



April 1, 2019

The Honorable Ben Allen
Chair, Senate Committee on Environmental Quality
California State Senate
State Capitol Room 5072
Sacramento, California 95814

Re: SB 25 (Caballero): California Environmental Quality Act: exemption - OPPOSE

Dear Chair Allen:

We oppose Senate Bill 25. Under this bill, a court would be required to resolve lawsuits brought pursuant to the California Environmental Quality Act (“CEQA”) against any “qualified project” to the extent feasible, within 270 days and prohibits a court from staying or enjoining construction of these projects unless “the continued construction or operation of the project presents an imminent threat to the public health and safety” or “the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.” SB 25 severely interferes with judicial processes and lacks the requisite environmental protection that CEQA was intended to provide.

First, the bill’s expedited judicial review provision is unnecessary. Under current law, CEQA actions are already entitled to calendar preference in both California superior courts and the Courts of Appeal. (§ 21167.1(a)). And many of the projects that the bill seeks to allow for (affordable and infill housing, transit

¹ Defined as “a project financed, in whole or part by any of the following:

- (A) A qualified opportunity fund.
- (B) Moneys appropriated from the Greenhouse Gas Reduction Fund and allocated by the Strategic Growth Council.
- (C) An enhanced infrastructure financing district.
- (D) An affordable housing authority.
- (E) A community revitalization and investment authority.
- (F) A transit village development district.
- (G) A housing sustainability district.
- (H) A Neighborhood Infill Finance and Transit Improvements Act (NIFTI) district.
- (I) Moneys allocated through the Department of Housing and Community Development.
- (J) Moneys allocated through the Department of Veterans Affairs.
- (K) Moneys allocated through the California Housing Finance Agency.
- (L) Moneys allocated through the California Infrastructure and Economic Development Bank.

priority) already have other CEQA exemptions that would apply to them. By imposing an arbitrary 270-day requirement on the judiciary, SB 25 will have an adverse impact on other civil cases that have potentially more dire outcomes, such as juvenile cases and civil cases concerning parties that are at risk of dying.

Second, SB 25's prohibition on injunctive relief for certain projects removes an important tool that plaintiffs often rely on in CEQA proceedings. CEQA provides a public disclosure of environmental impacts from projects, and requires feasible mitigation of those projects to ensure that polluters, not the public, are held responsible for their actions. Litigation that is brought pursuant to CEQA, such as when the public was not provided with enough information about a project or when mitigation measures are insufficient to adequately alleviate the harms, can materially affect how a lead agency concludes that their project is the environmentally preferred alternative, and a project can change after litigation has taken place.

Because a project can change due to litigation, injunctive relief is often granted by a court to preserve the status quo until a determination of the merits of the CEQA challenge can be made. Staying or enjoining construction of a project is often necessary to prevent potential environmental degradation as well as containing any ongoing degradation. Preventing a court from providing injunctive relief leaves plaintiffs in CEQA cases, and the environment, without an appropriate remedy. Without the possibility of stay, construction and development can continue and can further add to potential environmental harms throughout the litigation process.

For these reasons, we oppose SB 25 and urge you and your committee to vote no when it appears before you.

Sincerely,



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Policy Advocate
Sierra Club California



Brian Nowicki
California Policy Director
Center for Biological Diversity



Melissa Romero
Legislative Affairs Manager
California League of Conservation Voters



Matthew Baker
Policy Director
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Cc: Senator Anna Caballero
Members and Staff of the Senate Committee on Environmental Quality,
Members and Staff of the Senate Committee on Judiciary