

Assembly Bill 1307

No CEQA on Noise from Residents of Housing

Assemblymember Buffy Wicks (AD-14)

SUMMARY

AB 1307 would reverse the “people as pollution” precedent created by a recent Appellate Court decision. If this precedent is not reversed, it will lead to a massive increase in Environmental Impact Reports (EIRs) for residential projects and provide a powerful new tool for NIMBYs to block the production of affordable housing. AB 1307 would reverse this precedent by declaring that noise generated by the occupants of a residential project cannot be considered a significant effect on the environment pursuant to the California Environmental Quality Act (CEQA).

BACKGROUND

CEQA provides a process for evaluating the environmental effects of applicable projects undertaken or approved by public agencies. Noise is one of 18 environmental factors that must be evaluated in the CEQA process. If, during that evaluation, it is determined that one or more of the environmental factors has a significant impact on the environment, then the project must propose mitigation measures to reduce those impacts to the extent feasible. If the mitigation measures cannot reduce the effect of the project on the environment to “less than significant,” the lead agency must issue a “statement of overriding considerations” that finds that the merits of the project outweigh its impact on the environment.

CEQA has been around for over 50 years, and there is substantial best practice for how the law is to be implemented and precedent for how it is to be interpreted. For the issue of noise, the best practice is to examine the major noise-generating activities from a proposed project, such as those from mobile sources (vehicles) or stationary sources (e.g., industrial noise). The standard of evaluating significance is typically the local jurisdiction’s Noise Element, which is a

required component of their General Plan. There is substantial judicial precedent upholding this approach to analyzing the effects of noise on the environment.

THE ISSUE

Recently, a dangerous new precedent was set that upends the way the impacts of noise are evaluated under CEQA. On February 24, 2023, the First Appellate Court of California voted 3-0 to uphold an appeal in the case of “Make UC A Good Neighbor et al. v. Regents of the University of California.” In the published ruling, the presiding judge stated that the University of California’s EIR “failed to assess the potential noise impacts from loud student parties in residential neighborhoods near campus, a longstanding problem that the EIR improperly dismissed as speculative.”

The implications of this ruling are massive. Practically speaking, if the unamplified voices of residents in a residential project *may* cause a significant effect on the environment, then all residential housing projects are likely going to need to conduct an EIR, which are expensive and time-consuming documents to produce. This will substantially delay the delivery of housing, and further exacerbate our already substantial housing crisis.

More perniciously, the implication of this ruling is that certain groups of people should be considered as creating a significant environmental impact merely because of the perceived risk of their behavior. The ruling therefore invites subsequent litigants in CEQA cases to sue residential projects that would house “those people.” This will exacerbate the racist and classist nature of housing policy, and undermine recent state efforts to confront that past, such as the ending of single-family zoning and requirements that local jurisdictions affirmatively further fair housing in the Housing Elements of the General Plans.

THE SOLUTION

AB 1307 would directly and narrowly address the Court's ruling in the case of "Make UC A Good Neighbor et al. v. Regents of the University of California." Specifically, it would say that noise generated by the occupants of residential projects cannot be considered a significant effect on the environment under CEQA.

By making this change, AB 1307 would remove the potential for litigants to challenge residential development based on the speculation that the new residents will create unwanted noises. It would also reestablish existing precedent that minor or intermittent noise nuisances created by the residents be addressed through local nuisance ordinances and not via CEQA. As such, no longer could CEQA consider "people as pollution."

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CONTACT

Steve Wertheim
(916) 319-2085
steve.wertheim@asm.ca.gov