



June 19, 2019

The Honorable Anna Caballero
 California State Senate
 State Capitol, Room 5052
 Sacramento, CA 95814

RE: SB 25 (Caballero and Glazer)—California Environmental Quality Act: Projects Funded by Qualified Opportunity Zone Funds or Other Public Funds—**OPPOSE**

Dear Senator Caballero:

The undersigned organizations write to respectfully oppose SB 25. This bill would restrict public participation and unnecessarily expedite judicial review for projects funded through federal opportunity zone funds, other public funds, and funds allocated through the Strategic Growth Council. If passed, this bill would result in greater environmental degradation and harms to

low-income residents and communities of color that already face disproportionately high pollution and socioeconomic burdens.

The California Environmental Quality Act (CEQA) is California's quintessential public participation and environmental protection law. Many of our groups rely on CEQA to uphold the rights of environmental justice (EJ) communities to clean air, water, and soil that is free from pollution and toxic contamination. In many jurisdictions across the state, CEQA is the only tool that guarantees members of our most vulnerable communities a right to provide input on the environmental and associated health impacts, alternatives to, and appropriate mitigation measures for projects which stand to harm these communities. A strong CEQA is critical for disadvantaged communities to have a meaningful voice in local planning decisions in order to protect the environmental health of their neighborhoods.

Unfortunately, SB 25 goes far beyond allowing CEQA streamlining for housing projects. Instead, the bill would apply to a wide and undefined array of projects funded by federal opportunity funds and would fast track potentially harmful projects, such as large industrial, commercial, and luxury resort developments, into low-income communities while further restricting community members' ability to shape how these projects proceed.¹ As a result, projects that will be fast-tracked under SB 25 will likely conflict with and irrevocably undermine residents' own visions for sustainable development, investment and prosperity in these and other underserved communities.

In particular, low-income communities that have been identified as opportunity zones include south Stockton, as well as various parts of Sacramento, and Los Angeles.² Requiring that projects financed by opportunity funds be LEED-certified, not result in any net emissions of greenhouse gases," and to have "zero net energy emissions," in order to qualify under this bill's provisions is not a substitute for compliance with CEQA's existing public process requirements.³ First, it is difficult to tell whether a qualifying project will actually meet LEED requirements since LEED certification often occurs after a project is finished, rather than beforehand during the project proposal or development stage. Second, even in the rare instances when these provisions are complied with and/or enforced by local jurisdictions, these requirements would not fully address a project's harms on nearby communities, such as truck traffic impacts, displacement, and

¹ Sen. Bill No. 25 (2019-2020 Reg. Sess. § 2 (adding Pub. Res. Code §§ 21168.6.9(a)(4)(A)-(M)(containing a list of qualifying project types)). The bill was amended in the Senate Committee on Environmental Quality to include affordability requirements for projects financed by opportunity funds only "**if** the project contains residential units". Sen. Bill No. 25 (2019-2020 Reg. Sess. § 2 (adding Pub. Res. Code § 21168.6.9(b)(1)(D))). Projects financed by the dozen other funding programs that this bill would also apply to shall include residential units, but can contain other types of projects. Sen. Bill No. 25 (2019-2020 Reg. Sess. § 2 (adding Pub. Res. Code §§ 21168.6.9(b)(2)-(3))).

² See map of CA opportunity zones. Available at: <https://opzones.ca.gov/oz-map/>.

³ Sen. Bill No. 25 (2019-2020 Reg. Sess. § 2 (adding Pub. Res. Code §§ 21168.6.9(b)(1)(A)-(C))).

impacts on groundwater levels for communities dependent on well water. Third, these conditions do nothing to address the bill's core affront to environmental justice by limiting meaningful public participation and judicial requirements we discuss below.

In addition to projects financed by opportunity funds, SB 25 also applies to an unidentifiable number of projects financed by a dozen funding programs.⁴ We are concerned that SB 25 would allow all of these potentially harmful projects to escape meaningful public and judicial review by:

- **Requiring a court to resolve an action within 270 days to the extent feasible, despite that CEQA lawsuits already receive priority in court.** Courts need time to deliberate over complex legal issues surrounding projects that may bring decades of environmental and public health harms. It is essential to preserve, and not create additional hurdles to, courts' ability to thoughtfully deliberate on cases, since litigation is often the only way EJ communities can hope to protect their environmental health. Requiring projects to be resolved within 270 days will not only hurt low-income environmental justice communities, it would also give preference to CEQA related cases over other cases—including violent crimes and other serious offenses.
- **Providing that a lead agency need not consider public comments after the comment deadline for a draft environmental review document,** except in very limited circumstances. Limiting the time in which local governments could consider their input only puts them at a further disadvantage in ensuring their voices are heard, respected, and responded to in the CEQA process. EJ communities require more time, not less, to participate and to reduce the possible environmental and health impacts of the wide array of projects this bill would apply to.
- **Requiring a party seeking to file an action pursuant to CEQA to notify the lead agency within 10 days of posting of a notice of approval or determination.** This short time frame is insufficient to allow environmental justice communities, who already lack access to information on agency decisions as well as legal representation, to determine whether to file suit or not. Additionally, this provision would likely force petitioners to file lawsuits in order to preserve their day in court, which would not only waste judicial resources but also undermine the authors' very intent to reduce litigation risk for projects.

⁴Including Greenhouse Gas Reduction Funds allocated to the Strategic Growth Council, Enhanced Infrastructure Financing District funds, and funds allocated to the CA Infrastructure Economic Development Bank. *See* Sen. Bill No. 25 (2019-2020 Reg. Sess. § 2 (adding Pub. Res. Code § 21168.6.9(a)(4)(A)-(M)).

- **Requiring a lead agency to file notices of approval or other determination on the project within 5 days instead of within 5 *working days* after the approval or determination becomes final under current law.** EJ communities oftentimes do not even know about projects until the project is approved, if at all, as many of these projects fly under the radar. This is yet another unreasonable proposal to restrict meaningful public participation.

In sum, we oppose all of these proposed changes to the law because they would prevent EJ communities from exercising their right to participate in shaping the outcomes of the wide array of projects that could have detrimental impacts on the environment and the health of their neighborhoods.

Lastly, it is important to highlight that SB 25 will also not mitigate or solve the current housing crisis. The weight of the available evidence demonstrates that CEQA is not a major barrier to development,⁵ and instead helps to ensure that affordable housing does not compromise public health and safety.⁶ Many housing projects are already exempt from environmental review all together through using the infill exemption as well as tiering from specific or community plans.⁷ Yet the housing crisis exists as a result of several factors, including high building costs, non-CEQA related neighborhood opposition, and lack of available sites.⁸ Additionally, lack of affordable housing financing and loss of redevelopment agencies are also key constraints to affordable housing production.⁹ Similarly, SB 25 is not the answer to the needs of disadvantaged communities for investments which reflect their vision for their future.

Instead of continuing to weaken CEQA, we urge you to instead support legislative solutions that would address these primary barriers to housing production, especially those for affordable housing.

Sincerely,

⁵ Senate Judiciary Committee, Bill Analysis, Sen. Bill No. 25 (2019-2020 Reg. Sess.), at 7. Available at: http://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200SB25.

⁶ *Id.* at 7, citing The Rose Foundation, *CEQA in the 21st Century* (2016). Available at: <https://rosefdn.org/wp-content/uploads/2016/08/CEQA-in-the-21st-Century.pdf>.

⁷ Association of Environmental Professionals, *CEQA and Housing Production: 2018 Survey of California Cities & Counties*, at ii-iii, 10. Available at: https://senv.senate.ca.gov/sites/senv.senate.ca.gov/files/ceqa_and_housing_production_report.pdf.

⁸ *Id.* at iv., 18.

⁹ *Id.* at 18.



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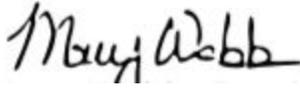
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