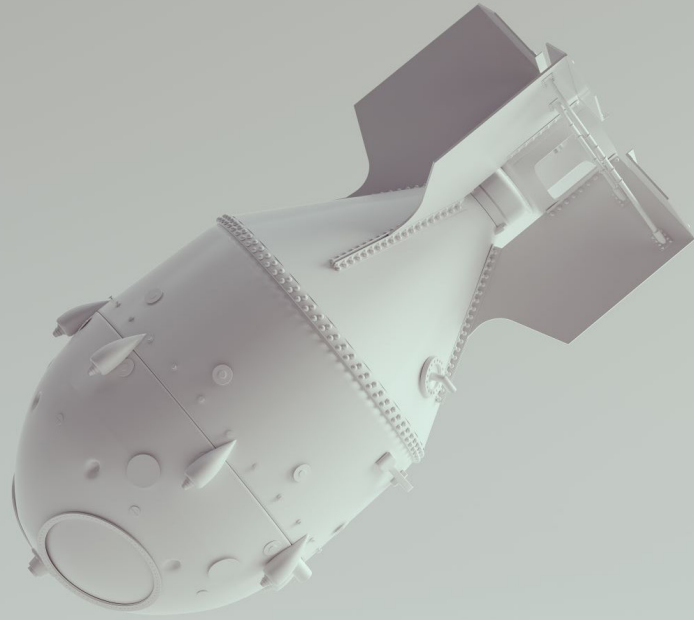


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PERSPECTIVE

California's environmental state agencies are converting CEQA's anti-project Howitzer into a Neutron Bomb.



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By Jennifer Hernandez

In 2020, one of the many law firms specializing in filing lawsuits alleging noncompliance with the California Environmental Quality Act (CEQA), sued the City of Bakersfield for approving an outpatient medical clinic to serve veterans. (*Progress for Bakersfield Veterans, LLC v. City of Bakersfield*, Case No. BCV-21-100778). The petition alleged that the outpatient medical clinic, located in a warehouse/industrial neighborhood, would cause a shocking litany of “site-specific adverse environmental impacts,” including “air quality, biological resources, tribal cultural resources and geology/soils, energy, greenhouse gas emissions, hazards and hazardous materials, hydrology/water quality, land use, noise, transportation/traffic, utility and utility service systems, including fire safety and drainage systems.” ¶44)

Notwithstanding its sanctimonious name, “Progress for Bakersfield Veterans” is actually an existing medical clinic operator, and its CEQA lawsuit challenges a competing clinic operator as part of chasing a lucrative contract with the

year or longer to complete - and if adopted can be challenged again in another CEQA lawsuit. Fighting the CEQA lawsuit at the trial court takes a year or longer, and a simple (aka cheap) appeal will take more than another year to be decided.

lenging the EIR. For the price of hiring a CEQA-abuse mill to churn out a complaint, Bakersfield veterans won't be served by a modern, new, competitive outpatient clinic. Instead, CEQA protects the status quo - because CEQA values the

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— Justice Ming W. Chin

Veterans Administration. Its competitor asserts it will be “irreparably harmed” (¶34) unless Bakersfield rescinds its approval of the project and completes a “certified” CEQA document, which under CEQA translates into an Environmental Impact Report (EIR) that takes a

The VA hasn't, and can't, award a veterans medical services contract to a clinic paralyzed in three years of litigation, nor can it stand by for the City to do precisely the massive EIR demanded by the Petition since the competitor can simply file another lawsuit chal-

Jennifer Hernandez is a partner at Holland & Knight LLP.



status quo (existing environment) above all else, including veterans' health, and because the CEQA protectorate of lawyers and special interests have distorted CEQA into a racially-discriminatory (the majority of Bakersfield veterans, especially veterans of more recent wars, are Latinos, Blacks or Asian-Pacific Islanders) anti-people, weapon. CEQA lawsuits kill projects with delays and dollars, which always - always - cause the most lasting damage to the people who need the medical services, housing, transportation, water, and public services that the vast majority of CEQA lawsuits attack.

None of this is hyperbole. We evaluated all CEQA lawsuits filed statewide over seven years. See [name of the environment, hastings env law journal, calif center for jobs]. What is hyperbole are persistent claims that almost no CEQA lawsuits are ever filed. As we found in our latest report, covering 2020, CEQA lawsuits challenged about half (47,999 specific housing units in challenged projects, plus thousands more housing units in challenged local agency upzoning approvals), of the total housing units produced in the entire state in 2020. The most cited alternative reality reported that only 3% of CEQA decisions were sued, but this number tallies up the 36 categories of regulatory CEQA exemptions - and scores of legislated exemptions - that nobody notices, cares about, or gets any notice is even planned.

The political challenges of legislating CEQA reform have been well chronicled. The story not told, however, is that California's environmental state agencies are converting CEQA's anti-project Howitzer into an anti-people Neutron Bomb. Let's return to the Bakersfield outpatient veterans clinic, in which the City is alleged to have: "fail[ed] to disclose the Project's Greenhouse Gas ("GHG") impacts, claiming that "the impacts of this project are not considered significant given the efforts made to reduce emissions of GHG from the project through design measures and standards, plus further mitigation accomplished at the statewide level through California Air Resources Board (CARB) regulations adopted pursuant to AB 32." The MND's GHG analysis violates CEQA because it fails to

establish that the project-level reduction is consistent with reaching the State's current OHO-reduction goals. (The MND was required to acknowledge the relevance of the currently applicable law, SB 32, and should have used the California Air Resources Board's 2017 Scoping Plan for guidance on interpreting it, instead of the outdated 2014 Scoping Plan. (§ 45 (e)).

Yep, a medical clinic for veterans in Bakersfield will cause greenhouse gas (GHG) that may impair California's global climate leadership as embodied in a statewide "Scoping Plan" adopted in Sacramento in 2017. Through the magic of CEQA expansions adopted during the Brown Administration, the Scoping Plan first elevates into plan mandates policies that the Legislature has explicitly declined to adopt as policy (e.g., "carbon neutrality"), and then CEQA demands that 58 counties, hundreds of cities, and thousands of other local, regional and state agencies figure out how to apply the Scoping Plan to specific projects - like outpatient medical clinics for veterans, or housing for everyone everywhere, or infrastructure (whether "green" or "climate resilient" or not), or - wait for it - LED lights on school or park playfields.

This isn't about a 2017 Scoping Plan, though - it's about the 2022 Scoping Plan which even CARB concedes is based on "hope" - but is also expressly intended to change how we work, live, and play. It's about a 2022 Scoping Plan that again rejected as infeasible climate targets rejected by the Legislature - and again acknowledged the absence of technology, high consumer costs, and high job losses. And it's about an ambitious Governor seeking to cram down those technologically infeasible, high consumer costs, high job loss climate targets that even CARB rejected.

And it's about asking everyone to take a deep breath, remember laws enacted just a couple of years before CEQA - remember civil rights? Take a sober look at California's worst-in-the-nation poverty rate and the shameful fact that the vast majority of our poor are Latino or Black, and question whether a climate cram-down meets anyone's criteria for racial justice.

Three more facts, direct from

CARB's 2022 Draft Scoping Plan:

(1) California's entire economy produces less than 1% of global GHG, and Californians have the lowest per capita GHG emissions in the nation.

(2) CARB counts people and jobs that leave California - because they don't turn on the lights or the tap, or add heat to their house or production line - as GHG "reductions" that help California achieve its climate goals even when they simply move to Texas or other states and double (or worse) their GHG emissions. CARB's climate math rewards "de-growth" - an Orwellian term for forcing your family, friends and jobs to leave for more affordable states.

(3) Two-thirds of CEQA lawsuits allege that the climate (GHG and/or vehicle miles traveled) impacts of a "project" are legally deficient, and not even the "best" climate hawk lawyers in California - former Attorney General Jerry Brown and former Office of Planning Research Director Ken Alex - satisfied the Supreme Court that they properly advised their environmental state agency client, and failed to meet the CEQA GHG compliance mark.

As Justice Ming W. Chin reported in his dissent in that case, although the EIR at issue was "one of the longest ever prepared under CEQA," the majority opinion that an ever-shifting GHG mitigation trigger is required by CEQA will simply cause more uncertainty and delay for a "green" project and the people who would otherwise live and work in that project will live and work "somewhere," and "that somewhere will undoubtedly be far less green than this project promises to be."

Justice Chin also presciently forecasts precisely this Governor's legislative climate cram-down (and many of CARB's ever more grandiose but absolutely failed Scoping Plan mandates): "Delay can be its own reward for project opponents. Delay the project long enough and it has to meet new targets, and then perhaps new targets after that. All this is a recipe for paralysis. But CEQA is not meant to cause paralysis."

We represent The Two Hundred: civil rights leaders laser-focused on restoring attainable homeownership for California's hard working families, the majority of whom are

in communities of color. Homeownership is not just the California Dream, it closes multi-generational wealth gaps and as Habitat for Humanity has exhaustively chronicled, allows kids to attain higher levels of education, increases voter participation and civic/charitable volunteer work, and creates family wealth that is more than 70 times higher than renters. The Two Hundred has supported dozens of new housing laws to increase the housing supply, and has filed three lawsuits against state agencies, including CARB, that exacerbate CEQA's anti-housing weaponization. One of those cases has been won and the other two are pending.

Among the most important of these new housing laws are those mandating approvals of new Housing Elements. If the Governor's climate cram-down or the 2022 Scoping Plan are approved as proposed, the anti-housing CEQA cracker will again be unleashed as Justice Chin predicted. The result? More paralysis (but more income for CEQA lawyers and the CEQA-industrial machine).

Shoving people and jobs to Texas isn't a legitimate climate change policy, it's a (largely) racially discriminatory family and job expulsion policy - and it runs afoul of civil rights laws, as well as the morality and decency that I believe are still embedded in our representative democracy. There are far more effective, and equitable, climate leadership strategies that the world's fifth largest economy should embrace as foundational principles of a just transition to the climate future. These strategies don't get debated or even proposed in a two-week top-down cram-down, or buried in the fraudulent climate bureaucratic math of the Scoping Plan.

Transparency, participation, equity (for all civil rights, including but not limited to environmental justice), is needed to solve our housing-induced poverty crisis, and restore attainable homeownership to our communities of color. The Governor has a clear pathway to four more years of climate leadership, and an unparalleled opportunity to solve both our housing and infrastructure crises. It's time to move from process (including endless CEQA lawsuit squabbles) to progress, for all Californians.