



# CEQA & Underserved Communities

*California Environmental Law & Policy Center, U.C. Davis School of Law*

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# Environmental Justice and CEQA 50+ Years and Going Strong

*Shana Lazerow, Communities for a Better Environment*

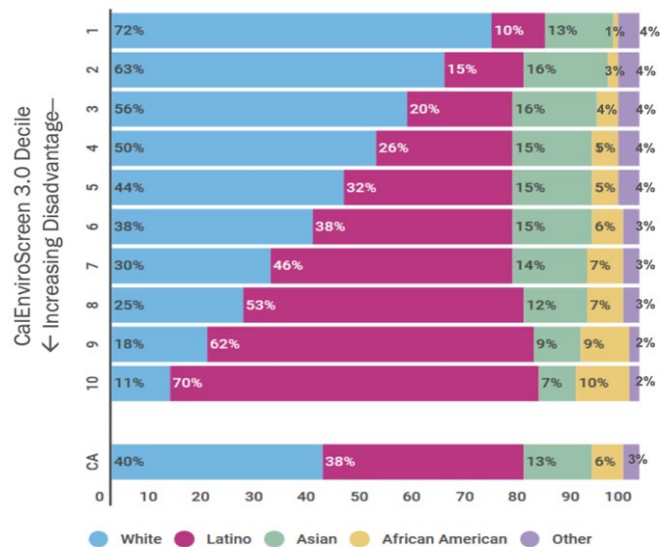




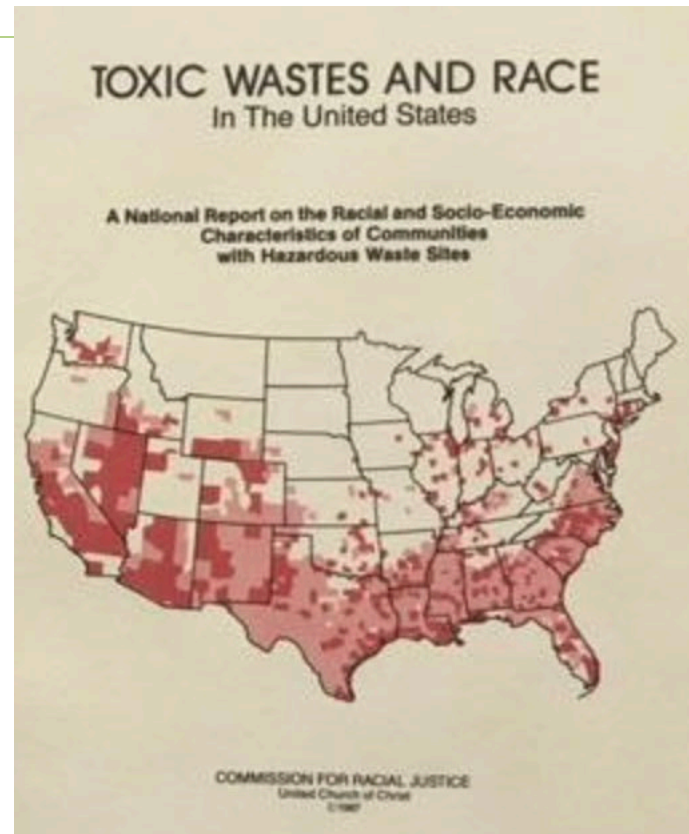


# Environmental Justice

**Problem:** race has been the determining factor in how land is used, and low-income communities of color bear the greatest environmental burdens.



thnic **Figure 2: Racial Makeup of Each Decile of CalEnviroScreen 3.0 Score.**



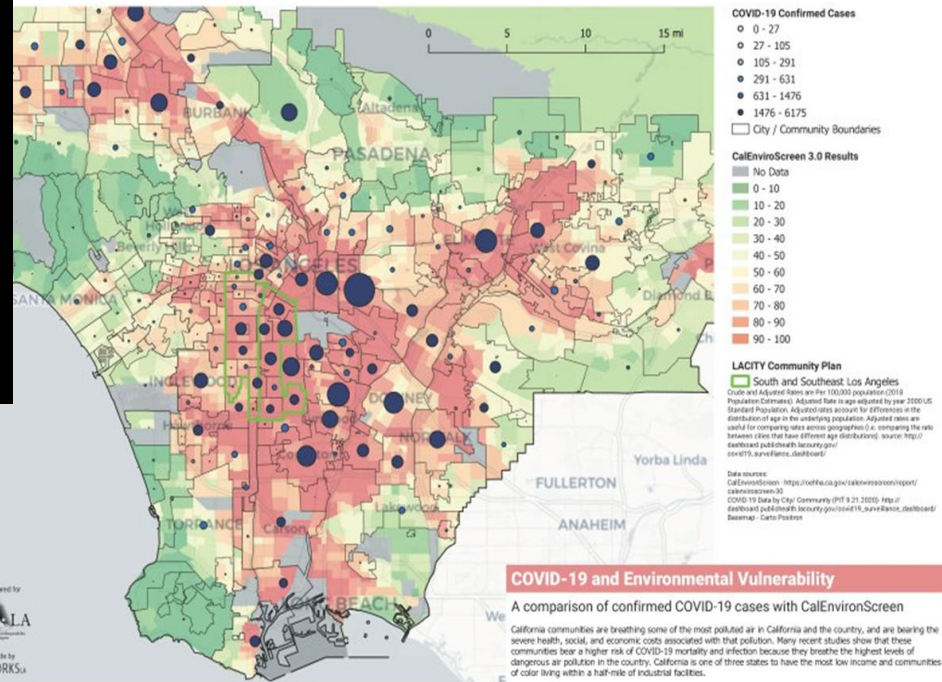
Pre-pandemic, environmental racism was already sickening, and eventually killing, people of color. A Black person in Oakland's heavily-polluted flatlands lived an average 12 years less than a White resident of the Oakland hills.

An Unbelievable Chain of Oppression: American's History of Racism Was a Preexisting Condition for COVID-19. USA Today

Air Pollution Linked with Higher COVID Death Rates, Harvard School of Public Health

Why Air Pollution Is Linked to Severe Cases of COVID, Stanford Medicine SCOPE

Urban Air Pollution May Enhance Case-Fatality and Morality Rates in the United States, The Innovation Journal



COVID has swept through these communities, whose daily exposure to environmental pollution puts them at highest risk.

# **CEQA is Key to Land Use Self-determination**

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Solution: low-income communities of color organize to achieve power over environmental decisions

- Refineries
- Oil Wells
- Power Plants

# CEQA and Refineries

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*CBE v. Richmond / Chevron* (2010) 184 Cal.App.4th 70 – Chevron sought a permit to retool Richmond refinery. EIR failed to disclose key information about pre-project “baseline” and changes to post-project crude inputs; and deferred GHG mitigation.



*Photo credit: US Chemical Safety Board*

# CEQA and refineries

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*CBE v. SCAQMD / Conoco* (2010) 48 Cal.4th 310 – Conoco (LA) sought to avoid a full EIR for its diesel project by asserting the project would not exceed the baseline of its existing air permits. The Supreme Court concluded the CEQA baseline must reflect “ ‘established levels of a particular use,’ ” and not the “ ‘merely hypothetical conditions allowable’ under the permits....” (48 Cal.4th at 322.) The Court stressed that the purpose of CEQA is to fully inform the public of the environmental effects of a proposed project. Using hypothetical, allowable conditions as a baseline “will not inform decision makers and the public of the project’s significant environmental impacts, as CEQA mandates.” (Id. at 328.)



*Photo credit: CBE*



# CEQA and Oil

## *Youth for Environmental Justice v. City of LA (CIPA)*

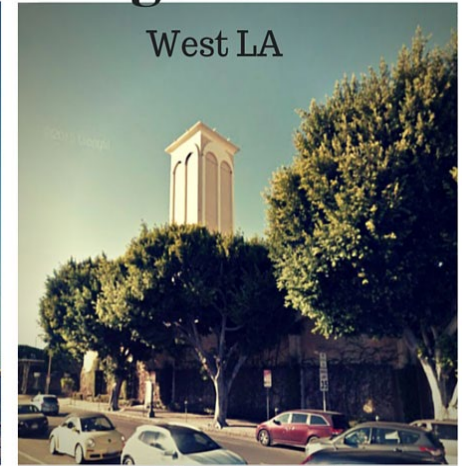
- City exempted drilling in Wilmington, required mitigation in Beverly Hills



## City of Los Angeles



Wilmington



West LA

### We Get

Exposed Rigs  
Diesel Rigs  
Toxic Chemicals  
Asthma  
Odors  
Nosebleeds

[wilmingtonwire.com](http://wilmingtonwire.com)

### They Get

Enclosed Rigs  
Electric Rigs  
Landscaping  
Soundproofing  
Double-pane Windows  
Less hours of operation

Photo credits: D Boon via Archpaper (left); Wilmingtonwire.com (above)

# CEQA and Power Plants

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## Puente Power Project 15-AFC-01

- CEC has a CEQA-equivalent program
- Project review included specific EJ analysis
- CEC denied application



*Photo credit: California Environmental Justice Alliance*

# CEQA for the next 50 years



*We need a strong CEQA to build an environmentally-just future!*



# Ongoing Evolution of Tribal Cultural Resources and Equity Issues in CEQA

*Holly Roberson, Kronick, Moskovitz, Tiedemann & Girard*





# Introduction/ Opening Remarks

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- Land Acknowledgement of the Ancestral Territory of:
  - Yocha Dehe Wintun Nation (Wintun), United Auburn Indian Community (Maidu and Miwok), Wilton Rancheria (Miwok)
- Holly Roberson, Esq., Shareholder (She/Her)
  - I do not speak for any Native American people
  - I am only sharing my experience with you
- Indigenous Participants / Trigger Warning

# All California Land Is Tribal Land

Indigenous Population  
Pre-European and Mission  
Era Contact

- 1770: 300,000-700,000 people
  - over 200 Tribes
- 1848: 30,000 people
- 1900: 20,000 people
- 2010: 723,000 people
  - 160+ CA Native American Tribes



# Timeline of Statute & Regulatory Changes: Addressing Tribal Issues in Environmental & Land Use Laws

1970: CEQA Enacted

1990: NAGPRA/CalNAGPRA

- Address Graves and Grave Goods
- Focus on Federally Recognized Tribes

1992 Office of Historic Preservation (Parks Dept.) CA Register of Historical Resources Regs.

- (PRC 5024.1 (c) (1-4))

1998: CEQA Amendments to define Historical Resources

- TCR addressed through Historic Preservation
- Problematic because TCR are not “Historic” but part of vibrant living cultures

2004: SB 18 (Steinberg, 2004)

- Establishes Consultation Process for General Plan amendments
- Creates definition of California Native American Tribe, includes Federally and Non-Federally Recognized Tribes
- Powerful but underutilized opportunity

2014: AB 52

- Defines Tribal Cultural Resources (“TCR”) (PRC 21074).
- Substantial Adverse Change to a TCR is a Significant Effect on the Environment
- Notice, Consultation, Avoidance, Preservation in Place, Mitigation
- Timing Requirements/CEQA Procedural Violations

2020: SB 35 (Wiener, 2017) Amended by AB 168 (Aguiar-Curry, 2020)

- Amendments to Planning and Zoning Law
- Housing Streamlining Projects must still consider TCR, required Scoping and Consultation
- Housing projects ineligible for streamlined, ministerial process if site is listed TCR
- Evidence of Political Power/ Importance of the Issue

# AB 52 as an Example of the Evolution of CEQA to Include People and Culture



Consideration of Tribal Issues in CEQA is an Environmental Justice and Social Equity Issue

CNAT and Indigenous People have been involved in environmental activism and CEQA long before AB 52

Tribal Governments fought for a seat at the table in the CEQA process

Often have ecological knowledge or information about TCR that is not otherwise available, Western Colonial Perspective on Expertise vs. Traditional and Cultural Knowledge

AB 52 recognizes the importance of the TCR to the Tribe, culturally

Inclusion of intangible aspects of environment vs “science”. View/ Sense of Place/ Soundscape/ History of a Place/ Ongoing Cultural Uses.



# Future of CEQA: Regulatory Changes

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- AB 52 is ripe for Case Law / Regulations/ Legislative Updates
- Regulatory Changes
  - Further CEQA Guidelines Amendments could help, **IF** supported by case law or legislative changes
    - Exceptions to the Exemptions
  - Amendments to Historical Register Criteria-PRC 5024.1(c)
    - Inclusion of TCR- relevant criteria

# Future of CEQA: Don't be the Test Case!

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- One case so far: *Save the Agoura Cornell Knoll v. City of Agoura Hill* (March 17, 2020) \_\_\_\_ Cal.App.5th \_\_\_\_
  - EIR with full site assessment rather than MND needed for CA Historical Register- eligible site
  - Tribal monitoring plan without performance standards was improperly deferred mitigation
  - More analysis needed on avoidance and preservation in place
- Future Case Law Development: AB 52 Interpretation
  - Definition of Tribal Cultural Knowledge/ TEK as Substantial Evidence
  - Good-Faith Consultation
  - Confidentiality of TCR/ appropriate inclusion of TCR info. in environmental document
  - Developer/ Applicant Participation in Consultation, Nexus challenges to appropriate mitigation
    - Increasingly creative mitigation measures including cultural programs such as language, scholarships, etc. where avoidance or preservation in place is infeasible
  - Tribal Cultural Landscapes

# Future of CEQA: Intersectionality

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- NEPA Consultation/ Stronger DOI Involvement in Native American Issues
  - Updates to Bulletins 36 and 38 or new regs.
- NHPA/ Section 106 Process Strengthened
  - Implicates US Army Corps Permits, Clean Water Act
- AIRFA: Ongoing Religious Practices at Sacred Sites
- NAGPRA/ Cal NAGPRA
- California Water Law
  - Water as a TCR
  - Waterways as Tribal Cultural Landscapes
- ESA/CESA- Plants and Animals as TCR
- Planning Law
  - Increased use of Tribal Historic Registers
  - Local Gov. Changes to General Plans, Up-Zoning / Down-Zoning Changes



# Call to Action

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- Practitioners: We must not compound California's history of state-sponsored genocide with ongoing destruction of remaining TCR through unconscious bias in the development process.
- As CEQA practitioners, with each project we have an opportunity to:
  - Acknowledge Past Harm: Know CA and Local History
  - Limit Current Harm: Recognize Tribal Expertise, Identify and Avoid TCR, Mitigate Appropriately when Necessary
  - Reduce Future Harm: Build a Better Relationship, Include and Listen to Tribes



# Additional Information and Resources

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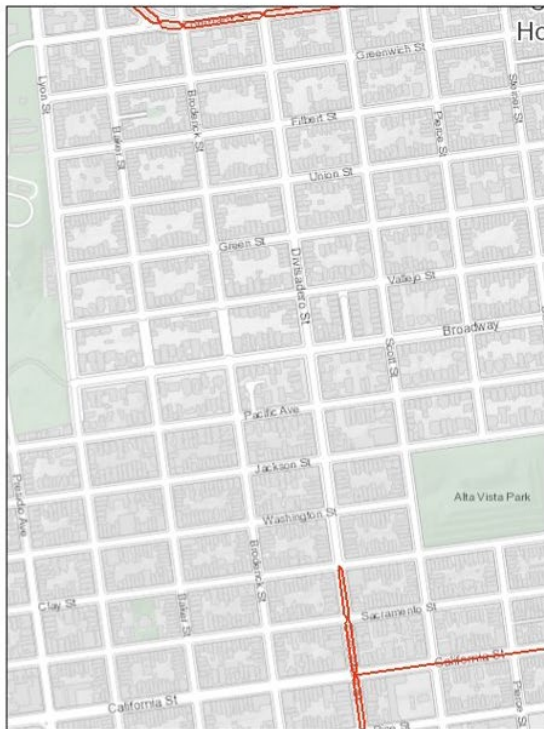
- [AB 52 \(Gatto 2014\) and OPR's AB 52 Technical Advisory](#)
- An American Genocide: The U.S. and the CA Indian Catastrophe, 1846-1873 by Benjamin Madley
- Saving Places that Matter: A Citizen's Guide to the National Historic Preservation Act by Thomas King
- [Gov. Newsom's Press Release on Native American Day, 2020](#)
- Learn about the Indigenous People and Tribal Governments where you live/ where your project is.

# CEQA & Environmental Justice


*Andrea Ruiz-Esquide, Deputy City Attorney*



# Why Racial and Social Equity?



## Legend

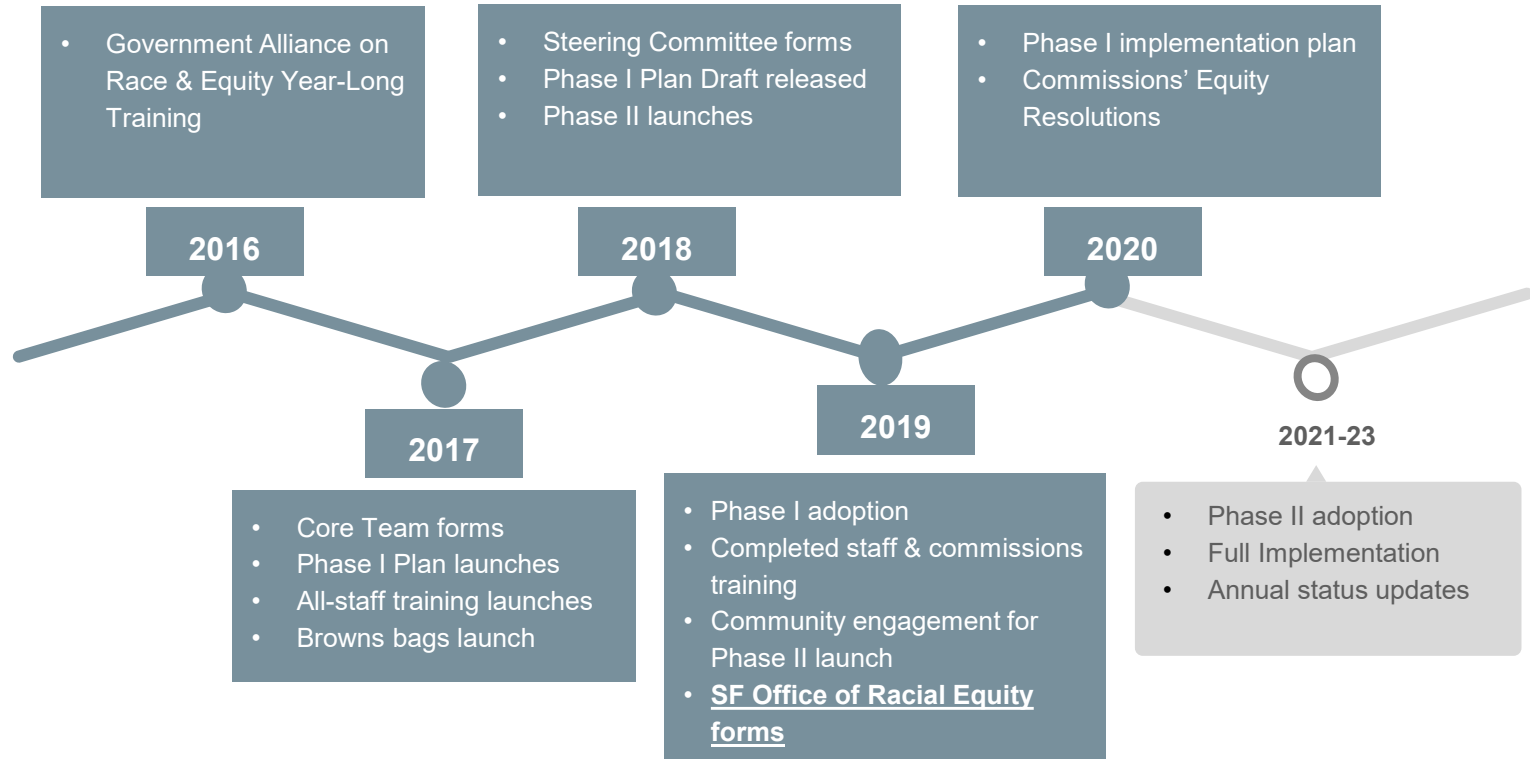
-  High injury corridor, measuring pedestrians and cyclist conflicts with vehicles

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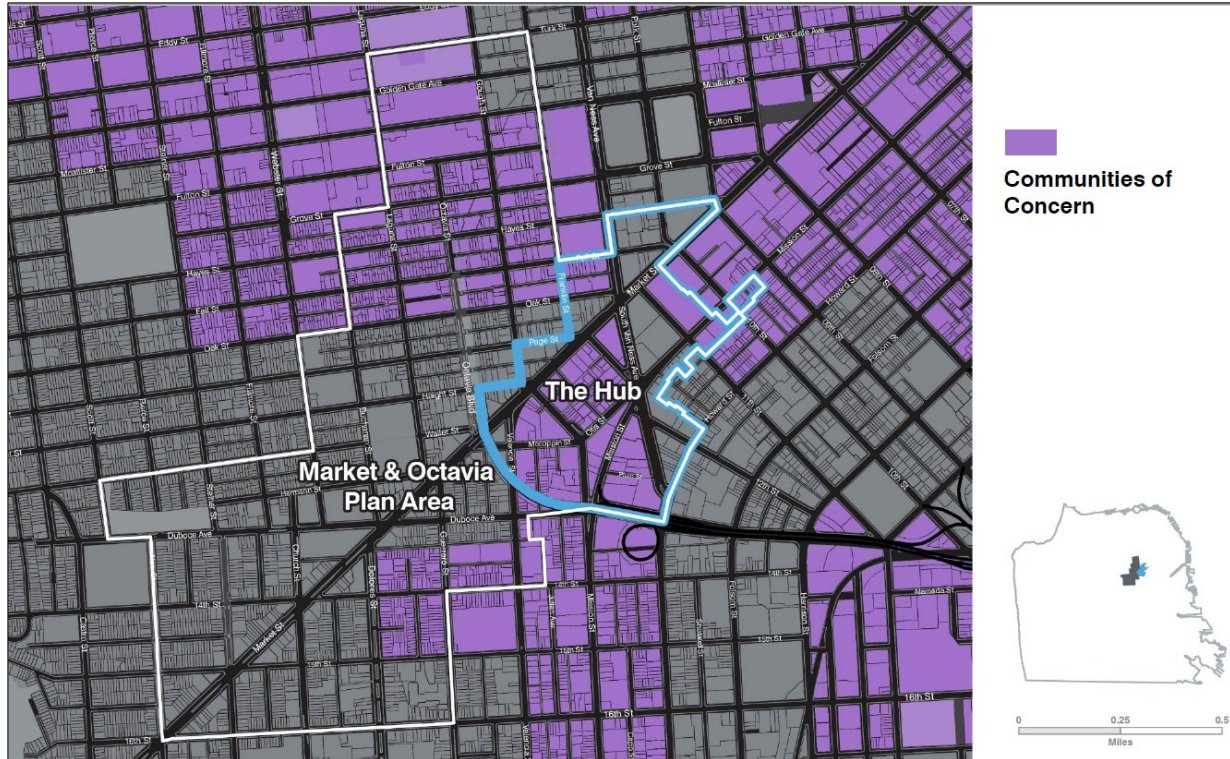
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# SF Planning's Racial & Social Equity Plan



# Tool Application Example



## Equity Assessment – Equity Goals

- Decrease displacement risk of low income, people of color and other vulnerable populations
- Decrease displacement risk of small businesses in and adjacent to the Hub.
- Increase affordable housing options for low-income residents and communities of color.
- Ensure sidewalks are comfortable for everyone and safe.
- Program impact fee money with an equity lens and engage vulnerable populations in the process to ensure that they benefit from investment and opportunities.



# California Environmental Quality Act

## Requires Government Agencies to:



**Inform** the public and decisionmakers about potential environmental impacts related to physical changes from a proposed discretionary project

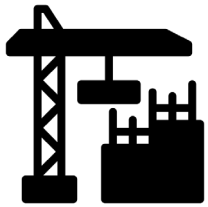


**Mitigate** the environmental impacts to below the “significance threshold” levels

# CEQA & Racial & Social Equity

- CEQA does not currently consider environmental justice (EJ)
- Instead, 2 ways that economic or social effects of a project can be relevant:

May lead to physical changes to the environment that are significant



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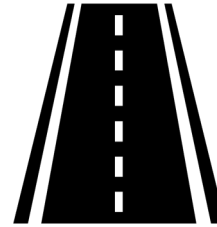


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May be considered in determining whether that physical change is significant



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# CEQA EJ Audit - ongoing

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## Findings



### Top priority justifications:

Directly related to health  
More room for discretion  
Strong relation to EJ

### Top priority examples:

Air Quality  
Hazards and Hazardous  
Materials  
Transportation

## Recommendations



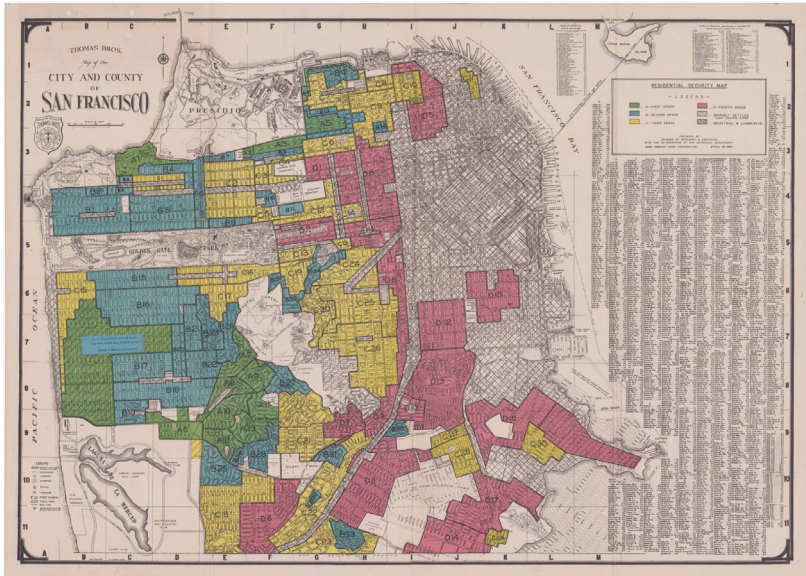
Identify & recommend areas to **update** within current CEQA significance thresholds



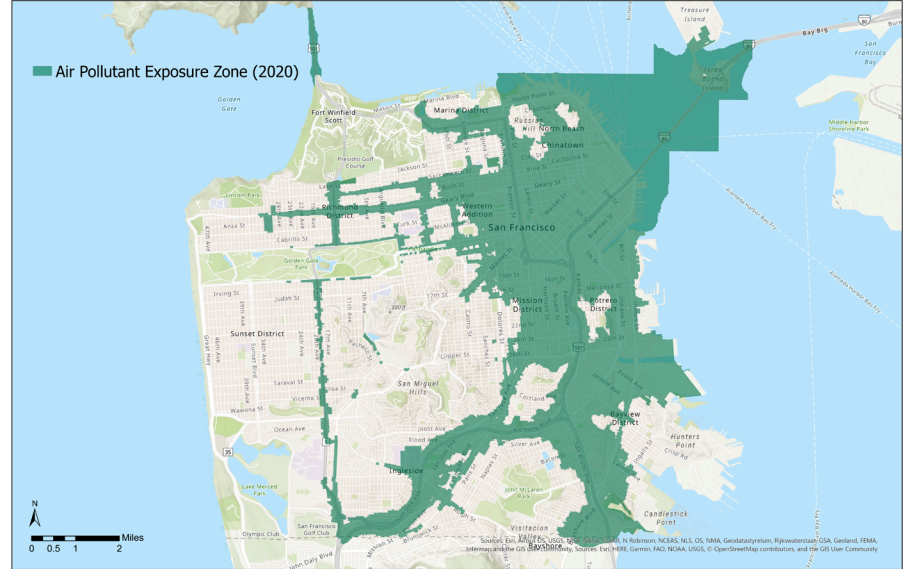
Improve public accessibility and involvement in the environmental review process, including intentional **community engagement**

# Air Pollutant Exposure Zone (APEZ)

- Enhanced ventilation systems required
- Clean Construction required – mitigation or best practices



Air Pollutant Exposure Zone (2020) Map



# Contact Information

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