IN THE NAME OF THE ENVIRONMENT

How Litigation Abuse Under the California Environmental Quality Act Undermines California’s Environmental, Social Equity and Economic Priorities – and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse

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CEQA is Great – CEQA Litigation Abuse Is Not

Abuse 1: Non-Environmental Goal
» Anyone can sue (even anonymously)
» Courts are very active in shaping CEQA’s substantive requirements
  - “Fair Argument”
  - “Interpreted Broadly to Protect Environment”
  - Lawyer Crankiness
  - Proving the Negative
» Most common judicial remedy is reversal of project approval
  - Most money waits for lawsuit outcome (3+ years)
» Sued projects stop
» Lawsuit filing fee: $1000-ish

Abuse 2: Anti-Change Goal

15 Years of Win/Loss CEQA Stats

Agency Wins  Petitioner Wins

- Cat Ex: 20 56
- Neg Dec: 43 40
- EIR: Total

Figure 1: Statewide (2010-2012) CEQA Lawsuits Targeting Taxpayer-Funded and Privately-Funded Projects

<table>
<thead>
<tr>
<th>PUBLIC AGENCY/ TAXPAYER-FUNDED PROJECTS</th>
<th>BUSINESS/INDIVIDUAL PRIVATELY-FUNDED PROJECTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Other Public Services &amp; Infrastructure 17%</td>
<td>Residential 21%</td>
</tr>
<tr>
<td>Parks 4%</td>
<td>Retail 10%</td>
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<tr>
<td>Schools 5%</td>
<td>Commercial 5%</td>
</tr>
<tr>
<td>Agency Plans and Regulations 15%</td>
<td>Entertainment 2%</td>
</tr>
<tr>
<td>Water 7%</td>
<td>Industrial 4%</td>
</tr>
<tr>
<td>Agency Property &gt;1%</td>
<td>Mining 5%</td>
</tr>
<tr>
<td>Agriculture &amp; Forestry 1%</td>
<td>Energy 4%</td>
</tr>
<tr>
<td>Agriculture &amp; Forestry 1%</td>
<td></td>
</tr>
</tbody>
</table>

PUBLIC AGENCY/ TAXPAYER-FUNDED PROJECTS

- Residential
- Retail
- Commercial
- Entertainment
- Industrial
- Mining
- Energy
- Agriculture & Forestry
- Agency Property
- Water
- Parks
- Schools
- Other Public Services & Infrastructure
- Agency Plans and Regulations

BUSINESS/INDIVIDUAL PRIVATELY-FUNDED PROJECTS

- Residential
- Retail
- Commercial
- Entertainment
- Industrial
- Mining
- Energy
- Agriculture & Forestry
- Agency Property
- Water
- Parks
- Schools
- Other Public Services & Infrastructure
- Agency Plans and Regulations
Figure 1B: SCAG Regional CEQA Update (2013-2015)

CEQA Lawsuits Targeting Taxpayer-Funded & Privately-Funded Projects (SCAG, 2013-2015)

- Residential (33%)
- Agency Plan/Regulations (14%)
- Public Services & Infrastructure (14%)
- Energy (4%)
- Mining (1%)
- Commercial (1%)
- Entertainment (1%)
- Retail (10%)
- Industrial (11%)
- Park (2%)
- Water (2%)
- School (4%)
Figure 2: Statewide (2010-2012) CEQA Lawsuits Targeting Greenfield Versus Infill Projects
(Select Project Types Shown – See Tables 2B through 2D for all Project Types)

- Infill - Public Service & Infrastructure: 22%
- Infill - Residential: 20%
- Infill - Retail: 13%
- Infill - Schools: 6%
- Infill - Commercial: 6%
- Infill - Park: 5%
- Infill - Entertainment: 2%
- Infill - Energy: 2%
- Greenfield - Energy: 4%
- Greenfield - Entertainment: >1%
- Greenfield - Park: 2%
- Greenfield - Industrial: 1%
- Greenfield - Schools: 1%
- Greenfield - Retail: 1%
- Greenfield - Public Service & Infrastructure: 1%
- Greenfield - Commercial: 1%
- Greenfield - Residential: 9%

Infill vs. Greenfield Project Types:

- Infill:
  - Public Service & Infrastructure: 22%
  - Residential: 20%
  - Retail: 13%
  - Schools: 6%
  - Commercial: 6%
  - Park: 5%
  - Entertainment: 2%
  - Energy: 2%

- Greenfield:
  - Public Service & Infrastructure: 1%
  - Residential: 9%
  - Retail: 1%
  - Schools: 1%
  - Commercial: 1%
  - Park: 2%
  - Industrial: 1%
  - Entertainment: >1%
  - Energy: 4%
Figure 2b: SCAG Regional CEQA Update (2013-2015)

13,946 Housing Units – and 200-Bed Homeless Shelter - Targeted by CEQA Lawsuits In SCAG Region (2013-2015) by Project Type

- Infill: Multifamily/Mixed Use 9912 units 71%
- Infill: Single Family with some Multifamily/Mixed Use 3,810 units 27%
- Greenfield: 185 - 120 Multifamily/Mixed Use & 65 single-family mixed use 2%
- Infill: Construction or Remodel of One Single Family Home: 39 units (too small to show as wedge on chart)
- Infill: Multifamily/Mixed Use 9912 units 71%
- 13,946 Housing Units – and 200-Bed Homeless Shelter
- Targeted by CEQA Lawsuits In SCAG Region (2013-2015)
Figure 3
CEQA Lawsuits Targeting Infill Projects

- Infill - Residential: 25%
- Infill - Public Service & Infrastructure: 28%
- Infill - Retail: 16%
- Infill - Schools: 8%
- Infill - Commercial: 7%
- Infill - Park: 7%
- Infill - Industrial: 5%
- Infill - Entertainment: 2%
- Infill - Energy: 2%
Figure 4
CEQA Lawsuits Targeting Infill Housing

- Multifamily/ Mixed Use: 45%
- Single Family Home/ Second Unit: 17%
- Large Subdivision/ Mixed Use: 16%
- Master Planned Community: 12%
- Small Subdivision: 9%
- Mobile Home Conversion (Rent to Own): 1%
Figure 6: Types of Petitioners Filing CEQA Lawsuits

- Other Organization or Association: 45%
- Individual/Family: 19%
- Established Environmental Advocacy Organization: 13%
- Agency: 11%
- Private Companies/Trade Associations/Competitors: 8%
- Labor Union: 2%
- Tribe: 2%
Bar Graph 2: Percent Decline in Rate of Private Construction Union Membership 1983-2012

Decline 1983-2014

- California: -70%
- USA (all states): -60%
- New York: -40%
- New Jersey: -30%
- Illinois: -20%
Figure 7: Distribution of CEQA Lawsuits in California Regions

<table>
<thead>
<tr>
<th>Map Region</th>
<th>Petitions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles &amp; Inland Empire</td>
<td>33%</td>
</tr>
<tr>
<td>San Francisco Bay Area</td>
<td>22%</td>
</tr>
<tr>
<td>San Joaquin Valley</td>
<td>13%</td>
</tr>
<tr>
<td>San Diego</td>
<td>10%</td>
</tr>
<tr>
<td>Sacramento Area</td>
<td>8%</td>
</tr>
<tr>
<td>Central Coast</td>
<td>6%</td>
</tr>
<tr>
<td>Northern California</td>
<td>5%</td>
</tr>
<tr>
<td>Sierra Foothills</td>
<td>2%</td>
</tr>
<tr>
<td>Mojave Desert</td>
<td>1%</td>
</tr>
</tbody>
</table>
Figure 8: CEQA Compliance Tracks Targeted by CEQA Lawsuits

- Environmental Impact Reports: 52%
- Negative Declarations: 23%
- Certified Regulatory Program (Substitute CEQA Documents): 1%
- Statutory Exemptions: 5%
- Categorical Exemptions: 12%
- CEQA Not Applicable: 7%
Figure 9: CEQA Petitions Targeting Taxpayer/Ratepayer Projects

- Public Services/Infrastructure: 35%
- Water: 14%
- Agency Plans/Regulations: 31%
- Parks: 9%
- Agency Property Management: 1%
- Schools/Colleges/Workforce Training: 10%
Figure 10: CEQA Petitions Targeting Private Sector Projects

- Residential: 41%
- Retail: 19%
- Commercial: 9%
- Energy: 8%
- Mining: 9%
- Industrial: 7%
- Agricultural/Forestation: 5%
- Entertainment: 5%
- Other: 41%
CEQA was not etched onto stone tablets or penned with a feather quill centuries ago. Over the past four decades the courts have issued hundreds of judicial interpretations of CEQA that have morphed this great environmental law into a “blob” of contradictions and uncertainty – often misshapen, misused, mismanaged and, as shown by this study, used to thwart important environmental policies like climate change.
Editorialists United:

“As an environmentalist, I am ashamed that environmental regulation is preventing low-income housing from being built, is significantly increasing the cost of building in California, is allowing groups to blackmail developers into a variety of concessions and is wasting government resources to negotiate an out-of-control process.”
Governor Brown – who has called CEQA reform “the Lord’s work” – has also expressed exasperation about it. “I’ve always said about CEQA, it’s like a vampire. Unless you strike to put a silver stake through it, there’s always a law somewhere that’s brought into the process, and the exemptions are more illusory.”
Solution 1: Litigation Transparency

Transparency to reveal the non-environmental interests of CEQA litigants is a powerful weapon against abuse, and it’s a fair and long-overdue CEQA litigation reform.
Solution 2: End Duplicative Lawsuits

Duplicative CEQA lawsuits create a strong deterrent against comprehensive community planning such as General and Community Plans, and can result in a “project-by-project” review and approval pattern that is driven solely by opportunistic private sector development applications.
Solution 3: Fix It, Don’t Derail It

The appropriate remedy for the vast majority of CEQA lawsuits is to fix the technical study gap, require more public disclosure and comment, require more mitigation if appropriate under the corrected study, and hold decision-makers accountable for their final actions.
Vacating project approvals after six or more years of public and judicial review is a nuclear threat that stops environmentally beneficial and widely-supported projects.
CEQA litigation abuse is real, it is harming people (especially the poor, the working class, and the young), and it is obstructing rather than advancing critical environmental priorities.
CEQA Reform for Me, Not Thee

“Labor unions, environmentalists are biggest opponents of Gov. Brown’s affordable housing plan” (LA Times Headline)
- Can’t “spend our way out” of the housing supply and affordability crisis
- Do union members count in this political debate?
- “Slow growth” v “smart growth” split in environmental community (plus union alliances)

Requiring transparency in who files CEQA lawsuits would cause the “dismantling” of CEQA (Labor representative testimony in policy committee hearing for Hadley transparency bill)

Meanwhile, Governor’s Office of Planning & Research proposes to achieve Governor’s Executive Orders on climate (80% GHG mass reduction by 2050, 50% reduction in transportation fuels by 2030) by expanding CEQA to add new “Road Diet” and VMT impacts
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