

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 347 (Newman) – As Amended June 4, 2024

SENATE VOTE: Not relevant

SUBJECT: Subdivision Map Act: exemption: hydrogen fueling stations and electrical charging stations.

SUMMARY: Adds an exemption to the Subdivision Map Act (SMA) for a hydrogen fueling station or electrical charging station on a parcel that is zoned for industrial or commercial development and does not contain any residential units, or on a parcel that was previously developed with a service station, as specified.

EXISTING LAW:

- 1) Requires, pursuant to Planning and Zoning Law, every city and county to adopt a general plan that sets out planned uses for all of the area covered by the plan, and requires the general plan to include seven mandatory elements, including a land use element. [Government Code (GOV) Section 65302]
- 2) Requires major land use decisions by cities and counties, such as development permitting and subdivisions of land, to be consistent with their adopted general plans. (GOV Section 65300.5)
- 3) Requires, under the California Environmental Quality Act (CEQA), lead agencies with the principal responsibility for carrying out or approving a proposed project to prepare a negative declaration, mitigated negative declaration, or an environmental impact report (EIR) for this action, unless the project is exempt from CEQA. [Public Resources Code (PRC) Section 21080]
- 4) Provides, pursuant to the SMA, the following related to the subdivision of land (GOV 66410-66499.41):
 - a) Requires a city or county to require a tentative and a final map for all subdivisions of land creating five or more parcels, except for subdivisions which meet specified conditions.
 - b) Requires a city or county to require a parcel map for subdivisions meeting specified conditions.
 - c) Allows a city or county to require a tentative map where only a parcel map is required.
 - d) Limits the improvements a city or county may require for a subdivision of land that is less than five parcels.
 - e) Requires a legislative body of a city or county to deny approval of a tentative map or a parcel map if it makes any of the following findings:
 - i) That the proposed map is not consistent with applicable general and specific plans.

- ii) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
 - iii) That the site is not physically suitable for the type of development.
 - iv) That the site is not physically suitable for the proposed density of development.
 - v) That the design of the subdivision or the proposed improvements are likely to cause environmental damage, injure wildlife, or are likely to cause serious public health problems.
 - vi) That the design of the subdivision or the type of improvements will conflict with certain easements providing access through or use of property within the proposed subdivision.
- 5) Provides a number of exemptions from the SMA for specified land uses and actions related to the subdivision of land. Among these are the following:
- a) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a wind powered electrical generation device on the land, if the project is subject to discretionary action by the advisory agency or legislative body. [GOV Section 66412(i)]
 - b) The leasing or licensing of a portion of a parcel, or the granting of an easement, use permit, or similar right on a portion of a parcel, to a telephone corporation as defined in Section 234 of the Public Utilities Code, exclusively for the placement and operation of cellular radio transmission facilities, including, but not limited to, antennae support structures, microwave dishes, structures to house cellular communications transmission equipment, power sources, and other equipment incidental to the transmission of cellular communications, if the project is subject to discretionary action by the advisory agency or legislative body. [GOV Section 66412(j)]
 - c) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of a solar electrical generation device on the land, if the project is subject to review under other local agency ordinances regulating design and improvement or, if the project is subject to other discretionary action by the advisory agency or legislative body. [GOV Section 66412(l)]
 - d) The leasing of, or the granting of an easement to, a parcel of land or any portion or portions of the land in conjunction with a biogas project that uses, as part of its operation, agricultural waste or byproducts from the land where the project is located and reduces overall emissions of greenhouse gases from agricultural operations on the land if the project is subject to review under other local agency ordinances regulating design and improvement or if the project is subject to discretionary action by the advisory agency or legislative body. [GOV Section 66412(m)]
 - e) The leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of an

electrical energy storage system on the land, if the project is subject to discretionary action by the advisory agency or legislative body, as specified. [GOV Section 66412(n)]

- 6) Requires counties and cities to administratively approve an application to install EV charging stations and hydrogen-fueling stations through the issuance of a building permit or similar nondiscretionary permit, and limits review to whether the station meets all health and safety requirements of local, state, and federal law. (GOV Section 65850.7)
- 7) Specifies that administrative approval of hydrogen-fueling stations pursuant to 6), above, shall only apply to an application to install a hydrogen-fueling station on a parcel that satisfies either of the following:
 - a) It is zoned for industrial or commercial development and does not contain any residential units.
 - b) It was previously developed with a service station. For purposes of this requirement, “service station” means any establishment which offers for sale or sells gasoline or other motor vehicle fuel to the public. (GOV Section 65850.7)
- 8) Authorizes a county or city to require an applicant to apply for a use permit if the building official makes a finding, based on substantial evidence, that the EV charging station or hydrogen-fueling station could have a specific, adverse impact upon the public health and safety. (GOV Section 65850.7)
- 9) Establishes, under Executive Order B-48-18 a goal of 200 hydrogen-fueling stations, 250,000 EV chargers, and 10,000 EV fast chargers by 2025.
- 10) Establishes, under Executive Order N-79-20 a goal that 100 percent of in-state sales of new passenger cars and trucks be zero-emission by 2035 and that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045.
- 11) Establishes the Clean Transportation Program (CTP) to be administered by the CEC in order to develop and deploy zero-emission technology and fuels in the marketplace where feasible and near-zero-emission technology and fuels elsewhere through competitive grants, revolving loans, loan guarantees, loans, or other appropriate funding measures. (Health and Safety Code (HSC) 44271 and 44272)
- 12) Requires the CEC to allocate at least 15% of annual CTP funds appropriated by Legislature to co-fund the development of hydrogen-refueling stations. (HSC 44271 and 43018.9(e)(1))
- 13) Requires the CEC and CARB, on or before December 31, 2015 and annually thereafter, to jointly review and report on progress toward establishing a sufficient hydrogen-fueling network that provides the coverage and capacity to fuel vehicles requiring hydrogen fuel that are being placed into operation in the state, including, but not limited to, the available plans of automobile manufacturers to deploy hydrogen-fueled vehicles in California and their progress toward achieving those plans, the rate of deployment of hydrogen-fueled vehicles, the length of time required to permit and construct hydrogen-fueling stations, the coverage, capacity, and public accessibility of the existing hydrogen-fueling station network, and the amount and timing of growth in the fueling network to ensure fuel is available to these vehicles. (HSC 43018.9(e)(8))

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill adds an exemption to the SMA for a hydrogen fueling station or an electrical charging station that meet either of the following conditions:
 - a) Be on a parcel that is zoned for industrial or commercial development and does not contain any residential units.
 - b) Be on a parcel that was previously developed with a service station.

This bill is sponsored by the author.

- 2) **Author's Statement.** According to the author, "California has set some of the most aggressive transportation decarbonization goals in the nation, with targets for up to 1.2 million EV chargers by the year 2030, and 200 hydrogen refueling stations by the year 2025. If California hopes to make any meaningful progress toward these goals, it must do more to address the administrative and local permitting barriers that have plagued the development of zero-emission vehicle (ZEV) infrastructure.

"SB 347 would address one such source of delays by exempting ZEV infrastructure from California's Subdivision Map Act. By streamlining this step of the development process, SB 347 would help to control costs and delays, stimulate private investment, and accelerate infrastructure buildout as the State works to ensure every Californian can participate in our clean energy transition."

- 3) **Background.** California has been steadily expanding its policies supporting the adoption of EV technology and infrastructure, beginning with incentives for purchasing EVs and requirements on automakers to manufacture specified percentages of EVs in relation to their production of conventional cars. This was followed by statutes governing the degree of authority Common Interest Developments (CIDs) can exercise over the installation of EV charging infrastructure, and prohibitions against specified membership and fee requirements for the privilege of using an EV charging station.

In 2012, the Governor issued an Executive Order directing the California Air Resources Board (CARB), the California Energy Commission, the PUC, and other relevant agencies working with the California Plug-In Electric Vehicle Collaborative and the Fuel Cell Partnership to develop benchmarks to help support and facilitate the rapid commercialization of zero emission vehicles (ZEVs). The order directed these agencies to establish benchmarks to help the state's ZEV infrastructure support 1.5 million EVs by 2025. Furthering this goal, the Governor's Office of Planning and Research and the State Architect published guidelines to address physical accessibility standards and design guidelines for the installation of EV charging stations throughout California.

To further these efforts, at the end of 2020, Governor Newsom issued Executive Order (EO) N-79-20, which requires 100% of in-state sales of new passenger cars and trucks to be zero-emission by 2035. This EO tasks CARB with developing and proposing passenger vehicle and truck regulations requiring increasing volumes of new zero-emission vehicles sold in the State towards that goal. The EO also directs CEC to update the biennial statewide assessment

of zero-emission vehicle infrastructure required by AB 2127 (Ting) Chapter 365, Statutes of 2018, to support the level of EV adoption required by the EO.

- 4) **AB 1236 of 2015.** Responding to the patchwork of California’s EV permitting structure and the uncertainty it posed to installers, AB 1236 (Chiu), Chapter 598, Statutes of 2015, placed significant new requirements into law regarding applications to install EV charging stations. AB 1236 required counties and cities to administratively approve an application to install EV charging stations through the issuance of a building permit or similar nondiscretionary permit, and limited review of an application to whether it meets all health and safety requirements of local, state, and federal law. Requirements of local law were limited to those standards and regulations necessary to ensure that the EV charging station will not have a specific, adverse impact upon the public health or safety. AB 1236 allowed a county or city to require an applicant to apply for a use permit under certain circumstances.

AB 1236 also required local agencies to adopt an ordinance that creates an expedited, streamlined permitting process for EV charging stations. Local agencies must adopt a checklist of all requirements with which EV charging stations must comply to be eligible for expedited review. An application that satisfies the information requirements in the checklist is deemed complete. A local agency must approve the application and issue all required permits once the local agency confirms the application and supporting documents are complete and meet the requirements of the checklist. If a local agency receives an incomplete application, it must issue a written correction notice detailing all deficiencies in the application and any additional information required to be eligible for expedited permit issuance.

- 5) **SB 1291 of 2022.** SB 1291 (Archuleta), Chapter 373, Statutes of 2022, added hydrogen-fueling stations to the provisions of AB 1236, requiring administrative approval of applications to install hydrogen-fueling stations. This was limited to parcels that are zoned for industrial or commercial development and do not contain any residential units, or to parcels that were previously developed with a service station. Notably, SB 1291 did not extend the expedited, streamlined permitting process to hydrogen-fueling stations. SB 1291 contained a sunset date of January 1, 2030.
- 6) **Hydrogen Fueling.** As an alternative to gasoline-based vehicles, California has more fuel cell electric vehicles (FCEVs) – and the hydrogen-fueling stations necessary to fuel them – than any other state in the nation. In January 2018, Governor Brown signed Executive Order B-48-18, setting targets of 200 hydrogen-fueling stations and 250,000 EV chargers to support 1.5 million zero-emission vehicles (ZEVs) on California roads by 2025. The 2025 target is an interim goal on the state’s path to 5 million ZEVs by 2030 and 100 percent of in-state sales of new passenger cars and trucks as ZEVs by 2035. Although the vast majority of those vehicles are projected to be battery EVs supported by EV chargers, the state currently has approximately 8,000 FCEVs on the roads and 61 hydrogen-fueling stations, according to the CEC’s Zero Emission Vehicle and Infrastructure Statistics dashboard.

FCEVs contain a fuel cell, which converts energy stored as hydrogen to electricity to power the vehicle. Similar to refueling a conventional internal combustion engine, a FCEV can be refueled in less than four minutes and have a range of around 300 miles. These characteristics create the potential for FCEVs to replace conventional medium- and heavy-duty trucks and

complement battery EVs by providing vehicles that have advantages pertaining to long-range travel.

The numbers of FCEVs and hydrogen stations have grown in recent years due to various state policies that support the adoption of FCEV technology and infrastructure, beginning with rebates for purchasing FCEVs. Additionally, AB 8 (Perea) Chapter 401, Statutes of 2013, requires the CEC to allocate \$20 million annually, as specified, until there are at least 100 publicly available hydrogen-fueling stations in California. The bill also requires the CEC and the California Air Resources Board (CARB) to annually review and report on progress toward establishing a hydrogen-fueling network that provides the coverage and capacity to fuel vehicles requiring hydrogen fuel that are being placed into operation in the state.

In its analysis of AB 2147 (Mathis) of this year, the Assembly Transportation Committee notes:

“The construction of hydrogen-fueling stations has been slower than anticipated. At the end of 2023, there were 68 active hydrogen-fueling stations statewide. In the latest 2023 Annual Hydrogen Evaluation Report, previous projections that 100 stations would be fully operational by the end of 2023 have now been pushed back to 2025, based on input from station developers. Several planned fueling stations have been canceled by station developers, and there have been closures of some existing stations for light-duty passenger vehicles by station operators.

“Station developers cite many factors for the reduced roll-out and closures of hydrogen-fueling stations, including political and economic uncertainty as well as practical challenges with construction, operation, and hydrogen fuel sourcing. On the construction side, the 2023 Report notes that ‘securing site access, permitting timelines, utility connection timelines, and other site-specific issues appear to remain barriers to rapidly deploying hydrogen-fueling stations.’ There also appear to be hiring difficulties related to the tight labor market, e.g., the limited availability of skilled contractors with specialized experience in hydrogen permitting and construction as well as personnel trained to work with high-pressure hydrogen. Station equipment reliability also remains a challenge. Across operational fueling stations, consumers frequently experience long wait times and occasional equipment failures. Station owners are evaluating strategies ranging from equipment improvements to changes in operational strategies and even workforce development to improve consumer experiences with hydrogen-fueling.

“Looking ahead, California’s efforts to deploy hydrogen-fueling infrastructure will be further bolstered by federal funds. In October 2023, the U.S. Department of Energy awarded \$1.2 billion to California’s Alliance for Renewable Clean Hydrogen Energy Systems (ARCHES) through the Regional Clean Hydrogen Hub Program created under the Bipartisan Infrastructure Law. ARCHES is a statewide public-private partnership led by the Governor’s Office of Business and Economic Development (GO-Biz), the University of California, the California State Building Trades Council and the Renewables 100 Policy Institute Energy to produce and create a market for renewable hydrogen. The program is expected to focus on hydrogen infrastructure projects in support of three hard-to-decarbonize sectors: heavy-duty vehicles, power plants, and ports.”

- 7) **The Subdivision of Land.** The SMA establishes a statewide regulatory framework for subdividing land, which generally requires a land owner who wishes to subdivide land to submit a tentative map showing the planned subdivision to the city or county where the land is located. Cities and counties approve tentative maps that are consistent with their general plans, and may attach scores of conditions when doing so. Once a land owner complies with those conditions, local officials must issue final maps. Approving tentative maps is a discretionary action. However, once the conditions of a tentative map are met, a final map is typically approved on a ministerial basis.

For smaller subdivisions (lot splits), the level of improvements local governments can require for the subdivisions are statutorily limited and local officials issue parcel maps rather than tentative and final maps. Parcel maps may be approved via a ministerial process, as well as through a one-step discretionary process. However, local governments may, at their discretion, require a tentative parcel map followed by a final parcel map for these subdivisions.

- 8) **SMA Exemptions.** The SMA defines a subdivision as the division of land for the purpose of sale, lease, or financing. About a dozen types of land uses and divisions are exempt from the SMA, such as leases and easements for wind powered electrical generation devices, solar electrical generation and certain biogas projects. Most of these exemptions, especially those approved by the Legislature in recent years, have stipulated that the action or project itself must be subject to local discretionary approval or a local ordinance regulating design and improvement.

Most recently, the Legislature approved SB 2625 (Ting), Chapter 212, Statutes of 2022, which provided an exemption from the SMA for the leasing of, or the granting of an easement to, a parcel of land, or any portion or portions thereof, in conjunction with the financing, erection, and sale or lease of an electrical energy storage system (EESS) on the land. This Committee specifically amended SB 2625 to require that the project itself be subject to discretionary action by the advisory agency or legislative body, in order for the SMA exemption to apply.

- 9) **Policy Considerations.** The Committee may wish to consider the following:
- a) **Maintaining Consistency.** As noted above, the Legislature has approved a number of SMA exemptions that have specified that the exemption applies only if the project is subject to discretionary action by the advisory agency or legislative body. This ensures that the underlying project itself remains subject to some discretionary review by the local agency, since the discretionary review that would usually accompany a subdivision would no longer occur under an SMA exemption. This would also be especially relevant for this particular exemption, given the ministerial permitting that these projects enjoy under current and proposed law. The Committee may wish to consider if similar language should be added to this bill to maintain consistency with prior SMA exemptions.
 - b) **Terminology.** This bill uses the term “electrical charging station,” whereas existing law generally uses the term “electric vehicle charging station.” The Committee may wish to consider if this bill should be amended to maintain consistency in terminology with existing law.

10) **Committee Amendments.** To address the policy considerations noted above, the Committee may wish to amend the bill as follows:

66412 (o) ~~A~~ **The leasing of, or the granting of an easement to, a parcel of land or any portion or portions of the land in conjunction with a** hydrogen fueling station or ~~electrical charging station that satisfies the requirements of subdivision (b) of Section 65850.7~~ **electric vehicle charging station, if the project is subject to discretionary action by the advisory agency or legislative body. For the purposes of this subdivision, “hydrogen fueling station” and “electric vehicle charging station” shall have the same meanings as defined in Section 65850.7.**

11) **Related Legislation.** SB 1418 requires cities and counties to create an expedited, streamlined permitting process for hydrogen-fueling stations. SB 1418 is pending in this Committee.

AB 2427 (McCarty) requires local agencies to undertake specified actions regarding the permitting of EV charging stations in the public right-of-way. AB 2427 is pending in the Senate Appropriations Committee.

SB 1123 (Caballero) Requires local agencies to ministerially approve the subdivision of vacant, single- family lots to allow for up to 10 parcels and 10 units, as specified, and makes other changes to SB 684 (Caballero), Chapter 783, Statutes of 2023. SB 1123 is pending in this Committee.

12) **Previous Legislation.** SB 1291 (Archuleta), Chapter 373, Statutes of 2022, added hydrogen-fueling stations to the provisions of AB 1236.

AB 970 (McCarty), Chapter 710, Statutes of 2021, established specific time frames in which local agencies must approve permits for EV charging stations.

AB 2168 (McCarty) of 2020 was nearly identical to AB 970. AB 2168 was held in this Committee.

AB 1236 (Chiu), Chapter 598, Statutes of 2015, required counties and cities to administratively approve applications to install EV charging stations, and create an expedited, streamlined permitting process for EV charging stations.

AB 2127 (Ting), Chapter 365, Statutes of 2017, required the CEC to conduct a statewide assessment of the EV charging infrastructure needed to support the levels of EV adoption required for the state to meet its goals of putting at least five million ZEVs on California roads by 2030 and of reducing emissions of GHG to 40% below 1990 levels by 2030.

AB 1510 (Plescia), Chapter 658, Statutes of 2008, exempted solar and biogas projects from the requirements of the SMA under specified conditions.

13) **Arguments in Support.** Air Products writes, “California’s Map Act rightfully ensures the proper coordination of land use that prevents land subdivision that could negatively impact public services, environmental safety or local infrastructure. However, its detailed requirements for land subdivision – including mapping, design and improvement standards – is a multistep process that includes layers of review, potential appeals and legal challenges

that can significantly delay the timely approval of a hydrogen fueling or electric vehicle charging station. These stations must already comply with myriad other state and local regulations such as zoning laws, building codes, rigorous environmental regulations, technological standards to ensure stations are equipped to handle hydrogen safely and efficiently, and regular inspections to ensure continuous compliance with safety and environmental standards and mitigate risks.

“When planning for the placement of hydrogen fueling stations, Air Products considers public spaces and amenities such as shopping centers, corporate campuses, office buildings and other low-impact locations with current and projected market demand and proximity to production sources. Combined with the existing rigorous oversight of the building and operation of such stations, Air Products believes exempting these projects from the Map Act will streamline the development of these stations and support California’s targets for reducing greenhouse gas emissions and improving air quality.”

14) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Air Products and Chemicals, INC.
California Hydrogen Coalition
California Transportation Electrification Coalition
CALSTART

Opposition

None on file

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