

Virtual Library

“CEQA at 50” Conference

April 16, 2021

CEQA At 50

William Fulton on

Dec 6, 2020

[CEQA](#)



[Previous](#) | [Next](#)

The other day I spent the afternoon writing up an appellate court ruling involving the California Environmental Quality Act for publication in *CP&DR*. In [this particular case](#), the Fifth District Court of Appeal, interpreting [a 2018 California Supreme Court ruling](#), ordered Fresno County Superior Court judge to order the Fresno County Board of Supervisors to throw out their approvals of the Friant Ranch development project – an action that occurred nine years ago – and start over again with the CEQA analysis.

In other words, it was a pretty appropriate way to celebrate CEQA’s 50th anniversary: Trying to understand a lengthy sequence of events almost impossible to follow and interpret a court ruling that split so many hairs I could barely keep track of them.

I’ve been writing up CEQA cases for public consumption for 40 of those 50 years – ever since I started writing about land-use law for the [Los Angeles Daily Journal](#), a daily newspaper for lawyers, in 1981. CEQA is not technically a land-use law, but it has probably had as much impact on California land use as any statute on the books. It’s confounding in many ways – confoundingly complicated, confoundingly resistant to reform, and indeed confoundingly resistant to any rational assessment of whether it has “worked,” whatever “worked” means. Business leaders and developers blame it for every economic downturn in California whether CEQA deserves the rap or not, and environmentalists and labor unions cling to it as the only to extract what they want from developers.

So, now that we’ve hit the half-century mark, let’s take a few minutes to give CEQA its due and try to figure out what it’s really done – or not done – for California.

To begin with, it’s important to remember that CEQA is not, strictly speaking, a law designed to protect the environment. Like its national counterpart, the National Environmental Protection Act, it’s designed to generate analysis that highlights the potential environmental damage and stimulate a robust public debate about that potential damage. Unlike laws protecting air, water, endangered species, and the like, it doesn’t contain any hard-and-fast standards for environmental protection. In the end, the public officials making a decision on whether to move the project forward (the “lead agency” in CEQA parlance) can do whatever they want, even if their decision damages the environment.

So, from the beginning, CEQA has been a process law, not an environmental protection law. And citizen and environmental groups – which were quite deliberately empowered by the law – have taken advantage of those processes, including easy access to the courts, to try to both stall and shape development projects.

Roughly speaking, the history of CEQA can be divided into four eras. First, in the ‘70s and ‘80s, came the era of using CEQA to kill projects. Then, in the ‘90s and ‘00s, came the mitigation era. After that, in the early 2010s, came a series of attempts to simplify and reform CEQA, all of which failed. And now we have entered what might be called the “end-run” era, characterized by increasing attempts by both local governments and the state to find ways around CEQA altogether.

The first era really began with the *Friends of Mammoth* case in 1972, in which the California Supreme Court vastly expanded CEQA’s scope by concluding that it covered any land-use permit issued by a government agency. In essence, this meant that all private development projects were subject to CEQA – something not contemplated by CEQA’s authors and, indeed, not included in NEPA. This set off a period when environmental groups sued constantly to make sure CEQA analysis was conducted on private development projects, and also expand both the circumstances under which environmental impact reports had to be conducted and the scale and scope of those EIRs. Within a few years, EIRs – which had, in the beginning, been a few dozen pages, similar to an initial study today – were so voluminous and technical that the average person had a hard time reading them. No coincidentally, dozens and maybe hundreds of projects in the ‘70s and ‘80s were killed by the growing EIR process.

The “killing projects” era ended on New Year’s Eve 1990, when the Cal Supremes handed down the *Citizens of Goleta Valley* case, which essentially refocused CEQA from re-fighting local planning decisions to limiting environmental damage using mitigations. (The case involved alternative sites under Santa Barbara County’s general plan for [what is today the superfancy Bacara](#) resort on the Goleta coast.)

Thus, the mitigation era began – an era that led to increasing lawsuits by one government agency against another, largely in an attempt to get traffic mitigation money out of development projects that are outside their boundaries but still affect their streets. It was during this era that the private consulting firms that conduct most CEQA analysis became extremely powerful, as they not only hold most of the information about underlying environmental conditions but also propose most of the mitigations. (A respected planner friend of mine once said, during this period, that he had lost interest in general plans as being too vague and high-level and preferred CEQA work because looking out the window of his office and dreaming up mitigations was the most creative

and satisfying part of his job.) The “mitigated negative declaration” emerged as an alternative to the EIR.

Even so, by about 2010, pressure was building to try to engage in a major reform of CEQA to make it more manageable. As a result, during Gov. Jerry Brown’s first term in office the second time around, he and the Senate’s then-leader Darrell Steinberg (now the mayor of Sacramento), danced around CEQA reform for years, with limited success. The problem in Sacramento was that labor unions had figured out that CEQA was a very effective tool to put pressure on developers – and on the businesses that were their tenants, such as grocery chains – to make commitments favorable to labor.

So when Steinberg started talking about reforming CEQA, labor resisted and Brown folded. The result was that [Steinberg only got through limited reforms](#) – reforms that didn’t necessarily improve the situation. Because, as I once said during the attempted-reform era, [simplifying CEQA is really complicated](#). The context for this comment – which incurred the wrath of the CEQA folks at the Governor’s Office of Planning & Research – was the implementing of SB 226, which was designed to simplify CEQA review for infill projects but contained an extremely complicated definition of an infill project. But there’s an underlying truth: CEQA is so complicated that it isn’t easy to simplify. Remember that one of the most important CEQA cases in recent years, the so-called [Berkeley Hillside](#) case, turned on the question of whether an exception to an exemption should be applied. Honest.

Perhaps the capstone of the attempted-reform era – when everybody realized it was time to move on – was the reform bill Steinberg did pass in 2013, [SB 743](#), which did away with level of service traffic analysis within CEQA and replaced it with vehicle miles traveled as the metric. A revolutionary idea – but it literally took [almost seven years](#) for OPR to implement the darned thing, partly because of an extremely extended stakeholder process.

Even then, however, the attempted-reform era was giving way to the end-run era. In recent years, the end-run era’s most visible poster child has been Sen. Scott Wiener’s [SB 35](#), which allows developers to get certain housing developments approved ministerially and therefore avoid CEQA entirely. (Ministerial approvals aren’t subject to CEQA and never have been; labor went along with the bill because an SB 35 project must use prevailing-wage labor.)

Despite the publicity around Wiener’s efforts, the end-run era actually started a few years before, when – following the collapse of the reform efforts – cities and other lead agencies got more daring about using exemptions.

Exemptions were always available under the law but for most of CEQA’s history cities were afraid to use them. But in the last decade this has changed dramatically, OPR’s own numbers

show that since 2008, [the use of exemptions has dramatically surpassed](#) the use of mitigated negative declarations. A turning point in the end-run era was, in fact, the [Berkeley Hillside ruling](#) in 2015. Use of exemptions accelerated after that ruling and, in fact, a number of subsequent appellate court rulings relied on *Berkeley Hillside* to uphold the use of exemptions. (Even so, many practitioners were aggressively using exemptions before *Berkeley Hillside*; for example, as planning director of San Diego in 2013, I [authorized an exemption for the 2021 U.S. Open at Torrey Pines in La Jolla](#) and nobody ever squawked about it.)

So it's reasonable to assume that the end-run era will be around for a while, especially so long as the crisis of housing under-production is with us in California. What comes next is anybody's guess. The Planning and Conservation League – a devoted keeper of the CEQA flame – has undertaken a reform effort called [CEQA 2.0](#), but it hasn't had a very high profile. And large projects like Friant Ranch still grind through massive EIRs and years of litigation in order to get their projects approved. In all likelihood, CEQA won't see comprehensive reform anytime soon; instead, we will all stumble along, benefiting from the mitigations dreamed up by environmental consultants and also from the projects that end-run the process but somehow imagining that there simply must be a better way to do all this.

The Revolution in CEQA Exemptions

William Fulton on

May 16, 2020

[CEQA](#), [EIRs](#), [Mitigated Negative Declarations](#)



[Previous](#) | [Next](#)

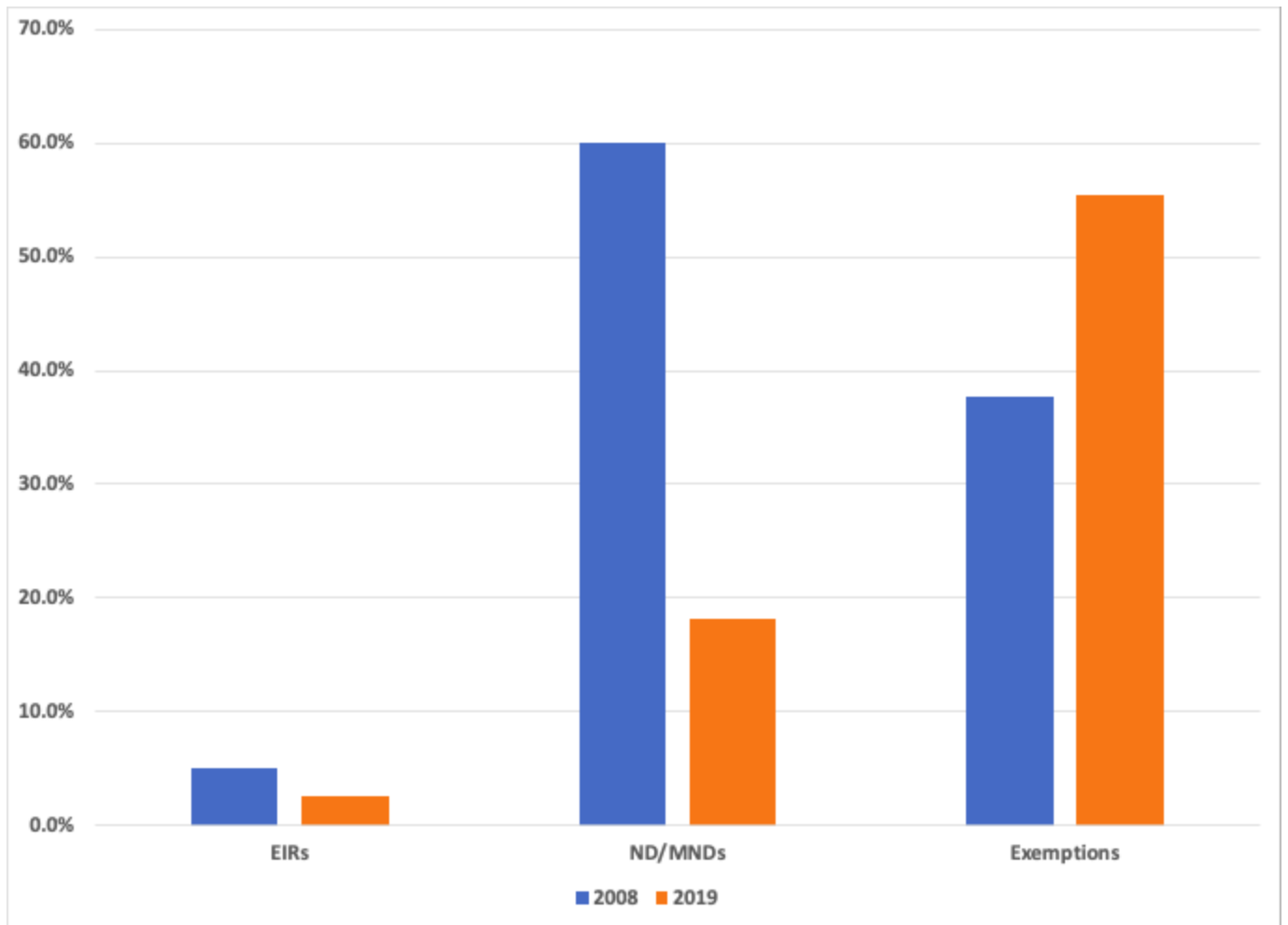
If past experience is our guide, we're about to see another major assault on the California Environmental Quality Act. Like clockwork, every time there's a major economic downturn – and a major downturn in real estate development activity – the California Chamber of Commerce, the California Building Industry Association, and other business and development groups start calling for major CEQA reform as a way to stimulate the market.

But is CEQA reform really the solution? After all, it may be that the real CEQA reform has already occurred – a dramatic shift from the use of mitigated negative declarations and environmental impact reports to the use of exemptions.

Reforming CEQA, after all, is politically complicated. Environmental groups, neighborhood associations, and labor unions all use CEQA as a way to gain leverage over the development process to get what they want – and labor unions in particular hold great sway over the legislative process in Sacramento.

Meanwhile, over the past decade, the legislature has passed a number of important exemption bills and the courts have been upholding the use of exemptions for infill projects. In the past, [I've speculated](#) that increasing use of exemptions is a trend worth watching. Now, data provided to *CP&DR* by the Governor's Office of Planning & Research shows that the use of exemptions it's just a trend – it's a revolution.

**EIRs, ND/MNDs, and Exemptions
As A % Of CEQA Actions, 2008 and 2019**



Source: Governor's Office of Planning & Research

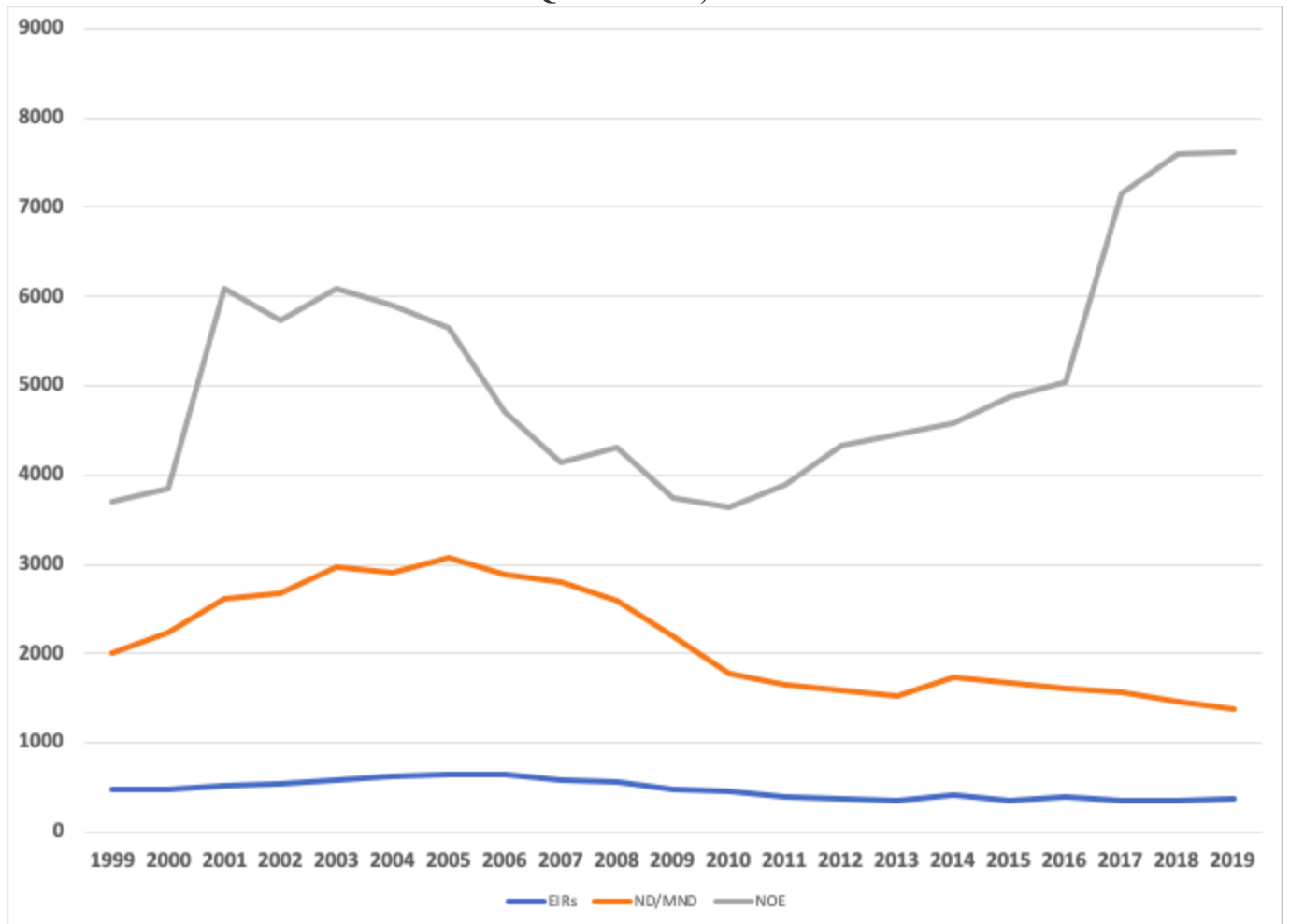
As recently as 2008, according to OPR, 60% of all actions CEQA filed with the state CEQA clearinghouse were NDs and MNDs. By 2019, more than 55% were exemptions. At the same time, the percentage of CEQA actions that are EIRs have dropped in half. These are really dramatic numbers

So how did this happen? A more detailed line chart over the past 20 years highlights the way this change occurred – The first big CEQA infill exemption – [the so-called Class 32 exemption](#) – was adopted in 1998. But this was at the height of the mitigated negative declaration era. MNDs had emerged as an alternative to EIRs in the 1980s and had been authorized by statute in 1993. Also, infill development wasn't nearly as common then as it is now.

Both NDs/MNDs and EIRs reached their peak during the housing boom of 2006-2008. The market was hot. MNDs were a way to avoid doing an EIR on midsize projects and EIRs were

necessary for large subdivisions, which were then on fire in the Inland Empire and the Central Valley. Exemptions, meanwhile, reached a 20-year low.

EIRs, ND/MNDs, and Exemptions As A % Of CEQA Actions, 1999-2019



Source: Governor's Office of Planning & Research

Then things began to change, however. Almost immediately, NDs/MNDs declined while exemptions rose. The two reached a crossover point in 2011, the beginning of the first (or, more accurately, the third) Jerry Brown administration and the trend continued after that.

What happened in 2011? CEQA veterans will recall that 2011 was [the year the Legislature passed SB 226](#), the first comprehensive infill exemption, which was Brown promoted heavily. Clearly, once the state greenlighted major infill exemptions, lead agencies started using them.

(That same year, an appellate court upheld [the use of an infill exemption in a density bonus case](#) – a now-common tactic.)

But that's not the end of the story. Another major change began six years later, in 2017, and has continued since. Since 2017, exemptions have accounted for almost 60% of all CEQA actions filed with the state. NDs/MNDs dropped from 32% to less than 20%. And EIRs – reliably about 5% of all CEQA actions over the past 20 years – now account for only 2.7% of CEQAs actions.

So what happened starting in 2017? Two things: a court case and a change in the market.

The court case was [Berkeley Hillside Preservation v. City of Berkeley](#), which was handed down by the California Supreme Court in the spring of 2015. *Berkeley Hillside* didn't seem like an especially expansive ruling at first, because it dealt with the application of a categorical exemption to a very large single-family house proposed by a tech mogul in Berkeley. But it *was* a Supreme Court case, and it was [soon followed by several other cases](#) that made it harder for project opponents to claim that “unusual circumstances” prevented the use of an exemption. More than anything else, cities and counties took *Berkeley Hillside* as a signal that expansive use of exemptions was okay.

Meanwhile, the market was shifting dramatically toward multi-family housing coming out of the Great Recession. This shift reached its peak in 2016 and 2017, when multifamily construction went up 40% over previous post-recession years and amounted to almost 60% of all housing construction in California.

The increased use of exemptions might be part of the reason that California reached a 12-year high in housing construction last year. It's only about 100,000 units – far, far less than Gov. Gavin Newsom's hoped-for 500,000+ per year – but it's triple the number from 2011, when exemptions first outnumbered NDs/MNDs. So, no wonder CEQA reform is mostly off the table these days. For infill projects at least, it's increasingly irrelevant.

California Is Making Liberals Squirm

If progressivism can't work there, why should the country believe it can work anywhere else?



By Ezra Klein
Opinion Columnist

Feb. 11, 2021

You may have heard that San Francisco's Board of Education voted 6 to 1 to rename 44 schools, stripping ancient racists of their laurels, but also Abraham Lincoln and Senator Dianne Feinstein. The history upon which these decisions were made was dodgy, and the results occasionally bizarre. Paul Revere, for instance, was canceled for participating in a raid on Indigenous Americans that was actually a raid on a British fort.

In normal times, bemusement would be the right response to a story like this. Cities should have idiosyncratic, out-there politics. You need to earn your "Keep X weird" bumper stickers. And for all the Fox News hosts who've collapsed onto their fainting couches, America isn't suffering from a national shortage of schools named for Abraham Lincoln.

But San Francisco's public schools remain closed, no matter the name on the front. "What I cannot understand is why the School Board is advancing a plan to have all these schools renamed by April, when there isn't a plan to have our kids back in the classroom by then," Mayor London Breed said in a statement. I do not want to dismiss the fears of teachers (or parents), many living in crowded homes, who fear returning to classrooms during a pandemic. But the strongest evidence we have suggests school openings do not pose major risks when proper precautions are followed, and their continued closure does terrible harm to students, with the worst consequences falling on the neediest children. And that's where this goes from wacky local news story to a reflection of a deeper problem.

San Francisco is about 48 percent white, but that falls to 15 percent for children enrolled in its public schools. For all the city's vaunted progressivism, it has some of the highest private school enrollment numbers in the country — and many of those private schools have remained open. It looks, finally, like a deal with the teachers' union is near that could bring kids back to the classroom, contingent on coronavirus cases continuing to fall citywide, but much damage has been done. This is why the school renamings were so galling to so many in San Francisco, including the mayor. It felt like an attack on symbols was being prioritized over the policies needed to narrow racial inequality.

I should say, before going further, that I love California. I was born and raised in Orange County. I was educated in the state's public schools and graduated from the University of California system, the greatest public university system in the world. I moved back a few years ago, in part because I love California's quirks and diversity and genius. It's a remarkable place where tomorrow's problems and tomorrow's solutions vie with each other for primacy. California drives the technologies, culture and ideas that shape the entire world. But for that very reason, our failures of governance worry me.

California has the highest poverty rate in the nation, when you factor in housing costs, and vies for the top spot in income inequality, too. There are bright spots in recent years — electric grid modernization, a deeply progressive plan to tax the wealthy to fund poor school districts, a prison population at a 30-year low — but there's a reason 130,000 more people leave than enter each year. California is dominated by Democrats, but many of the people Democrats claim to care about most can't afford to live there.

There is an old finding in political science that Americans are "symbolically conservative" but "operationally liberal." Americans talk like conservatives but want to be governed like liberals. In California, the same split political personality exists, but in reverse: We're often symbolically liberal, but operationally conservative. Renaming closed schools is an almost novelistically on-point example, but it is not the most consequential.

The median price for a home in California is more than \$700,000. As Bloomberg reported in 2019, the state has four of the nation's five most expensive housing markets and a quarter of the nation's homeless residents. The root of the crisis is simple: It's very, very hard to build homes in California. When he ran for governor in 2018, Gavin Newsom promised the construction of 3.5 million housing units by 2025. Newsom won, but California has built fewer than 100,000 homes each year since. In Los Angeles, Mayor Eric Garcetti persuaded Angelenos to pass a new sales tax to address the city's homelessness crisis, but the program has fallen far behind schedule, in part because homeowners fought the placing of shelters in their communities.

Some of this reflects the difficulty of wielding power in a state where authority is often fractured and decentralized. But that does not explain all of it. Watching SB50, State Senator Scott Wiener's ambitious bill to allow dense construction near mass transit, fail has become an annual political ritual. Last year, Toni Atkins, the Democratic State Senate leader, sponsored a modest bill to allow duplexes on single-

family lots. It passed the Senate, and then passed the Assembly in slightly amended form, and then died because it was sent back to the Senate with only three minutes left in the legislative session. All this in a state racked by a history — and a present — of housing racism.

This is a crisis that reveals California's conservatism — not the political conservatism that privatizes Medicare, but the temperamental conservatism that stands athwart change and yells “Stop!” In much of San Francisco, you can't walk 20 feet without seeing a multicolored sign declaring that Black lives matter, kindness is everything and no human being is illegal. Those signs sit in yards zoned for single families, in communities that organize against efforts to add the new homes that would bring those values closer to reality. Poorer families — disproportionately nonwhite and immigrant — are pushed into long commutes, overcrowded housing and homelessness. Those inequalities have turned deadly during the pandemic.

“If you're living eight or 10 people to a home, it's hard to protect yourself from the virus,” Senator Wiener told me. “Yet what we see at times is people with a Bernie Sanders sign and a ‘Black Lives Matter’ sign in their window, but they're opposing an affordable housing project or an apartment complex down the street.”

Once you start looking for this pattern, you see it everywhere. California talks a big game on climate change, but even with billions of dollars in federal funding, it couldn't build high-speed rail between Los Angeles and San Francisco. The project was choked by pricey consultants, private land negotiations, endless environmental reviews, county governments suing the state government. It has been shrunk to a line connecting the midsize cities of Bakersfield and Merced, and even that is horribly over budget and behind schedule.

Smaller projects are also herculean lifts. In San Francisco, for example, it took 10 years to get two rapid bus transit lines through environmental review. It's become common in the state to see legislation like the California Environmental Quality Act wielded against projects that would curb sprawl. Groups with no record of green advocacy use it to force onerous environmental analyses that have been used to block everything from bike lanes to affordable housing developments to homeless shelters.

The vaccine rollout in California was marred by overly complex eligibility criteria that slowed the pace of vaccinations terribly in the early days. Those regulations were written with good intentions, as California politicians worried over how to balance speed and equity. The result, however, wasn't fairness, but sluggishness, and California lagged behind the rest of the nation for the first weeks of the effort. Eventually, the state reversed course and simplified eligibility.

Some conservative outcomes are intended; California's voters blocked the 2020 ballot initiative restoring affirmative action on purpose. But some reflect old processes and laws that interest groups or existing communities have perverted for their own ends. The California Environmental Quality Act wasn't passed to stop mass transit — a fact California finally acknowledged when it recently passed legislation carving out exemptions. The profusion of councils and public hearings that let NIMBYs block new homes are a legacy of a progressivism that wanted to stop big developers from slicing communities up with highways, not help wealthy homeowners fight affordable apartments. California wants to be the future, but its governing institutions are stuck in the past. Its structures of decision making too often privilege incumbents who like things the way they are over those who need them to change.

Writing this piece, I found myself thinking about Ibram X. Kendi's book “How to Be an Antiracist.” Kendi's central argument is that it is policy outcomes, not personal intent, that matter. “Racist policies are defined as any policy that leads to racial inequity,” he told me when I interviewed him in 2019. “And so, for me, racial language in the policy doesn't matter, intent of the policymaker doesn't matter, even the consciousness of the policymaker, that it's going lead to inequity, doesn't matter. It's all about the fundamental outcome.”

In California, taking that standard seriously might mean worrying less about the name on the school than whether there are children inside it — as Mayor Breed has been insisting. It might mean worrying less about the sign in the yard than the median home price on the block. And yes, it might mean worrying less about a cumbersome process that claims to be about environmental protection and more about how to speed along projects that will lead to environmental justice.

There is a danger — not just in California, but everywhere — that politics becomes an aesthetic rather than a program. It's a danger on the right, where Donald Trump modeled a presidency that cared more about retweets than bills. But it's also a danger on the left, where the symbols of progressivism are often preferred to the sacrifices and risks those ideals demand. California, as the biggest state in the nation, and one where Democrats hold total control of the government, carries a special burden. If progressivism cannot work here, why should the country believe it can work anywhere else?

I hope California keeps being weird. But it needs to do better.

The Times is committed to publishing a diversity of letters to the editor. We'd like to hear what you think about this or any of our articles. Here are some tips. And here's our email: letters@nytimes.com.

Follow The New York Times Opinion section on Facebook, Twitter (@NYTopinion) and Instagram.



IDEAS

CEQA Is an Abomination

How California's signature environmental law got out of control, and how to fix it

7:30 AM ET

M. Nolan Gray

Housing researcher at UCLA



GETTY / THE ATLANTIC

BY ANY REASONABLE METRIC, the empty lot on the corner of First and Lorena Street in the Boyle Heights neighborhood of Los Angeles is a natural place to build housing. With a bus stop next door and an Expo Line light-rail station less than a quarter mile away, residents would enjoy an easy 30-minute commute to one of the densest business districts in North America. They could walk to daily necessities such as grocery stores, pharmacies, and restaurants, making car ownership mostly optional. And thanks to the energy efficiencies of multifamily living, folks moving in from the sprawl that otherwise defines L.A. would see their environmental impact plummet.

Yet when a local nonprofit developer proposed several years ago to build a 49-unit apartment building on the lot—with 24 homes set aside for disabled veterans experiencing homelessness—it was slammed with an environmental lawsuit. A single angry neighbor was able to delay the project, thanks to a piece of legislation known as the California Environmental Quality Act. Although a 189-page assessment found that all possible environmental effects could be mitigated, the suit demanded that planners spend years conducting additional environmental research. The site—covered in cracked concrete and lined with a barbed-wire-topped chain-link fence—remains empty to this day.

RECOMMENDED READING

Restoring Pell Grants—And Possibilities—for Prisoners

CLINT SMITH



Renting Is Terrible. Owning Is Worse.

SHANE PHILLIPS



The Second-Class Treatment of U.S. Territories Is Un-American

STACEY PLASKETT



[Read: [How climate change will affect where you live](#)]

As incidents like the one at First and Lorena multiply, CEQA has emerged as an unexpected impediment to California's going green. Across the Golden State, CEQA lawsuits have imperiled [infill housing](#) in Sacramento, [solar farms](#) in San Diego, and [transit](#) in San Francisco. The mere threat of a lawsuit is enough to stop small projects—especially housing—from starting in the first place. Indeed, one of the main effects of CEQA has been to exacerbate the state's crippling [housing-affordability](#) crisis.

How did such a conservative institution take root in one of America's most [progressive](#) states? And what can California leaders do to get environmental review out of the way of saving the environment?

CEQQA AS WE KNOW it today is a bit of an accident. Adopted in 1970 under the auspices of then-Governor Ronald Reagan, the bill rode to passage on a wave of nationwide environmental consciousness. With environmental disasters such as the Cuyahoga River fire and the trauma of highway-construction-related urban clearances fresh in the American mind, the concept was straightforward: The government should consider and mitigate the environmental impacts of public projects. Fifteen other states joined in with their own environmental-policy acts, most modeled on California's approach.

The acts work like so: For any public project, the state must conduct an initial environmental study, considering a range of possible effects relating to issues such as air quality, noise, and protected natural areas. If a project crosses certain thresholds—say, by encroaching too much on wetlands or generating too much stormwater runoff—the agency must conduct an environmental-impact report (EIR), extensively documenting all possible harms, setting out potential alternatives, and organizing public hearings for feedback. In this sense, CEQA's purpose is strictly informational: Legislatures and agencies are always free to go forward with a project, as long as they acknowledge, disclose, and mitigate its impacts.

In the early days, initial studies and EIRs were generally quite short, and covered only truly public projects. But in 1972, the California courts interpreted a “public

project” to include any *private* development that required governmental approvals. In cities such as San Francisco and Los Angeles, where almost nothing can be built without some form of discretionary permit, this effectively meant that every apartment building and office tower in the state now had to conduct an environmental assessment. Notably, no other state applies its environmental-policy act in this way.

This mandate wouldn't have been such a problem if bringing a CEQA suit weren't so easy. As a “self-executing” statute, CEQA is enforced by aggrieved parties requesting that a court mandate either a full environmental review—in cases where none was initially deemed necessary—or heavy revisions to an existing EIR. Litigants can even file these lawsuits anonymously. In theory, the system was meant to protect those most affected by proposed projects. In practice, it has made CEQA the preferred lever of California's infamously litigious NIMBYs (Not-in-My-Back-Yard-ers). Anyone with a few hundred bucks can drag developers to court, forcing projects to undergo years of delays and to pay hundreds of thousands of dollars in legal fees.

[Annie Lowrey: California is becoming unlivable]

This mechanism has utterly transformed development in California. For starters, enforcement by litigation adds risk to any project that has to undertake an environmental review. This risk is most acute in dense urban areas—particularly those with residents wealthy enough to bankroll lawsuits—making infill development in California prohibitively difficult. In fact, attorneys at Holland & Knight estimate that 80 percent of CEQA lawsuits now target infill development. (Others dispute these findings.) Another study found that multifamily housing is the most popular target of CEQA litigation against private projects, while developments that would intuitively raise environmental concerns—think industry or mining—collectively make up less than a fifth of such litigation.

Habitat for Humanity of San Francisco learned this lesson in 2017, when it attempted to build 20 affordable homes on an empty lot in the heart of Redwood City, mere blocks away from a train station. Thanks to one cynical neighbor's CEQA suit, Habitat faced delays and mounting environmental-review costs. The project is only now nearing completion. Had Habitat proposed 20 homes out on the exurban periphery of the Bay Area, where new construction is less needed and less controversial, the project might already be full of people. But housing isn't CEQA's only victim; desperately needed infrastructure languishes in the name of the environment, as well. Although San Francisco's bicycle plan encountered years of environmental litigation, typical suburban arterial roads tend to skate by unchallenged. In this way, CEQA has the effect of encouraging urban sprawl.

To minimize the risk of litigation, EIRs have ballooned into thousand-page documents covering potential impacts that few would normally associate with the environment. California's CEQA Guidelines, which set the parameters for how environmental review must be conducted, have swelled from a 10-page checklist to a nearly 500-page tome, covering a range of issues including aesthetics. And NIMBYs seem to continually discover new, creative reasons to block housing. In 2018, a proposal to redevelop a San Francisco laundromat as a 75-unit apartment building was held up on the basis that the developer had not fully considered the

project's effect on "community character." This followed a similar bad-faith attempt by project opponents to get the laundromat—a squat, one-story building hemmed in by a parking lot—designated as a historic landmark.

A CEQA suit is now so terrifying to developers—the delays so long, the legal fees so excessive—that the mere threat of one is enough to force a developer to the table. As with so much about California's environmental-review law, this might sound great in theory. But in practice, it has given rise to the phenomenon of "greenmailing," whereby special interests as varied as construction unions, neighborhood groups, and business associations can force concessions from a project before the public review even starts. At times, this can end up looking a lot like extortion: In one recent case, a CEQA litigant allegedly demanded \$5.5 million from a developer in exchange for dropping a baseless environmental suit.

This type of backdoor haggling represents a fundamental usurpation of the very idea of planning. If a lone NIMBY can second-guess the decisions of local city councils and city-planning commissions, what good are institutions such as comprehensive planning, public hearings, or disclosure requirements? The original idea of CEQA was to strengthen the California planning process by informing the public. Instead, what we've ended up with is a system that subjects even humdrum infill proposals to obtuse multi-binder reports and shady dealings, leaving a housing-affordability crisis in its wake.

THE GOOD NEWS about CEQA is that these problems are now widely recognized within the state. But what can California leadership do? One solution has been to exempt more projects from review altogether. Since CEQA's inception, certain small projects have always been beyond its scope. In 2020, the state legislature expanded that list to include certain green transportation projects, including pedestrian, bicycle, and transit improvements along existing rights-of-way, though these exemptions will sunset in 2023. This move followed an earlier 2019 bill, which exempted homeless shelters and permanent supportive housing within Los Angeles from CEQA requirements. To the extent possible, these exemptions should be made permanent and applied statewide.


[Jacob Anbinder: The pandemic disproved urban progressives' theory of gentrification]

For the infill housing that California so urgently needs, a simpler solution might be to free more development from discretionary permitting in the first place. (If a project is "ministerial"—meaning that the government has no discretion in issuing the relevant permits—it doesn't need to conduct a full CEQA study.) Cities such as Los Angeles and San Francisco could ease up on the strict zoning rules that force developers to seek discretionary relief in the form of special permits, rezonings, and site-plan reviews. This would mean getting rid of onerous minimum parking requirements and exclusionary single-family zoning. But state legislators shouldn't wait around: The shorter the state can make the time frame for infill housing, the better.

Californians need fewer messes like the one at First and Lorena, and more projects like Jordan Court, a 34-unit North Berkeley development that will house low-income seniors. It's the neighborhood's first affordable-housing development in nearly 30 years. All Souls Episcopal Parish, the project's sponsor, was able to access

streamlined permitting, thanks to [S.B. 35](#). The 2017 bill, sponsored by State Senator Scott Wiener of San Francisco, created a straight path to approval for affordable-housing proposals in cities that aren't building their fair share—no CEQA required. Without S.B. 35, the church today might have been embroiled in environmental litigation. Instead, it broke ground in the fall. Local NIMBYs who might have misused the 50-year-old law to kill the project aren't happy. But at least 34 Californians will now have homes.

M. NOLAN GRAY *is a professional city planner and a housing researcher at UCLA.*

Connect 

Make your inbox more interesting.

Each weekday evening, get an overview of the day's biggest news, along with fascinating ideas, images, and people. [See more newsletters](#)

Ideas that matter. Since 1857.

Subscribe and support 162 years of independent journalism. For less than \$1 a week.

SUBSCRIBE >



ABOUT

CONTACT

PODCASTS

SUBSCRIPTION

FOLLOW

April 2, 2019

RE: Keeping CEQA Strong to Protect Californians' Health and Environment

To the Honorable Members of the California State Senate and Assembly and Governor Newsom:

For nearly 50 years, the California Environmental Quality Act (CEQA) has protected our environment, improved the livability of our cities and communities, and kept Californians healthy and safe. CEQA plays a vital role in both preserving California's unparalleled natural resources and protecting the rights of residents to weigh in on the land use decisions that most affect them.

Development interests have long complained about California's flagship environmental law. Now they are trying to blame CEQA for the state's housing crisis. However, CEQA did not cause the housing crisis, and weakening CEQA will not solve it. Rather, if implemented properly, CEQA can be an effective tool in helping to address California's housing problems by encouraging sustainable development.

CEQA is often unfairly accused of "stopping" housing and other projects. That's not the way the law works. CEQA simply requires officials to consider environmental impacts and do what can be done to avoid or reduce these impacts, before moving forward. Major changes to CEQA would pose a significant threat to our natural environment, including critical resources like clean air and clean water, and to California's most disadvantaged communities.

The Senate Committee on Judiciary and the Senate Committee on Environmental Quality held a joint hearing on March 12, 2019 about CEQA's role in development. To aid the discussion, the legislators prepared a background paper, which made key findings regarding recent CEQA studies and the true causes of California's housing crisis.¹ We applaud these Committees for their efforts to dispel the myths surrounding CEQA, and strongly urge the Legislature to resist efforts to weaken this essential law.

Studies show CEQA is not a major factor in California's housing crisis; rather, CEQA encourages sustainable development. CEQA is not to blame for the housing crisis. A recent UC Berkeley study of five expensive Bay Area cities shows that **most cities effectively streamline CEQA review for residential projects and very few projects require full environmental impact reports.**² According to the study, the **pace of development is influenced mostly by local zoning requirements, not by CEQA.** A new follow-up study focusing on five southern California cities similarly suggests that local laws and approval procedures play a very significant role in determining the rate of entitlement of affordable housing.³ The Legislature can build on recent efforts to address the housing crisis by helping cities increase zoned capacity for housing, especially affordable housing, near public transit and jobs.

Notably, CEQA contains numerous exemptions and streamlining provisions that speed up housing construction and infill-type development. For example, CEQA excludes from additional environmental

¹ California Legislature, *Just the Facts: An Evidence-Based Look at CEQA Streamlining and CEQA's Role in Development* (March 2019), available at <https://tinyurl.com/CEQAkeyfindings2019>.

² Moira O'Neill, et al., *Getting it Right: Examining the Local Land Use Entitlement Process in California to Inform Policy and Process* (Feb. 2018), available at https://www.law.berkeley.edu/wp-content/uploads/2018/02/Getting_It_Right.pdf/.

³ Moira O'Neill et al., *Examining the Local Land Use Entitlement Process in California to Inform Policy and Process* (Feb. 2019), available at <https://www.law.berkeley.edu/wp-content/uploads/2019/02/Examining-the-Local-Land-Use-Entitlement-Process-in-California.pdf>.

review projects that are consistent with the development density set by existing EIR-certified zoning, community plans, or general plans. SB 1925 creates an exemption for infill residential development that meets size, location, use, and affordable housing criteria. Under SB 375, certain infill residential, mixed-use, and transit priority projects can qualify for streamlined CEQA review.

These streamlining measures are already working, and full-blown environmental impact reports are now relatively rare. A 2018 survey of California cities and counties revealed that between 2015 and 2017, only 6% of housing projects were reviewed by EIRs.⁴ An earlier study showed that in San Francisco, where CEQA streamlining has been embraced, only 14 EIRs were prepared from 2013-15; in that same period, 13,237 projects were exempt from CEQA review.⁵ Moreover, when CEQA review is required, CEQA compliance costs are only a small percent of total project costs.⁶

In addition, the CEQA process encourages decision-makers and the public to carefully consider the impact of proposed projects with respect to California's housing crisis. For example, CEQA requires the reviewing agency to evaluate whether the project would displace existing populations, physically divide established communities, or promote urban sprawl. These inquiries both protect existing communities and encourage infill housing alternatives.

While CEQA must adjust to changing circumstances over time, the Legislature should focus on preserving and strengthening CEQA, not weakening its protection for the environment and California communities.

CEQA promotes environmental justice. Many low-income communities and communities of color—long unfairly burdened by polluting industries, toxic waste dumps, pesticides, and other threats—rely on CEQA to protect themselves from air pollution, water contamination, and other public health challenges. A strong CEQA is one of the few tools these communities have to inform themselves about and weigh in on new polluting developments, refineries, coal terminals, battery factories, oil wells, and warehouse facilities with heavy truck traffic.

Low-income communities also rely on CEQA to ensure that new affordable housing is safe and healthy, and that the most vulnerable residents are not inadvertently exposed to toxic hazards and other dangers in their own home. We must resist changes to CEQA that would allow an abbreviated or weak environmental review process that fails to identify significant health impacts.

High housing costs and long commutes disproportionately affect low-income Californians. Rampant gentrification and the displacement of low-income residents and communities of color are of deep concern. CEQA affords members of these communities a voice in land use decisions that affect their future and well-being. CEQA also requires government agencies to disclose and address proposed projects' displacement effects, growth-inducing impacts, and compatibility with locally-adopted land use plans, including housing elements. Weakening CEQA would further disempower these communities.

⁴ Association of Environmental Professionals, *CEQA and Housing Production* (2018), available at <https://tinyurl.com/ceqa-fn03>.

⁵ BAE Urban Economics, *CEQA in the 21st Century: Environmental Quality, Economic Prosperity, and Sustainable Development in California* (2016), available at <https://rosefdn.org/wp-content/uploads/2016/08/CEQA-in-the-21st-Century.pdf>.

⁶ BAE 2016 at pp. 28-41.

CEQA helps California reach its climate change goals. In the past two years, the effects of climate change have become ever more pronounced in California and the rest of the country. At the same time, the Trump administration has walked away from the nation's climate commitments and worked to eviscerate environmental regulation of all kinds. This is not the time for our leaders in Sacramento to voluntarily weaken the state's most powerful environmental law. Today, more than ever, it is essential that California stand strong in reducing greenhouse gas emissions and encouraging sustainable growth.

CEQA is a key tool for decision-makers and community members alike to ensure that new projects incorporate all feasible measures to reduce their contribution to climate change. CEQA also helps ensure that local land use decisions track the state's climate goals and promote transit-friendly development. Weakening CEQA would undermine California's leading role in combatting climate change.

CEQA litigation is not a major threat to development in California. CEQA keeps government officials accountable by allowing citizens to enforce the law. Yet multiple studies have shown that CEQA litigation rates are very low and have remained essentially unchanged over many years, even as the state's population has grown dramatically. On average, only about 200 CEQA lawsuits are filed every year in the entire state;⁷ in 2018, only 173 suits were filed.⁸ Typically, less than one percent of projects subject to CEQA review face any kind of legal challenge.⁹

There is no litigation crisis when it comes to enforcing CEQA. Accordingly, there is no reason for the Legislature to consider weakening CEQA's citizen enforcement provisions at developers' behest.

CEQA works to make development safer for Californians. Despite constant attacks from special interests, CEQA is working. The law routinely results in projects that improve protections for public health and the environment. Examples abound:

- **CEQA protects public safety:** When a developer proposed to build luxury second homes near Lake Tahoe without any effective wildfire evacuation plan, CEQA ensured consideration of wildfire risk and safety.
- **CEQA reduces climate impacts:** In the San Diego region, CEQA required the County of San Diego to improve its climate action plan and has led the San Diego Association of Governments to consider alternatives that reduce car travel and increase public transit in the region.
- **CEQA protects natural resources:** When a luxury development threatened to convert some of the last remaining open space on the Orange County coast, the Supreme Court required the City of Newport Beach to address and mitigate impacts on sensitive coastal areas.
- **CEQA protects public health:** A study by BAE Urban Economics found that rigorous CEQA review did not hinder an affordable housing project in Richmond, but rather highlighted potential environmental problems early in the process, ultimately resulting in a better project that protected vulnerable residents from air pollution, toxic soil, and water contamination on the site.¹⁰
- **CEQA advances environmental justice:** At the Richmond Chevron refinery, CEQA required the oil giant to come clean about its plans to process dirtier crudes.

⁷ NRDC and California League of Conservation Voters, *CEQA – The Litigation Myth* (2013), available at <https://tinyurl.com/ceqa-fn02>.

⁸ This number is based on data received from the California Attorney General's Office.

⁹ NRDC 2013.

¹⁰ BAE 2016.

CEQA should be preserved and strengthened, not weakened. Strong environmental laws like CEQA ensure that California remains a healthy place to live, work, and visit. Our state enjoys vibrant cities, unrivaled natural areas, clean air and water, and a strong agricultural sector. All of these aspects of California’s way of life and economy are worth protecting—and CEQA has been key in doing just that. Californians should not be forced to make a false choice between affordable housing and a clean environment. We can—and must—have both.

Sincerely,

Kathryn Phillips, Director, Sierra Club California

David Pettit, Staff Attorney, Natural Resources Defense Council

Howard Penn, Executive Director, Planning and Conservation League

Gladys Limon, Executive Director, California Environmental Justice Alliance

Kim Delfino, California Program Director, Defenders of Wildlife

John Buse, Senior Counsel, Legal Director, Center for Biological Diversity

Erica Martinez, California Policy Advocate, Earthjustice

Patty Clary, Executive Director, Californians for Alternatives to Toxics

Greg Suba, Conservation Program Director, California Native Plant Society

Ashley Werner, Senior Attorney, Leadership Counsel for Justice & Accountability

Shana Lazerow, Legal Director, Communities for a Better Environment

Allen Hernandez, Executive Director, Center for Community Action and Environmental Justice

Caroline Farrell, Executive Director, Center on Race, Poverty and the Environment

Mary Creasman, Chief Executive Officer, California League of Conservation Voters

Helen Hutchison, President, League of Women Voters of California

Michael Lynes, Director of Public Policy, Audubon California

Eugene Wilson, President, California Clean Energy Committee

Sumona Majumdar, General Counsel and Director, Earth Island Advocates

Diane Takvorian, Executive Director, Environmental Health Coalition

Tim Little, Executive Director, Rose Foundation for Communities and the Environment

Curtis Knight, Executive Director, California Trout

Kim Kolpin, Executive Director, Bolsa Chica Land Trust

Sean Bothwell, Executive Director, California Coastkeeper Alliance

Janet Cobb, Executive Officer, California Wildlife Foundation/California Oaks

Sarah Aird, Co-Director, Californians for Pesticide Reform

Chay Peterson, Founder and Ed Amador, President, Canyon Land Conservation Fund

Linda Rudolph, Director, Center for Climate Change and Health

Rebecca Spector, West Coast Director, Center for Food Safety

Leah Simon-Weisberg, Directing Attorney, Centro Legal de la Raza

Jason Merrick, Board Member, Citizens Advocating for Roblar Rural Quality

Carin High, Co-Chair, Citizens Committee to Complete the Refuge

Robin Gerber, Chair of the Board, Citizens for Responsible Oil and Gas

Dan Howells, California State Director, Clean Water Action

Duncan McFetridge, Director, Cleveland National Forest Foundation

Nicole Capretz, Founder and Executive Director, Climate Action Campaign

Joseph K. Lyou, President/CEO, Coalition for Clean Air

Alan Levine, Director, Coast Action Group

Marco Gonzalez, Executive Director, Coastal Environmental Rights Foundation

Megan Fluke, Executive Director, Committee for Green Foothills

Susan Robinson, President, Ebbetts Pass Forest Watch

Bob Purvey, President/Chairman, EcoMalibu

Scott Sutherland, Vice Chair, Elfin Forest / Harmony Grove Town Council

Dan Silver, Executive Director, Endangered Habitats League

Morgan Patton, Executive Director, Environmental Action Committee of West Marin

Linda Krop, Chief Counsel, Environmental Defense Center

Colin Bailey, Executive Director and Managing Attorney, Environmental Justice Coalition for Water

Tom Wheeler, Executive Director, Environmental Protection Information Center

Bill Allayaud, California Director of Government Affairs, Environmental Working Group

Jim Walsh, Renewable Energy Policy Analyst, Food & Water Watch

Katherine Evatt, Board President, Foothill Conservancy

Rick Coates, Executive Director, Forest Unlimited

Paul Hughes, Executive Director, Forests Forever

Anna Ransome, Founder, Friends of Atascadero Wetlands

Angela Lindstrom, Friends of Coyote Hills

Bridget Beytagh, Friends of Graton

Marian Dodge, President, Friends of Griffith Park

Michael Wellborn, President, Friends of Harbors, Beaches and Parks

Matt Maguire, Secretary, Steering Committee, Friends of Lafferty Park

Nadine Scott, Founder/Attorney at Law, Friends of Loma Alta Creek

Deborah Knight, Executive Director, Friends of Rose Canyon

Stephanie Tidwell, Executive Director, Friends of the Eel River

Marissa Christiansen, Executive Director, Friends of the Los Angeles River

Harriet Buckwalter, Co-Chair, Friends of the Mark West Watershed

Teri Shore, Regional Director, North Bay, Greenbelt Alliance

JP Theberge, Executive Director, Grow the San Diego Way

Dianne Prado, Executive Director, HEART L.A.

Stevee Duber, CEO, High Sierra Rural Alliance

Claire Schlotterbeck, Executive Director, Hills for Everyone

Darcie Goodman Collins, Chief Executive Officer, League to Save Lake Tahoe

Elizabeth Lambe, Executive Director, Los Cerritos Wetlands Land Trust

Jeff Kuyper, Executive Director, Los Padres ForestWatch

Linda J. Novy, President, Marin Conservation League

Rika Gopinath, CoChair, MOMS Advocating Sustainability

Geoffrey McQuilkin, Executive Director, Mono Lake Committee

Alexis Ollar, Executive Director, Mountain Area Preservation Foundation

Nils Lunder, Executive Director, Mountain Meadows Conservancy

Susan Harvey, President, North County Watch

Debbie Astrin, Executive Committee Member, Petaluma Community Guild

David Keller, Founder, Petaluma River Council

Martha Dina Argüello, Executive Director, Physicians for Social Responsibility-Los Angeles

Diane Nygaard, President, Preserve Calavera

Padi Selwyn, Co-chair, Preserve Rural Sonoma County

Manal J. Aboelata, MPH, Deputy Executive Director, Prevention Institute

Laura Solorio, President, Protect Monterey County

Joel Chaban, Secretary, Redwood Coast Conservancy

Huey D. Johnson, Founder and Chair, Resource Renewal Institute

Brenda Adelman, Chair of the Board, Russian River Watershed Protection Committee

Manu Koenig, Executive Director, Santa Cruz County Greenway

Seth Adams, Land Conservation Director, Save Mount Diablo

Bruce Coons, Executive Director, Save Our Heritage Organisation

Katherine O'Dea, Executive Director, Save Our Shores

Stephen Green, President, Save the American River Association

Susan Britting, Executive Director, Sierra Forest Legacy

Jenny Hatch, Executive Director, Sierra Nevada Alliance

Tom Mooers, Executive Director, Sierra Watch

Bob Berman, Chair, Solano County Orderly Growth Committee

Rev. Earl Koteen, Member, Coordinating Committee, SunFlower Alliance

Melanie Winter, Director, The River Project

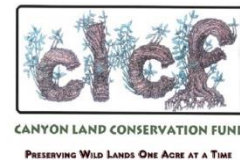
David Schonbrunn, President, TRANSDEF

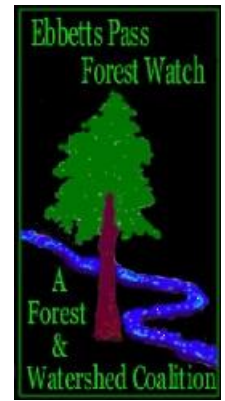
Kathy Pons, President, Valley of the Moon Alliance

Diane Underhill, President, Ventura Citizens for Hillside Preservation

Dee Swanhuysen, Board Chair, Western Sonoma County Rural Alliance

Janus Matthes and Merrillyn Joyce, Wine & Water Watch





Protecting Marin Since 1934



environmental DEFENSE CENTER



Resource Renewal Institute
Innovations for a Sustainable Future

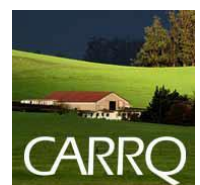


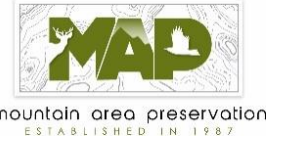
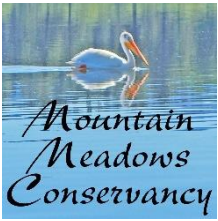
SIERRA NEVADA ALLIANCE

Keeping light in the range.



LOS CERRITOS WETLANDS LAND TRUST





COMMITTEE FOR GREEN FOOTHILLS

