with limited records admissible. The legislation limits the record significantly. Internal communications among agency staff are excluded from the record, and the record is limited to public documents and objective facts.

Other provisions:

- Makes permanent SB 330's housing streamlining features, such as a five-hearing limit on approvals, protections against downsizing, and safeguarding application validity.
- Amends related housing laws to facilitate subdivisions and homeless shelter inspections and caps homeowners' association fines and increases renter tax credits.
- Requires local agencies to determine whether a housing project site is a historic site at the time the planning application is deemed complete.

SB 131: Limited CEQA Review for Near-Eligible Projects and Expanded Exemptions

SB 131 expands CEQA exemptions to include a range of specific types of projects, such as infrastructure, community-serving facilities, and climate resilience initiatives, by introducing nine specific exemptions and streamlined environmental review processes for projects that narrowly miss a statutory or categorical CEQA exemption criteria by one environmental factor. SB 130 limits review solely to that issue without requiring full environmental impact reports or alternatives analysis.

Example: For an infill project to qualify under a Class 32 CEQA exemption, analysis is needed to demonstrate that the project would not result in significant impacts on biological resources, traffic, noise, air quality, and water quality. If the analysis for such a project demonstrates that it meets all the other Class 32 exemption criteria, except for significant traffic impacts, then the future environmental impact reports/mitigated negative declaration for the project would be limited to analyzing solely the traffic impacts. Additionally, environmental impact reports for such projects are not required to include alternative analyses or discussions of growth-inducing impacts.

SB 131 also broadens CEQA exemptions to various project types, including:

- Advanced manufacturing facilities on industrially zoned land
- Parks and non-motorized trails
- Rural public health clinics and daycare facilities
- New or repaired farmworker housing
- Broadband infrastructure within local rights-of-way
- Wildfire mitigation projects (valid through 2030)
- Non-profit food banks and shelters
- High-speed rail support facilities
- Water and sewer system improvements serving disadvantaged communities (with sunset dates)
- Climate adaptation planning updates

Disqualifications: SB 131 disqualifies certain projects from exemptions, including distribution centers over 50,000 square feet, oil and gas infrastructure, and projects on natural or protected lands such as state parks, hazardous waste sites, prime farmland, earthquake fault zones, and floodways.

SB 131 also introduces new funding for Homeless Housing Assistance and Prevention, contingent on meeting criteria related to housing and homelessness.

1 What is the primary objective of AB 130 and SB 131?

Both bills aim to streamline the approval process for housing and infrastructure projects by reducing regulatory hurdles, particularly those associated with CEQA, and to address California's housing shortage and promote sustainable development. The key takeaways from these bills include:

- Speeding up housing approvals
- Reduce litigation risks and CEQA abuse
- Lower development costs
- Support climate and equity goals

2 What kind of documentation is needed to determine a project is eligibility under AB 130?

Eligible projects must prepare a Phase I Environmental Site Assessment (Phase I ESA) to confirm whether hazards or hazardous materials are on site. Documentation of tribal consultation must also be provided. Project proponents may also need to provide documentation supporting the lack of protected biological resources on site or evidence that existing structures are not historic. This is in contrast to categorical exemptions that typically require additional technical reports or memorandums to evaluate air quality, GHG emissions, noise, biological resources, cultural resources, and/or transportation.

3 How do these laws affect the Housing Crisis Act of 2019?

AB 130 makes permanent several provisions of the Housing Crisis Act of 2019, including the five-hearing limit on housing development projects and the requirement for local agencies to determine the historical significance of a site at the time an application is deemed complete.

4 What changes do AB 130 and SB 131 make to the building code update process?

AB 130 implements a freeze on state and local building code updates for nearly six years, with limited exceptions, providing developers with greater certainty and potentially reducing housing costs.

5 Do these bills impact judicial review timelines and overall approval timelines under CEQA?

Both AB 130 and SB 131 include provisions that limit judicial review timelines for CEQA-related lawsuits, aiming to expedite the resolution of legal challenges and reduce delays in project implementation. AB 130 enables faster court reviews under an accelerated legal process. SB 131 significantly narrows what must be included in the administrative record for CEQA litigation, including only internal agency communication actually presented to the final decision-making body or reviewed by high-level officials and only draft environmental studies that were publicly circulated. Anyone who wishes to challenge the exemption has 35 days from the filing of the NOE to file a lawsuit. Those opposing the exemption must meet the substantial evidence standard.

Once a planning application has been deemed complete, tribal consultation has been completed, the local agency has 30 days to approve the project. If the project is not approved within 30 days, the project is automatically deemed approved.

6 How does AB 130 compare to the Class 32 Exemption?

Both provide streamlined reviews for infill projects; however, there are several key differences. AB 130 is a **statutory exemption**, meaning it's codified in state law (Public Resources Code). As a statutory exemption, it's more robust and less vulnerable to legal challenges. The Class 32 Exemption is a **categorical exemption**, defined in CEQA Guidelines (14 CCR Section 15332) and is subject to several exceptions. AB 130 applies to infill housing projects up to **20 acres** (and up to **5 acres** for "builder's remedy" projects) whereas Class 32 is limited to 5 acres.

Projects exempted under AB 130 don't require analysis of traffic, noise, air quality, or water quality impacts. The AB 130 exemption is more streamlined and avoids those technical studies altogether. However, Class 32 requires that the project demonstrates that it would not result in significant environmental impacts in those topical areas. Therefore, Class 32 projects usually require the preparation of technical studies. Exemptions, including Class 32, can be challenged under CEQA Guidelines § 15300.2 exceptions, such as cumulative impacts, historic resource concerns, hazardous waste sites, scenic highways, and unusual circumstances, making it legally riskier. Additionally, AB 130 imposes a 30-day post tribal consultation approval deadline, but the Class 32 exemption has no specific deadline for approval.

7 How do these laws address transportation impacts of new developments?

AB 130 expands the method for mitigating significant transportation or Vehicle Miles Traveled (VMT) impacts by allowing developers to contribute to a state-managed mitigation bank, the Transit-Orientated Development (TOD) Implementation Fund, offering an alternative to traditional mitigation measures. These funds would be used to support VMT-efficient affordable housing and related infrastructure, including grants to cities, counties, tribal entities, or transit agencies for VMT-reducing developments or forgivable or repayable loans to build location-efficient affordable housing. Initial guidance on the VMT mitigation bank must be provided by July 1, 2026 and finalized by January 1, 2028.

8 What is the significance of the "builder's remedy" provision in AB 130?

The "builder's remedy" allows developers to bypass certain local zoning restrictions for projects on sites up to 5 acres, provided the jurisdiction has not adopted a compliant housing element, thereby facilitating the development of affordable housing in areas with unmet housing needs.

9 How do these reforms affect local governments' ability to impose new fees or requirements?

AB 130 prohibits local agencies from imposing new fees or financial requirements on housing development projects that were not in effect at the time a preliminary application was submitted, ensuring consistency and predictability in the approval process.

10 Do these bills include additional limitations on local governments/agencies?

A local government's rezoning (typically upzoning) of land to implement its "approved" housing element is now exempt from CEQA. Additionally, AB 130 strengthens the development of ADUs as part of a housing development project by prohibiting local governments from imposing standards on ADUs beyond state law requirements.