

AB 1001 (C. GARCIA) – ENVIRONMENT: MITIGATION MEASURES FOR AIR QUALITY IMPACTS:
ENVIRONMENTAL JUSTICE

JOB KILLER





May 16, 2022

TO: Members, Senate Committee on Environmental Quality

**SUBJECT: AB 1001 (C. GARCIA) – ENVIRONMENT: MITIGATION MEASURES FOR AIR QUALITY IMPACTS: ENVIRONMENTAL JUSTICE
HEARING SCHEDULED – JUNE 1, 2022
OPPOSE / **JOB KILLER** – AS AMENDED MARCH 22, 2022**

The California Chamber of Commerce, the California Building Industry Association and the organizations listed respectfully **OPPOSE AB 1001**, as amended, which CalChamber has labeled a **Job Killer** and CBIA has marked a **Housing Killer**. The bill proposes to expand the California Environmental Quality Act (CEQA) to further exacerbate known problems with the statute by limiting local land use discretion and imposing burdensome and unworkable new legal obligations on lead agencies. In attempting to address environmental justice concerns through CEQA as the bill proposes, **AB 1001** winds up substantially aggravating one of the state's most intractable problems: California's housing crisis inextricably linked to its inability to produce housing quickly and cost effectively. The historical environmental injustices that have

transpired in California should continue to be remedied in more suitable areas of California law— but CEQA is not one of those areas.

CEQA already prohibits lead agencies from approving projects with significant environmental effects to any community, including disadvantaged communities, if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects. **AB 1001** will worsen CEQA's most problematic aspects and further depress housing and other development in California by expanding the statute to create new avenues of CEQA litigation and limit agency discretion necessary to comply with CEQA. It is entirely unnecessary to upend CEQA when every single city and county in California is already going through the process of overhauling their long-term comprehensive General Plans to incorporate a new Environmental Justice land use element, as required per SB 1000 (Leyva). For the reasons outlined below, we oppose expanding CEQA and limiting agency discretion necessary to comply.

Exacerbates Known CEQA Abuses by Injecting Highly Subjective, Non-quantifiable and Litigation-bait Standards in CEQA

AB 1001 seeks to expand CEQA to incorporate the issue of discriminatory land use policies. Specifically, the bill creates two new legal standards under CEQA. First, it forces all public agencies when complying with CEQA to “act consistently with the principles of environmental justice ... by ensuring the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins.” Second, it creates a new requirement under CEQA that all mitigation pertaining to air quality impacts be directly mitigated in the affected disadvantaged communities. Both requirements present substantial ambiguities, legal challenges and additional liability for lead agencies and project applicants without any additional environmental protections.

Local governments already spend significant time and resources complying with CEQA, and then substantially more time and resources having to defend their decisions against CEQA lawsuits often brought by housing opponents under the guise of environmental protection. **AB 1001** overlays over CEQA's existing and quantifiable environmental standards new subjective standards, such as whether the agency's findings were “fair” or “*meaningfully involving*” all races, cultures, incomes and national origins. CEQA already is the most robust public disclosure, public participation and environmental protection law in the country, if not the world – and it is enforced entirely by citizen lawsuits where the identity of the plaintiff can be legally obscured. Until major CEQA reform is passed that addresses NIMBY abuses of the statute, it is paramount that the Legislature avoid creating new avenues of litigation under CEQA.

CEQA Already Requires Feasible Mitigation of Significant Impacts on Disadvantaged Communities

CEQA is an extraordinarily complex and all-encompassing environmental law. CEQA and its multitude of substantive and procedural requirements are implicated for nearly every type of land use project in the State of California. CEQA's “substantive mandates” already prohibit lead agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects. (*Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134.) Furthermore, as part of CEQA's enforcement process, “[i]n order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented,” the local agency must also adopt a program for mitigation monitoring or reporting. (CEQA Guidelines, § 15097, subd. (a).) “The purpose of these [monitoring and reporting] requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.” (*Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.)

Additionally, where a local lead agency has determined that a project may cause significant impacts to a particular community or sensitive subgroup, the alternative and mitigation analyses must address ways to reduce or eliminate the project's impacts to that community or subgroup. (See CEQA Guidelines, § 15041, subd. (a) [noting need for “nexus” between required changes and project's impacts].) By requiring a nexus, CEQA already requires local lead agencies to feasibly mitigate significant impacts from a proposed project on all communities *including disadvantaged communities* where there is a nexus between the project's

impacts and that population. By specifying disadvantaged communities, the measure implies that other affected people or resources are not deserving of protection. However, CEQA currently requires consideration of effects on all human beings. (See, Public Resources Code section 21083(b)(3)). Most importantly, the bill incorrectly focuses attention on mitigation in certain areas of effect rather than at the source of the pollution. Mitigation at the source protects all people and resources and allows the use of project design features which are under the control of the applicant and the lead agency. For example, **AB 1001** could require an infill project in San Francisco to mitigate air emissions in a disadvantaged community in the south-central valley (wind patterns typically blow air pollutants from the Bay Area into the central valley) instead of at the source of where the emissions are generated. This is both impractical and contrary to existing CEQA provisions that require mitigation of significant impacts to all impacted communities.

Accordingly, **AB 1001** will create substantial new legal liability for local governments by substantially limiting their discretion to determine what projects should be approved and how and where mitigation should be applied to reduce significant impacts to less than significant on impacted communities.

Environmental Justice is Already Being Incorporated in California's Planning and Zoning Laws

CEQA does not need to be expanded to incorporate environmental justice. Environmental justice is already substantially addressed in California's planning and zoning laws and policies. This Legislature passed [SB 1000 \(Leyva, 2016\)](#) to advance Environmental Justice (EJ) in CA's planning and zoning law by requiring every city and county to adopt new EJ land use elements in their comprehensive, long-term General Plans. The Governor's Office of Planning & Research recently released [2020 EJ Guidance](#) to cities and counties for implementation of SB 1000 – cities and counties are still going through this process. By requiring an environmental justice element inside all General Plans, cities and counties already must identify objectives and policies to reduce the health risks in their disadvantaged communities and promote civil engagement in the public decision-making process – exactly what **AB 1001** is unnecessarily trying to force into CEQA. The Legislature should allow local governments to implement SB 1000 before greatly expanding CEQA.

While additional discussions about how to further support environmental justice communities are important, they do not and should not include upending and expanding CEQA, especially when doing so is unnecessary because existing laws already accomplish what this bill is trying to do, will increase liability on local lead agencies, exacerbate CEQA's existing NIMBY abuse problem and worsen the state's housing crisis.

For all of these reasons, we respectfully **OPPOSE AB 1001** as a **JOB KILLER**.

Sincerely,



Adam J. Regele,
Senior Policy Advocate for the California Chamber of Commerce

On behalf of the following organizations:

African American Farmers of CA
Agricultural Energy Consumers Association
Alameda Chamber & Economic Alliance
American Pistachio Growers
Anaheim Chamber of Commerce
Big Bear Chamber of Commerce
Brea Chamber of Commerce
Building Owners and Managers Association
California Apartment Association
California Association of Realtors

California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Cotton Ginners and Growers Association
California Farm Bureau
California Food Producers
California Fresh Fruit Association
California Hispanic Chambers of Commerce
California Hmong Chamber of Commerce

California Independent Petroleum Association
California Manufacturers & Technology
Association
California Metals Coalition
California Railroads
California Retailers Association
California Walnut Commission
Carlsbad Chamber of Commerce
Chemical Industry Council of California
Chico Chamber of Commerce
Citrus Heights Chamber of Commerce
Corona Chamber of Commerce
Danville Area Chamber of Commerce
Elk Grove Chamber of Commerce
Far West Equipment Dealers
Fountain Valley Chamber of Commerce
Fremont Chamber of Commerce
Fresno Chamber of Commerce
Garden Grove Chamber of Commerce
Gateway Chambers Alliance
Gilroy Chamber of Commerce
Glendora Chamber of Commerce
Greater Coachella Valley Chamber of Commerce
Greater Conejo Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Greater Riverside Chamber of Commerce
Greater Stockton Chamber of Commerce
Harbor Association of Industry and Commerce
Imperial Valley Regional Chamber of Commerce
Industrial Environmental Association
Kings River Conservation District
Kings River Water Association
La Cañada Flintridge Chamber of Commerce
Laguna Niguel Chamber of Commerce
Lake Elsinore Valley Chamber of Commerce
Livermore Valley Chamber of Commerce
Lodi Chamber of Commerce
Long Beach Area Chamber of Commerce

Los Angeles Area Chamber of Commerce
Los Angeles County Business Federation
Menifee Valley Chamber of Commerce
Murrieta/Wildomar Chamber of Commerce
NAIOP of California
Newport Beach Chamber of Commerce
Nisei Farmers League
Norwalk Chamber of Commerce
Oceanside Chamber of Commerce
Orange County Business Council
Pacific Grove Chamber of Commerce & Tourist
Centers
Palos Verdes Chamber of Commerce
Paradise Ridge Chamber of Commerce
Pleasanton Chamber of Commerce
Redondo Beach Chamber of Commerce
Roseville Area Chamber of Commerce
San Juan Capistrano Chamber of Commerce
San Leandro Chamber of Commerce
San Marcos Chamber of Commerce
San Pedro Chamber of Commerce
Santa Clarita Valley Chamber of Commerce
Santa Maria Valley Chamber of Commerce
Santa Rosa Metro Chamber
Simi Valley Chamber of Commerce
South Bay Association of Chambers of
Commerce
Southern California Leadership Council
Southwest California Legislative Council
Torrance Area Chamber of Commerce
Tri-County Chamber Alliance
Valley Industry & Commerce Association
Visalia Chamber of Commerce
Western Agricultural Processors Association
Western Growers Association
Western Independent Refiners Association
Western States Petroleum Association

cc: Gabrielle Meindl, Senate Committee on Environmental Quality
Tiffany Ryan, Office of Assembly Member Garcia
Legislative Affairs, Office of the Governor
Scott Seekatz, Senate Republican Caucus

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