

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2091 (Grayson) – As Amended March 21, 2024

SUBJECT: California Environmental Quality Act: exemption: public access: nonmotorized recreation

SUMMARY: Establishes an exemption from the California Environmental Quality Act (CEQA) for a change in use to allow public access for nonmotorized recreation in areas acquired for open space or park purposes. Specifically, **this bill:**

- 1) Provides that CEQA does not apply to a change in use to allow public access for nonmotorized recreation in areas acquired for open space or park purposes where public access is limited to the following:
 - a) Preexisting paved and natural surface roads;
 - b) Preexisting trails;
 - c) Preexisting pathways; and
 - d) Use of disturbed areas for vehicle parking, such as driveways, involving no new paving or grading, as access points for park and open space.
- 2) Specifies that such a change in use is not a physical change in the environment requiring environmental review, even if physical changes to the environment requiring future environmental review are reasonably foreseeable consequences of the change in use to allow public access for nonmotorized recreation.
- 3) Requires the lead agency claiming exemption to file a notice with the State Clearinghouse in the Office of Planning and Research and with the county clerk of the county in which the land is located.
- 4) Establishes the following definitions:
 - a) “Public access” means allowing visitors on public agency-managed park and open space in a manner that is consistent with the purposes of those lands and not likely to result in significant impacts to sensitive species or tribal cultural resources.
 - b) “Nonmotorized recreation” means low-impact recreational activities, including, but not limited to, hiking, walking, bike riding, equestrian use, and nature viewing.
- 5) Sunsets the exemption January 1, 2030.

EXISTING LAW: Requires lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for this action, unless the project is exempt from CEQA.

CEQA includes various statutory exemptions, as well as categorical exemptions in the CEQA Guidelines (Public Resources Code § 21000, *et seq.*).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** This bill establishes a relatively narrow exemption, confirming that minor actions to provide public access for nonmotorized recreation are not subject to CEQA. It stems from the question whether CEQA applies in the first instance to a public agency action to provide public access to existing open space, where no other physical changes are involved in the agency's action. Though such an action seems insignificant, controversy and questions of environmental impacts could arise, e.g., from neighbors concerned about an increase in traffic or the access introducing recreational activities that cause impacts on protected species or tribal cultural resources.

According to the author, “[This bill] is a narrowly tailored bill that would facilitate public access to open space in a more expeditious manner by allowing a public agency, such as a park district, to open up acquired land that has existing roads and trails for nonmotorized recreational uses, without requiring additional CEQA analysis. Recent legislation has made it easier for park agencies to acquire land for the preservation of open space and recreational purposes by granting an exemption under CEQA, but in some cases, additional consideration must be taken before the land can be opened up for public use – even if the acquired land had pre-existing roads and trails. The additional considerations can often be used by project opponents to delay public access through the CEQA process, costing agencies thousands of dollars and denying the public access to nature acquired by public agencies. [This bill] will help public agencies save time and resources, and allow the public to access open space and nonmotorized recreational opportunities in a more expeditious manner.”

- 2) **Background.** Spending time outdoors is understood to benefit mental and physical health, but outdoor access is not equitably distributed to all communities. A history of discriminatory policies and exclusionary zoning have led to long-term disinvestment, fewer parks and outdoor spaces, and less coastal access for many communities. The practice of redlining led to neighborhoods with far fewer trees and parks and more paved surfaces that for lower-income residents and communities of color. Given the benefits of being outside, expanding access to open space and recreational areas is a statewide priority for many years. One example of this is the Outdoors for All initiative initiated by the California Natural Resources Agency that is intended to expand access to parks and nature for communities with little outdoor space.
- 3) **Arguments in support.** East Bay Regional Park District (EBRPD) and a number of conservation organizations and recreation agencies support this bill noting that the existing CEQA exemption for the acquisition of open space, while useful, does not apply to the process of opening up open space to public access. EBRPD argues that this bill is necessary “for the process of opening property acquired for the purpose of managed public access” and the existing process “faces unnecessary delays through CEQA review, costing thousands of dollars and, more importantly, denying public access to nature acquired by public agencies.” EBRPD contends that this bill will help the state achieve its 30x30 and Outdoors for All goals.

- 4) **Arguments in opposition.** The Sierra Club opposes this bill and argues that it precludes an evaluation under CEQA “that is needed to determine whether there may be impacts to wildlife or cultural resources, and eliminates this critical opportunity for public transparency and disclosure.” Furthermore, Sierra Club asserts “CEQA is an essential environmental protection and public disclosure law, and already contains off-ramps for projects that will not have significant environmental impacts” and that this bill is, therefore, unnecessary.
- 5) **Double referral.** This bill was also referred to the Assembly Natural Resources Committee where it passed 11-0 on March 19, 2024.
- 6) **Related legislation.** AB 782 (Berman), Chapter 181, Statutes of 2019, codifies the CEQA categorical exemption for transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources, thereby eliminating the exceptions for project-specific effects which apply to a categorical exemption.

REGISTERED SUPPORT / OPPOSITION:

Support

East Bay Regional Park District (co-sponsor)
 Midpeninsula Regional Open Space District (co-sponsor)
 Bay Area Ridge Trail Council
 Bear Yuba Land Trust
 California Association of Recreation & Park Districts
 California Outdoor Recreation Partnership
 California Special Districts Association
 California Trails Foundation
 City of Pico Rivera
 County of Nevada
 County of Placer
 Eastern Sierra Land Trust
 Feather River Land Trust
 John Muir Land Trust
 Placer Land Trust
 Save Mount Diablo
 Sierra Business Council
 Sierra County Land Trust
 Sierra Foothill Conservancy
 Sierra Nevada Alliance
 Sonoma County Regional Parks
 Truckee Donner Land Trust

Opposition

Sierra Club

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