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The CEQA Gauntlet

HOW THE CALIFORNIA ENVIRONMENTAL QUALITY ACT CAUSED THE STATE'S CONSTRUCTION CRISIS AND HOW TO REFORM IT

Chris Carr, Lucas Grunbaum, and Navi Dhillon

APPENDIX

The CEQA Gauntlet:
How the California Environmental Quality Act Caused
the State's Construction Crisis and How to Reform It
Appendix

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Appendix CEQA Reform Legislation, 2010-2021

Below are a number of significant CEQA reform proposals considered by the Legislature from 2010 through 2021. While most reform measures stalled, the enactment of minor reform measures throughout the decade shows promise that the legislative logjam can be broken and reasonable and realistic reform proposals could achieve bipartisan consensus. Note that where there are no interest group sponsors or key supporters for a bill, or where none have been identified, that field has been omitted.

Senate Bill 894 (2010)

Summary: Added new provision to CEQA (Pub. Resources Code § 21167.9) to explicitly authorize the use of mediation proceedings in CEQA actions.

Legislator Sponsors: Committee on Local Government

Status: Stats 2010, Ch. 699.

See full text of bill at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=200920100SB894

Senate Bill 195 (2011)

Summary: Would have encouraged agencies to prepare NDs/MNDs instead of EIRs by replacing the fair argument standard with a standard that allows an agency to prepare a ND/MND so long as a “preponderance of evidence” shows that the project “would not have a significant effect on the environment.” The bill also would have made several other changes to CEQA, including:

- o Ensuring that GHG impacts are not, in and of themselves, sufficient to render a project ineligible for an exemption so long as the project complies with applicable legal requirements adopted to implement statewide, regional, or local plans to reduce GHG emissions.
- o Barring materials submitted after the close of the public comment period from serving as a basis for challenging a lead agency’s CEQA compliance.
- o Revising various terms relating to cumulative impact analyses.
- o Requiring the court to consider additional factors before awarding attorney’s fees awards in a CEQA lawsuit.

- o Increasing the then-available sanction (\$10,000) for filing a frivolous CEQA claim to \$20,000. The provision authorizing a monetary sanction of \$10,000 sunsetted in 2016.

Legislator Sponsors: Cannella, Berryhill, Emmerson, and Harman

Status: Failed in Senate Rules Committee.

See full text of bill at: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB195

Senate Bill 226 (2011)

Summary: Authorized local agencies to perform streamlined environmental review for specified “infill” projects if the agency previously certified an EIR for a planning level decision. Under this procedure, the agency must limit its environmental review of qualifying “infill” projects to effects that (1) are specific to the project or project site and not found to be significant in the prior EIR, or (2) substantial new information shows will be more significant than described in the prior EIR. (Pub. Resources Code § 21094.5) This bill also created a new statutory exemption for solar energy systems located on the roof of an existing building or at an existing parking lot. (Pub. Resources Code § 21080.35)

Legislator Sponsor: Simitian

Status: Stats 2011, Ch. 469.

See full text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB226

Senate Bill 241 (2011)

Summary: Would have established the “CEQA Litigation Protection Pilot Program of 2011,” which would have prohibited courts from reviewing an agency’s certification of an EIR or adoption of an MND for 125 projects selected by the Business, Transportation and Housing Agency over a period of 5 years (25 projects per year).

Legislator Sponsor: Cannella

Status: Failed in Senate Environmental Quality Committee.

See full text of bill at: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB241

Assembly Bill 900 (2011)

Summary: Enacted the “Jobs and Economic Improvement Through Environmental Leadership Act of 2011” (Pub. Resources Code § 21178 et seq.), which authorizes the Governor to designate “environmental leadership development projects” to receive CEQA streamlining treatment. Among other things, the Act:

- o Sets out narrow categories of “environmental leadership development projects.”
- o Establishes original jurisdiction in the Courts of Appeal for any CEQA challenges brought against an environmental leadership development project.
- o Requires the court to issue a decision within 175 days of filing the lawsuit and allows the court to appoint a master to oversee and manage the case.
- o Prevents the court from granting extensions except for good cause.
- o Requires that the administrative record be prepared in connection with the CEQA process and released for public review at the same time the Draft EIR is released.

Legislator Sponsors: Buchanan and Gordon

Status: Stats. 2011, Ch. 354.

See full text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201120120SB226

Note: A 2013 court decision held this law invalid to the extent it vests original jurisdiction in the Courts of Appeal. While the case was on appeal, Senate Bill 734 (Stats. 2013, Ch. 386) repealed Pub. Resources Code § 21185 and set original jurisdiction in the Superior Courts. In addition, Senate Bill 7 (2021), described below, expanded the pool of potentially eligible “environmental leadership development projects” to include qualifying affordable housing developments.

Senate Bill 1214 (2012)

Summary: Would have established original jurisdiction in Courts of Appeal for CEQA challenges to projects in a “distressed county,” which would have included any county meeting two of the following criteria: (i) an unemployment rate higher than the statewide average for three consecutive months during the environmental review process, (ii) a poverty level higher than the statewide average during the environmental review process, and (iii) a foreclosure rate higher than the statewide average during the environmental review process.

Interest Group Sponsors: No official sponsors (but supported by American Council of Engineering Companies – California and Civil Justice Association of California)

Legislator Sponsor: Cannella

Status: Failed in Senate Environmental Quality Committee.

See full text of bill at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1214

Senate Bill 787 (2013)

Summary: Would have enacted the Sustainable Environmental Protection Act (SEPA), which would have provided streamlined CEQA review for projects demonstrating in the environmental document compliance with laws in specified environmental topical areas, conformance with land use plans, and incorporation of mitigation requirements. SEPA streamlining would have applied only if the lead agency agreed to provide an annual compliance report prepared pursuant to the mitigation, monitoring and reporting program.

Interest Group Sponsors: No official sponsors (but supported by California Chamber of Commerce, Citizens Against Lawsuit Abuse, California Retailers Association, and Silicon Valley Leadership Group)

Legislator Sponsor: Berryhill

Status: Failed in Senate Environmental Quality Committee.

See full text of bill at: http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140SB787

Senate Bill 1451 (2014)

Summary: Would have strengthened CEQA's exhaustion requirements by prohibiting a CEQA lawsuit based on grounds raised after the public comment period which could have been known with the exercise of reasonable diligence and presented to the agency during the public comment process.

Interest Group Sponsors: No official sponsors (but supported by numerous business organizations across the state)

Legislator Sponsors: Hill and Roth

Status: Failed in Senate Judiciary Committee.

See full text of bill at: http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201320140SB1451

Senate Bill 35 (2017)

Summary: Created a streamlined, ministerial approval process for certain infill multifamily developments in localities that have failed to meet their regional housing needs assessment goals. Multifamily housing projects that satisfy specified “objective planning standards” (e.g., the site is located in a designated urban area or urban cluster and is not located within the coastal zone or a designated very high fire hazard severity zone) do not require a conditional use permit and would be subject to ministerial. (Gov. Code § 65913.4.)

Interest Group Sponsors: No official sponsors (but numerous organizations supported the bill, including the California Building Industry Association, California Association of Realtors, California Apartment Association, and various labor groups)

Legislator Sponsor: Wiener

Status: Stats 2017, Ch. 366.

See full text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB35

Note: Government Code § 65913.4, which was first added by Senate Bill 35, was recently amended in 2021 pursuant to Assembly Bill 1174.

Assembly Bill 73 (2017)

Summary: Authorized cities and counties to establish “Housing Sustainability Districts” and issue ministerial permits to projects that are consistent with those districts and that meet certain specified criteria. (Gov. Code § 66200 et seq.; Pub. Resources Code § 21155.10 et seq.) The city or county must prepare an EIR for the proposed district in order to issue ministerial permits. (Pub. Resources Code § 21155.10)

Interest Group Sponsors: No official sponsors (but supported by California Apartment Association, California Association of Realtors, and Judicial Council)

Legislator Sponsor: Chiu

Status: Stats. 2017, Ch. 371.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB73

Senate Bill 540 (2017)

Summary: Authorized cities and counties to establish “Workforce Housing Opportunity Zones” (WHOZ) by preparing an EIR and adopting a Specific Plan. (Gov. Code § 65620 et seq.) Required cities and counties to approve projects that are located in the WHOZ, are consistent with the WHOZ Specific Plan, and meet certain other criteria. (Gov. Code §§ 65621, 65623) Also required cities and counties to:

- o Review the EIR after 5 years to evaluate whether a subsequent EIR is required under CEQA Guidelines § 21166. (Gov. Code § 65622)
- o Approve projects subject to conditions that mitigate or avoid any specific, adverse effect on the public health or safety that was unknown at the time the WHOZ Specific Plan and EIR were prepared. (Gov. Code § 65623)

Interest Group Sponsors: League of California Cities

Legislator Sponsor: Roth

Status: Stats. 2017, Ch. 269.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB540

Senate Bill 1052 (2018)

Summary: Would have required a plaintiff or petitioner in a CEQA action to disclose, either in the original petition or by subsequent notice, all persons or entities that contribute more than \$100 towards the costs of litigation.

Interest Group Sponsors: No official sponsors (but supported by California Apartment Association and California Association of Realtors)

Legislator Sponsor: Bates

Status: Failed in Senate Environmental Quality Committee.

See full text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1052

Senate Bill 1341 (2018)

Summary: Would have required CEQA petitioners to disclose any person or entity that contributes in excess of \$1,000 to the costs of the action and any pecuniary or business interest that the person or entity has related to the project. Also would have prohibited CEQA suits against a housing project that is part of an approved plan or project that has already completed environmental review, including the resolution of any litigation related to that environmental review.

Legislator Sponsor: Glazer

Status: Failed in Senate Environmental Quality Committee.

Amendment Language: See full text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1341

Senate Bill 4 (2019)

Summary: Would have created a streamlined, ministerial approval process for an eligible neighborhood multifamily project or eligible transit-oriented project located on an eligible parcel. Would have also exempted eligible projects from local conditional use permitting requirements if the project is consistent with objective zoning standards and design review standards.

Legislator Sponsors: McGuire and Beall

Status: Failed in Senate Environmental Quality Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB4

Senate Bill 384 (2019)

Summary: Would have established expedited administrative and judicial review for CEQA documents and approvals granted for housing development projects with 50 or more residential units, and prohibited courts from staying or enjoining challenged projects subject to two narrow exceptions.

Legislator Sponsor: Morrell

Status: Failed in Senate Environmental Quality Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB384

Assembly Bill 430 (2019)

Summary: Established a ministerial approval process for residential and mixed-use developments meeting various eligibility requirements and located within or adjacent to the cities of Biggs, Corning, Gridley, Live Oak, Orland, Oroville, Willows, and Yuba City. (Gov. Code § 65913.15)

Interest Group Sponsors: No official sponsors (but the bill was supported by the California Apartment Association, California Association of Realtors, California Building Industry Association, California Chamber of Commerce, and others)

Legislator Sponsor: Gallagher.

Status: Stats 2019, Ch. 749

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB430

Senate Bill 621 (2019)

Summary: Would have established expedited judicial review for CEQA documents and approvals granted for defined “affordable housing projects,” and required the Judicial Council to submit reports to the Legislature regarding CEQA litigation rates and whether expedited judicial review procedures are shortening litigation timelines.

Interest Group Sponsors: No official sponsors (but numerous interest groups supported the bill, including the California Association of Realtors, the California Chamber of Commerce, California Apartment Association, and Habitat for Humanity California)

Legislator Sponsors: Glazer and Caballero

Status: Failed in Assembly Committee on Natural Resources.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB621

Senate Bill 659 (2019)

Summary: Would have allowed a court to award reasonable attorney's fees to a prevailing respondent or real party in interest in actions or proceedings brought under CEQA challenging an infill housing development project, provided the court finds that the petitioner used actions, tactics, or claims that were made in bad faith and were frivolous or intended to cause unnecessary delay.

Interest Group Sponsors: No official sponsors (but the California Association of Realtors supported the bill)

Legislator Sponsor: Borgeas

Status: Failed in Senate Judiciary Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB659

Assembly Bill 1279 (2019)

Summary: Would have established a "by-right" approval process for eligible affordable housing projects located in designated "high-opportunity" areas and allowed for greater density than applicable zoning ordinances. This "by-right" approval process would have exempted covered projects from CEQA review.

Interest Group Sponsors: California Rural Legal Assistance Foundation and Public Advocates

Legislator Sponsor: Bloom

Status: Failed in Senate Housing Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1279

Assembly Bill 1515 (2019)

Summary: Prevented courts from invalidating or setting aside the approval of a development project based on any order issued in litigation challenging an update to a city's or county's community plan or its EIR. (Gov. Code § 65458.1)

Interest Group Sponsors: Los Angeles Mayor Eric Garcetti

Legislator Sponsor: Friedman

Status: Stats 2019, Ch. 269.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1515

Senate Bill 950 (2020)

Summary: Would have made various changes to CEQA, including adding: (i) an exemption for emergency shelters, supportive housing, and transitional housing projects; (ii) new requirements for translating CEQA documents; (iii) a new, optional method to receive public comments electronically; and (iv) a new requirement to report to the Attorney General if a CEQA action or proceeding is settled and involves the payment of money.

Interest Group Sponsors: No official sponsors (but the Council of Infill Builders supported the bill)

Legislator Sponsor: Jackson

Status: Failed in Senate Environmental Quality Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200SB950.

Senate Bill 1289 (2020)

Summary: Would have exempted from CEQA, until January 1, 2029, infill housing projects that are: (i) located in areas that were previously developed; (ii) located on sites that have no value as habitat for endangered, rare, or threatened species; and (iii) located on sites that can be adequately served by all required utilities and public services.

Legislator Sponsor: Chang

Status: Failed in Senate Environmental Quality Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1289

Senate Bill 1378 (2020)

Summary: Would have required a CEQA plaintiff or petitioner to disclose the identity of any person or entity that contributes \$1,000 or more toward the costs of the action or proceeding, and identify any such person's or entity's pecuniary or business interest related to the project or issues involved in the action or proceeding. Failure to comply would have been grounds for dismissal of the action or proceeding.

Legislator Sponsor: Borgeas

Status: Failed in Senate Judiciary Committee.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB1378

Senate Bill 7 (2021)

Summary: Re-established the expedited CEQA administrative and judicial review procedures in the Jobs and Economic Improvement Through Environmental Leadership Act (Leadership Act) for an additional four years. (Pub. Resources Code § 21178 et seq.) Also expanded the Leadership Act to include smaller housing projects that involve a minimum investment of \$15 million, provided at least 15% of the project is affordable to lower income households and no part of the project is for short-term rental. (Pub. Resources Code § 21180(a)(4))

Interest Group Sponsors: No official sponsors (but numerous organizations supported the bill, including trade groups)

Legislator Sponsor: Atkins

Status: Stats 2021, Ch. 19.

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB7

Senate Bill 10 (2021)

Summary: Authorized a city or county to adopt an ordinance to zone any parcel for up to 10 units of residential density at a specified height if the parcel is located in a transit-rich area or an urban infill site, as defined. (Gov. Code § 65913.5) Exempted the adoption of any such ordinance from CEQA review, and allowed the city or county to establish a ministerial approval process for projects approved under such ordinance (except for projects consisting of more than 10 new residential units).

Interest Group Sponsors: California Yimby (source)

Legislator Sponsor: Wiener

Status: Stats 2021, Ch. 163

See text of bill at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220SB10

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- Chris Carr and Robert Miller, *Wall Street Journal*, Bird Nests and Kit Foxes vs. Renewable Energy (Apr. 9, 2014), available at: <https://www.wsj.com/articles/SB10001424052702303802104579453872700416560>.
- NPR's Marketplace, interviewed about Offshore Wind Auction at minute 5:30, 7:05 (Dec. 12, 2017), available at: https://archive.org/details/KCLU_1340_AM_20181217_230000?start=297.
- Keith Goldberg, Law360, Energy Litigation to Watch In 2022 (Jan. 3, 2022), available at: <https://www.law360.com/articles/1444375/energy-litigation-to-watch-in-2022>.

For a representative matters list, recognitions, and additional publications and speaking engagements please see: <https://www.paulhastings.com/professionals/chriscarr>

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Navi is a go-to lawyer for clients seeking difficult regulatory approvals for large-scale projects, including utility-scale renewable energy, utility-scale desalination, a "new town" and other major infrastructure projects around the globe.

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