

California Environmental Quality Act

Why California Can't Build Reliable and Affordable Essential Projects

By Jennifer Hernandez, with Research Co-Authors Kristian Fors, Scott Levin Gesundheit, Franklin Muñoz & Maria Daniela de la Rosa

CEQA: Study, Sue, Rinse, Repeat



How an Environmental Protection Statute Has Been Weaponized into a 'Build Absolutely Nothing Anywhere Near Anything' Development Blockade in California's 'BANANA' Republic

Introduction

The California Environmental Quality Act (CEQA) was enacted unanimously by a bipartisan legislature and signed by then-Governor Ronald Reagan in 1970. CEQA is a catchall statute requiring state and local agencies to consider environmental impacts before approving or undertaking a construction project, plan or regulation applicable to a construction project or the physical environment. CEQA is older than the Endangered Species Act, Clean Air and Clean Water acts, California Coastal Act, National Historic Preservation Act, and thousands of other federal and state laws and regulations that ostensibly protect the environment and public health. Any person or entity that disagrees with an agency's decision to approve or undertake a project that is subject to CEQA can file a lawsuit in state court. CEQA trial and appellate court proceedings typically take about five years to complete, and while litigation is pending, most approved projects are stalled.



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SANTA MONICA

CEQA increasingly has been criticized as a major reason California can't build enough housing, water, and transportation infrastructure or public service facilities – including important projects approved and funded by taxpayers – because all projects subject to CEQA must also comply with myriad other laws to protect human health and the environment, only projects approved by elected and appointed officials can be challenged, and litigation delays increase project costs and sometimes derail projects altogether. In 2024, California's preeminent government oversight agency, the Little Hoover Commission, issued a landmark report describing CEQA's past successes and present challenges – and recommended significant reforms.¹ In 2025, the California Assembly Select Committee on Permitting Report likewise acknowledged challenges posed by CEQA in achieving the state's housing, infrastructure and climate goals.² The need to reform CEQA and its national equivalent, the National Environmental Policy

Act (NEPA), was even acknowledged by Democratic Party candidates in the 2024 national election.

CEQA reform debates are highly politicized because powerful stakeholders exploit CEQA lawsuits and lawsuit threats to leverage economic or environmental settlements and judicial outcomes that cannot otherwise be realized by laws and regulations. Often missing from political debates is how CEQA is applied in practice – including which projects are being sued and how those lawsuits are resolved. For the past decade, we have been filling that gap with actual CEQA litigation information. This report includes 11 years of previously unreported data about the judicial outcomes of CEQA appeals. It concludes with analysis of how California Proposition 45 on the November 2026 ballot offers voters the opportunity to accomplish what decades of legislative efforts have not – meaningful, structural CEQA reform.

¹Little Hoover Commission, "CEQA: Targeted Reforms for California's Core Environmental Law," 2024, <https://lhc.ca.gov/wp-content/uploads/Report279.pdf>.

²California State Assembly, "California Assembly Select Committee on Permitting Reform Final Report - March 2025," 2025, <https://a14.asmdc.org/sites/a14.asmdc.org/files/2025-02/assemblyselectcommitteeonpermittingreform-finalreportwithoutappendices-march2025.pdf>.

Background

In 2015, I joined with my law firm colleagues in writing the first comprehensive report describing CEQA appellate court decisions.³ We reported on all published appellate court cases involving the adequacy of environmental impact reports (EIRs), negative declarations and categorical exemptions decided within our 15-year study period (1997 to 2012).

³Holland & Knight, “CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions,” 2015, <https://www.hklaw.com/en/insights/publications/2015/05/ceqa-judicial-outcomes-fifteen-years-of-reported-c>.

Our 2015 report also described earlier CEQA judicial outcome studies dating back to the first CEQA decisions in the 1970s and contrasted the remarkably high win rate for petitioners suing to overturn agency project approvals with opponent loss rates in lawsuits filed under NEPA, CEQA’s federal analog. We also reported on a meta-analysis of lawsuits against a broad range of federal and state administrative agencies, which showed – as is the case with NEPA – that agencies win nearly 80% of such lawsuits.

Finally, this current report was informed by three separate trial court studies. Those studies tabulated all CEQA lawsuits filed in superior court statewide over three separate three-year periods (trial court studies).⁴ Evaluating appellate court outcomes in the context of all CEQA lawsuits filed in trial court allowed us to identify practices that were not evident in the 2015 study.

The most noteworthy conclusions from the comprehensive data evaluated in this study include:

- The current study found far more CEQA appeals filed and decided than were reported in the 2015 study. As reported by the Little Hoover Commission⁵ and informed by our own three trial court studies (as described below), about 200 CEQA lawsuits are filed annually. In 2015, which evaluated only published appellate court cases as described below, an average

of just 14.6 decisions were issued every year. In the current study, an average of just under 21 decisions were published and slightly more than 24 cases were not published – totaling approximately 45 decisions per year, more than twice the rate reported 2015 study.⁶ Appellate proceedings typically take about three years to resolve, and projects do not qualify for construction or grant funding while an appeal is pending. Filing more CEQA appeals gives project opponents and those seeking to leverage CEQA lawsuits for economic or other nonenvironmental reasons a “free” and low-cost litigation pathway for further delay or seeking to derail approved projects. Appeals prolong the 18-36 months typically required to resolve trial court CEQA lawsuits.

- Housing remains the top target of CEQA appeals in both the 2015 and updated studies, as well as in all three trial court studies, as confirmed by the Little Hoover Commission. Infrastructure needed to serve new housing or development – such as augmenting water supplies (including through recycled water technologies), wastewater and stormwater treatment systems, adequate electricity (including primarily renewable energy), and transit and transportation systems – comprises most of the projects challenged in CEQA lawsuits and appeals. These include climate resiliency systems such as enhanced flood protection or wildfire prevention projects.

⁴The three comprehensive studies of all CEQA lawsuits filed in trial court over three distinct three-year periods include: Jennifer Hernandez, David Friedman and Stephanie DeHerrera, “In the Name of the Environment,” Holland & Knight, July 15, 2015 (study period 2012-2015), https://issuu.com/hollandknight/docs/ceqa_litigation_abuseissuu?e=16627326/14197714; Jennifer Hernandez, “California Environmental Quality Act Lawsuits and California’s Housing Crisis,” Hastings Environmental Law Journal 24, no. 1 (2018): 21–71 (study period 2013-2015), https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1032&context=hastings_environmental_law_journal; and Jennifer Hernandez, “In The Name of the Environment Part III: CEQA, Housing, and the Rule of Law,” Chapman Law Review 26, no. 1 (2022): 57–158 (study period 2019-2021), https://www.chapmanlawreview.com/wp-content/uploads/2023/05/clr_26-1-57-herandez.pdf. These three studies are referred to herein as the “three trial court studies.”

⁵Little Hoover Commission, “CEQA: Targeted Reforms for California’s Core Environmental Law,” 5.

⁶Under California court rules, appellate courts have the option of designating a decision “published,” “unpublished,” or a mix of published and unpublished sections. A “published” opinion (or published part of an opinion) may be cited as judicial authority in the briefs filed by lawyers in CEQA trial and appellate court decisions. An “unpublished” decision (or unpublished part of a decision) cannot be cited as legal authority in legal briefs and oral argument. In this study, we evaluate all appellate court decisions to better understand how CEQA litigation is used in practice and to identify patterns in how appellate courts decide these cases. CEQA practitioners have long theorized that there are significant differences in the types of opinions that are published versus unpublished (e.g., that agency losses are more likely to be published than agency wins), and this dataset confirmed this theory. The dataset did not show any statistically noteworthy differences in outcomes or other criteria evaluated in this study.

- In the current study, far more “infill” projects in incorporated cities or areas surrounded by previously developed unincorporated county land were challenged; 64% of challenged projects are infill, about 8% have no locational flexibility (e.g., mining projects), and only about 11% of projects are located on previously undeveloped county lands. Besides resort projects, greenfield projects are located at the edge of existing urban communities or are served by existing backbone infrastructure such as freeways and water supply systems.
- In the current study, agencies prevailed against opponents at an average rate of 75% – still rewarding project opponents with judicial wins more frequently than NEPA and other administrative laws. The most detailed, time-consuming and costly form of CEQA compliance, environmental impact reports – which can take two to three years – were found deficient in 23% of the decisions in the current study. “Addenda” to EIRs, which serve as updates to previous EIRs, were upheld in 81.5% of those decisions. As in the 2015 study, EIRs were far more likely to be challenged than any other form of CEQA

document – about 53% of appellate court decisions were challenges to the sufficiency of EIRs (including a few challenges to supplemental EIRs). This EIR challenge pattern is consistent with our 2015 study and our three trial court studies.

- The current study showed more projects that qualified for “statutory exemptions” under CEQA statutes adopted by the legislature and for “categorical exemptions” under CEQA guidelines. As the legislature has expanded the number of statutory exemptions for housing and homeless shelters, an uptick in appellate court decisions challenging those exempt projects has followed. Although both datasets showed the appellate courts are more likely to uphold exemptions, exemption challenges comprise 25% of appellate court decisions, more than double the number of exemption appeal challenges reported in the 2015 study.

The data from our current study follows. Appendix A includes a brief overview of CEQA itself, and Appendix B provides additional methodological information about this updated study dataset.

The bottom line of the present study – like our previous 2015 judicial outcome study and our three trial court studies – is that CEQA continues to be a formidable obstacle to building anything in California, especially anything near where anyone lives. The cost of filing a CEQA lawsuit continues to be nominal, and the act of filing even a meritless lawsuit results in multiyear project delays, which either increase project costs or derail projects altogether. Anyone can file a CEQA lawsuit, even anonymously, for any reason, including to leverage money settlements or other economic terms. No costs or other consequences are incurred for filing meritless CEQA appeals, even for repeat offenders who file more than a dozen serial lawsuits against the same project. The adverse equity, consumer, environmental and public health costs of CEQA lawsuits are generally not acknowledged in court pleadings, although in recent years pro-housing advocates have begun to file amicus briefs

CEQA continues to be a formidable obstacle to building anything in California, especially anything near where anyone lives.

in some CEQA lawsuits. Median home prices were \$197,800⁷ in Los Angeles County when a project was initially approved in 1999; decades of litigation later, homes are still being built, but median home prices have skyrocketed to well over \$900,000.⁸ Taxpayer-funded transportation improvements are first stalled, then rendered unfinanceable as project costs and delays rise steeply – and drivers spend ever longer times away from their families commuting to distant homes they can afford.

⁷“Median Home Sales Prices for Southern California, Existing Single-Family Homes by County, 1990-2025,” Los Angeles Almanac, n.d., <https://www.laalmanac.com/economy/ec37.php>.

⁸“Housing Inventory: Median Listing Price in Los Angeles County, CA,” Federal Reserve Economic Data, January 7, 2025, <https://fred.stlouisfed.org/series/MEDLISPRI6037>.



Today, CEQA’s staunchest defenders exploit CEQA to block projects that comply with all existing environmental protection laws and regulations.

Climate-resilient infrastructure to provide reliable, affordable water and electricity are delayed for years by CEQA studies spanning multiple years, only to be challenged by project opponents intent on rejecting approvals by elected officials – and then stalled an additional five or more years in litigation.

Many stakeholders – the nonpartisan Little Hoover Commission and Legislative Analyst’s Office (responsible for overseeing state government operations in California), Democratic and Republican legislators, every governor holding office since 1990, and hundreds of agencies and applicants seeking to build anything anywhere – have recognized CEQA as a massive obstacle or, as former Governor Jerry Brown called it, a “blob.” CEQA’s status quo defenders tout its necessity to “protect the environment,” but thousands of environmental protection laws and regulations are in effect today that did not exist when CEQA was adopted in 1970 or judicially expanded in 1972 to cover private projects like building a home. The California Coastal Act, the Endangered Species Act, the Clean Air and Clean Water acts, the Occupational Safety and Health

Act, laws protecting public lands such as parks and forests, and dozens of other major state and federal environmental laws have cleaned up our air and water. In 2016, the Obama Administration’s Environmental Protection Agency announced that tailpipe emissions of smog-forming pollutants had been reduced by 99%⁹ – without an electric vehicle mandate.

Today, CEQA’s staunchest defenders exploit CEQA to block projects that comply with all existing environmental protection laws and regulations. They sue to get cash settlements to prevent new residents from entering their neighborhoods or schools, to oppose car-dependent development (despite the fact that 97% of Californians drive daily¹⁰), to reject market-rate housing in favor of exclusively taxpayer-funded alternatives, to assert that unelected community activists should control what can be built anywhere, or to advance a vision of California “de-growth” that prioritizes ideological climate goals over actually reducing global greenhouse gas emissions by making it affordable for people and jobs to stay in California.¹¹

I have written extensively about the racially disparate and regressive cost burdens imposed by California climate policies.¹² Defenders of CEQA’s status quo, operating under the banner of the climate crisis, have espoused ideological elitism while rejecting any responsibility for structuring California’s climate mandate measures “on the backs of working Californians” – as California State Assembly Speaker Robert Rivas reported in December 2024. In any true “crisis,” we would build. In a state that purportedly values equity and opportunity but has achieved the nation’s highest poverty rate¹³ and homeless population¹⁴ because we can’t build the housing, infrastructure and public services we need, let alone approve new manufacturing and other good-paying jobs for those without advanced degrees – we instead preserve a 1970 law that ceased functioning as intended decades ago, shifting from protecting the environment to obstructing efforts to build affordable and reliable water and electricity infrastructure and even benches at bus stops.

In a rule-of-law democracy, statutes are supposed to be clear enough to allow everyone to understand compliance requirements. If there is legal ambiguity,

the legislature or courts clarify. Here, with few exceptions, CEQA appellate court decisions continue to creatively and expansively interpret CEQA to impose new and novel compliance requirements on applicants and agencies to find deficiencies on CEQA documents prepared three or more years earlier. The retroactive judicial expansion of CEQA statutory compliance requirements without notice or comment or the policy balancing required in rulemaking undermines the rule of law.

As recently chronicled at length in the book *Abundance*, excessive proceduralism and litigation allowed in states and cities with governments controlled by the Democratic Party have failed to timely approve and actually get enough housing and other critical infrastructure actually built.¹⁵ It is difficult to see how California can respond to a “housing crisis,” “climate crisis,” “affordability crisis,” “electricity crisis” or “water crisis” without major changes to CEQA. Such attitudes do not serve Californians, the environment or the planet well.

⁹U.S. Environmental Protection Agency, History of Smog Vehicle Emissions, 2024 <https://www.epa.gov/greenvehicles/smog-vehicle-emissions#history>

¹⁰“Active Transportation,” Southern California Association of Governments, n.d., <https://scag.ca.gov/post/architecture-elements-active-transportation>.

¹¹See Hernandez, Friedman and DeHerrera, “In the Name of the Environment,” 22–28; Alastair Bland, “Weakling or bully? The battle over CEQA, the state’s iconic environmental law,” Cal Matters, May 13, 2019, updated March 27, 2025, <https://calmatters.org/economy/2019/05/weakling-or-bully-ceqa-environmental-law-california-development-battles/>; Jason Barrett and Kevin Klowden, “The CEQA Labyrinth: Fixing the Flaws in a Good Law,” Milken Institute, October 24, 2016, 4–8, <https://milkeninstitute.org/content-hub/research-and-reports/reports/ceqa-labyrinth-fixing-flaws-good-law>.

¹²Jennifer Hernandez, “Green Jim Crow: How California’s Climate Policies Undermine Civil Rights and Racial Equity,” The Breakthrough Institute, August 16, 2021, <https://thebreakthrough.org/journal/no-14-summer-2021/green-jim-crow/>; Jennifer Hernandez and Lauren Teixeira, “Time to Reset California’s Climate Leadership,” The Ecomodernist, January 6, 2025, <https://www.breakthroughjournal.org/p/time-to-reset-californias-climate>.

¹³California Budget & Policy Center, “New Census Data Show California Poverty Soared to Alarming High Levels in 2023,” <https://www.calbudgetcenter.org/news/new-census-data-show-california-poverty-soared-to-alarmingly-high-levels-in-2023/>

¹⁴Public Policy Institute of California, “Homelessness Hits Record High in California, Jumps Dramatically in Rest of US” (2025) [https://www.ppic.org/blog/homelessness-hits-record-high-in-california-jumps-dramatically-in-rest-of-us/#:~:text=Californians%20have%20consistently%20cited%20homelessness,24%25\)%20were%20in%20California](https://www.ppic.org/blog/homelessness-hits-record-high-in-california-jumps-dramatically-in-rest-of-us/#:~:text=Californians%20have%20consistently%20cited%20homelessness,24%25)%20were%20in%20California).

¹⁵Klein, Ezra and Thompson, Derek. *Abundance*. Simon & Schuster (2025)

CEQA Appellate Court Outcomes Update

METHODOLOGY

The study at hand is based on a review of all published and unpublished CEQA appellate court decisions over an 11-year period (2013 to 2023).

The present study's methodology is more expansive than that of the 2015 study and was intended to address topics not previously covered.

First, reviewing all appellate court decisions rather than only those approved for publication in whole or in part (which means the decision can be cited in subsequent CEQA lawsuits as court authority) more accurately captures the number of CEQA cases the appellate courts are asked to decide – and the number of projects that remain presumptively stalled until the appeal is decided. Second, including both published and unpublished judicial cases allowed us to test the theory that CEQA appellate court decisions in favor of an agency were more likely to be unpublished – and therefore

not allowed to be used as judicial authority in subsequent CEQA lawsuits – and those in favor of an opponent were more likely to be published (especially if the decision expanded CEQA's procedural or substantive requirements, notwithstanding the legislature's direction to the contrary in Section 21083.1). We confirmed that hypothesis: Agencies won in 80% of unpublished decisions and only 70% of published decisions. Of the total dataset of 498 cases, 229 were published and 269 unpublished. There were no other statistically notable differences in published and unpublished cases.



Appendix B describes the methodology for this updated study in greater detail.



To better understand the context and evolving pattern of CEQA appeals within the framework of CEQA lawsuits more generally, we also periodically refer to data on CEQA lawsuits filed in trial courts. The trial court studies include three comprehensive analyses that evaluated all CEQA lawsuit petitions filed in trial courts statewide between 2010 and 2012, 2013 and 2015, and 2019 and 2021.¹⁶ We also refer to two trial court study subsets of the sample that focused on housing, which has at all times remained the top target of CEQA lawsuits. The first study examined all CEQA lawsuits filed statewide targeting housing project approvals in 2020 – counting not just the number of lawsuits targeting housing projects but also the number of housing units approved for construction in each challenged project.¹⁷ That study revealed that 48,000 housing units were challenged, which is equivalent to nearly half of 2020's housing production statewide. The second was a regional study that evaluated CEQA lawsuits filed against projects that included housing (just under 14,000 housing units targeted) in California's most populous region, covering all Southern California counties except San Diego, between 2013 and 2015.¹⁸ That study, for which

we received research assistance from the Southern California Association of Governments, showed that less costly housing units – rental apartments – were by far the most likely to be targeted in CEQA lawsuits, that 98% of the targeted housing units were located on vacant or previously developed parcels in existing neighborhoods ("infill" development), and that far more lawsuits were filed in the region's wealthier and healthier neighborhoods than in the "disadvantaged" communities (with larger percentages of Latino or Black residents, lower educational attainment levels, closer proximity to industrial or other pollution sources, and greater incidences of asthma and other adverse health conditions). Notwithstanding scores of laws and policies intended to promote equity, the overall pattern of CEQA lawsuits against apartment projects reflects a century-long record of exclusionary and discriminatory housing practices enforced de jure – under "color of law," as chronicled by the most prominent scholar in the field.¹⁹

What follows are the most salient facts about the reality of CEQA litigation practice and appellate court CEQA decisions.

¹⁶See Note 5 above, Three CEQA Trial Court Studies.

¹⁷Jennifer Hernandez, "Anti-Housing CEQA Lawsuits Filed in 2020 Challenge Nearly 50% of California's Annual Housing Production" (Center for Jobs & the Economy, August 2022), <https://centerforjobs.org/wp-content/uploads/Full-CEQA-Guest-Report.pdf>.

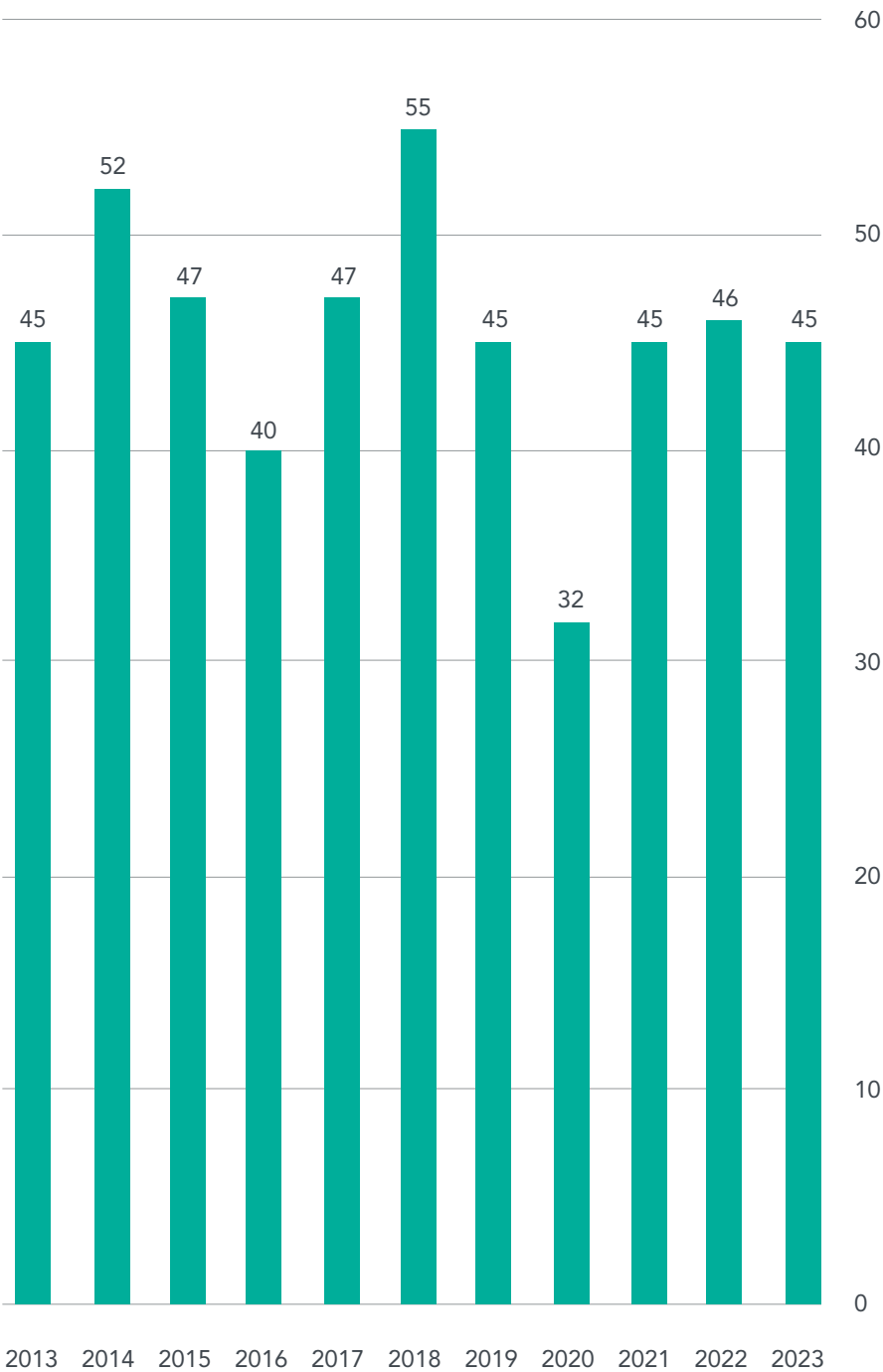
¹⁸Jennifer Hernandez, "California Getting in Its Own Way: In 2018, Housing Was Targeted in 60% of CEQA Lawsuits Against Construction Projects," ed. Joel Kotkin (Chapman University Press, 2019), <https://www.newgeography.com/files/ca-getting-in-its-own-way%20-%20Kotkin%20and%20Hernandez,%202012-19.pdf>.

¹⁹Rothstein, Richard. *The Color of Law: A Forgotten History of How Our Government Segregated America*. Norton (2018).

Courts Are Deciding Far More CEQA Appeals – 4.5 Times More Appeals Than Reported in Our 2015 Study

The 2015 study showed an annual average of 9.7 published appellate decisions – 146 decisions in 15 years. The updated study shows an average of twice as many published decisions – 229 in 11 years, or 20.8 per year. As depicted in Figure 1, the updated study reveals an average of 45.3 total decisions per year.

FIGURE 1: Total Appellate Court Decisions by Year



The trial court study series revealed that approximately 200 CEQA lawsuits are filed with superior courts every year – a number that was confirmed by the Little Hoover Commission in 2024. Trial court documentation is managed by the superior court for each of California’s 58 counties, and no easily accessible methodology is available for determining what happened to the CEQA lawsuits that were not appealed. From experience, the author knows that this category includes approved projects that have been abandoned by applicants unable to pay attorneys fees – and who risk liability for paying the opponent’s attorney fees and bonus of the opponent’s lawyer, as well as the lead agency’s legal costs.

Experience has also shown that many lawsuits settle – almost always on confidential terms. Some lawsuits are withdrawn without settlement, and sometimes agencies or applicants decline to defend lawsuits and accordingly abandon approved projects (e.g., by vacating prior project approvals).

Under existing law, CEQA opponents who lose their lawsuits bear no risk of paying the other party’s attorneys fees. However, CEQA opponents who win can and often do receive the court’s approval for collecting an attorneys fee award from the losing agency. Agencies, in turn, frequently require private applicants to pay all defense costs and the opposition counsel fee if the agency loses.



This one-sided exposure to attorneys fee awards – opponents can win such awards but never lose – has created a contingency fee business model for CEQA lawyers who represent opponents. Under that business model, if the agency loses the lawsuit, the lawyer for the project opponent can collect full market rate legal fees plus a bonus from the applicant, even if the lawyer charges nothing (or only a nominal sum) to represent the opponent.

CEQA’s brutal economic reality ... can drive ordinary people into abandoning approved projects.

This CEQA litigation business model is a particularly brutal tactic against a family seeking to build or remodel a home, a small business owner or an entrepreneurial housing developer seeking to build lower-cost housing affordable for median-income households. For example, in *Canyon Crest Conservancy v. County of Los Angeles*, 46 Cal.App.5th 398 (Cal. Ct. App. 2020), a couple purchased a small vacant lot in an established neighborhood and sought to build a two-story home with 1,436 square feet of habitable space. The next-door neighbor filed a CEQA lawsuit, but because the couple could not afford to pay the county’s legal fees in addition to their own legal fees, they

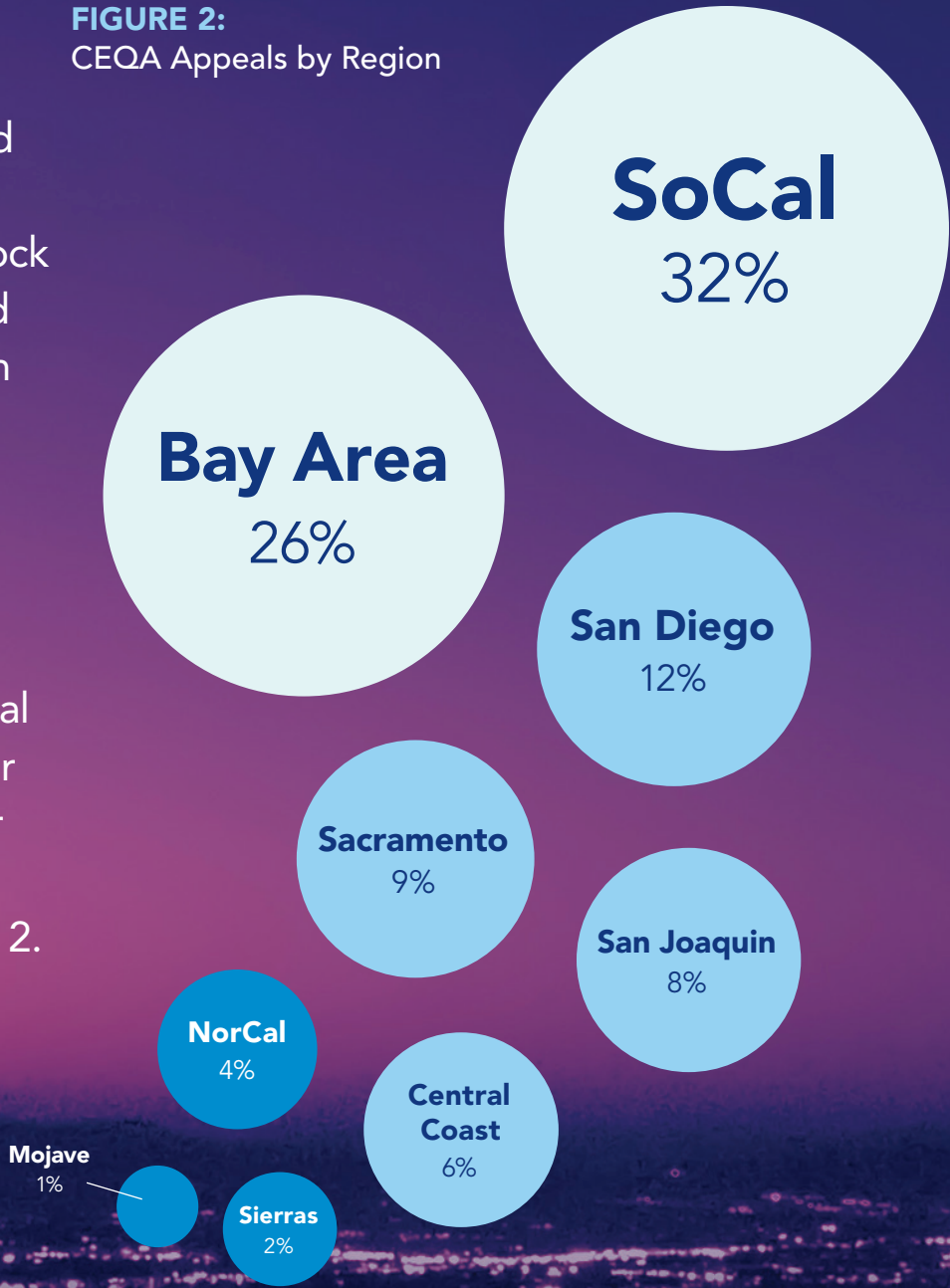
gave up – after having spent more than \$100,000 on project application documentation and other studies required under CEQA – and requested that their approved permit be vacated. The county agreed to vacate the permit, but the neighbor wasn’t satisfied with blocking the new neighbor – the neighbor also demanded that the couple pay their attorneys fees, even though the trial court had not decided the case. Los Angeles County contested the attorney fee award (and generously chose not to require the applicant to pay the county’s fees, notwithstanding having required the applicant to agree to pay any such fee award). That attorney fee dispute over an abandoned single home project went first to the superior court, where the neighbor lost, and then to the appellate court, where the neighbor lost again. But for the fact that the case resulted in an appellate court decision in an attorney fee dispute, it would have been among the 90% of trial court CEQA lawsuits that are not appealed.

CEQA’s brutal economic reality – whereby a party with funds or access to a contingency or discounted fee arrangement with a CEQA opposition lawyer can drive ordinary people into abandoning approved projects – is rarely acknowledged by CEQA’s status quo defenders in policy debates and court briefings. One final note: Building a single-family home on an existing lot already served by required infrastructure is categorically exempt from CEQA – which just didn’t matter because categorical exemptions can be challenged in lawsuits, and lawsuits cost money and time that normal people just don’t have to spare.

The Frequency of CEQA Appeals Correlates with the State’s Most Populated Urban Regions and Not with the Most Pristine Environments

CEQA appeals overwhelmingly occur in the state's most populated regions, where individuals and groups organize to block change to unincorporated county lands on the urban edge or locations served by existing backbone infrastructure. The same pattern was observed in the 2015 study and has been true in each of the trial court studies. The number of CEQA appeals filed for each of the state's major regions is shown in Figure 2.

FIGURE 2:
CEQA Appeals by Region



Housing Continues to Be the Top Target of CEQA Lawsuits Decided on Appeal

Housing consistently ranked as the top target of CEQA lawsuits in all of the trial court CEQA studies and the 2015 study of reported appellate decisions. The Little Hoover Commission also confirmed that even supporters of the CEQA status quo agreed that housing was the top target of CEQA lawsuits.²⁰

To provide a larger context for understanding housing as a top-ranking target of CEQA appeals, Figure 3 first depicts the percentage of CEQA lawsuits in the updated study filed against projects approved by public agencies (which may include construction projects like infrastructure or regulatory projects like approval of a plan or regulation) and those filed against agency approvals of applications submitted by a person or firm (e.g., a private or public utility employer; an affordable housing or homeless service provider; a builder; or a homeowner, resident or employee). Consistent with the 2015 study, this update shows that most CEQA appeals involve agency approvals of applications – not the agency’s approval of its own plans, regulations or projects. Virtually no change was observed in the split between public agency projects and agency approvals of project applications between the first study and the updated one; it adjusted by just 1%.

FIGURE 3: Do Appeals Challenge an Agency Project or Agency Approvals of Project Applications?

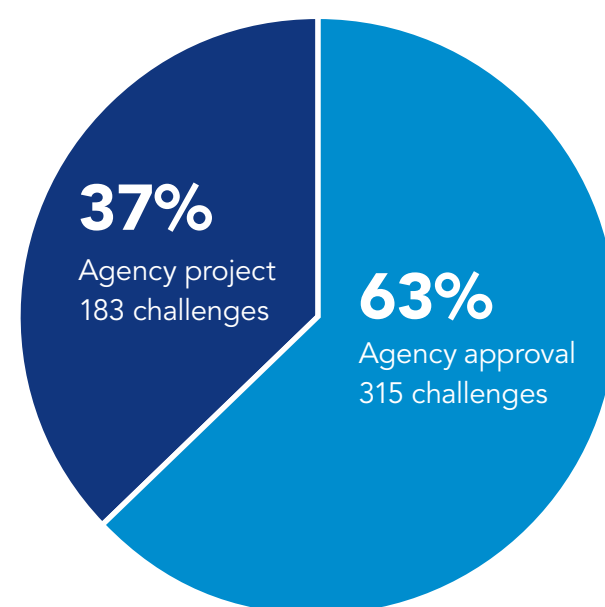
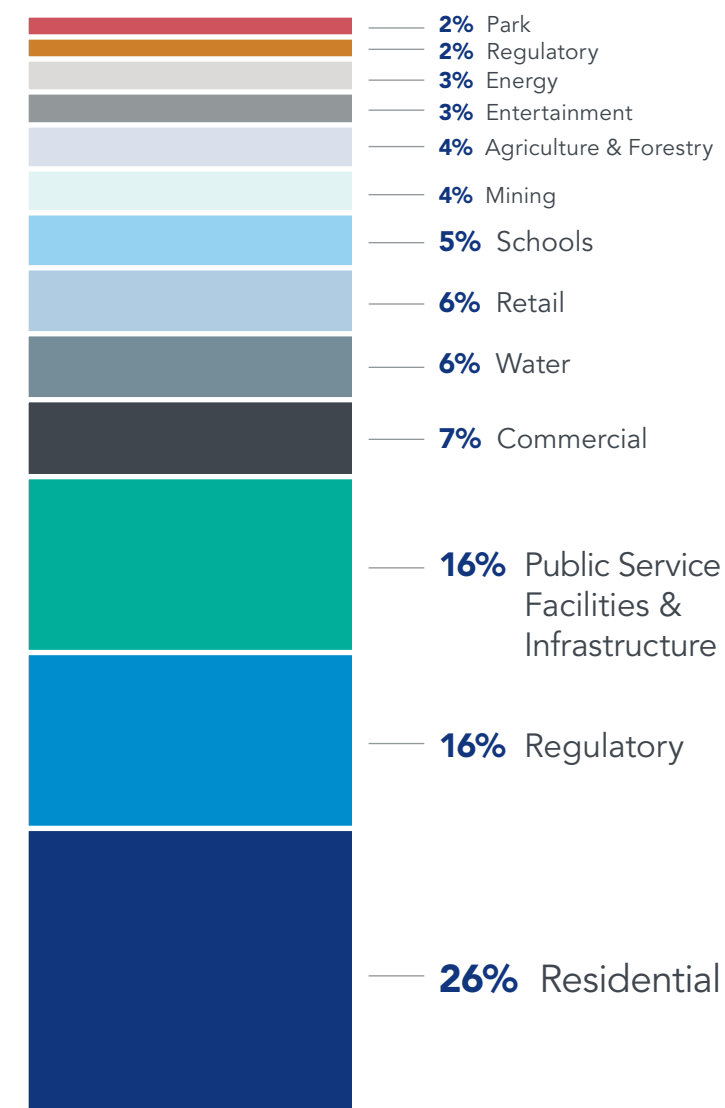


Figure 4 shows the types of projects at issue in CEQA appeals. No material difference emerges between published and unpublished decisions except that decisions in challenges to agency-approved plans, regulations and ordinances (collectively grouped as “regulatory”) are somewhat more likely to be published.

FIGURE 4: Types of Challenged Projects



The project-type categories shown in Figure 4 understate the extent to which the underlying controversy of the case is whether to allow – or block – population growth by approving more housing. The need for expanded public services facilities and infrastructure, for example, is most often spurred by population growth – and the challenges involve expanding project capacities. For example, the top public project targeted by CEQA lawsuits in the third trial court study involved constructing water recycling facilities that effectively displace and thereby supplement locally available water supplies for new residential and other projects. Other water projects increase drought and climate change resiliency with, for example, improvements to storage and conveyance systems. Choking off water supplies is a highly effective anti-growth tactic, and challenging water projects under CEQA furthers an anti-housing agenda.

Another major category of challenged projects in the third trial court study involved changes to local plans and zoning ordinances that implemented state law mandates to accommodate more housing, including for diverse income levels – among them apartments available to renters with lower household incomes who cannot afford to purchase a home. “Regulatory” also includes state regulations aimed partly at residential safety, such as fire prevention fuel management regulations in forests and open space.

²⁰Little Hoover Commission, “CEQA: Targeted Reforms for California’s Core Environmental Law,” 5.

The top three categories combined – Residential, Public Service/Infrastructure and Regulatory – account for 138 of 229 published appellate decisions, or

60%

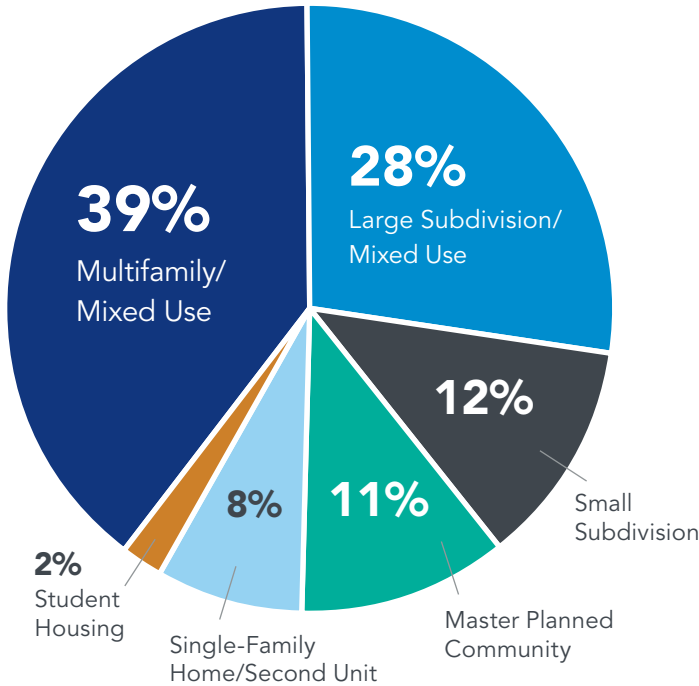
The top three categories combined – Residential, Public Service/Infrastructure and Regulatory – account for 138 of 229 published appellate decisions, or 60%. That is not surprising since CEQA is the litigation tool of choice for those seeking to block population growth, including building housing and the infrastructure and public services that serve and thereby enable population growth.

As the Little Hoover Commission accurately noted, CEQA debates often serve as proxy battles for various related but distinct policy contests. The commission noted that this adds another challenge to analyzing CEQA since it can be difficult to disentangle CEQA from other policy debates because they are so closely intertwined.²¹

Figure 5 shows only challenged residential projects by category. Multifamily projects are typically apartment buildings that can include some retail or office (mixed-use) space, such as on the ground floor. California’s climate and environmental policies prioritize building that form of housing, especially near train stations, ferry terminals and high-frequency bus stops where residents are presumed to drive less – and such higher-density projects are by far the most likely to be challenged in a CEQA appeal, comprising more than half of challenged residential projects. Single-family homes, converted garages or backyard cottages in single-family homes almost always qualify for statutory or categorical CEQA exemptions, but CEQA lawsuits (like the notorious 11-year court saga challenging a single home rebuild on an existing lot that was unanimously supported by surrounding neighbors and Berkeley’s elected and appointed decision-makers²² and the malicious prosecution cases in San Anselmo discussed above²³) challenge whether

the exemption really applies. Small subdivisions include only home construction (e.g., townhomes or several single-family homes) while large subdivision/mixed-use projects include new housing units (often combining single-family and multifamily homes) along with retail and/or office and park uses. Master-planned communities include many thousands of homes, commercial/retail/business, parking, and other employment uses, as well as parks, fire stations, schools and other town-scale uses. The final housing category comprises student dormitories – including the notorious People’s Park dorm case, where an appellate court found for the first time that noise from human occupancy of housing was an environmental impact. The decision was later reversed in urgency legislation and again rejected by the California Supreme Court in a related challenge to the expansion of the University of California, Berkeley campus.

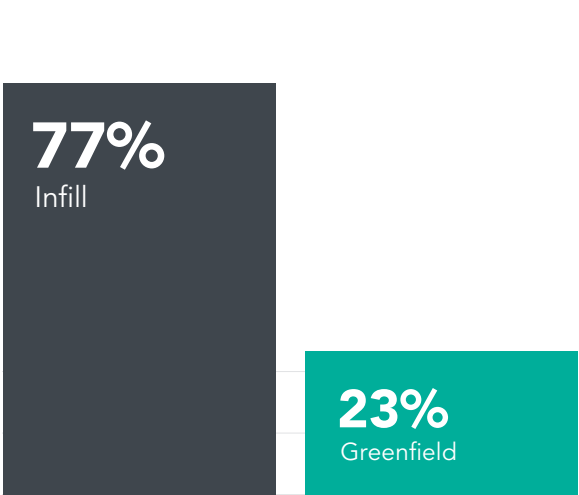
FIGURE 5: CEQA Housing Project Appeals



²¹Ibid., 12.
²²Berkeley Hillside Pres. v. City of Berkeley, 60 Cal. 4th 1086, 343 P.3d 834 (Cal. 2015), as modified (May 27, 2015).
²³Jenkins v. Brandt-Hawley, 86 Cal. App. 5th 1357, 302 Cal. Rptr. 3d 883 (Cal. Ct. App. 2022).

Figures 6A and 6B show the location of physical construction projects challenged on appeal, which are categorized as either "greenfield" (located on previously undeveloped land outside city boundaries) or "infill" (located on previously developed or vacant parcels inside city boundaries or in unincorporated county communities already surrounded by development). Figure 6A shows the infill and greenfield location for all types of appealed projects, and Figure 6B shows only residential projects located on a greenfield or infill parcel.

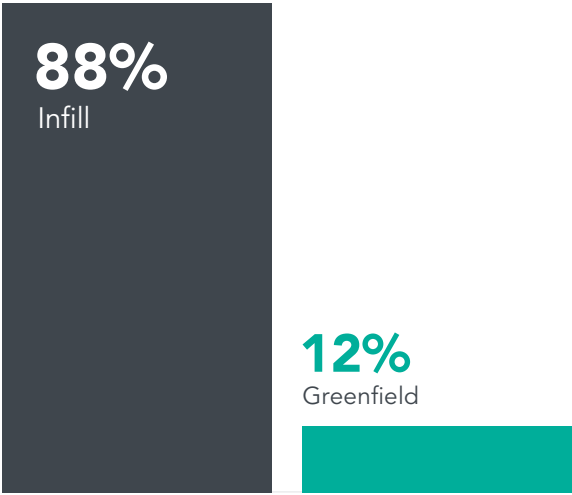
FIGURE 6A: CEQA Lawsuits Challenging Projects Located on Infill or Greenfield Sites



The 2015 study did not include an infill versus greenfield residential project subcategory but did include the broader category of infill and greenfield projects of all types, not just housing.

Figure 6A shows that only 23% of CEQA appeals in the current study involved challenges to greenfield projects, compared with 38% in the 2015 study. In the author's experience, there are far fewer greenfield projects now, so the reduction in CEQA appeals against this project type is simply because there are fewer such projects. CEQA appeal volumes nevertheless have risen sharply to challenge infill and other projects as CEQA strays further from its environmental purpose and instead dominates as the litigation tool of choice for neighborhood land use disputes and settlements to block or downsize infill housing.

FIGURE 6B: CEQA Lawsuits Challenging Housing on Greenfield or Infill Locations



Courts Continue to Find Fault with CEQA Studies and Require Rescissions of Project Approvals

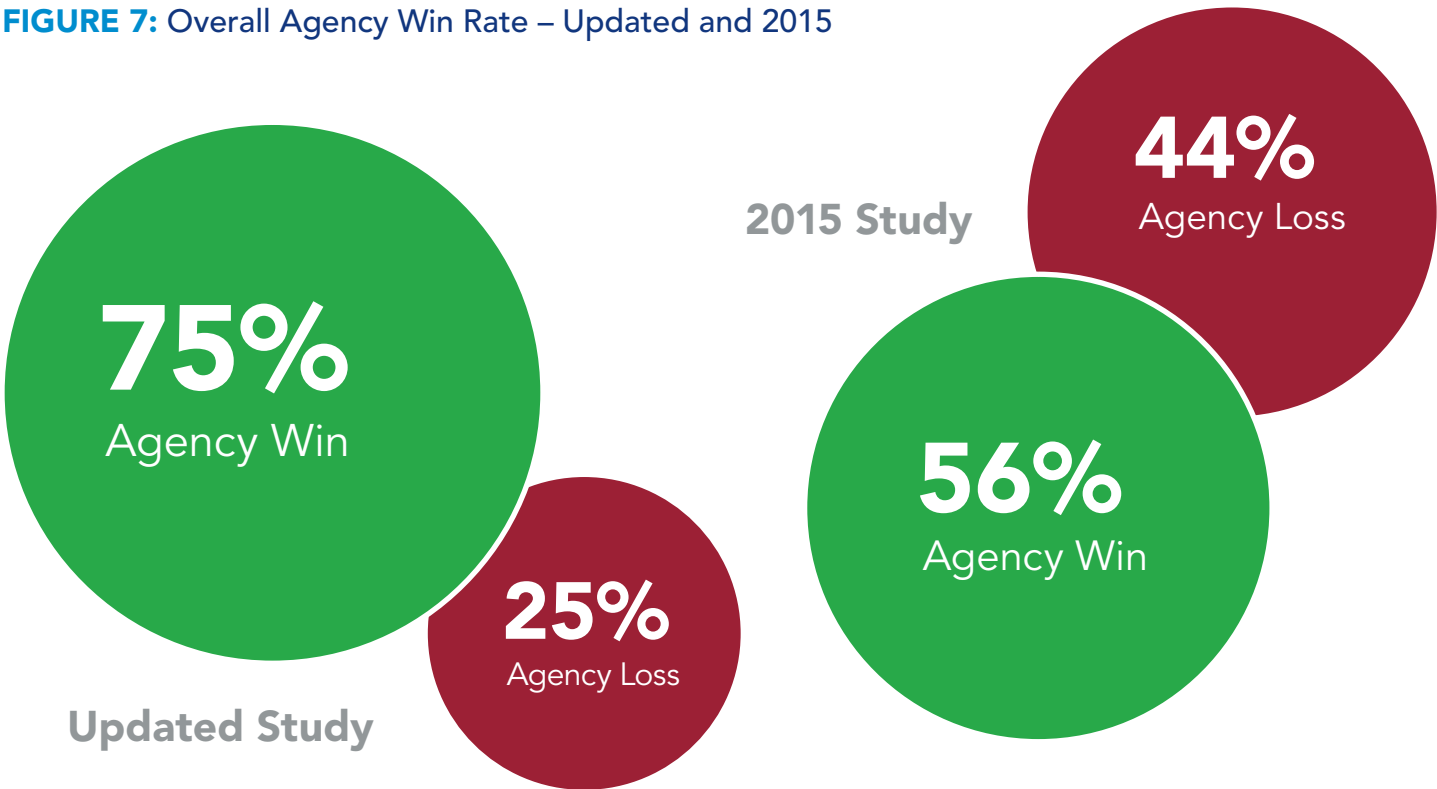
Because the 2015 study was limited to published decisions on the substantive adequacy of an EIR, negative declaration or categorical exemption, the updated study includes both unpublished decisions and – of greater relevance for the issue at hand – decisions about whether an agency or an opponent properly complied with CEQA's procedural requirements. For example, an opponent may simply argue that an EIR's analysis of a particular impact is legally deficient if that argument is first raised to the agency before the agency approves the CEQA documentation and the project – a doctrine called "exhaustion of administrative remedies." Similarly, an opponent must file a CEQA lawsuit shortly after an agency properly files the required notice; an opponent's tardy lawsuit can be dismissed, and an agency's failure to properly file a notice may extend the period during which an applicant must file the appeal.





Figure 7 compares the agency win rate for all 498 CEQA appellate decisions in the updated study to the overall agency win rate in the 146 CEQA appellate decisions included in the 2015 study. Agencies were significantly more likely to prevail in the decisions compiled in the current study.

FIGURE 7: Overall Agency Win Rate – Updated and 2015



When agency win-loss rates are evaluated in relation to the type of challenged project, the updated study also shows fairly comfortable win rates across most categories, with four exceptions where agency wins dipped below 66%: industrial (primarily warehouse) projects (50% win rate), K-12 and college school projects (60%), agency regulations (65%), and commercial projects such as office or hotel (66%).

FIGURE 8A: CEQA Appeal Agency Loss Rate by Project Type

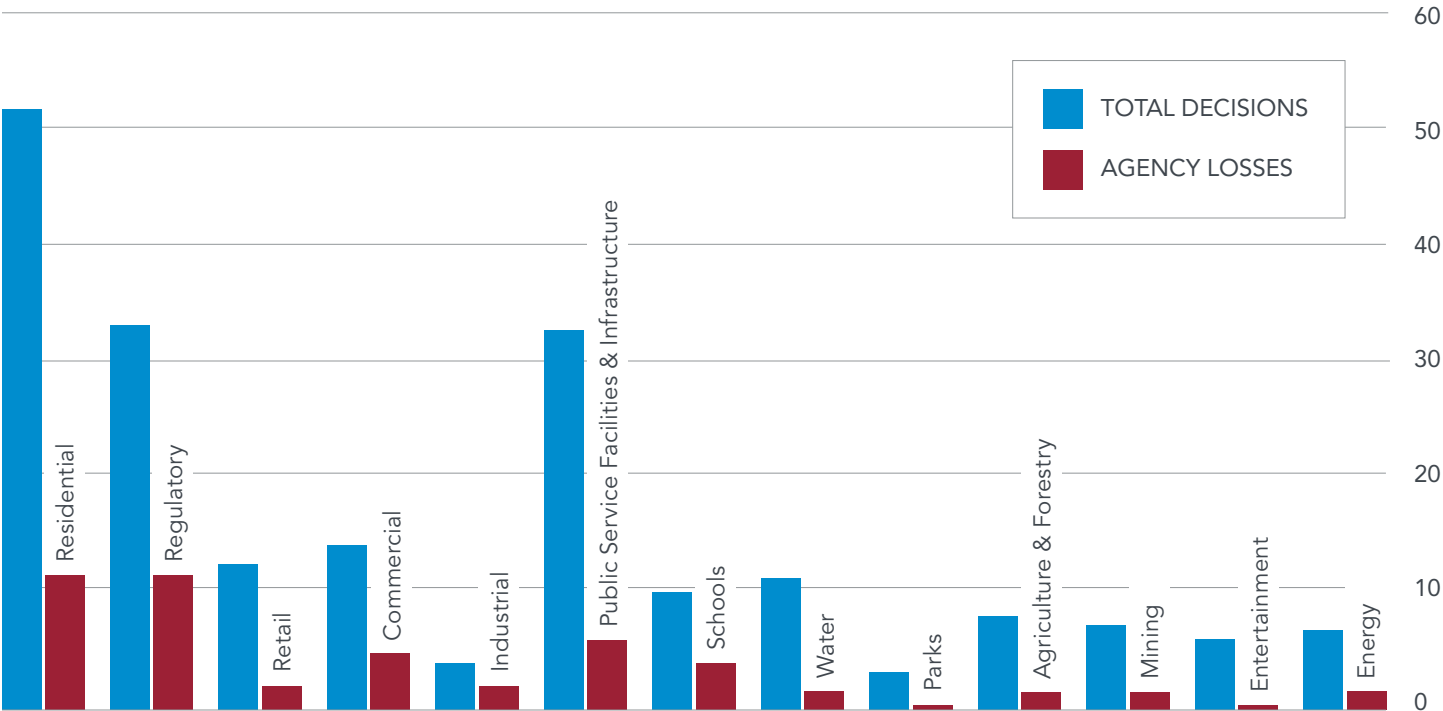
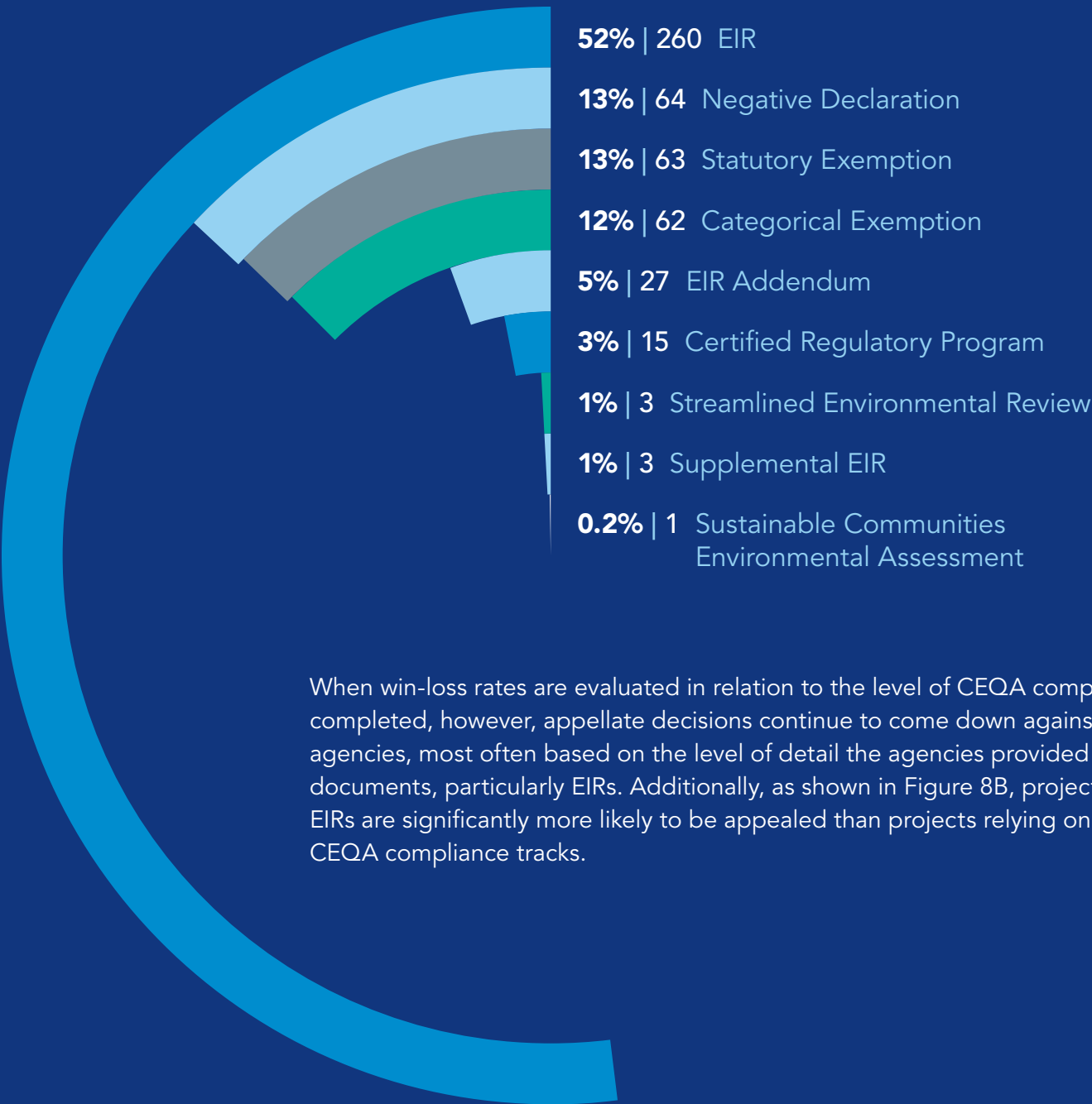


FIGURE 8B: Appeals by CEQA Compliance Track



When win-loss rates are evaluated in relation to the level of CEQA compliance completed, however, appellate decisions continue to come down against agencies, most often based on the level of detail the agencies provided in CEQA documents, particularly EIRs. Additionally, as shown in Figure 8B, projects with EIRs are significantly more likely to be appealed than projects relying on other CEQA compliance tracks.

To put the complexity of EIRs (and what constitutes a CEQA “impact” more generally) into perspective, Section 21083.1 directs courts not to require any substantive analysis unless it is “explicitly” required in the CEQA statute or CEQA guidelines. CEQA’s statutes are relatively general and include some – but not all – of the specific topics required to be analyzed under the guidelines.

Appendix G of the CEQA guidelines contains a form that agencies are encouraged but not required to submit in evaluating all environmental impacts from the “whole of the project,” including the proposed project itself and its effect on the physical environmental setting on the project’s site, as well as offsite physical improvements required by the project, such as electric substations and roadway improvements. Appendix G directs agencies to first identify all environmental impacts that could occur and then analyze those impacts to determine whether a “fair argument based on substantial evidence” that each such impact is “significant and adverse” can be made. Such a finding disqualifies the project from using the more abbreviated “negative declaration” process and also triggers the need for “all feasible mitigation” or a “feasible alternative” to the proposed project that would accomplish most of the project’s objectives. Projects that are exempt from CEQA by statute may need to undertake a similar analysis, and even projects that are categorically exempt from CEQA can be directed to complete the analysis to demonstrate that no “unusual circumstances” exist that would disqualify a project from exercising a categorical exemption. Even projects that the legislature has directed to be processed with a streamlined form of CEQA compliance, such as those that are consistent with a previously approved EIR, can be challenged under various statutory provisions, such as whether the project has a “peculiar” impact that was not “adequately analyzed” in the prior EIR.

Appendix G also includes 18 categories of impacts, ranging from aesthetics/agriculture/air quality through the alphabet to transportation/traffic, tribal resources and utilities. Each category contains multiple subtopics that collectively total 93 separate questions about whether a project could potentially have a significant impact, and each question requires varying levels of expert analysis – sometimes multiple analyses for a single question. One example of that

Projects with EIRs are significantly more likely to be appealed than projects relying on other CEQA compliance tracks.

requirement is whether a project could have “a substantial adverse effect, either directly or through habitat modifications,” on one of several categories of animal or plant species. Species experts are typically divided between, for example, experts on vegetation, experts on birds, experts on reptiles and experts on insects. The issue of whether habitat modification (grading and development) has an “indirect” effect on a species is undefined, as is the question of when an impact is “significant.” Another biological resource question includes a broader list of both “native” and “migratory” species, even if they are not covered under the first species category. As is the case with humans, species engage in different behaviors and have different sensitivities at different life stages – and in one case, the state Supreme Court faulted an agency for failing to consider project impacts on the juvenile phase of a fish.

Appendix G likewise includes as a “mandatory” finding of significance if the project – when considered in the context of past, present or reasonably foreseeable future projects – could have a significant adverse impact in relation to any type of CEQA impact (the 93 questions and beyond).

Courts have shown little regard not just for Section 21083.1 but even for other CEQA statutes governing how to decide CEQA lawsuits for a particular project. In one of the more notorious recent examples, the legislature decided to replace the office building annex attached to the state capital with a larger



high-rise structure.²⁴ The legislature enacted a special statute that limited the court’s authority to block the project absent evidence showing that the project would itself result in significant adverse public safety effects or that a previously unknown significant tribal resource was discovered and would be affected. The appellate court blocked the project anyway, finding that a portion of CEQA not referenced in the legislation – that the project description be finite, complete and accurate – was violated and that fault precluded a meaningful analysis of aesthetic and historic resource impacts.²⁵ (The appellate decision is included in the second trial court study). Stymied, the legislature then approved a full statutory exemption²⁶ for its new office building, prompting quips like, “CEQA reform for me, not thee” for those unable to politically muscle through a comparable legislative exemption.

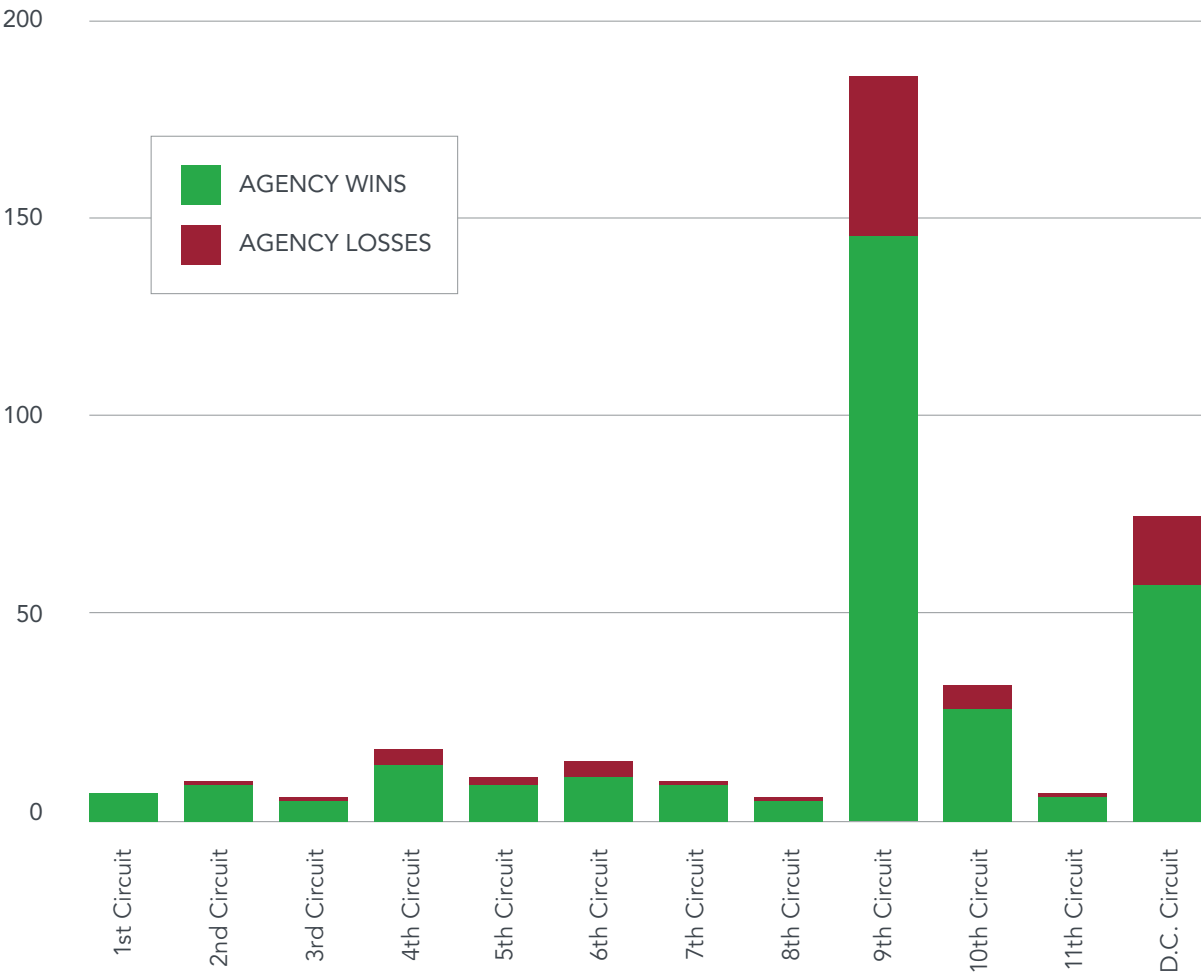
For projects that qualify for a statutory exemption, the court’s inquiry is simpler: Does the project satisfy the requirements or not? Even for more constrained categorical exemptions, the Supreme Court has made clear in the notorious Berkeley 11-year single-family-home court saga²⁷ that opponents must first present evidence of an “unusual circumstance” that disqualifies the project from making use of an exemption – effectively limiting judicial review to whatever limited “unusual circumstances” arguments (and evidence) are at issue on the appeal. Agencies prevailed in appeals challenging statutory exemptions in 75% of cases and won 84% of challenges to categorical exemptions.

²⁴Nicole Nixon, “Controversial Capitol annex project would be exempt from environmental law under new bill,” The Sacramento Bee, June 26, 2024, <https://www.sacbee.com/news/politics-government/capitol-alert/article289497348.html>.
²⁵*Save Our Capitol! v. Dep’t of Gen. Servs.*, 105 Cal. App. 5th 828, 326 Cal. Rptr. 3d 250 (Cal. Ct. App. 2024), review denied (Jan. 22, 2025); *Save the Capitol, Save the Trees v. Dep’t of Gen. Servs.*, 101 Cal. App. 5th 1237, 321 Cal. Rptr. 3d 46 (Cal. Ct. App. 2024).
²⁶Senate Bill No. 174, 2023-2024 Reg. Sess. (2023).
²⁷*Berkeley Hillside Pres. v. City of Berkeley*, 60 Cal. 4th 1086, 343 P.3d 834 (Cal. 2015), as modified (May 27, 2015).

Courts are also decidedly more skeptical of repeated rounds of CEQA lawsuits once an EIR process has been completed, particularly for projects that rely on an EIR “addendum” to show that the proposed project has no new or substantially worse significant adverse impacts. The updated study revealed that EIR addenda survived challenges in 82% of cases.

Outcomes demonstrated in the updated study continue to be anomalous relative to NEPA and meta-analyses of administrative law decisions, although agency win rates have improved compared to the 2015 study. For example, a study of NEPA appellate decisions over a 10-year period (Figure 9) showed that even the Ninth Circuit and District of Columbia Court of Appeals rejected the arguments of project opponents and upheld agency NEPA compliance 78% of the time.²⁸

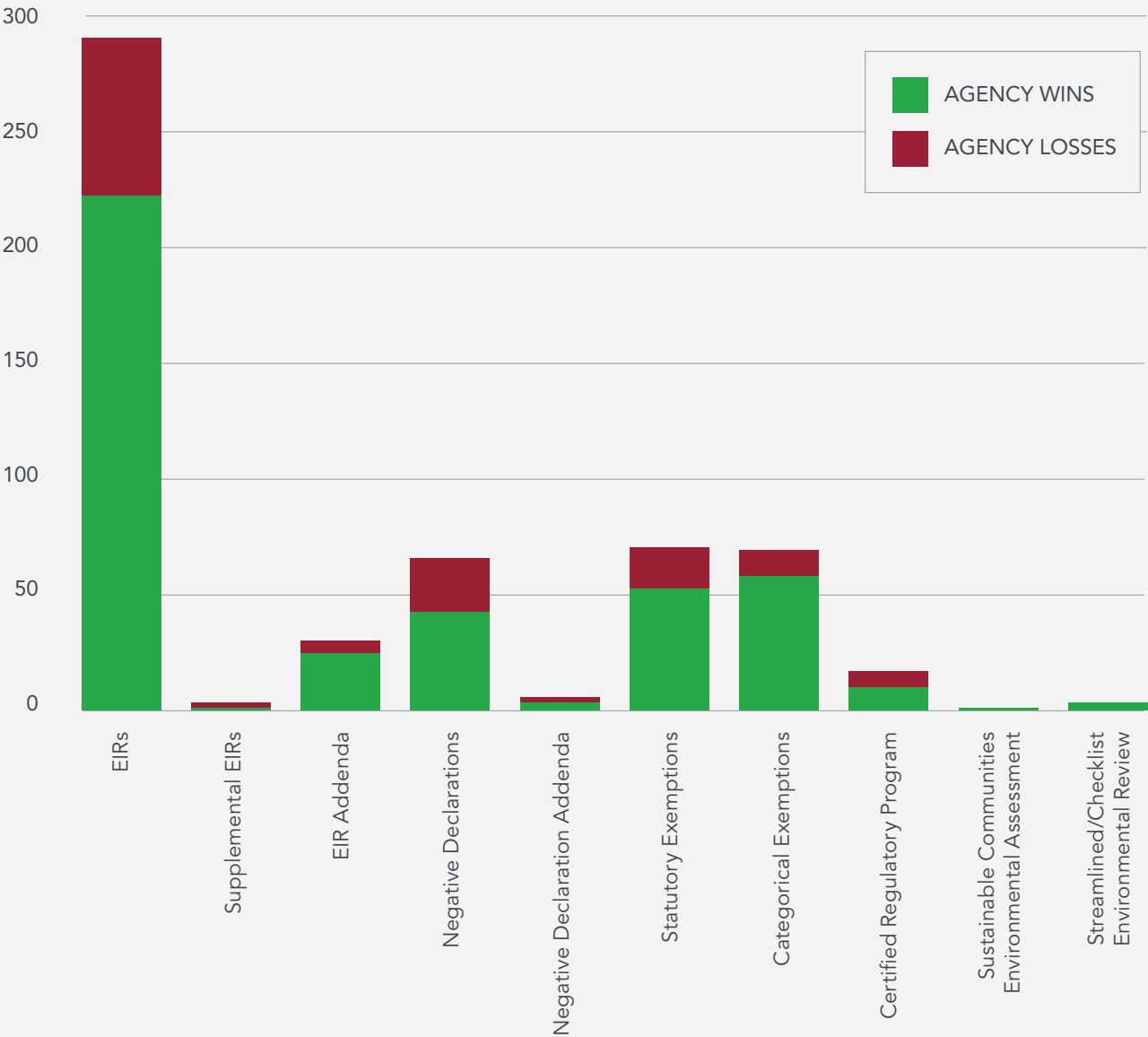
FIGURE 9: NEPA Decisions Sorted by Court of Appeal (2013-2022)



²⁸Nikki Chiappa et al., “Understanding NEPA Litigation: A Systematic Review of Recent NEPA-Related Appellate Court Cases,” The Breakthrough Institute (July 11, 2024), <https://thebreakthrough.org/issues/energy/understanding-nepa-litigation>.

A more focused evaluation of appellate court outcomes decided on the substantive adequacy of different forms of CEQA, especially EIR, tell a decidedly different story – one that is more closely aligned with project opponents’ lawsuit win rates reported in the 2015 study.

FIGURE 10: Appellate Court Outcomes Sorted by CEQA Compliance Track (2013-2022)



This pattern in Figure 10 tracks the 2015 study as well as the three trial court studies. Far from being a more legally protective CEQA compliance pathway, EIRs are far more likely to be challenged – and opponents are far more likely to win appellate court reviews. The reasons:

- As former Natural Resources Defense Council and current Center for Biological Diversity lawyer David Pettit quipped in a radio interview, "All the big projects get sued." EIRs are more likely to be done for "big" projects.²⁹
- Without judicially recognized or enforced constraints on the required scope and content of an EIR, literally hundreds of topics and subtopics, analytical methods and significance thresholds, mitigation measures, and proposed alternatives can be challenged. Although the legislature expressly directed courts not to impose any procedural or substantive requirements in a CEQA lawsuit that are not explicitly outlined in CEQA's statutes and the CEQA guidelines (Pub. Res. Code § 21083.1), courts appear to routinely ignore the statute – a fact that the Little Hoover Commission's 2024 CEQA report noted required correction.³⁰
- In ruling against agencies, appellate courts appear most willing to find that the agency has provided insufficient "proof of a negative" – the absence of an often-novel contested environmental impact. For example, both CEQA and the CEQA guidelines require analysis and mitigation for significant project impacts on protected plant and animal species, but the California Supreme Court unexpectedly held a project EIR to be inadequate because it had not sufficiently considered impacts on the juvenile life stage of a protected species – although neither CEQA nor the guidelines require species impacts to be separately evaluated for every life stage.³¹
- Longstanding and unresolved procedural disputes arise more often for EIRs, which involve more complex and contentious procedures. For example, an EIR includes a minimum of three public notice requirements and requires written responses to comments made orally or in writing during draft EIRs' public comment periods. Courts have emphasized that to be meaningful, agency responses need to be substantive and not dismissive – but in unpredictable circumstances, courts have concluded that a response to a comment triggers "recirculation" inclusive of revisions and another public review and comment process of a revised draft EIR. The California Supreme Court, for example, rejected the conclusion of both the lead local agency and all expert air quality/pollution control agencies that a particular type of regional smog-based pollutant study could not be applied to assess localized pollution conditions – and determined that even if that were true, the EIR was deficient because that limitation should have been explained in a revised draft EIR rather than in response to comments. However, no existing study methodology nor either CEQA or the CEQA guidelines require that such a study be done (or that the absence of such a study be explained and defended in a draft EIR).³²

²⁹Building Industry Association of Southern California, *Southern California Builder: The Magazine of the Building Industry Association of Southern California*, ed. Craig Foster, April 21, 2021, 25, https://issuu.com/biasc/docs/bia_online_magazine_-_april_hr; Hernandez, Friedman and DeHerrera, "In the Name of the Environment," 35.

³⁰Little Hoover Commission, "CEQA: Targeted Reforms for California's Core Environmental Law," 6.

³¹*Ctr. for Biological Diversity v. Dep't of Fish & Wildlife*, 62 Cal. 4th 204, 361 P.3d 342 (Cal. 2015), as modified on denial of reh'g (Feb. 17, 2016).

³²*Sierra Club v. Cnty. of Fresno*, 57 Cal. App. 5th 979, 271 Cal. Rptr. 3d 887 (2020), as modified (Dec. 22, 2020)

After 50 Years, California Voters Have a Chance to Fix CEQA

When CEQA was enacted and signed into law by Governor Reagan in 1970, the Vietnam War was raging, the Beatles were still together, and the “youth movement” was rebelling against “the establishment” with demonstrations and boycotts.

In the 50 years since, California has enacted thousands of federal, state and local laws, regulations and ordinances protecting our air, water, natural places and species. Yet CEQA has still not undergone any major updates. It’s an outdated law not suited for the times.

At the same time, California is in deep trouble. We have the highest poverty, unemployment and homelessness rates in the nation. Housing costs have skyrocketed, along with the cost of necessities like electricity, water, food, childcare, tuition and healthcare.

As our updated study shows, CEQA continues to be a formidable obstacle to building anything in California, especially anything near where people live. Even a meritless CEQA lawsuit can result in multiyear project delays that increase project costs or derail projects altogether. CEQA challenges have also been used for purposes having little or nothing to do with environmental protection, including to leverage money settlements or other economic terms. There are no consequences for filing meritless CEQA claims, even when the same repeat offenders file more than a dozen serial lawsuits against the same project.

Decades of data and multiple experts have acknowledged the unpredictability of CEQA’s judicial outcomes and the severe harm caused by litigation delays. Yet comprehensive reform has repeatedly stalled.

The voters of California must now take matters into their own hands. California Proposition 45 on the November 2026 ballot offers voters the opportunity to accomplish what decades of legislative efforts have not – meaningful, structural CEQA reform.

Proposition 45 applies to a broad category of “essential projects” – including housing, water systems, clean energy, medical treatment facilities, public safety, broadband internet access, education facilities and transportation.¹

Proposition 45 fixes four structural deficiencies that this study and its predecessors have documented for over a decade:

1) ENACTS ENFORCEABLE DEADLINES FOR THE CEQA BUREAUCRATIC PROCESS.

As documented in the three trial court studies and confirmed by the Little Hoover Commission, completing CEQA compliance for an EIR can take two to three years, and the process has no meaningful enforceable deadlines.² Proposition 45 changes that by establishing enforceable deadlines throughout the process. Agencies generally have 30 days to determine whether an application is complete, and it is automatically deemed complete if the agency misses this deadline. And lead agencies have 365 business days to certify an EIR, 180 business days for a negative or mitigated negative declaration, and 90 business days for an exemption determination. If an agency fails to meet these deadlines, the applicant may request a hearing that the agency must hold within 60 days. Proposition 45 does not predetermine an outcome. Lead agencies retain complete authority to deny, condition or approve a project; the measure simply sets the timeline for those decisions.

The legislature previously enacted a 270-day fast-track litigation pathway and more than 100 statutory CEQA exemptions, but they have been reserved for the legislature’s favored projects – sports stadiums, corporate headquarters and the legislature’s own office building – while ordinary housing, schools, hospitals and infrastructure projects are left to flounder in uncertainty for years.³

Prop 45 extends the same 270-day judicial resolution timeline to all essential projects. As this study has demonstrated, the act of filing even a meritless CEQA lawsuit results in multiyear project delays because lenders, investors and grantors are unwilling to fund projects while CEQA lawsuits remain pending.³

A 270-day deadline reduces the leverage of meritless lawsuits and the financial paralysis CEQA litigation currently inflicts. The measure also establishes firm public comment periods – 20 days for negative declarations and 45 days for draft EIRs – while excluding late comments that could not reasonably have been raised earlier, thereby preserving meaningful public participation while preventing the “document dumping” tactics opponents use to derail project approvals.

2) REQUIRES COURTS TO ENFORCE CEQA AS WRITTEN – NOT AS JUDICIALLY EXPANDED.

Section 21083.1 of the Public Resources Code expressly directs courts not to “interpret this division or the state guidelines adopted pursuant to Section 21083 in a manner which imposes procedural or substantive requirements beyond those explicitly stated in this division or in the state guidelines.” As the Little Hoover Commission’s 2024 CEQA report noted, courts routinely ignore this statute – a fact the commission concluded required correction.²

This study has documented the consequences. Appellate courts have held EIRs inadequate for failing to address novel analytical requirements not expressly required by CEQA or the guidelines. Courts have also rejected express legislative remedy restrictions, as when the Third Appellate District ignored the legislature’s prohibition on halting or rescinding the Capitol office building project, blocking the project based on aesthetic and historic resource impacts despite statutory limits on injunctive relief.

Proposition 45 addresses this by requiring that environmental impacts of essential projects be evaluated based on the project’s compliance with “existing laws” – formally adopted written standards in effect when the project application was submitted – rather than allowing courts and agencies to invent new analytical requirements after the fact. It also

mandates that courts apply the substantial evidence standard of review to all CEQA challenges to essential projects, replacing the petitioner-friendly “fair argument” standard that currently governs challenges to negative declarations and has resulted in nearly 60% of negative declarations failing to withstand judicial scrutiny. Together, these provisions enforce Section 21083.1’s direction that courts must apply CEQA as written, not as creatively expanded through decades of unpredictable jurisprudence.

3) ALLOWS PROJECTS TO MOVE FORWARD ON SCHEDULE WHILE REJECTED PARTS OF AN ENVIRONMENTAL REVIEW ARE FIXED. The most common judicial remedy in CEQA lawsuits is for a court to vacate agency approval of the challenged project pending a redo of the CEQA process. This draconian remedy has been applied even to housing that has been constructed and occupied while the lawsuit was pending – as when tenants of a completed Hollywood high-rise apartment building were served with eviction notices because a judge determined years after the fact that a historic resources study fell short of CEQA’s requirements.⁴

Under Proposition 45, if a court finds that an agency’s approval of an essential project was defective, it may not rescind the entire approval. Instead, the remedy is limited to suspending only the part of the development impacted by the agency’s noncompliance until it is corrected. This targeted reform matches the judicial remedy to the specific deficiency rather than vacating years of environmental

review and agency decision-making. Housing delayed is housing denied, and a deficient traffic study should not result in a six-year rerun of CEQA processing.³

4) APPLIES THE REFORMS UNIFORMLY TO EVERY ESSENTIAL PROJECT – NOT JUST POLITICALLY CONNECTED ONES. Every project must still comply with California’s strongest-in-the-nation environmental laws. Cities and counties still decide what gets approved in their communities. Californians continue to have a voice in the process through preserved public comment procedures. But instead of picking political winners and losers, Proposition 45 makes the same reforms available to the family building a home, the city building a fire station and the utility building the water recycling facility that a drought-stricken community desperately needs.

Critically, Proposition 45 does not create any new CEQA exemptions, nor does it eliminate public participation or transfer land-use authority from cities and counties. Local and state agencies continue to decide whether projects should be approved, conditioned or denied.

The data presented in this study – and in over a decade of prior studies – make the case for Proposition 45 incontrovertible. Housing remains the top target of CEQA appeals. Taxpayer-funded transportation improvements are first stalled, then rendered unfinanceable as project costs and delays rise steeply. Climate-resilient infrastructure to provide reliable, affordable water and electricity can be

delayed for years by CEQA review and then stalled for years more in litigation. The consequences are soaring costs of housing and other essentials, making California simply too expensive for too many people.

Predictably, defenders of the unaffordable status quo are opposing Proposition 45 with dire – and unfounded – warnings about toxic air and water pollution. Proposition 45 does not create new CEQA exemptions or eliminate environmental review. It sets enforceable timelines, clear benchmarks and consistent rules while maintaining California’s environmental protections for air, water, species and natural resources.

CEQA litigation abuse is real, and it is harming people – especially the poor, the working class and the young – and stopping rather than advancing critical environmental, equity and economic priorities. The nonpartisan Little Hoover Commission, the Legislative Analyst’s Office, Democratic and Republican legislators, governors, and hundreds

of agencies and applicants have recognized the problems with CEQA. Californians recognize them too: 73% support reforming CEQA to expedite environmental review of essential projects like housing, transportation, water, health and clean energy.

California cannot respond to a “housing crisis,” “climate crisis,” “affordability crisis,” “electricity crisis” or “water crisis” without major changes to CEQA.

Proposition 45 puts the power to reform CEQA where it belongs – in the hands of California voters, the same people paying the price for CEQA delay and abuse every day in higher housing costs, longer commutes and unreliable infrastructure. California has the resources to build the housing and essential infrastructure its people need. Proposition 45 gives voters the opportunity to make sure we can actually get it built.

¹California Legislative Analyst’s Office, *Proposition 45: Modifies Environmental Review for Certain Projects. Initiative Statute* (2026), <https://lao.ca.gov/BallotAnalysis/Proposition?number=45&year=2026>
²Milton Marks “Little Hoover” Commission on California State Government Organization and Economy, *CEQA: Targeted Reforms for California’s Core Environmental Law*, Report No. 279 (May 2024), <https://lhc.ca.gov/report/california-environmental-quality-act-ceqa/>
³Jennifer Hernandez, *In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law*, 26 Chap. L. Rev. 57 (2022), <https://digitalcommons.chapman.edu/chapman-law-review/vol26/iss1/2/>
⁴Jennifer Hernandez, *California Environmental Quality Act Lawsuits and California’s Housing Crisis*, 24 Hastings Env’t L.J. 21 (2018), https://repository.uclawsf.edu/hastings_environmental_law_journal/vol24/iss1/3/

CEQA Primer

For those not familiar with CEQA, it is important to know that CEQA lawsuits can only be filed after elected public officials (or agency leaders typically appointed by elected officials) first complete the CEQA compliance process and make a "discretionary" decision to approve a "project." Projects subject to CEQA include not just construction projects in the physical world but also the approval of plans, policies, regulations, ordinances and funding that are likely to result in a future change to the physical world.

Examples would be amending a local general plan or zoning code to allow apartments in neighborhoods zoned only for single-family homes or adopting a state regulation to allow fire prevention measures like removing dead vegetation in a forest. CEQA also applies to all "discretionary" agency decisions, which courts have defined as any decision that allows an agency to exercise subjective judgment about whether and under what conditions to approve any feature of a project that could "significantly" impact the "environment." Neither the legislature nor the state agency charged with adopting regulatory "guidelines" to implement CEQA has placed any enforceable boundaries on what constitutes an "impact" to the environment, an appropriate methodology for studying each such impact, or a "feasible" and thus required "mitigation measure" or "alternative" that achieves "most" of the "project's objectives" while avoiding or reducing any "significant" impact to "less than significant."

Each of the quoted terms is subject to myriad statutory and regulatory definitions, tens of thousands of new scientific studies, new "expert" studies created to support or contest a litigation

claim that CEQA requires recognition of a "new" impact or analytical methodology, and hundreds of judicial decisions issued over the 55 years following CEQA's adoption and in CEQA lawsuits that typically span four to five years following project approval through the judicial appeal process.

CEQA litigation outcomes are notoriously unpredictable, and if a court finds even a minor error in one aspect of one of the more than 100 "impacts," the most likely remedy is rescission of the project approvals until the CEQA process is corrected – which itself usually takes multiple years – and the project is re-approved, often in a contentious and uncertain charged political process by different elected leaders. The re-approval can then be challenged again in a subsequent CEQA lawsuit – a "rinse and repeat" framework that has resulted in some projects being sued more than 20 times with delays spanning decades.

Additional background information about CEQA's legal structure is provided below, largely adapted from the 2023 law review article "In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law."³⁶

³⁶In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law" (Pages 71-73)



LONG BEACH

CEQA continues to play a vital role in assuring that our state and local agencies carefully evaluate, disclose, and avoid or reduce the potentially adverse environmental consequences of their actions. In addition, CEQA ensures that agencies consider and respond to public and agency comments on these environmental issues and accept the responsibility of disclosing when such actions would have significant unavoidable adverse impacts on the environment, even after mitigating those impacts.

However, in recent years most CEQA lawsuits filed in California seek to block infill housing and transit-oriented land use plans, as well as public service and infrastructure projects in existing California communities. Most of the challenged projects are precisely the types of projects and plans that today's environmental and climate policies seek to promote. The most frequent targets of CEQA lawsuits typically are required to undergo a rigorous environmental analysis and public review process

The re-approval can then be challenged again in a subsequent CEQA lawsuit – a "rinse and repeat" framework that has resulted in some projects being sued more than 20 times with delays spanning decades.

that takes 18 to 36 months or longer. This process involves an environmental impact report (EIR) and at least three rounds of public notice and comment before being eligible for approval by public votes of elected officials. Projects without the ample



economic resources required to pay all costs (including technical and legal experts) are never eligible for an approval and thus cannot be sued under CEQA. Even the types of infill projects most commonly sued under CEQA that are not ultimately sued must undergo three rounds of costly administrative proceedings: (1) local agency staff, (2) appointed planning commissions, and (3) elected city councils or boards of supervisors. Planning commission and elected council or board approvals require majority votes from officials who are themselves elected and appointed based on majority votes from elections. CEQA lawsuits may only be filed against the projects that survive this multitiered review and approval gauntlet and are actually approved. There is no data available on projects that are abandoned or downsized due to lack of financial resources or inability to complete this process or that enter into financial and other settlements to avoid a CEQA lawsuit.

CEQA is both a procedural statute requiring analysis and public disclosure of the environmental consequences of proposed agency actions and a substantive statute, which requires that public agencies fully consider public comments as well as avoid or minimize to the greatest extent feasible significant adverse environmental impact. Only after an agency requires all such "feasible" means of avoiding or reducing an environmental impact is an agency nevertheless allowed to approve a project based on an "overriding" social (e.g., affordable housing), economic (e.g., job-creating), legal (e.g., emergency response to a fire or broken bridge) or technological (e.g., energy-conserving LED lighting retrofits), benefits of a project.

CEQA applies to both public agency approvals of their own plans, regulations, and policies and public agency decisions to approve or fund projects undertaken by private parties ranging from homeowners to large corporations. Scores of statutory exemptions to CEQA have been approved over the past decades. These are

typically limited to politically favored projects that also include numerous eligibility criteria and restrictions that render many "unicorns" – much discussed but rarely if ever seen in practice. There are also limited regulatory (or "categorical") exemptions from CEQA for project categories that normally would not result in adverse environmental impacts. Whether a project qualifies for a statutory or regulatory exemption can also be challenged in a CEQA lawsuit.

A CEQA lawsuit challenges whether an agency has properly complied with CEQA but in most cases is intended to – and does – block construction of the approved agency or private-party project until the lawsuit is resolved. There are two reasons for this practical consequence. First, as recently acknowledged in an amicus (friend of the court) filing by two longtime CEQA practitioners who were tenured law school professors – one of whom was the longtime leader of the environmental division of the California Attorney General's office – the outcome of judicial decisions in CEQA cases is entirely unpredictable. Second, the most common judicial remedy in CEQA decisions against agencies (which is about 50% of CEQA appellate court cases) is rescinding the project approval pending further CEQA processing and reapproval. Even years after approval, completed apartment projects with tenants in occupancy have been ordered to be vacated and have been left vacant for years based on a CEQA deficiency identified by a judge or appellate court, often for aesthetic or other nonpolluting and nonsafety reasons.

CEQA lawsuits typically require two to five or more years to resolve. One lawsuit involving a single-family home project on an existing lot in Berkeley was tied up in the courts for 11 years, despite receiving unanimous support from adjacent neighbors, the appointed planning commission and the elected city council. The homeowner family won the lawsuit but raised their children elsewhere as their dream house remained mired in litigation – and to this date has never been built.³⁷

³⁷Ibid.

CEQA lawsuits have several unique attributes not shared by any other environmental statute in the United States.

FIRST, ANY PARTY CAN FILE A CEQA LAWSUIT, EVEN FOR A NONENVIRONMENTAL PURPOSE.

For example, a competitor can file a CEQA lawsuit to delay or derail a competing project, and a labor union can file one to secure an agreement that gives it control over which project jobs will be allocated among which unions.

SECOND, A CEQA LAWSUIT CAN BE FILED ANONYMOUSLY.

CEQA lawsuits also can be filed on behalf of a previously nonexistent, unincorporated association with a sympathetic-sounding name (e.g., "Friends of Sustainable Neighborhoods") if one member of the newly formed "association" filed any agency comment at any time prior to agency approval of the project. A lawsuit may allege any CEQA violation that was raised by any party at any time prior to agency approval, even if the objecting party agrees that the alleged deficiency was adequately addressed by the agency as part of the CEQA and project approval process.

In a meta-study of 11 administrative lawsuits nationally, including 5,081 federal court cases, plaintiffs only won in 31% of the cases.

The California legislature has consistently declined to require disclosure of the identity and interest of those filing CEQA lawsuits. No party to the litigation – not the public, the judge, the public agency defending the lawsuit or the private applicants named in approximately half of all CEQA lawsuits – are entitled to know who is suing them. They also are not entitled to know whether the lawyer who filed the CEQA lawsuit even has a client or is simply pursuing a "bounty hunter" claim for a quick (and typically confidential) financial settlement payoff. In late 2014, the California Judicial Council – which has independent authority to adopt court rules requiring disclosure – declined to extend its existing CEQA litigation disclosure rules (currently applicable to those filing amicus briefs in CEQA cases and those seeking recovery of attorney fee awards in concluded CEQA lawsuits) to parties filing CEQA lawsuits. The Judicial Council concluded that requiring disclosure of CEQA litigants was a policy matter to be decided by the legislature.

The legislature's refusal to extend CEQA's transparency mandate to those filing CEQA lawsuits provides a vivid illustration of how the special interests that use CEQA for nonenvironmental purposes exert their power in the legislative arena.

CEQA lawsuits are also relatively inexpensive; a case can be brought for the cost of a county court filing fee of a few hundred dollars. In addition, lawsuits require only preparation of a complaint or petition – which can allege very generalized deficiencies in an agency's

environmental documentation, an opening brief that is typically limited to 25 pages and a reply brief limited to 10-25 pages, with one court hearing in front of a judge typically lasting less than one day. The lawsuit is decided based on the content of the agency's administrative record, which is prescribed by statute. The challenger is required to prepare or pay for preparation of the administrative record, but there is no prompt statutory remedy available if the party fails to timely prepare or pay for the cost of the record. Record preparation disputes can extend the time required to resolve a CEQA lawsuit by a year or longer.

CEQA lawsuits proceed through California's three levels of judicial review. The trial court process can extend more than two years, an automatic and mandatory right to appellate court review can require another one to two years, and a discretionary appeal to the state's Supreme Court can take another year or longer. All litigation process times have been stressed by substantial judiciary budget cuts. The simple act of filing a CEQA lawsuit without seeking an injunction or awaiting any judicial remedy vests the challenger with tremendous leverage, as documented in several recent CEQA studies of appellate court decisions.

In the published CEQA appellate court cases that comprise the body of jurisprudence available for determining the probable outcome of a CEQA lawsuit, challengers enjoy nearly 50/50 odds of winning.

Even if the agency completed an EIR – the most elaborate and costly form of CEQA document, which by statute is to be upheld if it is supported by "substantial evidence in the record," even if that evidence also supports a contrary conclusion or decision – the plaintiff still prevailed 43% of the time. To put the remarkably favorable odds of winning a CEQA lawsuit into perspective, in a meta-study of 11 administrative lawsuits nationally, including 5,081 federal court cases, plaintiffs only won in 31% of the cases. Further, the plaintiff win rate in cases brought against the Internal Revenue Service – which is required by Congress to closely track and quickly address adverse court claims – was only 22%.

For "negative declarations," which are a less costly and less time-consuming type of CEQA document, the standard of judicial review is whether an opponent has made a fair argument that a project may have even a single adverse environmental impact. Opponents win 44% of negative declaration cases.

CEQA documents must now study more than 100 different "environmental" topics. For each topic, an agency must correctly address the setting and baseline, evaluate the project's impacts, and identify significance thresholds for measuring whether an impact is indeed significant or less than significant. For each significant impact, an agency must then identify feasible mitigation measures to avoid or reduce such impacts to a less than significant level, correctly identify reasonably foreseeable future projects or plans in the project vicinity (which may result in a significant adverse cumulative impact,

even for an impact that has been mitigated to a less than significant level), identify and evaluate a reasonable range of feasible alternatives that can attain all or most of the project's objectives, explain its conclusions with findings, and then disclose significant unavoidable impacts for which no feasible mitigation measure or alternative is available. It is not enough under CEQA for a project to comply with a previously adopted plan for which an EIR has already been prepared or to demonstrate that a project complies with California's famously strict environmental standards that govern everything from energy and water efficiency to greenhouse gases and species protection.

It is virtually impossible for lawyers engaged in CEQA litigation and judges deciding these cases to avoid raising questions or concerns about whether an agency correctly completed all required





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components of the CEQA analytical process. Once judges decide that an agency did the calculations incorrectly, it is also hard for them to conclude that the agency should not be required to repeat this or other analytical steps.

The most likely remedy when the court rules that an agency has not completed the required level of analysis and processing is for a judge to vacate the agency's project approval and require more CEQA study. Vacating the project approval simply means that the project must be halted as is when the decision is issued (absent special dispensation by a judge, such as installing tarps on exposed plywood roofs) for the two to four-plus years needed to repeat the agency CEQA process and then return to court for a new trial court ruling and another round of appellate court review. In a recent case, a completed high-rise apartment project with tenants was served with a tenant eviction notice when a judge determined years after the fact that a historic resources study of a now-demolished former Spaghetti Factory restaurant fell short of what CEQA requires.

To address many conflicting CEQA appellate court decisions, as of May 2015, the California Supreme Court had 10 pending CEQA cases under review. These cases deal with a variety of issues with wide applicability throughout California. This includes the interplay between CEQA and California's climate change laws and policies; the extent to which CEQA covers public safety services and can require staffing for police and fire services as mitigation; the extent to which increased demand for transit is an environmental impact requiring mitigation; and the extent to which preexisting environmental conditions such as ambient noise, odors or vehicle exhaust should be evaluated under CEQA since these are environmental impacts on a project rather than project impacts on the environment. Some of these cases had been pending for several years, and the California Supreme Court has no hard deadline for reaching a final decision, either by issuing a ruling or remanding the case back to the lower courts for further consideration.

There is no limit to the number of times a project can be sued under CEQA; each discretionary approval by each agency can be the subject of a

separate CEQA lawsuit. For example, more than 20 lawsuits had been filed over the prior 30 years against an infill redevelopment project in Los Angeles, most of which involved alleged CEQA deficiencies, including two lawsuits filed during the 2010-2012 study period for the 2015 report.

A separate California free speech statutory prohibition – forbidding strategic lawsuits against public participation – prevents lawsuits from being filed against project opponents for any reason, including tortious interference or even extortion. In the most notorious of the recent cases, a student housing company run by enterprising alumni from the University of Southern California sought to control the student rental market by filing a CEQA lawsuit to block a project being built by a competing student housing developer. To gain further leverage, the housing company filed eight more CEQA lawsuits against the developer's other California projects and then filed two more lawsuits against projects by relatives of the developer under a statute similar to CEQA in Washington state. The targeted developer filed a federal civil racketeering lawsuit against the student entrepreneurs, who had by then repeatedly

described themselves as the al-Qaida of CEQA. A federal judge declined to dismiss the federal lawsuit, and the entrepreneurs closed up shop.

With these odds, these judicial remedies, these issues awaiting clarification from the Supreme Court, and these and other war stories, it should come as no surprise that banks making construction loans and government agencies making time-sensitive grant and appropriations decisions usually decline to fund projects while a CEQA lawsuit is pending. There is no bonding or other requirement that applies to project opponents who file CEQA lawsuits, and project opponents are not required to pay attorneys fees if the agency ultimately wins the lawsuits. But project opponents are entitled to seek judicial approval of reimbursement of their attorneys fees and a multiplier or bonus amount for helping enforce an "environmental" law if they win even a partial victory on one environmental study topic, regardless of whether their motivation is harming competitors, negotiating labor terms, derailing new environmental protections or stopping "those people" from coming into a neighborhood.

Methodology

This study analyzes the entire body of appellate CEQA decisions from 2013 to 2023. Each decision was sorted using the following criteria, which are consistent with the sorting categories used in the 2015 judicial outcomes study unless otherwise indicated:

- Whether the appellate decision was published (in whole or in part) such that it could be cited in future court briefs or unpublished and therefore could not be cited. This is a change from the 2015 study, which included only published cases.
- The region and city/county in which the challenged project was approved. The 2015 study did not include this location category sort, but the trial court studies did.
- Whether the appellate decision outcome was an agency/applicant win (agency complied with CEQA or the project opponents' arguments were dismissed for procedural reasons) or loss (agency failed to comply with CEQA).
- Whether the project was public or private. Public means the public agency that completed the CEQA process also either: (a) approved a project undertaken by the agency itself (e.g., public agency transportation or water infrastructure, public park improvements, and public school or public university buildings) or (b) approved a regulation, ordinance, plan or policy where such regulatory activities resulted in foreseeable environmental consequences. Private projects include those for which an applicant has applied and received public agency approval to construct – such as housing or a job-generating use such as office, hotel, industrial, entertainment, private school, medical or retail – or engage in other regulated activities such as mining, forestry or agriculture that require permits or other discretionary approvals by the agency that completed the challenged CEQA process.
- The challenged CEQA compliance process, such as whether: (a) the project was determined by the agency to be “categorical exemptions” (CEs) from CEQA – exempt by either statute or regulations in the CEQA Guidelines or (b) the challenged agency prepared an environmental impact report (EIR), negative declaration (ND) or other form of CEQA documentation for the project. Ten CEQA compliance tracks were tallied. The 2015 study examined only three tracks: EIRs, NDs and CEs. The expanded categories in the current report include a growing list of statutory exemptions (especially for affordable mixed-income housing projects that agree to construct only with union members or pay the prevailing wages established by the state for taxpayer-funded projects), other longstanding forms of CEQA documents such as an addendum to an EIR or ND, and newer streamlined forms of CEQA compliance such as a “sustainable communities environmental assessment” for projects meeting strict urban siting and other eligibility criteria.

- The type of challenged project. All projects were initially sorted into 13 categories: residential, regulatory, retail, commercial, industrial, public service facilities and infrastructure (except water infrastructure, which is the top target of public construction projects challenged and has its own category), schools, water, parks, agricultural and forestry, mining, entertainment and energy. Residential projects were the most frequent target of CEQA appeals and were further sorted into six categories: (1) single-family homes and accessory dwelling units such as granny flats; (2) multifamily apartment projects, including those with ground floor retail or other mixed-use components; (3) small subdivisions of fewer than 10 new homes and no other uses; (4) larger subdivisions that include more homes and mixed uses such as neighborhood parks or retail; (5) college dormitories; and (6) master planned communities that include many new housing units and a diverse range of housing types, as well as job-generating uses such as office and retail, park and recreational uses, and new public facilities such as fire stations or K-12 schools. These are more detailed categories than those used in 2015 but are generally consistent with the project types used in the most recent study of CEQA lawsuits filed in trial courts.
- The type of challenger to the approved project, sorted into 10 categories: individuals, local organizations, established community organizations, established environmental advocacy groups, other nonprofits, business trade associations, labor unions, businesses, other private enterprises and other. Challenger type was determined based on the description in the appellate decision along with readily accessible internet data. Organizations that were formed to oppose the challenged project or had no prior track record of opposing projects were considered local organizations. Organizations that had a prior track record of political or legal advocacy against projects were generally identified as established environmental advocacy groups or established community organizations.

Some appeals involved more than one challenger – for example, a national environmental group and an individual neighbor may both be among the challenging parties. In those cases, decisions were sorted based on the largest of the challengers (e.g., the national environmental advocacy group). This list has been refined since the 2015 study and omits categories such as religious organizations that did not file any CEQA appeals during the 11-year study period.

- Whether the challenged construction project is in an “infill” or “greenfield” location. Many state policies seek to incentivize increased residential density in urban areas, especially in urban neighborhoods within a half mile of a commuter train station, ferry terminal or bus route with very high levels of service (e.g., one bus per 15 minutes during peak commute hours with other minimum bus service standards for nonpeak periods on weekdays and weekends). Apartment projects in existing neighborhoods are the top target of CEQA appeals targeting residential projects. For example, a targeted study of residential projects challenged in the state’s most populous region (which includes all of Southern California except San Diego County) found that these anti-apartment CEQA lawsuits were most likely to be filed in the region’s wealthiest and healthiest neighborhoods – not in poorer and more racially diverse “disadvantaged” communities, as mapped by the California Environmental Protection Agency.

Consistent with our 2015 study and trial court studies, a project is defined as being in an “infill” location if it is within city limits and in a “greenfield” location if it is on unincorporated county land not already developed or substantially surrounded by development. Greenfield projects include development just outside city boundaries in “edge” areas; new community and resort projects; forestry/agriculture projects; and most large-scale infrastructure projects like solar farms, other forms of renewable energy projects or other energy projects such as transmission lines. About 17% of appellate court cases were not readily sorted into these categories.

