

**Attachment**

**Item c2**

Draft For discussion Purposes Only

Section 25395.79.2 of the Health & Safety Code defines whether property can be a “site” eligible for CLRRRA. The definition has one requirement, Cal. Health & Safety Code § 25395.79.2(a), and three exclusions, Cal. Health & Safety Code § 25395.79.2(b)(1)-(3). The three exclusions are designed to prohibit CLRRRA immunities from applying in situations when a government agency has identified a person as potentially responsible for hazardous conditions on a site. However, since the three exclusions apply to a “site” rather than a specific person, the exclusions have the effect of prohibiting a bona fide prospective purchaser of a property from qualifying for immunities under CLRRRA - even when that party has no responsibility for the condition of the property and the relevant government agency will continue to have legal recourse against the potentially responsible party. We suggest revising the three statutory exclusions as follows:

1. The Requirement: A site must be “real property located in an urban infill area for which the expansion, redevelopment, or reuse may be complicated by the presence or perceived presence of hazardous materials.” Cal. Health & Safety Code § 25395.79.2(a).
2. The First Exclusion: An eligible site cannot be a “facility that is listed or is proposed for listing on the National Priorities List established under Section 105 of [CERCLA] if the person seeking immunities has been named by the United States Environmental Protection Agency as a potentially responsible party.” Cal. Health & Safety Code § 25395.79.2(b)(1).
3. The Second Exclusion: An eligible site cannot be “a site on the list maintained by the department pursuant to Section 25356 if the person seeking immunities has been named by the Department of Toxic Substances Control, the Regional Water Quality Board, or a Certified Unified Program Agency as a potentially responsible party.” (DTSC’s list of hazardous substance release sites). Cal. Health & Safety Code § 25395.79.2(b)(2).
4. The Third Exclusion: An eligible site cannot be “a site that is solely impacted by a petroleum release from an underground storage tank eligible for reimbursement from the California Underground Storage Tank Cleanup Fund if the person seeking immunities has been name by any state or municipal entity a potentially responsible party.” Cal. Health & Safety Code § 25395.79.2(b)(3).

Section 25395.109 of the Health & Safety Code establishes that the sunset date for CLRRRA to be January 1, 2017. We suggest extending it as follows:

1. ~~1.~~ This chapter shall remain in effect only until January 1, ~~2017~~2024, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, ~~2017~~2024, deletes or extends that date.

Section 25395.110 of the Health and Safety Code address the extent of immunities following the sunset of the legislation. Consistent with the foregoing, we suggest revising this section as follows:

1. ~~1.~~ (a) “A person who, before January 1, ~~2017~~2024, qualifies for immunity pursuant to Chapter 6.82 (commencing with Section 25395.60), as that chapter read on December 31, ~~2016~~2023, shall continue to have that immunity on and after January 1, ~~2017~~2024, if the person continues to be in compliance with the requirements of former Chapter 6.82 (commencing with Section 25395.60), including, but not limited to, compliance with all response plans approved pursuant to Article 6 (commencing with Section 25395.90) of former Chapter 6.82, and compliance with all other applicable laws.” Cal. Health & Safety Code § 25395.110(a).

Field Code Changed

2. (b) This article shall become operative January 1, ~~2017~~2024. Cal. Health & Safety Code § 25395.110(b).