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A Twisted Fate: How California's Premier Environmental Law Has Worsened the State's Housing Crisis, and How To Fix It

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A Twisted Fate: How California's Premier Environmental Law Has Worsened the State's Housing Crisis, and How To Fix It

Abstract

California, the iconic Golden State, holds the infamous record for the largest population of people experiencing homelessness in the United States. These record-setting numbers have been steadily on the rise for decades and are due in large part to the state's severe housing shortage, which is currently just under one million housing units. From those directly experiencing homelessness to those living in the country's most expensive zip codes, the compounding economic and social impacts of the crisis touch every Californian. The extent of the crisis is not lost on California's leaders, but despite countless initiatives on both the state and local levels to mitigate the shortage, no one can seem to build housing fast enough.

One major roadblock to building more housing is the California Environmental Quality Act (CEQA). The Act was enacted in 1970 as a pioneering law to protect the environment from adverse developmental impacts. However, today, those opposing multifamily development have turned what was supposed to be a legislative tool for environmental protection into a convoluted tool to oppose multifamily housing development. CEQA has long been identified as a challenge to development, but after decades of seemingly miniscule reforms for a substantial problem, it is time for California to shift its perspective and seek solutions outside itself. This Comment will detail some of California's greatest missteps in the history of CEQA. It will then consider what California could learn from three other states facing similar housing shortages and how these states have reformed their own environmental laws similar to CEQA. Lastly, this Comment will encourage California to shift its perspective on the types of development reforms that are subject to CEQA reform by including all types of housing in future reforms.

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I. INTRODUCTION

In Summer 2020, construction was completed on the five-billion-dollar, 298-acre SoFi Stadium in Inglewood, California, near the heart of Los Angeles.¹ Taking only four years to turn from a real estate developer's² dream into a reality, the 3.1-million-square-foot stadium will serve as an epicenter for NFL fans to cheer on their favorite football team.³ As a home to both the Los Angeles Rams and Chargers, the stadium is expected to host at least twenty NFL games each year.⁴

Only a few months after the monolithic stadium's completion, the same city approved the development plans for a second stadium to be located almost directly across the street from SoFi Stadium.⁵ This second development, with estimated construction costs of 1.8 billion dollars, is scheduled to begin construction in 2021 so that it can host its first Clippers NBA basketball game by 2024.⁶ While many Los Angeles residents are understandably excited for the new developments, that sentiment is not shared across the board.⁷ Some

1. See Sam Lubell, *Commentary: How SoFi Stadium Makes a Revolutionary Design Promise: A Place for All To Play*, L.A. TIMES (Sept. 2, 2020, 7:00 AM), <https://www.latimes.com/entertainment-arts/story/2020-09-02/sofi-stadium-architecture-park>.

2. See Tom Hoffarth, *Stan Kroenke: A Condensed Guide*, L.A. BUS. J. (Mar. 16, 2020), <https://la-businessjournal.com/news/2020/mar/16/business-person-year-2020-stan-kroenke-guide/>. Stan Kroenke—the owner of the Los Angeles Rams football team—was the man with the vision for the stadium. *Id.* By 2016, Kroenke already had decades of experience as a commercial real estate developer, and he is currently “one of the largest landowners in the United States.” *Id.*

3. See Nathan Fenno & Sam Farmer, *A Turbulent Path: How Stan Kroenke and the NFL Turned SoFi Stadium into a \$5-billion Reality*, L.A. TIMES (Sept. 4, 2020, 6:00 AM), <https://www.latimes.com/sports/story/2020-09-04/stan-kroenke-nfl-owners-coronavirus-workers-sofi-stadium-rams-chargers>; *SoFi Stadium, Los Angeles Chargers and Los Angeles Rams Host Official Ribbon-Cutting Ceremony Ahead of Inaugural Event*, CHARGERS (Sept. 8, 2020, 10:17 AM), <https://www.chargers.com/news/sofi-stadium-ribbon-cutting-ceremony>.

4. See Fenno & Farmer, *supra* note 3.

5. See Andrew Greif, *Clippers Given Final Approval To Buy Land Needed for Arena in Inglewood*, L.A. TIMES (Sept. 8, 2020, 4:43 PM), <https://www.latimes.com/sports/clippers/story/2020-09-08/clippers-arena-given-final-approval-from-inglewood-for-land> (stating that “Inglewood’s City Council unanimously approved the sale of 13 parcels of publicly owned land to the developers of [a] proposed arena” for the Los Angeles Clippers).

6. See *id.*

7. See Jonny Coleman, *The Struggle Against a Stadium's Construction Became a Battle for the Soul of Los Angeles*, THE APPEAL (Sept. 10, 2020), <https://theappeal.org/sofi-stadium-gentrification-displacement-lennox-inglewood-tenants-union/> (explaining how the stadium's development is impacting “residents of historically Black and Latinx neighborhoods” by pushing them “out of their homes”); see also Bill Shaikin, *Amid Super Bowl Excitement in Inglewood, Local Businesses Fear They May Soon Be Crowded Out*, L.A. TIMES (Jan. 31, 2019, 12:05 PM), <https://www.latimes.com/sports/super-bowl/la-sp-super-bowl-inglewood-20190131-story.html>

Inglewood residents living in close proximity to the developments have expressed their concerns over issues resulting from the projects, such as gentrification and the need for the city to build more affordable housing, not another sports stadium.⁸ Despite these concerns and the ardent refusal of some private landowners to sell their property, Inglewood's City Council has done their best to successfully mute the local residents' critiques and fast-track the project's approvals.⁹

Meanwhile, within only a few miles of the Inglewood developments, there is a very different development story being written relating to affordable housing.¹⁰ Unlike the large stadiums, the relatively miniscule affordable housing projects in Los Angeles have run into seemingly insurmountable roadblocks.¹¹ All these roadblocks exist despite the fact that Los Angeles desperately needs more housing stock—arguably much more than it needs new stadiums.¹² To address the financial roadblock of increasing housing stock, Los Angeles residents voted in 2016 to pass Proposition HHH, which set aside 1.2 billion dollars for “the development of up to 10,000 [new] supportive housing units for individuals and families experiencing homelessness.”¹³

In passing HHH, Los Angeles thought that it had cleared one of the

(discussing local residents' concerns that the new stadiums could crowd older businesses out of the area); *Homes Before Arenas*, UPLIFT INGLEWOOD COAL., <https://www.upliftinginglewood.org/homesbeforearenas> (expressing the feeling among some Inglewood residents that the city needs to address its issues of housing affordability before building new stadiums) (last visited Nov. 5, 2021).

8. See Coleman, *supra* note 7.

9. See Jason Henry, *Inglewood Will Use Eminent Domain To Acquire Land Needed for Clippers' Arena*, ORANGE CNTY. REG. (JAN. 25, 2021, 12:50 PM), <https://www.ocregister.com/2021/01/25/inglewood-will-use-eminent-domain-to-acquire-land-needed-for-la-clippers-arena/> (stating that “Inglewood plans to use eminent domain to secure 11 properties needed for the proposed Los Angeles Clippers basketball arena project”); see also Brittany Martin, *Inglewood Expected To Use Eminent Domain To Clear Way for Clippers Arena*, L.A. MAG. (Jan. 26, 2021), <https://www.lamag.com/citythink-blog/eminent-domain-inglewood-clippers/> (describing some Inglewood residents' hesitancy towards the new stadium given the other seemingly more pertinent needs of the city, like low-income housing).

10. See *infra* notes 11–13 and accompanying text.

11. See Doug Smith, *This L.A. Project Shows that Homeless Housing Can Be Done Quickly and Cheaply*, L.A. TIMES (Jan. 18, 2021, 5:00 AM), <https://www.latimes.com/homeless-housing/story/2021-01-18/los-angeles-homeless-housing-project-vignes-street> (detailing that one recently erected homeless housing building in Los Angeles costs \$48 million and provides 232 beds).

12. See Noah Buhayar & Christopher Cannon, *How California Became America's Housing Market Nightmare*, BLOOMBERG (Nov. 6, 2019), <https://www.bloomberg.com/graphics/2019-california-housing-crisis/> (detailing Los Angeles's housing shortage).

13. *The High Cost of Homeless Housing: Review of Proposition HHH*, L.A. OFF. OF THE CONTROLLER (Oct. 8, 2019), <https://lacontroller.org/audits-and-reports/high-cost-of-homeless-housing-hhh/>.

greatest burdens to its housing crisis—funding and public support.¹⁴ However, almost immediately after development efforts began, more roadblocks emerged.¹⁵ These remaining roadblocks effectively muted the excitement from HHH's passage: in 2020, almost four years after the landmark housing bill, only *one single* housing complex had opened, consisting of just sixty-two units.¹⁶ In fact, the city now projects that instead of reaching its initial 10,000 housing unit goal, Los Angeles will barely reach half that amount.¹⁷ The major barrier that affordable housing proponents now face is the political opposition of angry, development-reticent citizens who are effectively stalling what could have been a turning point in the history of Los Angeles.¹⁸ And unlike the case of the two Inglewood stadiums, local politicians have yet to intervene in any meaningful way to mute the affordable housing critics and speed up the projects.¹⁹

While the above example focuses on only one city, Los Angeles effectively serves as a microcosm of what is happening across the state of California, where most, if not all, of the state's urban regions face similar housing development challenges.²⁰ Many of these large cities continue to fast-track

14. See Jason McGahan, *Will a Measure To Help L.A.'s Homeless Become a Historic Public Housing Debacle?*, L.A. MAG. (Mar. 8, 2019), <https://www.lamag.com/citythinkblog/proposition-hhh-debacle/>. Since HHH is a tax increase on the general population, it required “a two-thirds supermajority to pass.” *Id.* At the time of HHH's passing, Los Angeles City Council President Herb Wesson called HHH potentially “the most important thing that all of us do in our lives.” *Id.*

15. See *id.* (epitomizing the stagnation that followed the passage of Proposition HHH: “Not a single HHH [homeless housing] unit was completed by the end of 2018”).

16. Sandhya Kambhampati, Swetha Kannan & Iris Lee, *What Happened to L.A.'s \$1 Billion for Homeless Housing*, L.A. TIMES (Jan. 29, 2020), <https://www.latimes.com/projects/la-homeless-housing-hhh-tracker/>; see Dough Smith, *It Took Three Years of Blown Deadlines, but L.A. Opens Its First Homeless Housing Project*, L.A. TIMES (Jan. 7, 2020, 5:00 AM), <https://www.latimes.com/california/story/2020-01-07/homeless-housing-project-proposition-hhh-bond-measure>.

17. See Smith, *supra* note 16.

18. See TIMES ED. BD., *Editorial: Don't Let NIMBYs—Or Weak-Kneed Politicians—Stand in the Way of Homeless Housing*, L.A. TIMES (Feb. 27, 2018, 4:15 AM), <https://www.latimes.com/opinion/editorials/la-ed-permanent-supportive-housing-homeless-project-20180227-htmlstory.html> [hereinafter *Don't Let NIMBYs*]; see also *infra* notes 138–42 and accompanying text (explaining the term NIMBY in further detail).

19. Compare *supra* note 9 and accompanying text (showing that Inglewood's City Council has taken steps to ensure quick approval of the stadium projects by “muting” the critiques of local residents), with *Don't Let NIMBYs*, *supra* note 18 (stating that City Council members in Los Angeles “have been extremely reluctant over the years to challenge the fierce opposition of their most vocal constituents on the issue of homelessness”).

20. See, e.g., Adam Brinklow, *Housing Shortages and NIMBYism Driving Homeless Crisis, Says New Report*, CURBED S.F. (Apr. 11, 2019, 9:43 AM), <https://sf.curbed.com/2019/4/11/18306180/homeless-affordable-housing-shortage-nimby-bay-area->

multi-billion-dollar projects, such as sports stadiums, all while public opposition from a vocal minority successfully derails any efforts to build more of what is desperately needed—affordable housing.²¹ This issue persists despite the fact that California faces one of the largest housing shortages in the country²²—recent studies estimate that California's housing deficit is around 820,000 units.²³ So far, any hope for a brighter horizon appears bleak, especially if Los Angeles's efforts through HHH serve as a case study of what occurs in other California cities.²⁴

The failures from Proposition HHH have helped expose the reality that solving the issue of funding is not the end-all solution to building more housing.²⁵ Rather, a more subversive roadblock exists, preventing California from making sufficient headway in the area of housing development.²⁶ This roadblock lies at the heart of California's premier environmental law: the California Environmental Quality Act (CEQA).²⁷ Generally speaking, "CEQA provides a process through which public agencies, the public, and project developers can evaluate a project, understand its environmental impacts, and develop measures to reduce these impacts."²⁸ However, over the past few decades, those opposing new multifamily developments have turned what was supposed to be a tool for environmental regulation into one that prevents

economic-institute ("Homelessness across the nine Bay Area counties is getting worse not only due to a dearth of development[] but because most counties neglect affordable housing while allowing NIMBY interests to scare off potential solutions."); Joseph Perkins, *NIMBYs, No-Growthers Worsen Housing Crunch*, ORANGE CTY. REG. (May 15, 2015, 12:00 AM), <https://www.oregister.com/2015/05/15/nimbys-no-growthers-worsen-housing-crunch/> (detailing how NIMBY opposition harms the housing market in Orange County).

21. See *infra* note 74 and accompanying text (explaining how California has traditionally found a way to grant CEQA exemptions for the construction of sports stadiums but not for the erection of affordable housing units).

22. See Chase Stone, *Easements, Exchanges, and Equity: Models for California's Climate and Housing Crisis*, 26 HASTINGS ENV'T. L.J. 289, 296 (2020) (finding that "[a]bout one-fourth of the United States' homeless population lives in California").

23. See FREDDIE MAC, *THE HOUSING SUPPLY SHORTAGE: STATE OF THE STATES 1-7* (2020), <http://www.freddiemac.com/fmac-resources/research/pdf/202002-Insight-12.pdf> [hereinafter *THE HOUSING SUPPLY SHORTAGE*] (providing details surrounding California's housing shortage and comparing it to that of other states).

24. See *supra* notes 13-17 and accompanying text.

25. See *supra* notes 15-17 and accompanying text.

26. See discussion *infra* Section II.D.

27. See discussion *infra* Section II.B.

28. *CEQA Frequently Asked Questions*, PLAN. & CONSERVATION LEAGUE, <https://www.pcl.org/campaigns/ceqa/ceqa-faqs/> (last visited Nov. 5, 2021).

California from ever building the requisite housing stock.²⁹ When holistically considered, the use of CEQA as an anti-development tool serves to harm the environment, not help it.³⁰ This Comment highlights these issues and proposes four main legislative changes to CEQA that will remove it as a barrier to development and hopefully allow California to get back on track to meet its housing needs.³¹

Part II of this Comment details the historical background that laid the groundwork for the modern CEQA law and provides a broad overview of CEQA and how the law operationally fulfills its purpose.³² Part II also discusses some of the ways in which CEQA has become a tool for development-reticent community members to impede the development of multifamily housing projects.³³ Part III analyzes various recent CEQA reform efforts.³⁴ It discusses why some of the proposed reforms fail to get through the legislature and how even some of the enacted reforms are often so critically flawed that they fail to make meaningful changes.³⁵ In light of these legislative failures, Part III also looks to how California courts have prevented local municipalities from enacting such meaningful CEQA reform themselves.³⁶ Part IV then

29. See *infra* notes 153–54 and accompanying text.

30. See *infra* note 153 and accompanying text (highlighting how CEQA is now used to harm the environment); *infra* notes 55–58 and accompanying text (describing the original legislative intent of CEQA).

31. See discussion *infra* Parts II, III, IV (stating general issues with CEQA and proposing potential solutions). Given that CEQA is fundamentally positioned near the center of California's polarizing housing policy discussions, to date many scholars have shared their critiques and proposed reforms to CEQA. See, e.g., Sean Stuart Varner, *The California Environmental Quality Act (CEQA) After Two Decades: Relevant Problems and Ideas for Necessary Reform*, 19 PEPP. L. REV. 1447 (1992) (providing legislative history on the enactment of CEQA and detailing the reform efforts in the Act's first twenty years of existence); Annelise Bertrand, *Proxy War: The Role of Recent CEQA Exemptions in Fixing California's Housing Crisis*, 53 COLUM. J.L. & SOC. PROBS. 413 (2020) (critiquing three recent reforms to CEQA through Senate Bill 35, Assembly Bill 73, and Senate Bill 540 and discussing part of the problem with prevailing wage requirements); Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California's Housing Crisis*, 24 HASTINGS ENV'T L.J. 21 (2018) (highlighting the barriers that CEQA creates for developers and how some of its current uses are antithetical to helping the environment). This Comment employs much of this past work as a foundation to frame the broad issues surrounding CEQA and to highlight the impasse that legislators have appeared to reach on the issue. See *infra* Part III. Then, this Comment picks up where much of the prior work has left off by analyzing three other states that have reformed their CEQA-equivalent statutes and bringing economic real estate research to bear on future policy decisions. See *infra* Part IV.

32. See discussion *infra* Part II.

33. See *infra* Section II.D.1.

34. See *infra* Part III.

35. See discussion *infra* Sections III.A, III.B, III.C.

36. See *infra* Section III.D.

looks to three states with little-NEPA laws that are also facing housing shortages—Massachusetts, Minnesota, and New York—and suggests how California could learn from these states' little-NEPA reform efforts.³⁷ This Part further suggests that California must shift its perspective on the types of developments that are impacted by CEQA reforms by including *all* forms of multifamily housing in its reforms, including mid- to high-income housing.³⁸ Part V concludes.³⁹

II. BACKGROUND

A. Reviving the Economy, Inadvertently Killing the Earth.

*“Clean air, clean water, open spaces—these should once again be the
birthright of every American.”*

—Richard Nixon⁴⁰

To fully understand CEQA and its implications, it is necessary to consider the historical events leading up to its legislative enactment.⁴¹ In 1932, the United States was in the midst of one of its darkest moments—the Great Depression.⁴² At its bleakest, about fifteen million people were unemployed during the Depression, representing more than 20% of the United States population.⁴³ Hoping to guide the economy out of its dire straits, President Roosevelt implemented the Works Progress Administration (WPA).⁴⁴ At its core, the WPA's purpose was to provide each unemployed individual with a job, and

37. See discussion *infra* Section IV.A.

38. See *infra* Section IV.B.

39. See *infra* Part V.

40. Richard Nixon, President of the United States of America, State of the Union Address (Jan. 22, 1970).

41. See *infra* notes 42–60 and accompanying text.

42. See Christina D. Romer & Richard H. Pells, *Great Depression: Causes of the Decline*, BRITANNICA, <https://www.britannica.com/event/Great-Depression/Causes-of-the-decline> (Nov. 30, 2020).

43. *Great Depression History*, HISTORY, <https://www.history.com/topics/great-depression/great-depression-history> (last visited Nov. 5, 2021). This period of time accounted for the highest unemployment rate that the United States has ever experienced. See Kimberly Amadeo, *Unemployment Rate by Year Since 1929 Compared to Inflation and GDP*, THE BALANCE, <https://www.thebalance.com/unemployment-rate-by-year-3305506> (Mar. 16, 2020).

44. *Works Progress Administration*, BRITANNICA, <https://www.britannica.com/topic/Works-Progress-Administration> (July 7, 2020).

the program served its purpose so well that by 1943 it was no longer needed.⁴⁵ In total, WPA projects “produced more than 650,000 miles . . . of roads; 125,000 public buildings; 75,000 bridges; 8,000 parks; and 800 airports.”⁴⁶

While the WPA officially ended in 1943, its ideals continued to influence the creation of future massive public projects.⁴⁷ As the United States stepped into the 1960s and the dust began to settle from the excitement of the WPA, many began to wonder what kind of toll such an aggressive development posture was taking on the environment.⁴⁸ In response to this mounting public environmental concern, “[o]n January 1, 1970, President Nixon signed the National Environmental Policy Act (NEPA)” into law.⁴⁹ The first of its kind, NEPA is referred to as the federal environmental law “Magna Carta”⁵⁰ and sought to “revers[e] a national environmental decline,” which ironically was “caused in disproportionate amount by the federal government itself.”⁵¹ NEPA requires that, prior to a federal agency commencing a project that may have a “significant effect on the ‘quality of the human environment,’” the acting government agency must file a comprehensive environmental assessment.⁵² The project can then only move forward if it is fully compliant with

45. *See id.* (stating that by 1943 unemployment was “virtual[ly] eliminat[ed] . . . by a wartime economy,” and “the WPA was terminated”).

46. *Id.*

47. *See, e.g.,* Lee Lacy, *Dwight D. Eisenhower and the Birth of the Interstate Highway System*, U.S. ARMY (Feb. 20, 2018), https://www.army.mil/article/198095/dwight_d_eisenhower_and_the_birth_of_the_interstate_highway_system (explaining that, between 1956 and the early 1990s, the federal government funded the construction of “nearly 45,000 miles of interstate highway”); U.S. DEP’T OF THE INTERIOR, *THE HISTORY OF LARGE FEDERAL DAMS: PLANNING, DESIGN, AND CONSTRUCTION IN THE ERA OF BIG DAMS* 183, 280, 347, 463, 305 (2005), <https://www.usbr.gov/history/HistoryofLargeDams/LargeFederalDams.pdf> (listing numerous dams that were built by the federal government in the 1950s and 1960s, including the Garrison, Glen Canyon, Shasta, and Oroville Dams).

48. *See* U.S. DEP’T OF THE INTERIOR, *supra* note 47, at 399–403 (explaining how the tone began to change in the 1960s as people began to wonder what the environmental risks were of building such massive dams); *see also* Varner, *supra* note 31, at 1448 (stating that by 1970 there was “growing concerns for protecting the environment”).

49. Varner, *supra* note 31, at 1448; *see* National Environmental Policy Act of 1969, 42 U.S.C.A. §§ 4371–4374 (West) (providing the statutory language of NEPA).

50. *Welcome*, NEPA.GOV, <https://ceq.doe.gov/> (last visited Nov. 5, 2021). The 1970s are considered “environmental law’s formal commencement,” as over fifteen important environment-related laws were passed, beginning with NEPA. RICHARD J. LAZARUS, *THE MAKING OF ENVIRONMENTAL LAW* 48, 70 (2004).

51. Michael C. Blumm, *The National Environmental Policy Act at Twenty: A Preface*, 20 ENV’T L. 447, 448 (1990).

52. Varner, *supra* note 31, at 1450 (quoting 42 U.S.C. § 4332(2)(C)).

NEPA's guidelines.⁵³

In the years following NEPA's enactment, state legislators in sixteen states recognized the need for their own state-specific versions of NEPA, and thus, enacted their own "little NEPAs."⁵⁴ Perhaps the strictest of all little NEPAs is the California Environmental Quality Act (CEQA).⁵⁵ Enacted only eight months after NEPA by California Governor Ronald Reagan, CEQA "require[d] state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible."⁵⁶ Unlike NEPA, which focuses solely on the projects enacted by federal agencies that could have significant environmental effects,⁵⁷ CEQA goes a step further and enforces environmental regulations on "private individuals, corporations, and public agencies" so long as their actions could "affect the quality of the environment."⁵⁸ The oversight of projects triggering CEQA enforcement is carried out by a local lead governmental agency, who determines first if "the proposed activity is subject to CEQA at all," then "[s]econd . . . whether the activity qualifies for one of the many [CEQA] exemptions."⁵⁹ If no

53. Varner, *supra* note 31, at 1450.

54. *See States and Local Jurisdictions with NEPA-like Environmental Planning Requirements*, NEPA.GOV, <https://ceq.doe.gov/laws-regulations/states.html> (last visited Oct. 9, 2021) (showing that the states that have created their own "environmental review requirements" are California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New York, North Carolina, South Dakota, Virginia, Washington, and Wisconsin; Washington D.C. and Puerto Rico have similar requirements); *see also First Annual "Little NEPA" Conference: State-Level Environmental Impact Assessment*, ENV'T L. INST. (April 2005), <https://www.eli.org/news/first-annual-little-nepa-conference-state-level-environmental-impact-assessment> (noting that state "programs for preparing environmental impact assessments of proposed governmental and private actions" are "often called 'little NEPAs'").

55. *See* Bertrand, *supra* note 31, at 413 (asserting that CEQA "is one of the strongest state-level environmental statutes in the United States").

56. *Frequently Asked Questions About CEQA*, CA NAT. RES. AGENCY, <http://files.resources.ca.gov/ceqa/more/faq.html> (last visited Sept. 26, 2021).

57. *See supra* note 52 and accompanying text.

58. CAL. PUB. RES. CODE § 21000(g) (West 1979); *see also* Application for Leave To File Amicus Curiae Brief of Cal. Bldg. Indus. Ass'n in Support of Defendants and Respondents Stanislaus Cnty. at 17–18, *Protecting Our Water & Env't Res. v. City of Stanislaus*, 472 P.3d 459 (Cal. 2020) (No. S251709) [hereinafter Amicus Curiae Brief for Respondents] ("California's land use and environmental review process is quite different than in other states—not necessarily because of anything in CEQA itself, but rather because of the choices local agencies in California may make about how to design their own permitting processes.").

59. *Union of Med. Marijuana Patients, Inc. v. City of San Diego*, 446 P.3d 317, 323 (Cal. 2019). For the sake of efficiency, this Comment does not fully cover the detailed "three-tiered decision tree." *See id.* at 323–25 (providing a full explanation of the CEQA "three-tiered decision tree").

exemption applies, then “environmental review . . . must [be] undertake[n].”⁶⁰

B. The Strictest of the “Little NEPAs”—CEQA

Generally speaking, local agencies split projects into two CEQA-defined subcategories when determining whether a project is subject to CEQA review—*ministerial* and *discretionary*.⁶¹ The word “discretionary” is commonly referred to as the gateway to CEQA since CEQA applies to nearly all discretionary projects.⁶² Discretionary projects are those requiring the approval of a public agency prior to commencement, such as “enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps.”⁶³ If there exists even a fair argument that the project could negatively impact the environment,⁶⁴ the developer must complete an Environmental Impact Report (EIR)—known as the “heart of CEQA.”⁶⁵ The EIR is an extensive document prepared by the developer and then analyzed by the public agency that provides decision-makers “with information they can use in deciding

60. *Id.* at 323.

61. *When Does CEQA Apply?*, OFF. OF HISTORIC PRES., https://ohp.parks.ca.gov/?page_id=21723 (last visited Sept. 19, 2021).

62. See LEAGUE OF CAL. CITIES, DISCRETION—THE GATEWAY TO & LIMITATION ON CEQA 2 (2019), <https://www.cacities.org/Resources-Documents/Member-Engagement/Professional-Departments/City-Attorneys/Library/2019/2019-Annual-Conference/10-2019-AC;-Velyvis-Discretion-The-Gateway-To-And.aspx>; CAL. PUB. RES. CODE § 21080 (West 2014).

63. § 21080(a); see LEAGUE OF CAL. CITIES, *supra* note 62, at 6 (providing a simple element-driven approach to whether a project is considered discretionary). A project is subject to CEQA review if it (1) “involves an activity that may cause a direct (or reasonably foreseeable indirect) physical change in the environment” and (2) “is an activity that will either be directly undertaken by a public agency, supported in whole or in part by a public agency, or involves the issuance by a public agency of some form of entitlement, permit, or other authorization.” LEAGUE OF CAL. CITIES, *supra* note 62, at 6. In *Friends of Westwood, Inc. v. City of Los Angeles*, the California Supreme Court clarified that discretionary developments include all those that require permits or conditions that extend outside of present local zoning codes. 235 Cal. Rptr. 788, 795 (Dist. Ct. App. 1987).

64. *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 66, 71 (Cal. 1974). In *No Oil*, the California Supreme Court clearly noted that it intentionally chose a low threshold to trigger an EIR, instead of only requiring EIRs for “projects which may have an ‘important’ or ‘monumentous’” environmental impact. *Id.* at 70. In *Ocean View Estates Homeowners Ass’n v. Montecito Water District*, the California Court of Appeal for the Second District noted that the reason the threshold is so low is partly due to the finality of the negative declaration to end the environmental review. 10 Cal. Rptr. 3d 451, 453 (Dist. Ct. App. 2004). If the threshold is not cleared, then the developer need not file an EIR. *Id.* Instead, they will just file a negative declaration, and the procedure is done. *Id.*

65. *Citizens of Goleta Valley v. Bd. of Supervisors*, 801 P.2d 1161, 1167 (Cal. 1990).

whether to approve a proposed project.”⁶⁶ Included within the pages of an EIR are statements of a project’s environmental impact, as well as evaluations of what could be done to mitigate such impacts and how project alternatives could avoid the impacts altogether.⁶⁷ These reports are costly for developers, and in *Schellinger Brothers v. City of Sebastopol*, the judge noted that “[i]t is probably a truism that since adoption of [CEQA] in 1970, every developer has at some point before construction start[ed] ground his teeth or clenched her fists in frustration while enduring the often lengthy process leading to certification of an [EIR] for the proposed project.”⁶⁸

On the other hand, ministerial projects are not subject to CEQA review.⁶⁹ Ministerial projects are those already conforming to the existing land use standard and therefore “require[] little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.”⁷⁰ Due to its objective inquiry on fixed standards, the California Supreme Court has reasoned that requiring environmental reports, such as EIRs, for ministerial projects “would be a meaningless exercise.”⁷¹

Even if a project might be classified as discretionary, however, the project could be exempt from any of the CEQA protocols so long as it fits within a statutory⁷² or categorical exemption.⁷³ While most CEQA statutory exemptions are only given for specific projects, such as “repairs to public service facilities of an emergency nature,” the California legislature has a growing

66. *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.*, 764 P.2d 278, 284 (Cal. 1988); see CAL. PUB. RES. CODE § 21100 (West 1994) (detailing the required aspects of an EIR). The EIR has also been referred to “as an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Cnty. of Inyo v. Yorty*, 108 Cal. Rptr. 377, 388 (Dist. Ct. App. 1973).

67. GOV’T OFF. PLAN. & RSCH., CEQA: DESIGNING HEALTHY, EQUITABLE, RESILIENT, AND ECONOMICALLY VIBRANT PLACES 271 (2020), https://opr.ca.gov/docs/OPR_C10_final.pdf.

68. 102 Cal. Rptr. 3d 394, 395 (Dist. Ct. App. 2009) (internal citations omitted).

69. See *When does CEQA Apply?*, *supra* note 61.

70. *Id.* (showing common examples of ministerial projects, such as “roof replacements, interior alterations to residences, and landscaping changes”); see *Friends of Westwood, Inc. v. City of Los Angeles*, 235 Cal. Rptr. 788, 796 (Ct. App. 1987) (explaining that the only way that a development project will be considered “presumptively ministerial” is if “the agency has *no* power to exercise . . . personal judgment . . . but instead *only* has the power to determine whether zoning allows the structure to be built and whether it satisfies strength requirements, and nothing more”).

71. *Mountain Lion Found. v. Fish & Game Comm’n*, 939 P.2d 1280, 1287 (Cal. 1997).

72. See CAL. CODE REGS. tit. 14, §§ 15260–15285 (2005). These are CEQA exemptions “granted by the legislature.” § 15260.

73. See §§ 15300–15333. These exemptions are limited to “projects which have been determined not to have a significant effect on the environment.” § 15300.

track record of granting exemptions for private projects such as sports stadiums.⁷⁴ For certain billion-dollar, highly profitable development projects like sports arenas, fortune-500 office headquarters,⁷⁵ or preparations for the Olympic games,⁷⁶ the developer often has enough political weight and financial means to leverage a statutory exemption.⁷⁷ But since most developers do not have the same level of influence or available capital as billionaire-sports-team-owners, this option remains elusive to most developers.⁷⁸

C. Charting Its Own Path: CEQA's Unique Feature from NEPA—Judicial Interpretation

While CEQA was initially designed in relation to its federal counterpart, NEPA, there are significant differences between the two statutes.⁷⁹ One unique feature of CEQA is that unlike NEPA, which provides little room for judicial interpretation, California state courts play a pivotal role in the interpretation and implementation of CEQA.⁸⁰ It is possible that California courts

74. *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Comm'n*, 160 P. 3d 116, 120 (Cal. 2007); see also Kristen Kortick, *Oakland A's on Deck with CEQA Exemption Legislation for New Stadium*, ABBOTT & KINDERMANN, INC. (July 30, 2018), <https://blog.aklandlaw.com/2018/07/articles/ceqa/oakland-deck-ceqa-exemption-legislation-new-stadium/> (providing a list of sports stadiums to receive recent full CEQA exemptions: the Los Angeles Rams, Sacramento Kings, Golden State Warriors, and the Los Angeles Clippers). Courts have upheld these sorts of project-specific statutory exemptions against claims of unconstitutionality. See, e.g., *Saltonstall v. City of Sacramento*, 180 Cal. Rptr. 3d 342, 355 (Dist. Ct. App. 2014) (rejecting plaintiff's argument that the accelerated, project-specific CEQA deadlines imposed by a state statute were in violation of the California Constitution).

75. See Liam Dillon, *Which California Megaprojects Get Breaks from Complying with Environmental Law? Sometimes, It Depends on the Project*, L.A. TIMES (Sept. 25, 2017, 11:15 AM), <https://www.latimes.com/politics/la-pol-ca-environmental-law-breaks-20170925-story.html>. For example, the social media giant Facebook was recently granted a fast-tracking CEQA exemption so it could build its new headquarters in Menlo Park, California. See *id.*

76. See CAL. CODE REGS. tit. 14, § 15272 (2005) (detailing CEQA exemptions for developments relating to the 2028 Summer Olympics, set to be held in Los Angeles, California).

77. See Kortick, *supra* note 74.

78. See *supra* notes 74–75 and accompanying text.

79. See *infra* notes 80–92 and accompanying text.

80. See Varner, *supra* note 31, at 1450 (stating that “[u]nlike the federal courts in NEPA decisions, state courts [under CEQA] have embraced environmental policies by promoting judicial interpretation”). The California Supreme Court had “the first opportunity to construe provisions of [CEQA]” in relation to the legislature’s intent in a 1972 case, *Friends of Mammoth v. Board of Supervisors*. 502 P.2d 1049, 1051–52 (Cal. 1972). In *Friends of Mammoth*, the California Supreme Court established the “fair argument” test, which created a very low threshold for plaintiffs to be able to bring their CEQA impact claims. See Christopher Chou, *Fair Argument Test Applies to Agency Determination Whether Subsequent CEQA Review Is Required once a Negative Declaration Has Been Adopted*, PERKINS COIE (June 1, 2017), <https://www.californialandusedevelopmentlaw.com/2017/06/01/fair->

first took up the mantle as CEQA's primary interpreter due to CEQA's "theoretical and vague application[]" of many important statutory terms.⁸¹ In the words of one scholar, "in contrast to NEPA, the [CEQA] state statute delineates a viable policy[] but fails to procedurally institute its policy goals."⁸²

In interpreting public agency decisions, California courts have repeatedly stated that they will "scrupulously enforc[e] all legislatively mandated CEQA requirements."⁸³ Over the past decades, this room for judicial review has led to an increasingly broad interpretation of what constitutes a discretionary project as compared to what was explicitly stated in CEQA's initial

argument-test-applies-to-agency-determination-whether-subsequent-ceqa-review-is-required-once-a-negative-declaration-has-been-adopted/ (discussing "the [California] Supreme Court's ruling that the question of whether further environmental review is required for modifications to a project approved based on a negative declaration is not subject to the deferential substantial evidence test but is instead governed by the more searching 'fair argument' standard").

81. Varner, *supra* note 31, at 1453.

82. *Id.* One example of how CEQA's vague statutory language has led to expansive interpretations by the California courts is regarding what sort of projects trigger the CEQA review process. See *Union of Med. Marijuana Patients, Inc. v. City of San Diego*, 446 P.3d 317, 332 (Cal. 2019). Recently, the California Supreme Court reminded local agencies of CEQA's expansive ambiguity by stating that:

[A] proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. This determination is made without considering whether, under the specific circumstances in which the proposed activity will be carried out, these potential effects will actually occur.

Id.; see also LISABETH D. ROTHMAN, CEQA TURNS FORTY: THE MORE THINGS CHANGE, THE MORE THEY REMAIN THE SAME 3–7 (2011), <https://law.ucdavis.edu/centers/environmental/files/Rothman-article-Hernandez.pdf> (discussing how California courts have dealt with CEQA's statutory ambiguity when it comes to terms like "projects" and "feasibility"). But see *S.F. Taxi Coal. v. City of San Francisco*, 979 F.3d 1220, 1226–27 (9th Cir. 2020) (holding that a project will not be found to be present under CEQA if the connection between the proposed activity and the environmental impact "is so attenuated as to be 'speculative'" (quoting *Union of Med. Marijuana Patients, Inc.*, 446 P.3d at 332)). In contrast, federal courts have strictly construed NEPA's statutory language, resulting in a clearer application of the law. See *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.20 (1976) (finding that NEPA "does not require an agency to consider the possible environmental impacts of less imminent actions when preparing the impact statement on proposed actions"). Under NEPA's statutory language, federal agencies must "prepare a detailed Environmental Impact Statement . . . for 'major [f]ederal actions significantly affecting the quality of the human environment.'" Paul J. Cucuzzella, *The Mute Swan Case, the Fund for Animals, et al. v. Norman, et al.: National, Regional and Local Environmental Policy Rendered Irrelevant by Animal Rights Activists*, 11 U. BALT. J. ENV'T L. 101, 108 (2004) (quoting 42 U.S.C. § 4332(2)(C)). The court in *Kleppe* went on to say that "[a] court has no authority to depart from the statutory language." *Kleppe*, 427 U.S. at 406.

83. *Banning Ranch Conservancy v. City of Newport Beach*, 392 P.3d 455, 466 (Cal. 2017) (quoting *Citizens of Goleta Valley v. Bd. of Supervisors*, 801 P.2d 1161, 1167 (Cal. 1990)).

codification.⁸⁴ This judicial interpretation has allowed CEQA review to play a major role even on minor projects like a single-family home just because the project might impact someone's private view or temporarily cause increased construction noise.⁸⁵ One recent example was in *Canyon Crest Conservancy v. County of Los Angeles*,⁸⁶ where a private citizen used the threat of an impending CEQA suit (and all the intensive reporting that comes along with it) to scare a private individual away from building a single-family house on a one-acre parcel.⁸⁷

Furthermore, due to the impact of stare decisis, CEQA's past judicial interpretations are often followed in subsequent CEQA cases, even if a different judge considering the circumstances might have interpreted the matter differently.⁸⁸ This precedent has effectively lowered the bar for CEQA-related claims by validating even minor environmental impacts such as temporary noise pollution,⁸⁹ opinions of aesthetic impairment, and more.⁹⁰ This is why, when looking at CEQA's history, one must analyze both the legislative

84. See Hernandez, *supra* note 31; see also S.B. 55, 2019–2020 Reg. Sess. (Cal. 2020) (“Rigorous judicial enforcement of CEQA has made the law stronger and more effective.”).

85. See Hernandez, *supra* note 31, at 40 (stating that “‘impacts’ to th[e] existing environment—ranging from temporary construction noise, to changes in private views, to increases in the number of kids playing in the park, going to school or using a library—are all required to be avoided or reduced to a ‘less than significant level,’ to ‘the extent feasible given the objectives of the project’”) (quoting CAL. PUB. RES. CODE § 1513(a)(2)); see also *Pocket Protectors v. City of Sacramento*, 21 Cal. Rptr. 3d 791 (Dist. Ct. App. 2004); *Keep Our Mountains Quiet v. Cnty. of Santa Clara*, 187 Cal. Rptr. 3d 96 (Dist. Ct. App. 2015).

86. 259 Cal. Rptr. 3d 368 (Dist. Ct. App. 2020).

87. *Id.* at 371–74; see *Ridiculous CEQA Challenge To Development of 1,436 Square Foot Residence on 1.04-acre Parcel Did Not Vindicate Important Right for Purpose of Awarding Attorney Fees*, MITCHELL CHADWICK (Apr. 4, 2020), <http://www.mitchellchadwick.com/2020/04/ridiculous-ceqa-challenge-to-development-of-1436-square-foot-residence-on-1-04-acre-parcel-did-not-vindicate-important-right-for-purpose-of-awarding-attorney-fees/> (providing a short analysis of *Canyon Crest*).

88. See *Sierra Club v. San Joaquin Loc. Agency Formation Comm’n*, 981 P.2d 543, 552–53 (Cal. 1999) (outlining the impact that the principle of stare decisis has on court decisions in subsequent cases).

89. See, e.g., *Citizens for Responsible & Open Gov’t v. City of Grand Terrace*, 73 Cal. Rptr. 3d 202, 205 (Dist. Ct. App. 2008) (holding, in favor of the plaintiff, that the increased ambient noise of air conditioning units from a “120-unit senior housing facility” was a sufficient environmental impact to require an environmental impact report and awarding plaintiff attorneys’ fees).

90. See *Ocean View Ests. Homeowners Ass’n v. Montecito Water Dist.*, 10 Cal. Rptr. 3d 451, 455–56 (Dist. Ct. App. 2004). In *Ocean View*, the local water district tried to put a metal cover over a water reservoir to “prevent water quality problems.” *Id.* at 453. However, local residents objected to the cover on the basis that the cover would cause a significant environmental impact by obstructing their view from a few select homes and from local hiking trails. *Id.* at 455–56. The court found in favor of the plaintiffs and said that the citizens’ opinions of the potential obstruction was sufficient. *Id.*

enactments and the subsequent judicial interpretations that serve to color in between the lines of the explicit statutory text.⁹¹ Historically, this web of broadened CEQA applications has served as a pathway for subsequent lawsuits.⁹²

In interpreting what serves as a discretionary project, both public agencies and courts have historically based their determinations on the delicate balance of policy interests, “including [the] economic, environmental, and social factors” of a project.⁹³ The California Supreme Court highlighted the importance of this balancing test in *Citizens of Goleta Valley v. Board of Supervisors* when it noted that environmental regulatory tools such as CEQA “must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement.”⁹⁴ This statement aligns with one of CEQA’s original, clearly stated purposes, which is to “provid[e] a decent *home* and satisfying *living* environment for *every* Californian.”⁹⁵

Reviewing CEQA’s direct application over the last half-century, however, it appears that California public agencies and the judiciary have continued to stray further and further from giving sufficient weight to the balancing test’s economic and social factors.⁹⁶ As a result, the scale has disproportionately tipped in favor of environmental protection at the expense of providing

91. See *supra* notes 80–82 and accompanying text.

92. Compare *Friends of Westwood, Inc. v. City of Los Angeles*, 235 Cal. Rptr. 788, 797 (Dist. Ct. App. 1987) (holding that the issuance of a building permit for a major construction project was discretionary in a CEQA suit that was more within the bounds of what the legislature intended when CEQA was first enacted), and *Miller v. City of Hermosa Beach*, 17 Cal. Rptr. 2d 408 (Dist. Ct. App. 1993) (holding that issuing a hotel permit was a discretionary project), with Kenneth R. Weiss, *Reports Have an Impact on Environment: Development: Studies Mandated by the State Are Poised To Play a Key Role in the Biggest Decisions Facing Local Officials*, L.A. TIMES (Sept. 15, 1991), <https://www.latimes.com/archives/la-xpm-1991-09-15-me-3409-story.html> (explaining how, in 1991, community members launched a CEQA suit against a developer’s efforts to build a land fill because they were concerned that “sea gulls might spread the [AIDs] virus by carrying used condoms from the dump to nearby neighborhoods”).

93. *City of Irvine v. Cnty. of Orange*, 164 Cal. Rptr. 3d 586, 592 (Dist. Ct. App. 2013); see also CAL. CODE REGS. tit. 14, § 15021(d) (2005) (stating a public agency’s duty to balance various policy interests); *Bozung v. Loc. Agency Formation Comm’n*, 529 P.2d 1017, 1030 (Cal. 1975) (stating that there is no guarantee that CEQA determinations will “always be those which favor environmental considerations,” but it will be determined neutrally).

94. 801 P.2d 1161, 1175 (Cal. 1990); see also *Bozung*, 529 P.2d at 1030 (“The purpose of CEQA is not to generate paper but to compel government at all levels to make decisions with environmental consequences in mind.”).

95. *City of Irvine*, 164 Cal. Rptr. 3d at 592 (emphasis added) (citation omitted).

96. See *infra* notes 97–98 and accompanying text.

a suitable home for the over one-hundred thousand Californians dealing with housing insecurity.⁹⁷ This is demonstrated by a 2015 report by Holland and Knight, which explained that the most frequent use of CEQA today is targeted towards residential projects, particularly high-density apartment projects in urban areas, and not the sort of open-space environmental areas that one might imagine.⁹⁸

D. The Dark Side of CEQA

"I have been on the receiving end of abuses by CEQA. I have literally been threatened by CEQA. I have seen abuses for non-environmental reasons."

—California Governor Gavin Newsom⁹⁹

Together, the California judiciary and legislature have strengthened CEQA's influence by empowering local development-reticent municipalities and by commissioning individual citizens and citizen groups opposed to certain development projects.¹⁰⁰ This has ultimately weakened any private developer's ability to navigate CEQA issues in a cost-effective manner.¹⁰¹

1. Enabling Municipalities To Abuse CEQA

Even though the official delegation of local municipalities' zoning power preceded CEQA's enactment by almost fifty years, it has always been a major character in CEQA's storyline.¹⁰² This is because, as a result of a

97. See *infra* Section II.D. It is worth pointing out early on that, while this Comment seeks to critique the unintended negative aspects of CEQA, it does not ignore the important role that CEQA continues to play in providing the average citizen with a voice in the environmental change of their own community. See *California Environmental Quality Act (CEQA) Review*, CAL. DEP'T FISH & WILDLIFE, <https://wildlife.ca.gov/Conservation/CEQA/Purpose> (last visited Sept. 29, 2021). Recognizing the inherent value in the CEQA tool, this Comment does not advocate for complete repeal of CEQA but instead for comprehensive CEQA reform to certain aspects that have become harmful to California's future of sustainable development. See *infra* Parts III, IV.

98. See JENNIFER HERNANDEZ & DAVID FRIEDMAN, *IN THE NAME OF THE ENVIRONMENT* 62–63 (2015).

99. "PG&E No Longer Exists. It Will Be Completely Transformed." *Six Quotes from Gov. Newsom*, FRESNO BEE, <https://www.fresnobee.com/opinion/editorials/article237326924.html> (last visited Feb. 1, 2020).

100. See *infra* Sections II.D.1, II.D.2, II.D.3.

101. See *infra* notes 127–37 and accompanying text.

102. See *infra* notes 103–10 and accompanying text.

municipality's local control over its zoning power, municipalities are able to use this self-regulated control as a "crucial regulatory lever" to exercise local power over state-wide efforts such as CEQA.¹⁰³ This local power was established in *Village of Euclid v. Ambler Realty Co.*¹⁰⁴ and has since been stretched to great lengths to the deferential advantage of municipalities.¹⁰⁵ This power impacts CEQA because if a municipality desires, it can place a blanket discretionary approval requirement on specific classifications of development projects, even if such projects are already in compliance with the current zoning code, effectively transforming projects that once enjoyed rightful ministerial exemptions into discretionary ones.¹⁰⁶

For example, cities like San Francisco, Santa Monica, Pasadena, and others have "imposed discretionary [CEQA] review [processes] on 'all residential development projects of five or more units,'" even if the project would be otherwise within the current zoning requirements.¹⁰⁷ In turn, these sorts of actions often have the effect of "prevent[ing] housing construction in . . . communities rather than facilitat[ing] housing construction at the local level."¹⁰⁸ If an affluent area is not interested in building more housing, they can zone their city to make it difficult to place any housing there, even if this is inconsistent with the needs of their own region and greater state.¹⁰⁹ The end result

103. Alejandro E. Camacho & Nicholas J. Marantz, *Beyond Preemption, Toward Metropolitan Governance*, 39 STAN. ENV'T L.J. 125, 149 (2020); see Bertrand, *supra* note 31, at 420 ("[A] 2018 survey of five of the most expensive Californian housing markets—San Francisco, Oakland, San Jose, Redwood City, and Palo Alto—found that each local government has imposed discretionary review on 'all residential development projects of five or more units.'").

104. 272 U.S. 365 (1926).

105. See Eliza Hall, *Divide and Sprawl, Decline and Fall: A Comparative Critique of Euclidean Zoning*, 68 U. PITT. L. REV. 915, 918–19 (2007) (showing the strength that a municipality's enacted zoning ordinance has when "challenges to zoning ordinances will fail unless they show the ordinance has no rational relation to the police power goals of health, safety, or welfare"); see, e.g., *Vill. of Belle Terre v. Borras*, 416 U.S. 1, 9 (1974) (stating that it is within a municipality's zoning power "to lay out zones where family values . . . and clean air make the area a sanctuary for people").

106. See Bertrand, *supra* note 31, at 420. An example of such a blanket classification is how San Francisco and Palo Alto, along with other "expensive Californian housing markets," have required discretionary approval for "all residential development projects of five or more units . . . even if these developments comply with the underlying zoning code." *Id.* (emphasis added) (citation omitted).

107. *Id.*

108. Ryan Forgiione, *A New Approach to Housing: Changing Massachusetts's Chapter 40R from an Incentive to a Mandate*, 53 SUFFOLK U. L. REV. 199, 216 (2020).

109. *Id.* (asserting that, "[e]ven though each municipality has the authority to build how much or how little housing it desires, existing homeowners within each municipality often dominate local zoning decisions in favor of exclusionary zoning"); see also Michael Lewyn, *New Urbanist Zoning for*

of such localized power is “significantly less housing in desirable metropolitan areas and individual neighborhoods than the market would likely otherwise supply.”¹¹⁰

2. Enabling Individual Citizens To Abuse CEQA

CEQA also bolsters its own strength by empowering local citizens through broad deputization and allowing CEQA claimants to file suit anonymously.¹¹¹ CEQA allows for the deputization of Californians to anonymously file a CEQA suit if they believe that a specific project will adversely impact them.¹¹² Generally, all a complaining party needs to show is that they have a “beneficial interest” in the enforcement, which can be met by anyone with “some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.”¹¹³ This standard can be met even if the proponent’s concern is primarily economically motivated.¹¹⁴ However, many more trivial CEQA claims are

Dummies, 58 ALA. L. REV. 257, 263 (2006) (explaining that a 2001 survey of developers and town planners showed that “70% of municipalities made their zoning rules more restrictive between 1997 and 2002, while only 16% reduced landowners’ regulatory burdens”).

110. John Infranca, *The New State Zoning: Land Use Preemption Amid a Housing Crisis*, 60 B.C. L. REV. 823, 831 (2019). See also VICKI BEEN, INGRID GOULD ELLEN & KATHERINE O’REGAN, SUPPLY SKEPTICISM: HOUSING SUPPLY AND AFFORDABILITY 3 (2018), https://furman-center.org/files/Supply_Skepticism_-_Final.pdf (“A large number of cross-sectional studies show that stricter (less strict) local land use regulations are associated with less (more) new construction and higher (lower) prices.”).

111. See *infra* notes 112–22 and accompanying text.

112. Jeremy Rosenberg, *Laws That Shaped L.A.: How the California Environmental Quality Act Allows Anyone To Thwart Development*, KCET (Feb. 6, 2012), <https://www.kcet.org/history-society/laws-that-shaped-la-how-the-california-environmental-quality-act-allows-anyone-to-thwart-development> (“CEQA is a self-executing statute[,] . . . and its provisions are enforced, as necessary, by the public through litigation and the threat thereof.”).

113. *Env’t Prot. Info. Ctr. v. Cal. Dep’t of Forestry & Fire Prot.*, 187 P.3d 888, 901 (Cal. 2008) (quoting *Associated Builders & Contractors, Inc. v. S.F. Airports Comm’n*, 981 P.2d 499, 504 (Cal. 1999)); see CAL. CIV. PROC. CODE § 1086 (West 1907).

114. 8 ARTHUR F. COON, MILLER AND STARR CALIFORNIA REAL ESTATE § 26.23 (4th ed. 2021) (citing CAL. CIV. PROC. CODE § 1086 (West 1907)); see *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1011–12 (Cal. 2011) (outlining the requirements for “public interest standing” under CEQA). Public interest standing is not a challenging standard to meet since “the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.” *Id.* (quoting *Bd. of Soc. Welfare v. Cnty. of Los Angeles*, 162 P.2d 627 (Cal. 1945)). But see *Vill. of Canajoharie v. Plan. Bd. of Fla.*, 882 N.Y.S.2d 526, 529 (App. Div. 2009) (holding that claims of economic harm were insufficient to confer standing for a claim under SEQRA).

brought under an even lower “well-established exception” called public interest standing.¹¹⁵ This exception was firmly established for the first time in 2011 in *Save the Plastic Bag Coalition v. City of Manhattan Beach*.¹¹⁶ Prior to 2011, some California appellate courts opted to hold to a “stricter ‘zone of interest’ rule, which require[d] that a plaintiff’s interest fall ‘within the zone of interests to be protected by the legal duty asserted.’”¹¹⁷ But, *Save the Plastic Bag Coalition* set the new standard, stating that public interest standing applies

where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty[;] the [petitioner] need not show that he has any legal or special interest in the result, since it is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced.¹¹⁸

Unfortunately, in laying out public interest standing, the court mandated a state-wide standard that is “broad enough to capture even the most self-interested plaintiff.”¹¹⁹ Under public interest standing, a citizen does not even need to live in the same zip code as the development project they are complaining of.¹²⁰ If a party has standing, all that is required to file a claim and begin the arduous process is a basic letter of appeal with an exemption

115. *See Env't Prot. Info. Ctr.*, 187 P.3d at 901 (stating that an exception to the “beneficial interest rule” applies “[w]here the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty”). In these instances, “it is sufficient that [the applicant] is interested as a citizen in having the laws executed and the duty in question enforced.” *Id.*

116. 254 P.3d at 1011.

117. Jessica Diaz, *Save the Plastic Bag Coalition v. City of Manhattan Beach: California Supreme Court Answers More than “Paper or Plastic?” in Major Decision on Corporate Standing Under CEQA*, 39 *ECOLOGY L.Q.* 627, 629 (2012).

118. 254 P.3d at 1011 (quoting *Bd. of Soc. Welfare v. County of L.A.*, 162 P.2d 627, 628–29 (Cal. 1945)).

119. Diaz, *supra* note 117, at 633.

120. *CEQA Frequently Asked Questions*, PLAN. & CONSERVATION LEAGUE, <https://www.pcl.org/campaigns/ceqa/ceqa-faqs/> (last visited Nov. 6, 2021). This article does recognize that there *could* be beneficial uses for public interest standing since, as one scholar notes, “broad public interest standing can be beneficial in protecting communities from adverse environmental impacts they are unaware of.” Ha Chung, *Moving CEQA Away from Judicial Enforcement: Proposal for a Dedicated CEQA Agency To Address Exclusionary Use of CEQA*, 93 *S. CAL. L. REV.* 307, 319–20 (2020).

determination, along with a filing fee.¹²¹ In light of the amount of work required by the developer once this appeal is filed, these filing requirements, paired with the low standing threshold, serve as very low bars to entry to what could potentially result in a very expensive process for a developer on the other side.¹²² Furthermore, plaintiffs bringing a CEQA complaint are protected by a veil of anonymity, which means that “the true filer [is] unknown to the judge, defending agency, or the public.”¹²³ This anonymity can result in a plaintiff filing suit “under the guise of a ‘public interest’ group, so that nobody knows who the real opponent is.”¹²⁴ Some CEQA critics have complained that allowing anonymous complaints harms the “public planning and the democratic process” because it prevents the developer from ever getting to work with the complaining party to seek a solution that is in the best interest of both parties and the environment.¹²⁵ Overall, this low threshold and anonymity provide potentially frivolous CEQA plaintiffs with low economic and social costs to file a suit and slow down a project’s development.¹²⁶

The empowerment of local citizens and development-reticent municipalities has resulted in various adverse economic impacts on developers.¹²⁷ If a municipality requires blanket discretionary approval for certain projects,¹²⁸ then the developer will likely have to complete an EIR.¹²⁹ Normally, if a

121. See S.F., CAL., ADMINISTRATION CODE § 31.16 (2020).

122. See Christian Britschgi, *How California Environmental Law Makes It Easy for Labor Unions To Shake Down Developers*, REASON (Aug. 21, 2019, 10:00 AM), <https://reason.com/2019/08/21/how-california-environmental-law-makes-it-easy-for-labor-unions-to-shake-down-developers/> (explaining that all a filer needs to do to file the letter of appeal is to “write a very standard” complaint, such as: “Your traffic analysis is wrong. Your air analysis is wrong. You haven’t provided enough detail about this or that”).

123. *California Environmental Quality Act: Judicial Challenge: Identification of Contributors: Hearing on A.B. 2026 Before the Assembly Committee on Natural Resources*, 2016 Reg. Sess. (Cal. 2016) (“Individuals and groups file anonymously for many reasons[:] to slow down a competitor’s project, to leverage for bargaining agreements, to maintain access to a ‘free’ commodity like water, wind or sun, or to stop a plan for non-environmental reasons.”). In 2016, it was found that “45% of CEQA lawsuits are filed anonymously.” *Id.*

124. Scott Peters, *CEQA an Obstacle for Needed Housing in California*, SAN DIEGO UNION-TRIB. (Mar. 3, 2017, 6:00 AM), <https://www.sandiegouniontribune.com/opinion/commentary/sd-utbg-ceqa-obstacles-peters-20170302-story.html>.

125. *Id.*; see also Hernandez, *supra* note 31, at 42 (explaining that anti-SLAPP statutes protect those filing anonymous CEQA lawsuits from being counter-sued, even if the complainant is filing its complaint for misguided or ill-intended reasons).

126. See Hernandez, *supra* note 31, at 42 (“[C]ourts demand only a few hundred dollars to accept a new [CEQA] lawsuit.”).

127. See *infra* notes 128–37 and accompanying text.

128. See *supra* note 106 and accompanying text.

129. CAL. CODE REGS. tit. 14, § 15060 (2005). The EIR will be required if a lead agency—which

developer foresees the possibility that its proposed project will have an impact on the environment, then they will prepare the report “as early as feasible in the planning process.”¹³⁰ However, if a party raises an objection to a project’s approval and threatens a CEQA suit, then the developer could have to complete further mitigated negative declarations or supplement the EIR.¹³¹ EIRs are generally extensive reports, often consisting of several hundred pages, that can take up to a year to complete.¹³²

If a deputized citizen decides to file a suit against a developer, this litigious process—which can halt any project for years—can have a cost starting around \$300,000 and can increase by roughly \$1,500 per unit after that.¹³³ For developers faced with such a cumbersome CEQA process, there are typically only two options available: pay the money and go through the full CEQA process or give up the project completely.¹³⁴ Many developers often choose the latter and abandon their project before ever breaking ground.¹³⁵ This issue is especially salient for developers of low- to mid-income multifamily

determines whether the project meets the current permitting and entitlement standards—determines that the project could have an environmental impact. *See id.* (“[T]he agency should be alert for environmental issues that might require preparation of an EIR or that may require additional explanation by the applicant.”).

130. CAL. CODE REGS. tit. 14, § 15004(b) (2018).

131. *See* CAL. PUB. RES. CODE § 21166 (West 1977) (providing a list of triggering events for a mitigated negative declaration); *Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Cmty. Coll. Dist.*, 378 P.3d 687, 692 (Cal. 2016) (stating that, where “changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration,” the agency may have to “revis[e] the EIR”). Even where the changes to the initial plan are minor and a revision of the EIR or an additional negative declaration is not required, “CEQA Guidelines . . . provide that an agency [must] still prepare an addendum to a previously certified EIR.” *Friends of Coll. of San Mateo Gardens*, 378 P.3d at 692.

132. *See Planning and Environmental Review*, SACRAMENTO CNTY., https://planning.sac-county.net/applicants/Pages/FAQ_ER.aspx#:~:text=About%2012%20to%2018%20weeks,limits%20of%20CEQA%20noted%20above (last visited Nov. 6, 2021). *See generally* S.F. PLAN. DEP’T, 1028 MARKET STREET PROJECT (2016), https://sfmea.sfplanning.org/2014.0241E_1028%20Market_Draft%20EIR.pdf (providing the necessary information for a draft EIR). If a developer is only required to file a negative declaration, then that process could take up to twelve to eighteen weeks to complete. *See generally id.*

133. *See* Bertrand, *supra* note 31, at 424; *see also* Hernandez, *supra* note 31, at 21 (explaining that, after filing an EIR, developers will then often have to go through “at least three rounds of public notice and comment before being eligible for approval by public votes of elected officials”).

134. *See supra* notes 64–66 and accompanying text.

135. *See* Bertrand, *supra* note 31, at 424 (asserting that “developers who might otherwise produce valid affordable housing projects for the community are likely to drop out of the running” due to the high costs associated with the CEQA process).

housing, who are generally already facing low profit margins.¹³⁶ These developers cannot afford to watch as their already-low margins dwindle away while litigating a CEQA suit, and thus CEQA claims may mean that their project is “dead on arrival.”¹³⁷

3. Enabling Citizens Groups To Abuse CEQA—The Rise of NIMBYism

These challenges faced by developers (particularly of low- and mid-income multifamily developments) involving CEQA have been exploited by a group of development-reticent people commonly referred to as NIMBYs (not in my backyard).¹³⁸ NIMBY is a term given to people who, in an effort to protect their home's property value, are willing to go to great legal and political lengths to oppose any project that is potentially detrimental to their home's value.¹³⁹ One scholar notes that NIMBYs have learned that CEQA can become one of their greatest and sharpest weapons against increased

136. See *The Cost of Affordable Housing: Does it Pencil Out?*, URBAN.ORG, <https://apps.urban.org/features/cost-of-affordable-housing/> (last visited Oct. 1, 2021) [hereinafter *The Cost of Affordable Housing*] (explaining that, given the high cost of development, “the rent the poorest families can pay is too little to cover the costs of operating an apartment building, even if developers could build that building for free”). Because “low-income housing” is rented at a substantially lower rate than higher end housing, developers are likely to make less money from a given project in the long run, and therefore local governments often have to motivate developers to build low-income housing through incentives like subsidies and tax credits. See Eugene L. Meyer, *Cities Need Affordable Housing, but Builders Want Big Profits. Can It Work?*, N.Y. TIMES (July 9, 2019), <https://www.nytimes.com/2019/07/09/business/affordable-housing-luxury-development-gentrification.html>.

137. Peters, *supra* note 124; see *The Cost of Affordable Housing*, *supra* note 136; *Cities Need Affordable Housing, but Builders Want Big Profits. Can It Work?*, *supra* note 136. The issue of not being able to wait out CEQA legislation also applies to smaller government-funded projects, such as small parks or other neighborhood improvement projects, and thus, these projects are often “dead on arrival . . . because governments can't spare hundreds of thousands of dollars for the environmental review process.” Peters, *supra* note 124.

138. See *infra* notes 139–41 and accompanying text.

139. See David L. Schwed, *Pretexual Takings and Exclusionary Zoning: Different Means to the Same Parochial End*, 2 ARIZ. J. ENV'T. L. & POL'Y 53, 56–57 (2011). The term NIMBY relates to the group's impact on delaying the production of affordable housing and driving up its costs and has been around since as early as 1997. See *Hoffmaster v. City of San Diego*, 64 Cal. Rptr. 2d 684, 694 (Dist. Ct. App. 1997). One scholar recently recognized that NIMBYism is possibly the result of a “natural psychological tendency to endorse something in theory, but not when it is proposed next door.” KATHERINE L. EINSTEIN, DAVID M. GLICK & MAXWELL PALMER, *NEIGHBORHOOD DEFENDERS: PARTICIPATORY POLITICS AND AMERICA'S HOUSING CRISIS* 4 (2020). Einstein points out that some of the primary motivations for NIMBYs are things like the “fear [of] a loss in their home values . . . or a decrease in the quality of their local public goods, like schools and parks.” *Id.* at 13 (citations omitted).

density in their communities.¹⁴⁰ In fact, California courts have recognized that “[NIMBY]’ plaintiffs are often at the forefront of private environmental enforcement in the public interest” and even that “CEQA enforcement is *built* on such private enforcement.”¹⁴¹ Even though CEQA was created to protect and preserve the environment and wild spaces, at the hands of NIMBYs, CEQA can be wielded as a means of perpetuating chronic issues such as homelessness, opposition to “economic and social mobility, racial segregation, [and lack of] economic growth and equality.”¹⁴²

In the Los Angeles County region, data shows that CEQA lawsuits are disparately used in “whiter, wealthier, [and] healthier communities.”¹⁴³ In fact, from 2013 to 2015, a study showed that “87[%] of all CEQA lawsuits . . . contest[ed] infill projects,” and a majority of all CEQA suits in that period were targeted towards residential projects.¹⁴⁴ The idea that racial motivations could be undergirding a portion of CEQA’s utilization is further supported by a recent study by the Obama White House, which found that there is a correlation between “localized pressure to regulate land use” and “higher rates of income segregation.”¹⁴⁵ This study was consistent with another study showing that “each additional [land use] regulation is associated with a roughly one

140. *See Is California's Legacy Environmental Law Protecting Beauty or Blocking Affordable Housing?*, HOLLAND & KNIGHT (July 5, 2018) <https://www.hklaw.com/en/news/intheheadlines/2018/07/is-californias-legacy-environmental-law-protecting> (quoting Jennifer Hernandez, one of the most prominent lawyers in the CEQA world, who recently stated that today, CEQA “is not about the environment”—“[t]his signature environmental law is being hijacked to advance economic interests”).

141. *Fams. Unafraid to Uphold Rural El Dorado Cnty. v. El Dorado Cnty. Bd. of Supervisors*, 94 Cal. Rptr. 2d 205, 213 (Dist. Ct. App. 2000) (emphasis added); *see also* *Bowman v. City of Berkeley*, 31 Cal. Rptr. 3d 447, 455 (Dist. Ct. App. 2005) (holding in a CEQA case that even having a NIMBY “‘personal interest’ in the outcome of the suit does not automatically preclude a fee award”).

142. *Infranca*, *supra* note 110, at 831–32 (citations omitted); *see also* *How Gavin Newsom Can Stop NIMBYs from Blocking Homeless Housing Projects*, L.A. TIMES (Sept. 25, 2019, 3:00 AM), <https://www.latimes.com/opinion/story/2019-09-24/heres-one-smart-way-to-stop-nimbys-from-blocking-homeless-housing-projects> (“[O]pponents of homeless housing projects in their neighborhoods use CEQA as a weapon to thwart those developments.”).

143. *Hernandez*, *supra* note 31, at 32.

144. *Chung*, *supra* note 120, at 329 (showing that “49[%] of [all CEQA] lawsuits [between 2013 and 2015] challenged high density apartment or condominium housing” and another “13[%] were] . . . directed at single family homes”).

145. THE WHITE HOUSE, HOUSING DEVELOPMENT TOOLKIT 10 (2016), https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf [hereinafter WHITE HOUSE].

percentage point decrease in the multifamily permits.”¹⁴⁶ Scholars noted that this negative correlation is part due to the fact that each additional regulation creates another point at which “members of the community can object to proposed housing projects, . . . [which] blocks or delays new housing.”¹⁴⁷

Therefore, the use of CEQA—which serves as one of California’s largest land use regulatory measures—has been retooled as a means of providing affluent communities with a means of excluding undesired groups from their communities.¹⁴⁸ Today’s use of CEQA in the wrong hands actually shares a strange resemblance to the sorts of racially based tactics used to keep minorities out of white communities in the 1960s.¹⁴⁹ Now, society looks back on those racial practices of the 1960s with disdain and regret, and we will likely look back on the current uses of racially motivated CEQA suits with a similar eye.¹⁵⁰ History will look favorably on those who act against such an injustice, but who will act, and what can be done?¹⁵¹

Unsurprisingly, given the convoluted way in which CEQA litigation is being used today, a recent study showed that CEQA lawsuits are actually worsening the very thing that CEQA was made to protect: the environment.¹⁵² By brandishing CEQA as an antidevelopment tool, citizens warp the practical implications of CEQA to mean that the law is “no longer focused on protecting forests and other natural lands, or fighting pollution sources like factories and freeways.”¹⁵³ Instead, it has “evolved into a legal tool most often used against the higher density urban housing, transit, and renewable energy projects, which are all critical components of California’s climate priorities and California’s ongoing efforts to remain a global leader on climate policy.”¹⁵⁴ One example of the type of environmental impact that preventing multifamily housing has created is increased vehicle pollution.¹⁵⁵ If an economic hub that

146. EINSTEIN ET AL., *supra* note 139, at 67.

147. *Id.* at 66.

148. See HERNANDEZ & FRIEDMAN, *supra* note 98, at 17 (explaining that many of the current NIMBY-driven uses of CEQA “are more evocative of a hoped-for past era of civil rights abuses than the ‘modern’ self-image of wealthy, liberal—and notoriously NIMBY—coastal communities”).

149. See *id.* at 16–17 (quoting Oakland Mayor Jerry Brown, who stated that what is at stake in the “discourse” surrounding CEQA is “not . . . environmental impacts, but competing visions of how to shape urban living”); see also *supra* text accompanying note 149.

150. See *id.*

151. See *id.*

152. See *infra* notes 153–54 and accompanying text.

153. Hernandez, *supra* note 31, at 24.

154. *Id.*

155. See Ally Schweitzer, *Why the Housing Crisis Is a Problem for Everyone—Even Wealthy*

draws in numerous workers has insufficient housing to meet the demands of those working in the region, this usually results in lower income individuals being forced to move farther away from their place of work and to drive into work each day.¹⁵⁶ CEQA can also be used as a tool to harm the environment by preventing or slowing the development of renewable energy projects, such as wind turbine farms, solar farms, and desalination plants.¹⁵⁷ Thus, in order to realign CEQA with its originally intended purposes of holistic environmental preservation and the provision of a suitable place for every Californian to live, the legislature must be prepared to undertake substantial reform measures.¹⁵⁸

III. THE CURRENT STATE OF CEQA

“The trouble is the political climate[;] that’s just kind of where we are. . . [Y]ou can’t change CEQA.”

–California Governor Jerry Brown¹⁵⁹

In recognizing the numerous ways CEQA has been twisted to serve dubious purposes over the past decades, it is unsurprising that the call for reform is not novel.¹⁶⁰ Since its inception, many efforts have been made to make the broad environmental statute more effective at serving its initially intended purposes; unfortunately, however, the tale of CEQA reform is not one of great victories but instead is filled with many failures and smaller, piecemeal successes along the way.¹⁶¹ This Section is not intended to serve as an exhaustive

Homeowners, NPR (Jan. 13, 2020), <https://www.npr.org/local/305/2020/01/13/795427706/why-the-housing-crisis-is-a-problem-for-everyone-even-wealthy-homeowners> (asserting that “not building housing can make traffic worse” by forcing “people [who] can’t afford to live near jobs . . . [to] move somewhere cheaper and drive to work”).

156. *See id.*

157. *See, e.g.*, *Save Panacho Valley v. San Benito Cnty.*, 158 Cal. Rptr. 3d 719, 725–28 (Dist. Ct. App. 2013) (explaining how local farmers brought a CEQA claim against the county for its approval of an EIR for a new solar farm); *Citizens Opposing a Dangerous Env’t v. Cnty. of Kern*, 174 Cal. Rptr. 3d 683, 686 (Dist. Ct. App. 2014) (analyzing a claim under CEQA that challenged the approval of an EIR for a new wind turbine farm in Kern County); *Surfrider Found. v. Cal. Reg’l Water Quality Control Bd.*, 149 Cal. Rptr. 3d 763, 768–70 (Dist. Ct. App. 2012) (discussing a challenge brought to an EIR approved for a new desalination plant in San Diego).

158. *See supra* note 97 and accompanying text.

159. *See infra* note 161.

160. *See supra* Section II.D.

161. *See infra* Sections III.A, III.B. In a candid interview just before he ended his second stint

list of all of the proposed and enacted reforms but instead to highlight the most critical reforms.¹⁶² Then, acknowledging the successes and failures of these reforms, this Comment will take an in-depth look at numerous other states who have also fought to reform environmental legislation similar to CEQA.¹⁶³ Together, an analysis of California and other states' reform efforts, along with a look at an unrecognized blind spot, will paint a picture of a brighter future for California's landmark environmental legislation.¹⁶⁴

A. Failed Legislative Attempts

In recent history, there were four broad categories of CEQA-related legislative amendments that failed to pass into law: litigation streamlining,¹⁶⁵ judicial streamlining,¹⁶⁶ regaining state zoning control by forcing municipalities to up-zone,¹⁶⁷ and piecemeal multifamily development strategies.¹⁶⁸ First, Senate Bill 995 sought to streamline CEQA litigation by keeping the litigation process to a 270-day maximum so long as (1) the development would cost more than \$15 million, but less than \$100 million, and (2) at least 15% of the development's units would qualify as affordable housing.¹⁶⁹ This bill died mostly due to fairly baseless criticisms that it was a "phony housing bill" that

serving as California's Governor, Jerry Brown stated, "The trouble is the political climate[.] that's just kind of where we are. Very hard to—you can't change CEQA." Jim Newton, *Gov. Jerry Brown: The Long Struggle for the Good Cause*, UCLA BLUEPRINT, <https://blueprint.ucla.edu/feature/gov-jerry-brown-the-long-struggle-for-the-good-cause/> (last visited Nov. 6, 2021). This was the same Governor who, in 2015, confidently stated: "I believe before I depart [as Governor,] we will see reform in CEQA." Bill Whalen, *Oh Say Can You Reform CEQA? Not on Jerry Brown's Watch*, STAN. UNIV. (Sept. 20, 2018), <https://www.hoover.org/research/oh-say-can-you-reform-ceqa-not-jerry-browns-watch>.

162. See *infra* Part III.

163. See *infra* Section III.B.

164. See *infra* Part III.

165. See *infra* text accompanying notes 169–74.

166. See *infra* notes 175–83 and accompanying text.

167. See *infra* notes 184–200 and accompanying text.

168. See *infra* notes 203–08 and accompanying text.

169. S.B. 995, 2019–2020 Reg. Sess. (Cal. 2020). The threshold requirement for what qualifies as low-income housing is based on the median income of each California county. See CAL. HEALTH & SAFETY CODE § 50079.5 (West 2002); see also Memorandum from Zachary Olmstead, Deputy Dir. Div. of Hous. Pol'y Dev. 5–12 (Apr. 30, 2020), <https://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/income-limits-2020.pdf> (providing a full list of all California counties and their income brackets). For example, in Los Angeles, to qualify for low-income housing, a family of four must not have a household income that exceeds \$77,300, and in Marin County the limit is \$143,000. Memorandum, *supra*, at 7.

rewarded the massive real estate developers.¹⁷⁰ In light of these criticisms, it is worth noting that one of the reasons these critiques were baseless is because the average thirty-six unit apartment complex costs over \$15 million to construct,¹⁷¹ and the \$100 million project limitation would have prevented any developers from using the bill for massive projects, such as new stadiums that cost upwards of a billion dollars.¹⁷² Considering that CEQA litigation cases have been known to last longer than a year,¹⁷³ placing a time limit on CEQA claims could have helped to strike the proper balance between respecting the good in CEQA and expediting the process so developers' projects are not unduly delayed.¹⁷⁴

In comparison, Senate Bill 55 aimed to free the judicial backlog caused

170. Paul Koretz & Jeffrey Ebenstein, *Critique of Housing Legislation Under Consideration by California State Senate and Assembly*, CITYWATCH (Aug. 13, 2020), <https://www.city-watchla.com/index.php/cw/los-angeles/20245-critique-of-housing-legislation-under-consideration-by-california-state-senate-and-assembly>. It is worth noting that one of the authors of this article opposing Senate Bill 995 is a city council member of one of the wealthiest areas of Los Angeles. See *Meet Paul Koretz*, CITY OF L.A., <http://www.councilmemberpaulkoretz.com/about-office/meet-paul-koretz> (last visited Sept. 26, 2021).

171. See Tara Mastroeni, *How Much Does It Cost To Build Apartments?*, MILLIONACRES (Feb. 4, 2021), <https://www.millionacres.com/real-estate-investing/commercial-real-estate/how-much-does-it-cost-build-apartments/> (“On average, it cost \$22 million to build an apartment building in 2020.”). Considering there are over 670,000 multifamily structures at least this large across the country, these are hardly outliers as far as real estate developers go. See *Planning for Apartments*, AM. PLAN. ASS'N, <https://www.planning.org/pas/reports/report139.htm> (last visited Sept. 26, 2021).

172. See *The Cost of Building Housing Series*, U.C. BERKELEY: TERNER CTR. FOR HOUS. INNOVATION (Mar. 20, 2020), <https://ternercenter.berkeley.edu/construction-costs-serie>. The \$100 million project limitation would prevent the bill from being used for projects such as SoFi Stadium, which cost a total of \$5 billion dollars, or the new Chase Center Arena (home to the San Francisco Warriors), which cost nearly \$1.5 billion. See Jay Paris, *SoFi Stadium Is Paying the Price for Lifting Its Curtain During a Pandemic*, FORBES (May 31, 2020, 1:13 PM), <https://www.forbes.com/sites/jay-paris/2020/05/31/sofi-stadium-is-paying-the-price-for-lifting-its-curtain-during-a-pandemic/?sh=45d330351a11>; Scott Davis, *Warriors President Rick Welts Explains Why Their New \$1.4 Billion Self-Financed Stadium was a One-of-a-Kind Situation Other Teams Can't Replicate*, BUS. INSIDER (Mar. 28, 2019, 1:19 PM), <https://www.businessinsider.com/how-chase-center-built-warriors-cost-perfect-storm-2019-3>.

173. See, e.g., *Golden Door Props., LLC v. Vallecitos Water Dist.*, No. D072280, 2018 WL 1465530 (Cal. Dist. Ct. App. Mar. 26, 2018) (lasting over one year); *Fedge v. Cal. Coastal Comm'n*, No. B281700, 2018 WL 4767213 (Cal. Dist. Ct. App. Oct. 3, 2018) (lasting over a year-and-a-half).

174. See *supra* notes 134–37 and accompanying text. California Assembly Bill 73 (AB 73), which was passed in 2017, provides its own means of fast-tracking CEQA claims; however, the bill requires too much of developers to be truly effective. See CAL. GOV'T CODE § 65582.1 (West 2020); CAL. GOV'T CODE § 66205 (West 2018); see also *infra* text accompanying notes 226–30 (discussing the issues with AB 73).

by complex CEQA litigation instead of streamlining future litigation.¹⁷⁵ By appointing specific judges to oversee CEQA-related disputes in any California city with a population of over 200,000 people—affecting over twenty-two cities statewide—this bill hoped that judges would “develop expertise in CEQA and certain related laws so that those judges [would] be available to hear and quickly resolve actions or proceedings alleging noncompliance with CEQA.”¹⁷⁶ With such a large number of CEQA cases being brought in large urban regions, this bill would result in most CEQA cases now being decided by judges familiar with CEQA and its technicalities.¹⁷⁷ For smaller cities that could not have a CEQA-designated judge, this bill would have allowed those courts to transfer the case to be heard “by a judge with expertise in CEQA.”¹⁷⁸ Lastly, Senate Bill 55 would have also created state-wide mandated CEQA exemptions for supportive housing and would have required states to follow the mandate.¹⁷⁹

Given that the average California judge hears 288 cases in one year, Senate Bill 55 was a practical solution considering the fact that the one designated CEQA-qualified judge would only be required to handle about sixty CEQA cases each year—far from a full-time commitment.¹⁸⁰ Allowing knowledgeable judges to interpret the CEQA statutes would be an important step for CEQA's future, since *stare decisis* has played such a large role in CEQA's application.¹⁸¹ This could have been an effective tool to alleviate the housing crisis in many California cities while giving these shelters the necessary CEQA shields.¹⁸² Unfortunately, after undergoing numerous amendments, Senate Bill 55 eventually died in the state Senate and joined the long list of CEQA reform efforts never passed.¹⁸³

175. See S.B. 55, 2019–2020 Reg. Sess. (Cal. 2020).

176. *Id.* In California, there were twenty-two cities with populations of over 200,000. *California Cities by Population*, CAL. DEMOGRAPHICS BY CUBIT, https://www.california-demographics.com/cities_by_population (last visited Sept. 27, 2021). Looking to practical solutions to appoint specific judges to CEQA cases alone, Senate Bill 55 proposes hiring retired judges to oversee such cases. See S.B. 55.

177. See S.B. 55; see also *supra* note 144 and accompanying text (explaining how most CEQA suits filed recently were filed in urban regions).

178. See S.B. 55.

179. See *id.*

180. See BUREAU OF JUST. STAT., STATE COURT CASELOAD STATISTICS 106 (2002) <https://bjs.ojp.gov/content/pub/pdf/scs02.pdf>.

181. See *supra* notes 88–92 and accompanying text.

182. See *supra* notes 22–23 and accompanying text.

183. See S.B. 55. California Senate Bill 55 was also the first CEQA bill in recent history to specifically address the racial impact of CEQA by stating that “all public agencies should give consideration

The third attempted CEQA reform strategy involved the California legislature indirectly revoking the power to make certain zoning and development decisions from municipalities by creating state-mandated upzoning, specifically near “transit-rich areas.”¹⁸⁴ This bill came at a time when many cities were attempting to place new multifamily housing developments near transit-rich areas, hoping the new residents would be more likely to utilize public transit if they were within walking distance.¹⁸⁵ However, these efforts often faced CEQA challenges.¹⁸⁶ One example of such a project was in West Covina, California, where complainants took issue with the local agency’s EIR approval for a “68-unit, mixed use, infill project” that would be a quarter-mile away from a railway station.¹⁸⁷ The primary environmental concern cited by the claimants was that the development did not provide enough parking spaces.¹⁸⁸ To assist public-transit-centered projects such as this one, legislative efforts have attempted to allow such developers to bypass certain EIR requirements.¹⁸⁹

One example of such a reform effort was Senate Bill 827.¹⁹⁰ Senate Bill 827 was the California legislature’s attempt to bypass a locality’s area-specific CEQA speed bumps¹⁹¹ by requiring local governments to grant

to environmental justice by ensuring the fair treatment and meaningful involvement of people of all races, incomes, and national origins.” *Id.* While this brief statement does not rectify the racial inequities driven by the bad incentives of CEQA, it is a start to recognition. *See id.*

184. *See infra* text accompanying notes 185–200 (discussing the issues with municipalities having so much control over their zoning and development decisions). “Upzoning” has been defined as “a change in zoning classification from less intensive to more intensive” that can be caused by the “use,” “height,” or “bulk” of a property. Richard W. Bartke & John S. Lamb, *Upzoning, Public Policy, and Fairness—A Study and Proposal*, 17 WM. & MARY L. REV. 701, 702 n.10 (1976).

185. *See* S.B. 827, 2017–2018 Reg. Sess. (Cal. 2018); *News Release: Major Affordable Housing Development is Currently Under Construction in the City of Santa Clara*, CITY OF SANTA CLARA (Jan. 15, 2021, 3:57 PM), <https://www.santaclaraca.gov/Home/Components/News/News/42347/3171>.

186. *See, e.g., infra* text accompanying notes 187–88.

187. *Covina Residents for Responsible Dev. v. City of Covina*, 230 Cal. Rptr. 3d 550, 554 (Dist. Ct. App. 2018).

188. *Id.* at 558 (stating that the plaintiff’s “principal CEQA challenge focused on the project’s allegedly inadequate parking”). There is certainly irony in the fact that the primary complaint brought against a development geared towards public transit was that there was not enough parking space provided for personal vehicles. *See id.*

189. *See infra* text accompanying notes 197–99; *see supra* note 33 and accompanying text (providing the costs associated with meeting EIR requirements when requested).

190. *See* S.B. 827.

191. *See supra* text accompanying notes 106–10.

development projects near transit-rich areas if the project met certain standards.¹⁹² The bill faced opposition from multiple sides, the most obvious of which was local governments who did not want their local decision-making restricted.¹⁹³ Another voice of opposition came from environmental organizations who did not want to see the power of CEQA taken out of the hands of the citizens.¹⁹⁴ Lastly, low-income community advocates opposed the bill out of fear that Senate Bill 827 would disproportionately displace people of color through gentrification.¹⁹⁵ Although a valiant effort at reform, the aforementioned opposition was too much for the bill to survive.¹⁹⁶

Only a few short years after Senate Bill 827's failure, California's Senate tried and failed to pass Senate Bill 50, which also focused on requiring municipalities to approve multifamily housing near transit centers; however, Senate Bill 50 faced similar opposition to its predecessor.¹⁹⁷ On top of the same criticism that Senate Bill 827 faced, many California residents were annoyed that the state legislature was essentially repackaging the same bill for the third time in an attempt to get it through.¹⁹⁸ Then, in August 2020, Senate Bill

192. See S.B. 827.

193. See Liam Dillon, *A Major California Housing Bill Failed After Opposition from the Low-Income Residents It Aimed To Help. Here's How It Went Wrong*, L.A. TIMES (May 2, 2018, 12:05 AM), <https://www.latimes.com/politics/la-pol-ca-housing-bill-failure-equity-groups-20180502-story.html>.

194. See *supra* text accompanying note 112.

195. See sources cited *supra* note 84. Often, low-income communities equate more development with more gentrification of their neighborhoods. See generally Grace Watkins, Ashley Fulton, Ivan Moreno & Rocky Rivera, *Gentrification in Los Angeles: Describing and Mitigating the Effects of Neighborhood-Level Displacement*, GENTRIFICATION IN L.A. (Apr. 5, 2021), <https://story-maps.arcgis.com/stories/c62eefccdc424603ba4603deff2119d7>. This is not an unfounded fear considering that the number of "gentrified" neighborhoods is on the rise and gentrification generally has a negative effect on the original residents. See *Mapping Neighborhood Change & Gentrification in Southern California County*, URB. DISPLACEMENT PROJECT, <https://www.urbandisplacement.org/map/socal> (last visited Nov. 6, 2021). See generally Emily Chong, *Examining the Negative Impacts of Gentrification*, GEO. L. (Sept. 17, 2017), <https://www.law.georgetown.edu/poverty-journal/blog/examining-the-negative-impacts-of-gentrification/> (discussing the various negative impacts of gentrification on poorer communities "such as forced displacement, a fostering of discriminatory behavior by people in power, and a focus on spaces that exclude low-income individuals and people of color").

196. See *supra* text accompanying notes 193–95.

197. S.B. 50, 2019–2020 Reg. Sess. (Cal. 2020); see also Liam Dillon & Taryn Luna, *California Bill To Dramatically Increase Home Building Fails for the Third Year in a Row*, L.A. TIMES (Jan. 30, 2020, 4:49 PM), <https://www.latimes.com/california/story/2020-01-29/high-profile-california-housing-bill-to-allow-mid-rise-apartments-near-transit-falls-short>.

198. See Dan Brekke, *It's SB 827, the Sequel: Wiener Introduces Revamped Bill To Spur Housing Near Transit*, KQED (Dec. 4, 2018), <https://www.kqed.org/news/11709817/its-sb-827-take-2-wiener-introduces-revamped-bill-to-require-more-housing-near-transit>.

902—what some would consider a “softer” version of Senate Bill 50 and Senate Bill 827—also died in the state assembly for similar reasons.¹⁹⁹ Senate Bill 902 differed from Senate Bill 50 and Senate Bill 827 because, instead of trying to take back zoning control from municipalities, Senate Bill 902 sought to “supersede local zoning rules that . . . limit[] density”; however, even this opposition proved to be too much, and the bill died in the face of similar criticisms as Senate Bills 827 and 50.²⁰⁰ Despite the failures of Senate Bills 50, 827, and 902, increasing the stock of multifamily housing near transit hubs makes both environmental and practical sense.²⁰¹ Such developments would not only benefit the environment by encouraging greater use of public transit systems but also make practical sense because living near public transit is often most important to “lower-income people who can’t afford cars” and, thus, have a higher likelihood of using conveniently located public transportation.²⁰²

A fourth reform strategy that was more of a slow-and-steady approach to CEQA reform sought to increase the usability of a single-family zoned parcel by one unit at a time.²⁰³ This method saw its first success in California in 2019 with the passage of Assembly Bill 68 (AB 68).²⁰⁴ After the bill’s passage, accessory dwelling units (ADUs) could be added onto a residential or mixed-use property with ministerial approval,²⁰⁵ meaning the projects are not subject to CEQA’s discretionary approval process.²⁰⁶ Then, in 2020, to build upon the success of AB 68’s passage, California sought to pass Senate Bill 1120, which would allow ministerial approval to turn a single-family zoned parcel into a duplex, thus doubling the housing potential of a single-family parcel.²⁰⁷

199. See S.B. 902, 2019–2020 Reg. Sess. (Cal. 2020).

200. John Myers, *After SB 50's Defeat, California Lawmaker Unveils 'Light Touch' Housing Density Bill*, L.A. TIMES (Mar. 9, 2020, 9:00 PM), <https://www.latimes.com/california/story/2020-03-09/california-new-housing-density-bill-scott-wiener-post-sb50-sb902>.

201. See *infra* text accompanying note 202.

202. Gillian B. White, *Stranded: How America's Failing Public Transportation Increases Inequality*, ATLANTIC (May 16, 2015), <https://www.theatlantic.com/business/archive/2015/05/stranded-how-americas-failing-public-transportation-increases-inequality/393419/> (quoting Rosabeth Moss Kanter, Professor of Business at Harvard Business School).

203. See *infra* text preceding notes 204–07.

204. See CAL. GOV'T CODE § 65852.2 (West 2021); CAL. GOV'T CODE § 65852.22 (West 2020).

205. See GOV'T § 65852.2; GOV'T § 65852.22.

206. See *supra* text accompanying notes 69–71.

207. See *Single-Family Zoning Reform: An Analysis of SB 1120*, U.C. BERKELEY: TERNER CTR. FOR HOUS. INNOVATION (July 30, 2020), <https://turnercenter.berkeley.edu/blog/sb-1120/> (estimating that “5,977,061 single-family parcels in California meet minimum lot size and historic district criteria

This bill failed to pass in 2020; however, its failure was attributed to legislative procedural issues instead of any substantive opposition like the aforementioned bills, and thus, there is hope that Senate Bill 1120 could see success in another year.²⁰⁸ In the meantime, AB 68 serves as a fairly successful piecemeal reform to CEQA in order to correct the housing shortage.²⁰⁹ In fact, from 2018 to 2020, ADU permits in California increased from 9,000 to over 12,000.²¹⁰

B. Fatal Flaws—“Successful” Legislative Efforts

On the increasingly rare occasion that a CEQA reform bill does get passed into law, the bill often is not nearly as helpful as anticipated.²¹¹ Often, to get passed the bills have to go through so many concessions that many of their benefits are “watered down.”²¹² Three prominent, recently passed CEQA reform bills—Senate Bill 35, Assembly Bill 73, and Senate Bill 540—did try to right certain CEQA wrongs, but all three bills contain fatal flaws, leaving CEQA reform advocates, and even the past California Governor himself, disappointed with each bill’s practical outcome.²¹³

First, Senate Bill 35 specifically targets communities that are not meeting their region’s projected housing needs and streamlines their development approval process by categorizing the projects as ministerial.²¹⁴ This

to be eligible for a lot split under bill SB 1120”).

208. See Andrew Khouri, *Bid To Allow Duplexes on Most California Lots Dies After Assembly Approval Comes Too Late*, L.A. TIMES (Sept. 1, 2020, 12:51 PM), <https://www.latimes.com/homeless-housing/story/2020-09-01/california-assembly-sb-1120-duplexes> (stating that a primary reason that the bill did not pass was because it was not brought up for a vote before the assembly until thirty minutes before the bill’s deadline). This year, the legislature again proposed Senate Bill 9, which is nearly an identical version of Senate Bill 1120. See S.B. 9, 2020–2021 Reg. Sess. (Cal. 2021).

209. See *infra* text accompanying note 210.

210. *About Accessory Dwelling Units*, CAL. ADU, <https://www.aducalifornia.org/> (last visited Sept. 28, 2021).

211. See Ben Adler & Emily Zentner, *Video: Jerry Brown Looks Back on Some of His Major Policy Decisions as Governor*, CAPRADIO (Jan. 4, 2019), <https://www.capradio.org/articles/2019/01/04/video-jerry-brown-looks-back-on-some-of-his-major-policy-decisions-as-governor/>.

212. *Id.* In his interview just prior to leaving the California Governor’s office, Jerry Brown stated, “I did try some changes [to CEQA,] but . . . even the *small* changes were watered down before they got enacted.” *Id.*

213. See *infra* notes 214–40 and accompanying text (providing a broad overview and criticism of Senate Bill 35, Assembly Bill 73, and Senate Bill 540); Bertrand, *supra* note 31, at 428–37 (providing an in-depth analysis and critique of these bills).

214. See CAL. GOV’T CODE § 65400 (West 2021); CAL. GOV’T CODE § 65913.4 (West 2021); JOHN PAUL HANNA & DAVID VAN ATTA, CALIFORNIA COMMON INTEREST DEVELOPMENTS: LAW AND

measurement is based off of state-wide regional allocation goals for multi-family housing, and therefore, quantifies each region's housing needs and then requires those regions to plan to match the need.²¹⁵ Considering that, as of 2018, 97.6% of cities and counties in California were not meeting their Regional Housing Needs Allocation (RHNA) goals, Senate Bill 35 had the potential to impact nearly every California region.²¹⁶ Senate Bill 35 removes certain barriers, like municipalities imposing costly parking space requirements,²¹⁷ and gives the municipality only sixty to ninety days to object to a given project based on objective criteria.²¹⁸ In summary, Senate Bill 35 could be described as a form of legislative arm twisting for those regions that were reticent to keep their low-income housing supply up with the demand.²¹⁹

Alternatively, Senate Bill 540 takes a different approach; instead of punishing development-reticent regions, Senate Bill 540 rewards those regions wanting to develop low-income multifamily housing but also desiring a simpler path through CEQA.²²⁰ Under the bill, local governments wanting to

PRACTICE § 12.28 (2020) (providing an overview of Senate Bill 35).

215. See GOV'T § 65400. The Regional Housing Needs Allocation (RHNA) is a state-mandated tool for municipalities to quantify their region's housing need. *Housing Element*, CAL. DEP'T HOUS. & CMTY. DEV., <https://www.hcd.ca.gov/community-development/housing-element/index.shtml> (last visited Sept. 30, 2021). It requires local governments to "adopt its housing element as part of its overall General Plan" so that they can match the anticipated need in their community. *Id.*

216. Katy Murphy, *Housing Shortage: New Report Shows How California Cities and Counties Stack Up*, MERCURY NEWS (Feb. 2, 2018, 3:34 PM), <https://www.mercurynews.com/2018/02/01/housing-shortage-new-report-shows-how-california-cities-and-counties-stack-up/>.

217. See Hannah Hoyt & Jenny Schuetz, *Parking Requirements and Foundations are Driving Up the Cost of Multifamily Housing*, BROOKINGS (June 2, 2020), <https://www.brookings.edu/research/parking-requirements-and-foundations-are-driving-up-the-cost-of-multifamily-housing/>.

"Most local zoning laws stipulate a minimum number of off-street parking spaces that must accompany new housing"; however, parking space requirements can vastly increase a development's cost. *Id.* This is especially salient in high-density areas such as Los Angeles and San Francisco where new housing is needed most. *Id.*

218. See GOV'T § 65400. If a municipality does object to a Senate Bill 35-qualifying development based on the objective standard of review, the municipality must describe with particularity what the objective standard is that the developer must meet. See *Order Granting Consolidated Petitions for Writ of Mandate at 12-37, 40 Main St. Offs., LLC v. City of Los Altos* (Cal. Super. Ct. Apr. 27, 2020) (No. 19CV349845) (explaining that a city's objection that a development did not meet "adequate" parking requirements was not an objective standard of review sufficient to deny development under Senate Bill 35 and requiring a city to provide a ministerial permit for a project satisfying Senate Bill 35's requirements).

219. See *supra* text accompanying note 218.

220. See CAL. GOV'T CODE § 65621 (West 2019). See generally Bertrand, *supra* note 31, at 433-

increase their region's housing stock can establish a Workforce Housing Opportunity Zone (WHOZ).²²¹ To create a WHOZ, the city or county completes an EIR covering the whole WHOZ.²²² Then, once approved, the city or county is eligible for state funding for future development projects as long as the developments designate a portion of the housing as low-income.²²³ Because the EIR is already completed and paid for by the municipality, developers do not have to complete a separate EIR for any qualifying projects within the WHOZ.²²⁴ Thus, Senate Bill 540 allows developers to be at ease and focus on their projects behind an artificial CEQA shield.²²⁵

While Senate Bill 540 provides financial incentives for creating *new* affordable housing, another bill—Assembly Bill 73 (AB 73)—similarly provides financial incentives to willing municipalities.²²⁶ But instead of incentivizing the creation of *new* affordable housing, AB 73 focuses on incentivizing the *preservation* of affordable housing.²²⁷ Similar to Senate Bill 540, AB 73 frontloads the EIR requirements for developments and provides additional funding to municipalities to support future qualifying projects.²²⁸ But unlike Senate Bill 540, AB 73 includes a provision to ensure municipalities fulfill their end of the affordable-housing bargain.²²⁹ If the Department of Housing and Community Development ever finds that the given district has fallen out of compliance with Assembly Bill 73, then the district must pay back all of the funding.²³⁰

Overall, while Senate Bill 540, AB 73, and Senate Bill 35 were likely all well-intended and do ostensibly provide CEQA shields, each of them has the

35.

221. See CAL. GOV'T CODE §§ 65620–65625 (West 2017). To qualify, a zone must be planned to support “a minimum of 100 units to a maximum of 1,500 residential dwelling units.” GOV'T § 65621(a)(1).

222. See GOV'T §§ 65620–65625.

223. See *id.*

224. See *id.*

225. See *id.*

226. See *infra* text accompanying notes 227–30.

227. See CAL. GOV'T CODE § 65582.1 (West 2020); see also Bertrand, *supra* note 31, at 435–37 (discussing Assembly Bill 73 in depth).

228. See CAL. PUB. RES. CODE § 21155.10 (West 2017). Unlike Senate Bill 540, which used WHOZs, Assembly Bill 73 established “housing sustainability districts.” See CAL. GOV'T CODE § 66201 (West 2019).

229. See CAL. GOV'T CODE § 66210 (West 2018).

230. *Id.* “If a city, county, or city and county reduces the density of sites within the district from the levels required, . . . the city, county, or city and county shall return the full amount of zoning incentive payments it has received . . . to the department.” *Id.*

same critical flaw preventing it from achieving its goals.²³¹ Likely due to legislative concessions needed to pass the bills, all three require developers to pay prevailing wages to all laborers, workers, and mechanics during the development phase.²³² This stipulation can have a negative effect on a developer's desire to utilize the statutory shields since “[p]roject labor costs at prevailing wage rates may be significantly higher than anticipated and may quickly surpass the cost benefit conferred by the public assistance.”²³³ In some cases, the increased cost due to prevailing wages could “increase construction costs anywhere between twelve percent and forty-eight percent.”²³⁴ Considering the already slim profit margins that low- to mid-income multi-family developers operate under, increasing their labor costs could essentially mute any benefits the bill would have provided.²³⁵

Furthermore, a brief look at California's Labor Code reveals that it is unlikely that California legislators could claim ignorance regarding the negative impact prevailing wage stipulations have on low- to mid-income developments.²³⁶ For example, California Labor Code Section 1720(c)(4) creates certain exemptions from having to pay prevailing wages to developers of low- to

231. See *infra* note 232 and accompanying text; Bertrand, *supra* note 31, at 441–42 (stating that “the prevailing wages and skilled and trained workforce requirements . . . take a substantial bite out of th[e] savings” the bills provide).

232. See A.B. 73, 2019–2020 Gen. Sess. (Cal. 2019) (enacted); CAL. GOV'T CODE § 65623(b)(9)(B) (West 2019) (requiring “all construction workers employed in the execution of the project” to be “paid at least the general prevailing rate of per diem wages for the type of work and geographic area”). “California's prevailing wage laws mandate that all bidders use the same legally[] established wage rates when bidding.” CAL. STATE TREASURER'S OFF., AFFORDABLE HOUSING COST STUDY 37 (2014), https://www.treasurer.ca.gov/ctcac/affordable_housing.pdf; CAL. LAB. CODE § 1723 (West 2001).

233. Stephen J. Fowler, *Contractor Beware: The Fine Line Between “Public Works” and “Private Projects” Under California's Prevailing Wage Law*, 20 MILLER & STARR REAL EST. NEWSL. 1. 1 (2010), <https://www.jdsupra.com/post/fileServer.aspx?fName=e8049571-4068-4d34-ad3f-14790e56c7dd.pdf>.

234. Bertrand, *supra* note 31, at 441.

235. See *supra* notes 136–37 and accompanying text.

236. See *infra* notes 237–39 and accompanying text.

mid-income housing.²³⁷ The statute reveals two things.²³⁸ First, legislators are already aware of the issues prevailing wage requirements pose for developers.²³⁹ Second, in order to create beneficial CEQA shields like Senate Bill 540, AB 73, and Senate Bill 35 without including prevailing wage requirements, the California legislature would likely have to explicitly provide such a statutory exemption similar to those provided in § 1720(c)(4), which the legislature ultimately chose not to do.²⁴⁰

C. Has the Legislature Found a CEQA Backdoor? The False Hope of Bonus Density Programs.

Recently, many have referred to the bonus density strategy as a CEQA backdoor; however, this is not necessarily the case.²⁴¹ In short, “[a] density bonus is an increase in the overall number of housing units that a developer may build on a site in exchange for including more affordable housing units in the project.”²⁴² Using San Diego as essentially a bonus density pilot program, legislators interpreted the county’s early indications of success as a green light to take the efforts statewide with Assembly Bill 2345 and Senate Bill 1085.²⁴³ This was because, in the early years of its density bonus program, San Diego experienced a “490 percent increase annually for the number of projects applying to use the [density bonus] program.”²⁴⁴ However, there

237. See CAL. LAB. CODE § 1720 (West 2021). Normally, any developer that receives public funding or public assistance (such as CEQA exemptions) would be required to pay prevailing wages on the project, unless one of the exemptions applied. See *id.* It is also worth noting that the legislature added recent amendments to Section 1720 in 2017, the same year as Senate Bill 540, Assembly Bill 73, and Senate Bill 35’s enactment. Compare CAL. LAB. CODE § 1720 (West 2017) (requiring payment of prevailing wages unless an exemption applied), with LAB. § 1720 (2021) (amending to include when a public subsidy is de minimis).

238. See *infra* text accompanying notes 239–40.

239. See *supra* text accompanying note 237.

240. See LAB. § 1720(c)(4). An explicitly created statute is necessary because California courts will “liberally construe” whether public assistance for a development project is exempt from prevailing wage requirements. See *State Bldg. & Constr. Trades Council of Cal. v. Duncan*, 76 Cal. Rptr. 3d 507, 535 (Dist. Ct. App. 2008) (citation omitted).

241. See *infra* notes 246–51 and accompanying text.

242. *About*, S.F. PLAN., <https://sfplanning.org/home-sf> (last visited Oct. 1, 2021). See generally JON GOETZ & TOM SAKAI, GUIDE TO CALIFORNIA DENSITY BONUS LAW 2–3 (2021), https://www.meyersnave.com/wp-content/uploads/California-Density-Bonus-Law_2021.pdf (providing an overview of how Bonus Density Housing works).

243. See A.B. 2345, 2019–2020 Gen. Sess. (Cal. 2020) (enacted); S.B. 1085, 2019–2020 Reg. Sess. (Cal. 2020).

244. COLIN PARENT & MAYA ROSAS, GOOD BARGAIN: AN UPDATED EVALUATION OF THE CITY OF

are two reasons that it may be too early to conclude that bonus density has actually been successful in San Diego.²⁴⁵

First, the increase in San Diego is only for *applications*, and there are no figures yet on how many of these projects actually broke ground without facing CEQA suits.²⁴⁶ Second, the standard CEQA discretionary approvals still apply even to bonus density housing.²⁴⁷ This was illustrated in *Wollmer v. City of Berkeley*, where the court held that only some density bonus projects will receive CEQA exemptions.²⁴⁸ In fact, if a prior or current EIR shows the increased “bonus” units on the property will cause an adverse impact on the surrounding environment, then the project is not exempt from CEQA.²⁴⁹ Given that the very purpose of bonus density programs is to allow more housing units on a property than might have been allowed under the current zoning plan, it is highly likely that a project using bonus density would be vulnerable to CEQA.²⁵⁰ Therefore, the recent density bonus legislation, like so many other ostensibly helpful and well-intended CEQA reform efforts, is unlikely to be a path to making the necessary radical reforms.²⁵¹

D. Municipalities Taking Matters into Their Own Hands

In light of the California legislature’s aforementioned struggles to reform CEQA, some local governments have attempted to take matters into their own

SAN DIEGO’S AFFORDABLE HOMES BONUS PROGRAM 12 (2020), https://d3n8a8pro7vhmx.cloudfront.net/circulatesd/pages/1316/attachments/original/1591816951/AHBP_status_report_2020_newlogos.pdf?1591816951 [hereinafter *Good Bargain*].

245. See *infra* notes 246–50 and accompanying text.

246. See PARENT & ROSAS, *supra* note 244, at 3 (establishing that the 490% increase is for “appl[ications] to use the [bonus density] program,” not for increases in actual construction projects).

247. See *infra* notes 248–49 and accompanying text.

248. 122 Cal. Rptr. 3d 781, 794 (Dist. Ct. App. 2011).

249. See GOETZ & SAKAI, *supra* note 242, at 11 (noting that “[n]ot all density bonus projects will qualify for one of the[] CEQA exemptions” and that these projects “may require additional CEQA analysis for approval”).

250. See, e.g., *About*, *supra* note 242 (explaining that density bonus programs are “designed to incentivize building more affordable and family-friendly housing in neighborhood commercial and transit corridors through zoning modifications”).

251. See *supra* text accompanying note 231. It is also worth mentioning that, unlike other recent CEQA reform efforts, Senate Bill 2345 and Assembly Bill 1085 do not require developers to pay workers prevailing wages. See A.B. 2345, 2019–20 Gen. Sess. (Cal. 2020) (enacted); S.B. 1085, 2019–2020 Reg. Sess. (Cal. 2020). But even despite the lack of prevailing wage requirement, the laws are still ineffective as wholesale CEQA solutions for the reasons described above. See *supra* text accompanying notes 246–50.

hands.²⁵² Unfortunately, their local efforts to loosen CEQA's grip over development projects have been met with judicial repudiation.²⁵³ This is because CEQA's judicial precedent over the last fifty years has established a rule that a municipality can restrict CEQA exemptions and review, but it cannot loosen them.²⁵⁴ The idea is that local governments are allowed to restrict CEQA exemptions because this furthers interests of environmental oversight, while any local ordinances liberalizing CEQA's implementations could allow harmful developmental projects.²⁵⁵

One recent example of a county attempting to reclassify what projects could receive ministerial exemptions was seen in *Protecting Our Water & Environmental Resources v. County of Stanislaus*.²⁵⁶ In *Protecting Our Water*, a central California county wanted to lessen the burden of CEQA on developers of water wells, so it created a blanket ministerial classification for such wells.²⁵⁷ In response to this blanket classification, an anonymous group of plaintiffs filed suit alleging that the classification was unlawful, and the California Supreme Court agreed.²⁵⁸ The Court reminded the county, pursuant to past precedent, that CEQA should be interpreted "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."²⁵⁹ This interpretation is apparently most consistent with the "Legislature's [CEQA] objectives: to reduce or avoid environmental damage by requiring project changes when feasible."²⁶⁰

The county argued for a broader interpretation of the CEQA guidelines by stating that the county—acting vicariously through its local agency—had the discretion to make the blanket exception, saving both the county and developers time and money instead of having to apply the discretionary

252. See *infra* notes 256–57 and accompanying text.

253. See *infra* note 263 and accompanying text.

254. See *supra* notes 106–07 and accompanying text.

255. See *supra* notes 106–07 and accompanying text.

256. 472 P.3d 459, 462–63 (Cal. 2020).

257. See *id.*

258. *Id.* Water rights have long been a disputed, politically driven topic in California's Central Valley, where Stanislaus County is located. See generally Susan G. Ehrlich, *Whither Water in California?*, 43 REAL EST. REV. J., no. 4 (2014) (discussing the decades-long disputes over Central California's water usage).

259. *Protecting Our Water*, 472 P.3d at 468 (quoting *Friends of Mammoth v. Bd. of Supervisors*, 502 P.2d 1049, 1056 (Cal. 1972)).

260. *Id.* (citing *Cal. Bldg. Indus. Ass'n v. Bay Area Air Quality Mgmt. Dist.*, 362 P.3d 792, 797 (Cal. 2015)).

procedures each time.²⁶¹ According to the guidelines, the county argued that “determination of what is ‘ministerial’ can most appropriately be made by the particular public agency involved based upon its analysis of its own laws.”²⁶² The Court disagreed, however, and armed with precedent and judicial interpretation of the legislature’s objectives, the Court held that the blanket ministerial classification could not be given to a class of projects where there might *sometimes* need to be the “exercise of independent judgement.”²⁶³ The Court also concluded that the type of CEQA classifications made by the city were not justifiable just because they were in the best interest of “alacrity and economy.”²⁶⁴

Multiple times throughout its opinion, the Court reminded the county that while it was now allowed to apply blanket ministerial approval to a whole category of projects, “[t]he agency may classify other types of project approvals as ministerial on a ‘case-by-case basis.’”²⁶⁵ However, if a municipality were to follow the case-by-case process deemed proper by the Court, this would not provide the much needed streamlining that counties like Stanislaus were aiming for.²⁶⁶ Despite the Court’s attempts to explain that its decision was narrow, the decision may still have fairly broad ramifications by “lower[ing] the threshold for the type and degree of discretion that triggers CEQA review” and by creating another level of unpredictability in the CEQA process.²⁶⁷ Overall, *Protecting Our Water* served to remind counties of their

261. *Id.* at 469–70.

262. *Id.* at 470 (citing CAL. CODE REGS. tit. 14, § 15268 (2005)). The court told the county that it wrongly interpreted the CEQA code’s meaning and that it was not the county’s job to “determine the scope and meaning of an ordinance as a matter of law” because that is the job of the court. *Id.* at 470–71.

263. *Id.* at 471.

264. *Id.* at 472.

265. *Id.* at 470 (citation omitted).

266. See Niran Somasundaram, *Supreme Court of California Weighs in on Blanket Categorization of Well Construction Permit Approvals as Ministerial*, JD SUPRA (Sept. 2, 2020), <https://www.jdsupra.com/legalnews/supreme-court-of-california-weighs-in-22368/> (“It appears that Courts will be far more lenient and deferential to permitting agencies if ministerial categorizations are made for particular permits on a case-by-case basis.”).

267. Austin Cho & Christian Marsh, *California Supreme Court Throws the Barn Doors Open, Finding That Groundwater Well Permits Aren’t Necessarily Ministerial*, JD SUPRA (Sept. 3, 2020) (citation omitted), <https://www.jdsupra.com/legalnews/california-supreme-court-throws-the-40041/>; see also Amicus Curiae Brief for Respondents, *supra* note 58, at 41 (citing CAL. CODE REGS. tit. 14, §§ 15258(b)(1), 15369 (2005)) (arguing that holding for the petitioner here would “subvert CEQA into an instrument for the oppression and delay of development” and would “contravene the Legislature’s clear direction that *more*, rather than less, ministerial permitting is a key element in meeting the

judicially enforced inability to create broad CEQA reform on their own.²⁶⁸ Instead, counties hoping for a more streamlined and efficient version of CEQA must continue to hope that the California legislature will take further action.²⁶⁹

Therefore, reviewing California's recent actions surrounding CEQA, it seems every step forward has been met with another step back.²⁷⁰ Whether it is new legislation such as Senate Bill 35, AB 73, Senate Bill 540, or proposed legislation that simply fails to see the light of day, it appears that no complete CEQA solution is readily available.²⁷¹ This lack of legislative solution, compounded with the California courts' restriction on how municipalities can create their own reforms,²⁷² suggests California should look externally to other states for effective reforms and also expand its idea of what kind of developments should benefit from these reforms.²⁷³

IV. A BRIGHTER FUTURE FOR THE GOLDEN STATE

As stated earlier, while California was the first state to enact a little NEPA, it was not the only state to do so.²⁷⁴ Nor is California the only state that struggles to strike the right balance between preserving the environment's future and enabling the development of requisite housing.²⁷⁵ Seeking the correct the balance, three states in particular—Massachusetts, Minnesota, and New York—reformed their environmental statutes in ways that can provide California with solutions to its own CEQA barriers.²⁷⁶ If California combines

[s]tate's housing crisis").

268. See 472 P.3d at 467.

269. See *supra* notes 263–66 and accompanying text.

270. See *infra* text accompanying notes 271–73.

271. See *supra* Sections III.A, III.B, III.C.

272. See *supra* Section III.D.

273. See *infra* Part IV.

274. See *supra* text accompanying note 54 (explaining that the states that have created their own "little NEPAs" are California, Connecticut, Georgia, Hawaii, Indiana, Maryland, Massachusetts, Minnesota, Montana, New Jersey, New York, North Carolina, South Dakota, Virginia, Washington, and Wisconsin).

275. See *infra* Section IV.A.

276. See *infra* Section IV.A. The three states analyzed below are Massachusetts, New York, and Minnesota. See *infra* Section IV.A. These states were selected for two reasons: according to recent reports, they are struggling with similar housing shortage issues to California, and these states have taken innovative steps to reform their environmental regulations relating to development. See *generally* THE HOUSING SUPPLY SHORTAGE, *supra* note 23 (providing details surrounding California's housing shortage compared to other states).

these solutions with a final change involving a perspective shift on which type of developments are impacted by CEQA reform, then there could be a brighter future for CEQA after all.²⁷⁷

A. Lessons from Other States

1. Lessons from Massachusetts in Accelerating and Simplifying Approval. Sort of.

Prior to CEQA's enactment in 1972, Massachusetts already foresaw the impending issues coinciding with affordable housing and local municipality control over land use decisions.²⁷⁸ Its response was to enact Massachusetts Chapter 40B, which served as the most popular "antisnob zoning" legislation.²⁷⁹ Similar to California's Senate Bill 35 utilization of RHNA, Chapter 40B established a legislative override for regions where there is not enough affordable housing units.²⁸⁰ However, instead of establishing a tool like RHNA that first tries to project the amount of housing that each specific region will need in the future and then tries to incentivize regions to meet that projection, Chapter 40B takes a simpler, more practical approach.²⁸¹ Massachusetts instead uses a uniform measurement across all cities by requiring that at least 10% of each region's housing qualify as affordable.²⁸² For enforcement, the statute provides that if a low- or mid-income housing developer applies for permitting and the local agency denies the permit, then the developer can appeal to the state-controlled Housing Appeals Committee (HAC).²⁸³ If the HAC finds that the region that denied the permit has not met the 10% threshold, then the state commission is empowered to grant the permit regardless.²⁸⁴ Chapter 40B also aims to expedite the application approval process.²⁸⁵

277. See *infra* Sections IV.A, IV.B.

278. See Infranca, *supra* note 110, at 837–39; see also *supra* Section II.D.1 (discussing the issues that arise from granting local municipalities too much zoning control).

279. Infranca, *supra* note 110, at 839; see MASS. GEN. LAWS ANN. ch. 40B, § 2 (West 2018).

280. See MASS. GEN. LAWS ANN. ch. 40B, §§ 20–21 (West 2018).

281. See *supra* note 215 and accompanying text (discussing how RHNAs work).

282. See ch. 40B, §§ 20–21. To qualify as affordable housing, it must be affordable to "a household of one or more persons whose maximum income does not exceed 80% of the area median income." 760 MASS. CODE REGS. § 56.02 (2020).

283. See MASS. GEN. LAWS ANN. ch. 40B, § 22 (West 1998).

284. See ch. 40B, § 20.

285. See *infra* text accompanying note 286.

Upon the initial permit application, the local board has thirty days to hold a hearing and then forty days after the hearing to issue a decision.²⁸⁶ Regarding the comparative success of Chapter 40B, as of 2020, roughly 19% of Massachusetts cities fall within the 10% threshold of low income housing,²⁸⁷ compared to California where only 3% of cities meet their predetermined RHNA goals.²⁸⁸

While Chapter 40B seems to have found legitimate solutions to get multifamily-housing-reticent regions to build housing on paper, recently scholars have debated whether CEQA or MEPA (the CEQA-analogous Massachusetts law) reforms are more effective.²⁸⁹ Critics of CEQA fault its arduous process and complex solutions, like the RHNA, and argue that Chapter 40B offers a more streamlined program that simply bullies municipalities into building housing.²⁹⁰ Meanwhile, critics of Chapter 40B have recently emerged, noting that the statute *still* leaves too much control in the hands of local zoning bodies, resulting in a process that remains too long and too ineffective to keep up with the pace of housing demands.²⁹¹ Apparently, under the current statute, local municipalities are still able to “block affordable housing construction quite easily.”²⁹² These critics of Chapter 40B argue that Massachusetts should instead model its reform efforts after California and specifically point to

286. See ch. 40B, § 21.

287. See *Subsidized Housing Inventory (SHI)*, MASS.GOV, <https://www.mass.gov/service-details/subsidized-housing-inventory-shi> (last visited Nov. 6, 2021).

288. Jeff Collins, *California Needs More Housing, but 97% of Cities and Counties Are Failing To Issue Enough RHNA Permits*, ORANGE CNTY. REG. (Dec. 10, 2019, 6:37 PM), <https://www.ocregister.com/2019/12/09/losing-the-rhna-battle-97-of-cities-counties-fail-to-meet-state-housing-goals/>. It is possible that one reason why California struggles to meet its RHNA goals is because, as some cities say, the goals are simply “unrealistic and unachievable.” Bradley Bermont, *Pasadena Reckons with ‘Unachievable’ RHNA Housing Goals After Appeal Rejection*, PASADENA STAR-NEWS (Jan. 23, 2021, 6:42 PM), <https://www.pasadenastarnews.com/2021/01/20/pasadena-reckons-with-unachievable-rhna-housing-goals-after-appeal-rejection/>. In fact, when the most recent RHNA numbers were released at least fifty cities appealed the numbers, believing they were too high. See *id.*

289. See *infra* notes 290–93 and accompanying text.

290. See generally Carolina K. Reid, Carol Galante & Ashley F. Weinstein-Carnes, *Addressing California's Housing Shortage: Lessons from Massachusetts Chapter 40B*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. 241 (2017) (arguing that California should model Massachusetts's Chapter 40B expedition process in order to increase the efficiency of its programs). What this back and forth tells us is that no state has yet to find the perfect concoction of reform. See *id.*

291. Forgione, *supra* note 108, at 216–17 (asserting that Massachusetts's “status quo policy of [new housing] incentivization” cannot resolve its current “housing crisis”).

292. Forgione, *supra* note 108, at 211. It is important to note that even critics of Chapter 40B do not contend that any *current* formulation of CEQA and CEQA-related reforms are better than 40B but are instead pointing to *proposed* California legislation that has yet to be enacted. See *infra* text accompanying note 293.

Senate Bill 50 and Senate Bill 827—both recently failed California legislative bills.²⁹³ Therefore, while Massachusetts provides a small piece of the puzzle as to what a more objective CEQA reform could look like, both Massachusetts and California face the same hurdle in pushing local municipalities to allow affordable housing: the voters.²⁹⁴

2. Lessons from Minnesota—Removing the Public Approval Hurdle

While California and Massachusetts struggle to figure out how to get over the hurdle of public approval, the capital of Minnesota,²⁹⁵ Minneapolis, has come up with a plain yet effective solution: remove the public approval hurdle altogether.²⁹⁶ In terms of state control over local zoning power, Minneapolis made perhaps the most progressive local zoning decision of any city in decades.²⁹⁷ In January of 2020, Minneapolis became the first city in the United States to enact a city-wide elimination of single-family zoning on parcels.²⁹⁸ The ordinance established a new minimum allowance for residential zoning by mandating that the most restrictive residential zoning must still allow for three-family dwellings.²⁹⁹

In practice, this means that if a developer wants to build a duplex, or a

293. Forgione, *supra* note 108, at 212–14.

294. *See supra* Section III.A.1.

295. Two years after California established CEQA, Minnesota enacted its own “little NEPA,” the Minnesota Environmental Policy Act (MEPA). *See* MINN. STAT. ANN. § 116D (1986). To pair with MEPA, Minnesota also created a separate act called the Minnesota Environmental Rights Act (MERA) that provides citizens with a right to claim against projects with adverse environmental impacts. *See* MINN. STAT. ANN. § 116B (1986). Together, these two Acts mirror CEQA in most general regards. *See generally* Kevin Reuther, *MEPA at 36: Perspectives on Minnesota's Little NEPA*, 39 ENV'T L. REP. NEWS & ANALYSIS 10663, 10663–66 (2009) (providing a broad overview of MEPA and MERA and their subsequent amendments).

296. *See infra* notes 297–99 and accompanying text. It is worth noting that Minneapolis, similar to most large cities in California, is dealing with its own affordable housing crisis. *See* Steven P. Katkov & Jon Schoenwetter, *Minneapolis's Great Experiment*, 77 BENCH & BAR MINN. 21, 22 (2020).

297. *See* Katkov & Schoenwetter, *supra* note 296, at 22. This portion of the article specifically addresses how a city like Minneapolis has drastically altered its zoning law on its own. *Id.* Oregon was the first state to get rid of single-family zoning within cities of a certain population by creating a minimum zoning requirement for duplexes. *See* Christian Britschgi, *Oregon Becomes First State To Ditch Single-Family Zoning*, REASON (July 1, 2019, 12:20 PM), <https://reason.com/2019/07/01/oregon-becomes-first-state-to-ditch-single-family-zoning/>. However, such an effort was already tried in California and failed. *See supra* text accompanying notes 125–26.

298. *See* MINNEAPOLIS, MINN., ORDINANCE NO. 2019-048 (Nov. 16, 2019).

299. *See id.*

triplex, where there was once a single-family home, opponents will now be unable to challenge the development by means of an environmental impact claim.³⁰⁰ This is because, under the new ordinance, the parcel where the single-family home sits is already zoned for a duplex or triplex.³⁰¹ Even though Minneapolis's new ordinance appears innovative in the seemingly archaic world of zoning laws, it is not quite as revolutionary as some might claim since a developer could still face adverse environmental claims for trying to build anything more than a three-unit development.³⁰² Even though the ordinance is not so drastic as to allow large multifamily structures to suddenly inundate single-family neighborhoods, Minneapolis deserves credit for being the first city to take this sort of step in the right direction.³⁰³

How was Minneapolis able to pass such a landmark legislation when so many other cities and states—California included—have failed?³⁰⁴ As it turns out, the secret lies in a statutory exemption provided for comprehensive plans (including zoning changes) adopted by the city.³⁰⁵ Every ten years, cities in Minnesota “are required to review and amend their comprehensive plans,” and the resulting plans are then “exempt from environmental review under MEPA.”³⁰⁶ Minneapolis took advantage of this mandated planning requirement by identifying and removing developmental barriers that were

300. *See id.*

301. *See id.*

302. *See* Erick Trickey, *How Minneapolis Freed Itself from the Stranglehold of Single-Family Homes*, POLITICO MAG. (July 11, 2019), <https://www.politico.com/magazine/story/2019/07/11/housing-crisis-single-family-homes-policy-227265>. Even though they are catchy, news headlines stating that Minneapolis “Freed Itself from the Stranglehold of Single-Family Homes” perhaps exaggerate the ordinance’s net impact. *See, e.g., id.*; Richard D. Kahlenberg, *Minneapolis Saw that NIMBYism Has Victims*, ATLANTIC (Oct. 24, 2019), <https://www.theatlantic.com/ideas/archive/2019/10/how-minneapolis-defeated-nimbyism/600601/>.

303. *See, e.g.,* Christian Britschgi, *Minnesota Is Latest State To Consider Ban on Single-Family Zoning*, REASON (Mar. 11, 2020, 10:15 AM), <https://reason.com/2020/03/11/minnesota-is-latest-state-to-consider-ban-on-single-family-zoning/> (discussing Minnesota’s recent consideration to turn Minneapolis’s city-wide ordinance into a state-wide ordinance). Since Minneapolis passed its ordinance, many other states have pursued similar legislation. *Id.*; Haisten Willis, *As Cities Rethink Single-Family Zoning, Traditional Ideas of the American Dream are Challenged*, WASH. POST (June 27, 2019), https://www.washingtonpost.com/realstate/as-cities-rethink-single-family-zoning-traditional-ideas-of-the-american-dream-are-challenged/2019/06/25/8312a512-4ca3-11e9-93d0-64dbcf38ba41_story.html (discussing how Minneapolis has inspired cities like Austin, Texas, and Berkeley, California, to consider getting rid of single-family zoning).

304. *See infra* Section IV.A.2.

305. MINN. R. 4410.4600 (2019).

306. *State by Smart Growth Minneapolis v. City of Minneapolis*, 941 N.W.2d 741, 745 (Minn. Ct. App. 2020) (citing MINN. STAT. ANN. § 473.864(2) (West 2006)), *rev’d on other grounds*, 954 N.W.2d 584 (Minn. 2021). These exemptions are judicially enforced. *See id.* at 746.

preventing low- to mid-income housing developments.³⁰⁷ This resulted in Minneapolis 2040, a comprehensive plan eliminating single-family zoning and other barriers to density development such as minimum street parking requirements and minimum lot size.³⁰⁸ Best of all, because of the exemption provided to comprehensive plans, NIMBYs have faced obstacles in their attempts to bring environmental causes of action against the plan.³⁰⁹

Unfortunately, the current state of California's laws prevents any city or county from being able to directly apply the same strategy as Minneapolis.³¹⁰ Primarily due to judicial interpretation, the loophole allowing Minneapolis to take such a radical zoning step is nonexistent in California.³¹¹ Unlike MEPA, which statutorily exempts a municipality's ten-year comprehensive plan from environmental review, California's legislature has not created a similar exemption, and its judiciary has repeatedly held that no similar exemption applies.³¹² Indeed, the California Supreme Court has stated that "the enactment or amendment of a general plan is subject to environmental review under CEQA."³¹³ Even though the CEQA statute includes no provision refusing such an exemption, the CEQA Guidelines do, and these guidelines are deeply rooted in numerous judicial opinions.³¹⁴ The justification for such precedent comes from the belief that general plans altering a region's zoning "have a potential for resulting in ultimate physical changes in the environment," and CEQA must be interpreted to "afford the fullest possible protection to the

307. See Sarah J. Adams-Schoen, *Dismantling Segregationist Land Use Controls*, 43 ZONING & PLAN. L. REP. 1, 11–13 (2020).

308. See *id.* at 11.

309. But see *Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584 (Minn. 2021) (finding that the plaintiff's challenge to a comprehensive plan could proceed under MERA).

310. See *infra* notes 312–15 and accompanying text.

311. See *infra* notes 312–14 and accompanying text.

312. See *infra* notes 314–15 and accompanying text.

313. *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Comm'n*, 160 P.3d 116, 124 (Cal. 2007) (citing *Devita v. Cnty. of Napa*, 889 P.2d 1019, 1039 (Cal. 1995); *Black Prop. Owners Ass'n v. City of Berkeley*, 28 Cal. Rptr. 2d 305, 312 (Dist. Ct. App. 1994); *City of Santa Ana v. City of Garden Grove*, 160 Cal. Rptr. 907, 913 (Dist. Ct. App. 1979)). In California, the "general plan" is the term used for what Minnesota calls the "comprehensive plan." See *Muzzy Ranch Co.*, 160 P.3d at 124 (describing the city's general plan).

314. See *Devita*, 889 P.2d at 1039; see also *Sierra Club v. San Joaquin Loc. Agency Formation Co.*, 981 P.2d 543, 552 (Cal. 1999) ("It is, of course, a fundamental jurisprudential policy that prior applicable precedent usually must be followed even though the case, if considered anew, might be decided differently by the current justices.").

environment.”³¹⁵

Thus, given the court’s aforementioned interpretations and the California legislature’s recent failures, if California wishes to allow any of its regions to follow in Minneapolis’s footsteps, there is still one available alternative through the legislature.³¹⁶ The state legislature could pass a bill mirroring Minnesota Statute Section 473.864(2) to provide a statutory exemption for certain types of locally adopted general plans.³¹⁷ This would free cities to follow Minneapolis’s footsteps and get rid of single family zoning altogether.³¹⁸ Technically, this would just be a more subversive and expansive form of the duplex zoning bill that failed in 2020: Senate Bill 1120.³¹⁹ However, this indirect strategy of passing legislation to allow local municipalities to freely alter their general plan without the fear of CEQA complaints so that they could then pass a sweeping zoning change similar to Minneapolis could be just the type of creative strategy required for effective CEQA reform.³²⁰

3. Lessons from New York—Sometimes It Pays To Be a Follower.

New York did not adopt its CEQA equivalent until 1976, six years after CEQA’s enactment.³²¹ This delay meant New York had the privilege of learning from California’s successes and missteps in its initial statutory enactments, which resulted in two stark differences between CEQA and New York’s State Environmental Quality Review Act (SEQRA).³²² First, New York does not allow individuals to file anonymous SEQRA law suits.³²³ It is

315. *City of Santa Ana*, 160 Cal. Rptr. at 910, 913.

316. *See infra* notes 317–20.

317. *See Smart Growth Minneapolis v. City of Minneapolis*, 954 N.W.2d 584, 591–92 (Minn. 2021) (explaining Minnesota’s statutory exemption).

318. *See* MINN. ORDINANCE NO. 2019-048 (Nov. 16, 2019); *supra* note 317 and accompanying text.

319. *See supra* text accompanying notes 207–08.

320. *See supra* notes 207–08 and accompanying text (discussing the failures of Senate Bill 1120).

321. *See* Nicholas A. Robinson, *SEQRA’s Siblings: Precedents from Little NEPA’s in the Sister States*, 46 ALB. L. REV. 1155, 1160 (1982).

322. *See id.* (“When [SEQRA was enacted], . . . New York was able to benefit from the experiences of California and twelve other states with little NEPA[.]s.”); *infra* notes 323, 327 and accompanying text.

323. *Cf. Hernandez, supra* note 31, at 58–60 (discussing the problems that anonymity brings to CEQA suits). A brief comparison of the complaining parties listed in major CEQA cases and the names listed in major SEQRA cases reveals the facial impact of this anonymity. *Compare* *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005 (Cal. 2011), and *Friends of the Eel River v. N. Coast R.R. Auth.*, 399 P.3d 37 (Cal. 2017), and *Friends of Mammoth v. Bd. of Supervisors*, 502 P.2d 1049 (Cal. 1972), with *Bridon Realty Co. v. Town Bd. of Clarkson*, 672 N.Y.S.2d 887 (App. Div.

possible that New York simply believed that SEQRA-filer anonymity was a redundant protection since SEQRA filers were already protected from any retaliatory lawsuits from angry developers through New York's anti-SLAPP statute.³²⁴ Generally, states enact anti-SLAPP statutes in order to “discourage claims against persons who exercise their ‘right of petition under the [C]onstitution of the United States or of the Commonwealth.’”³²⁵ In practice, New York's anti-SLAPP statute has served as a strong protection for complainants because most retaliatory “suits of this sort have been dismissed.”³²⁶ Second, SEQRA carries stricter standing requirements than CEQA does.³²⁷ To have standing under SEQRA, “the petitioner must make a showing that the action complained of will have a harmful effect on it or that it has suffered an injury in fact and that the interest asserted is arguably within the zone of interest protected by the SEQRA.”³²⁸

Similar to New York, California also has a fairly broad sweeping anti-SLAPP statute that provides sufficient protection to CEQA claimants.³²⁹ Therefore, if one of the primary justifications for CEQA's filer anonymity is to protect plaintiffs from developer retaliation suits, then legislators must recognize that the anonymity protection is redundant because such retaliation is already prevented by the state's anti-SLAPP protections.³³⁰ Under the current anti-SLAPP statute, CEQA complainants are already “entitled to treble damages if improperly targeted by a [retaliatory] lawsuit.”³³¹ Thus, California legislators can remove the shield of anonymity from CEQA suits without any legitimate fear of adversely impacting meritorious CEQA claimants.³³²

Regarding SEQRA's standing threshold, unlike New York, not only does

1998); *Collier Realty LLC v. Bloomberg*, 877 N.Y.S.2d 866 (2009), and *Long Island Contractors' Ass'n v. Town of Riverhead*, 793 N.Y.S.2d 494 (App. Div. 2005).

324. See Michael B. Gerrard, *Judicial Review Under SEQRA: A Statistical Study*, 65 ALB. L. REV. 365, 378 (2001) (citing N.Y. CIV. RIGHTS LAW § 76-a (McKinney 2001)).

325. 37 JOSEPH R. NOLAN & LAURIE J. SARTORIO, MASSACHUSETTS PRACTICE SERIES § 6.6 (3d ed. 2020).

326. See Gerrard, *supra* note 324.

327. See *infra* note 328 and accompanying text; see also *supra* notes 115–22 and accompanying text (discussing California's CEQA standing requirements in detail).

328. 1 ALEXA ASHWORTH ET AL., 24B CARMODY-WAIT 2D NEW YORK PRACTICE WITH FORMS § 145:1377 (2021).

329. See CAL. CIV. PROC. CODE § 425.16 (West 2015).

330. *Id.*

331. Hernandez, *supra* note 31, at 43.

332. See *supra* notes 329–31 and accompanying text.

CEQA's lower standing threshold make it easier for NIMBYs or economically interested parties to file frivolous CEQA suits,³³³ but it also allows interested parties to file CEQA suits simply because they do not like the government's environmental action.³³⁴ These increased complaints prevent California from ever effectively streamlining the CEQA process because the courts' dockets are too preoccupied with cases brought by anonymous individuals with weak standing.³³⁵

So far, the California legislature has never expressed interest in amending CEQA's statute to raise the threshold for standing requirements.³³⁶ However, state courts have left the door open to restrict public interest standing, and the courts may prove to be the best avenue through which to address CEQA's standing issues.³³⁷ For example, this door to denying public interest standing claims was left open in *Save the Plastic Bag Coalition v. City of Manhattan Beach*, where the court indicated that the "public interest [standing] exception 'may be outweighed in a proper case by competing considerations of a more urgent nature.'"³³⁸ Despite this precedent, few courts have chosen to use their authority to deny public interest standing to even the most self-interested petitioners.³³⁹ Instead, courts have only exercised the precedent from *Save the Plastic Bag Coalition* to expand and strengthen public interest standing and have not used the precedent to reject standing due to the weight of any competing considerations.³⁴⁰ In practice, this means that for the state court to restrict public interest standing so it can more closely mirror the standing requirements of SEQRA, California courts must finally exercise a decade-old

333. See generally LATHAM & WATKINS LLP, CEQA CASE REPORT 1–145 (2018), <https://www.lw.com/thoughtLeadership/ceqa-case-report-understanding-judicial-landscape-for-development> (analyzing the fifty-seven CEQA cases brought before California courts in 2018).

334. See, e.g., *Save the Plastic Bag Coal. v. City of Manhattan Beach*, 254 P.3d 1005, 1008 (Cal. 2011) (holding that plastic bag manufacturers did have public interest standing to challenge a city's plastic bag ban ordinance, even though such an action was intended as an environmental protection).

335. See *supra* notes 115–22 and accompanying text.

336. See *supra* notes 333–35 and accompanying text (explaining the possible benefits of raising the minimum threshold to bring a CEQA claim).

337. See *infra* note 338 and accompanying text.

338. 254 P.3d at 1013 (quoting *Green v. Obledo*, 624 P.2d 256, 267 (Cal. 1981)); see also *Rialto Citizens for Responsible Growth v. City of Rialto*, 146 Cal. Rptr. 3d 12, 24 (Dist. Ct. App. 2012) (“[N]o party may proceed with a mandamus petition ‘as a matter of right’ under the public interest exception.” (quoting *Save the Plastic Bag Coal.*, 254 P.3d at 1013)).

339. See *Diaz*, *supra* note 117, at 630 (discussing courts' reluctance to deny petitioners' claims of public interest standing).

340. See *supra* note 338 and accompanying text; see *Diaz*, *supra* note 117, at 630.

exception to public interest standing.³⁴¹

The final unique way in which New York navigates SEQRA compared to CEQA is that it empowers the state's largest city, New York City, to create its own codified process for SEQRA implementation called the City Environmental Quality Review (CEQR).³⁴² New York State explicitly allows for municipalities to create such agency procedures in order to clarify and streamline their region's SEQRA process, so long as these measures are "no less protective of environmental values, public participation, and agency and judicial review than the [mandated] procedures."³⁴³ CEQR allows New York to provide guidance and requirements that are necessary due to "the special circumstances of New York City."³⁴⁴ The main differences that CEQR provides from SEQRA are in "provid[ing] guidance on selection of a lead agency, add[ing] scoping requirements, and promot[ing] the use of the City's CEQR Technical Manual in conducting environmental reviews."³⁴⁵

In California, given that a majority of the CEQA cases are brought against projects in California's urban centers such as Los Angeles and San Francisco, California's legislature should consider implementing something similar to New York Environmental Conservation Law § 8-0113.³⁴⁶ Similar to New York, California's urban centers each have their own city-specific challenges, and even though city-specific implementation plans for CEQA would not make it any harder or easier for NIMBYs to bring frivolous CEQA claims, they could provide cities with more streamlined procedures that work best for that city.³⁴⁷ After all, given the vast differences between some of California's largest and smallest cities, it is only appropriate that individual cities address CEQA claims in the manner best suited for them.³⁴⁸

341. See *supra* note 340 and accompanying text.

342. N.Y.C., N.Y., RULES tit. 62, § 5 (2021).

343. N.Y. ENV'T CONSERV. LAW § 8-0113 (McKinney 2014). According to the statute, any city in New York could create its own codified city-specific SEQRA implementation rules; however, New York City is the only city to have done so thus far. See RULES, tit. 62, § 5.

344. *CEQR FAQs-General*, NYC MAYOR'S OFF. ENV'T COORDINATION, <https://www1.nyc.gov/site/oec/environmental-quality-review/ceqr-faqs-general.page> (last visited Nov. 6, 2021).

345. See *id.*

346. See ENV'T CONSERV. § 8-0113; RULES, tit. 62, § 5.

347. See N.Y.C., N.Y., RULES tit. 62, § 5-01 (2021) (allowing New York City to create its own city-specific SEQRA procedures).

348. See *supra* notes 346-47 and accompanying text. California arguably has more densely populated cities than any state in the United States. See CDC, 500 LARGEST CITIES, BY STATE AND

Overall, no one state currently provides California with a “one size fits all” solution for CEQA reform; however, Massachusetts, Minnesota, and New York do provide a piece of the puzzle for CEQA reform.³⁴⁹ Massachusetts, through its objective expedition process of Chapter 40B, provides a means for California to set clearer objective goals for housing and a means to expedite enforcement.³⁵⁰ Minnesota provides a creative strategy that, if adopted in California, could empower cities to rid themselves of single-family zoning.³⁵¹ And New York provides an example of what it could look like for California to get rid of anonymous CEQA suits and to allow cities to craft their own city-specific CEQA rules.³⁵²

B. A Change in Perspective.

“Preservation of our [e]nvironment is not a liberal or conservative challenge; it’s common sense.”

—President Ronald Reagan (former Governor of California)³⁵³

Considering California’s struggle to find effective CEQA reform, perhaps a perspective shift is required.³⁵⁴ Currently, most of the CEQA reform efforts focus almost solely on providing CEQA reform to low- to mid-income housing developments,³⁵⁵ and only a few focus specifically on multifamily housing.³⁵⁶ However, shifting the focus from solely low- to mid-income housing could more quickly create a positive impact in California’s housing

POPULATION 1–13 (2010), <https://www.cdc.gov/places/about/500-cities-2016-2019/pdfs/500-cities-by-state.pdf>. According to the 2010 United States Census, of the nation’s 500 most populous cities, California alone is home to nearly one quarter of them. *See id.* at 1–4.

349. *See supra* Section IV.A.

350. *See supra* Section IV.A.1.

351. *See supra* Section IV.A.2.

352. *See supra* Section IV.A.3.

353. Ronald Reagan, President of the U.S., State of the Union Address (Jan. 25, 1984).

354. *See infra* note 357 and accompanying text (describing the necessary perspective shift).

355. *See, e.g.*, A.B. 2345, 2019–2020 Gen. Sess. (Cal. 2020) (expanding California’s density bonus provisions); S.B. 35, 2017–2018 Gen. Sess. (Cal. 2017) (stating that communities that fail to approve sufficient housing for the poor automatically forfeit the privilege to deny qualifying infill projects until they rectify such a deficit); A.B. 73, 2017–2018 Gen. Sess. (Cal. 2017) (creating incentivized program for housing and more concerned with preserving affordable housing than creating more housing).

356. *See, e.g.*, A.B. 725, 2019–2020 Gen. Sess. (Cal. 2020) (providing large unzoning opportunities for middle-income apartments); S.B. 1085, 2019–2020 Gen. Sess. (Cal. 2020) (expanding Density Bonus Law to include qualifying moderate-income rental projects and student housing projects).

shortage.³⁵⁷ This indirect approach to increasing stock for affordable housing could be much more appealing for developers and NIMBYs alike.³⁵⁸ Thus far, no CEQA-specific reform efforts have applied in a blanket manner to all forms of multifamily housing, but sufficient economic research shows that the old maxim is indeed true that all housing is good housing.³⁵⁹

This radical perspective shift might seem bold; however, it is supported by multiple recent economic studies measuring the effect that an increase in housing stock has on nearby existing housing.³⁶⁰ First, in 2016, a report from the White House showed that “[h]ousing regulation that allows [for] supply to respond elastically to demand helps cities protect homeowners and home values.”³⁶¹ Thus, building more units of any kind should theoretically drive down the price of all housing units in the aggregate.³⁶² A second report shows that regardless of whether the new housing is high or low end, “for every 10% increase in the housing stock within a 500-foot buffer, residential rents decrease by 1%.”³⁶³ The report further showed that the rent reduction does not occur until after the new housing is fully completed and move-in ready.³⁶⁴ Third, a 2019 study showed that generally, “new buildings decrease nearby rents by 4.9 percent” for buildings that are within a 250-meter radius of the new development.³⁶⁵ Given that the rent prices are shown to drop in the buildings surrounding the new development, it makes sense that the study also showed that new buildings “increase in-migration from low-income areas” into the newly developed area.³⁶⁶ Together, these studies show that, in the

357. See *infra* notes 361–68 and accompanying text.

358. See *infra* notes 369–72 and accompanying text.

359. See *infra* notes 361, 363–65 and accompanying text.

360. See *infra* notes 361–65 and accompanying text.

361. WHITE HOUSE, *supra* note 145, at 3.

362. See *id.*

363. XIAODI LI, DO NEW HOUSING UNITS IN YOUR BACKYARD RAISE YOUR RENTS? 2 (2019), <https://blocksandlots.com/wp-content/uploads/2020/02/Do-New-Housing-Units-in-Your-Backyard-Raise-Your-Rents-Xiaodi-Li.pdf>. This same study also found that “[r]esidential property sales prices . . . decrease when new high-rises within 500 feet are completed.” *Id.*

364. *Id.* (stating that “rent reduction is caused by the completion of new high-rises, rather than [by] their approval”).

365. Brian J. Asquith, Evan Mast & Davin Reed, *Supply Shock Versus Demand Shock: The Local Effects of New Housing in Low-Income Areas* 16 (W.E. Upjohn Inst. for Emp. Rsch., Working Paper No. 19-316, 2019), https://research.upjohn.org/cgi/viewcontent.cgi?article=1334&context=up_workingpapers.

366. *Id.* at 1. Considering that NIMBYs often complain that new developments will increase congestion and bring outsiders into their community, this study did affirm that *new* development often

short-term, the addition of high-end housing is likely to drive down the rents in nearby apartments, whether they are high or low end.³⁶⁷ Furthermore, “[o]ver the long[] run, increases in supply at the medium or higher end of the market should also increase supply in lower priced markets as older units that are now less valuable work their way down to lower priced sub-markets.”³⁶⁸

It seems clear that streamlining CEQA approval for all forms of multifamily housing makes sense on paper, but it is also worth noting that this strategy would likely be easier to pass into legislation than some of the other recently failed reform efforts.³⁶⁹ One reason this strategy is practical is because higher end housing is much more attractive to real estate developers given its higher profit margins.³⁷⁰ These increased margins mean that even if legislators find themselves unable to pass a CEQA exemption without including a prevailing wage requirement, this is less likely to have a negative impact.³⁷¹ Another reason this strategy deserves optimism is because its bill passage is less likely to face NIMBY opposition than a bill specifically looking to increase low- to mid-income housing.³⁷²

Lastly, through the recent passage of the Housing Crisis Act of 2019, California legislators have shown that perhaps this perspective shift has already gained momentum; it is just not broad enough yet in its reach.³⁷³ The Act recently amended existing legislation to prevent local governments from creating additional ordinances, policies, or standards that would delay a housing development project that *already* has preliminary approval.³⁷⁴ It also

means *new* people. See discussion *supra* Section II.D.3.

367. See *supra* text accompanying notes 361–66. There is a group that opposes the aforementioned form of thinking, commonly referred to as “supply skeptics,” who argue that if you build more there will just be more outsiders who then move into your area. See BEEN ET AL., *supra* note 110, at 6.

368. BEEN ET AL., *supra* note 110, at 6.

369. See *infra* notes 370–72 and accompanying text.

370. See *The Cost of Affordable Housing*, *supra* note 136 (discussing a developer’s profit margins for building new multifamily housing).

371. See *supra* notes 232–35 and accompanying text (discussing the impact that mandated prevailing wages have on a development’s profit margins).

372. See discussion *supra* Section II.D.3. NIMBY opposition could arise from homeowners and landlords concerned that the overall value of their property might decrease. See LI, *supra* note 363, at 30 (discussing how, after the completion of a multifamily structure, “[t]he sales prices gradually decline right after nearby”).

373. See CAL. GOV’T CODE § 65589.5 (West 2020).

374. See GOV’T § 65589.5(o)(1)–(2); see 7 KARL E. GEIER & SEAN R. MARCINIAK, MILLER & STARR CALIFORNIA REAL ESTATE § 21.13 (4th ed. 2021) (providing a more in-depth discussion of the recent changes to Section 65905.5). The reason that the Housing Crisis Act of 2019 is not included in Part III.A’s discussion on the current state of the law is because the Act explicitly does not apply to CEQA. See *infra* text accompanying notes 379–81.

expedited the public agency approval process by limiting the number of public hearings that could be held relating to a development project to five.³⁷⁵ While such restrictions were previously in place for large affordable multifamily projects, the 2019 amendments expanded the statute's reach to *all* "housing development project[s]."³⁷⁶ Likely part of the reason why legislators expanded the impact of the statute was because, as stated in the bill itself: "California has a housing supply and affordability crisis of historic proportions" and requires "statutes intended to significantly increase the approval, development, and affordability of housing for *all income levels*."³⁷⁷

Unfortunately, the protections provided by The Housing Crisis Act of 2019 explicitly do not apply to CEQA.³⁷⁸ The statute states that its provisions do not lessen the burdens imposed by CEQA.³⁷⁹ The Act only seems to prevent *municipalities* from creating new roadblocks for housing that have preliminary approval and does not restrict a citizen's ability to bring a CEQA claim based on potential environmental impacts—frivolous or not.³⁸⁰ But the Housing Crisis Act shows that the state legislators do see the need to remove developmental hurdles for *all* forms of housing and are taking active steps to do so; however, the act fails thus far to address a major developmental roadblock: CEQA.³⁸¹ Given the economic and legislative feasibility of increasing *all* levels of housing stock in California, subsequent CEQA reforms must apply to all forms of housing similar to the Housing Crisis Act.³⁸²

375. See CAL. GOV'T CODE § 65905.5(a) (West 2020) ("[I]f a proposed housing development project complies with the applicable, objective general plan and zoning standards in effect at the time an application is deemed complete, after the application is deemed complete, a city, county, or city and county shall not conduct more than five hearings pursuant to Section 65905, or any other law, ordinance, or regulation requiring a public hearing in connection with the approval of that housing development project.").

376. GOV'T § 65589.5(h)(2)(A)–(C).

377. GOV'T § 65589.5(a)(2) (emphasis added).

378. See *infra* note 380 and accompanying text.

379. GOV'T § 65589.5(e); see *Schellinger Bros. v. City of Sebastapol*, 102 Cal. Rptr. 3d 394, 396, 405 (Dist. Ct. App. 2009) (stating that Government Code Section 65589.5 "cannot be used to halt the decision-making process specified by CEQA that is still on-going" since "there is no indication the [l]egislature meant to modify or accelerate CEQA's procedures").

380. See GOV'T § 65589.5(e); GOV'T § 65589.5(o).

381. See *supra* text accompanying notes 377–79.

382. See *supra* Section IV.B.

V. CONCLUSION

When California enacted CEQA over fifty years ago, the law was the first of its kind, and California was a pioneer on the environmental preservation stage.³⁸³ At its inception, CEQA was undoubtedly altruistic: seeking to empower citizens to partake in policing and ensuring the state's environmental quality for future generations.³⁸⁴ Unfortunately, CEQA has not aged well, as the wrong people have discovered the right ways to make CEQA serve their own interests—interests that demote the environment to a secondary concern.³⁸⁵ These suspect uses of CEQA have only exacerbated California's housing crisis and served as a subversive tool to keep minorities out of wealthy, affluent neighborhoods.³⁸⁶

Even in its current state, however, CEQA is not a lost cause.³⁸⁷ With the correct legislative and judicial reforms, CEQA can actually work alongside efforts to increase California's housing stock and get back to one of its original purposes: "providing a decent home and satisfying living environment for every Californian."³⁸⁸ First, California's current means of telling cities how much housing they must build—the Regional Housing Needs Allocation tool—is complex and results in what many cities consider unrealistic goals.³⁸⁹ By looking at Massachusetts's successes with Chapter 40B, California should implement a more objective form of measurement and a streamlined form of enforcement like the Housing Appeals Commission.³⁹⁰ Second, California should pass legislation that exempts a city's general plan amendments from CEQA review, which would then allow cities to amend their general plans and end single-family zoning as Minnesota has done.³⁹¹ Third, similar to New York, California should not allow anonymous CEQA lawsuits and should instead rely on its anti-SLAPP laws to protect CEQA filers.³⁹² Also similar to

383. *See supra* notes 54–58 and accompanying text.

384. *See supra* text accompanying notes 54–60.

385. *See* discussion *supra* Section II.D.

386. *See supra* text accompanying notes 26–29 (discussing how some CEQA suits can slow the development of housing); *supra* notes 144–49 and accompanying text (discussing the subversive racially motivated CEQA uses).

387. *See infra* text accompanying notes 388–96.

388. CAL. PUB. RES. CODE § 21000 (West 2021); *see also supra* Parts III, IV (discussing potential CEQA reform efforts).

389. *See supra* note 288 and accompanying text.

390. *See supra* Section IV.A.1.

391. *See supra* Section IV.A.2.

392. *See supra* Section IV.A.3.

New York, California should increase its standing requirement to file a CEQA claim by exercising a narrow judicial exception from *Save the Plastic Bag Coalition v. City of Manhattan Beach* and allow major California cities to adopt their own procedural codes for dealing with CEQA.³⁹³ Lastly, California must expand future reforms to *all* forms of housing and not just low- to mid-income housing.³⁹⁴ Overall, a successful course correction will not result from any single solution but instead will come from a collage of smaller piecemeal efforts that originate from past legislative efforts, other states' reforms, and untried innovative solutions.³⁹⁵ Together, these reforms will paint a brighter future for California's environment and its people.³⁹⁶

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393. *See supra* Section IV.A.3.

394. *See supra* Section IV.B.

395. *See supra* Parts III, IV.

396. *See supra* Parts III, IV.

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