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Does CEQA Need a Rewrite or Just a Better Public Relations Manager?

Brian Gillis

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Does CEQA Need a Rewrite or Just a Better Public Relations Manager?



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I've recently been tempted to blame my existential climate-change-induced dread on a 50-year-old environmental law that *may* be exacerbating California's contributions to the climate crisis. The impacts of climate change are here and will only grow more severe. I'm angry, and I am scared for the future because [we aren't doing nearly enough](#) to mitigate the worst impacts of climate change. The climate action pledges taken by many countries are [insufficient](#), and we aren't even on track to meet these pledges. The calls-to-action are all about urgency: "we need to act yesterday to avoid a climate catastrophe." So, an environmental law specifically created to slow projects down, even when that project is a much-needed wind farm, becomes a natural punching bag for frustration.



Photo by Steve Boland via [Flickr](#).

That punching bag is the [California Environmental Quality Act \(CEQA\)](#), a law first passed in 1970 that is rooted in the environmental conservation movement. It is a broad, process-based law that requires “projects” to undergo environmental review before they can proceed. As the governor’s office puts it, it makes agencies “[look before they leap](#)” when approving a project. In doing so, the CEQA process can appear to pit conservation concerns and climate change solutions [against each other](#). For example, when approving a wind farm, the California Department of Fish and Wildlife (CDFW) might be forced to delay the construction of an essential alternative energy source as it studies the habitat of a local bird population. CEQA stands as a visible barrier in the face of urgency, but is this a fair characterization of this impactful environmental law?

All Press is Not Good Press

If you live in the Bay Area, you’ve likely heard about the man who single handedly *almost* [stopped UC Berkeley](#) from admitting 2,629 students for the incoming 2022-23 academic year in an effort to “[keep Berkeley special](#).” A group called [Save Berkeley’s Neighborhoods](#) used CEQA to challenge UC Berkeley’s decision to expand its student body, asserting that the school failed to study the environmental impacts of increasing student

enrollment. The neighborhood group took their argument to the California Supreme Court, where they received a [favorable ruling](#) that would have forced the school to cap its student body.



Photo by

Alessio Vallero via [Flickr](#).

However, the court's ruling did not last long. The ruling spurred [outrage on Twitter](#) and [even a column](#) by the Bay Area's very own Ezra Kline in *The New York Times* about how democrats have hobbled the government's ability to solve climate change. It didn't help that the face of the challenge was a white-male-boomer who spends [half of the year](#) in his vacation home in New Zealand. (This is where CEQA's public relations representative should have stepped in to find a better face for the cause.) Ultimately, progressive state senator Scott Wiener was spurred into action and quickly (and unanimously) [passed SB 118](#), which specified that enrollment increases did not in-and-of themselves count as a "project" requiring an environmental review under CEQA. [California YIMBY](#), a proponent of transit oriented housing as a solution to climate change, reacted with approval and the assertion that "[students are not pollution](#)." The UC Berkeley story is only one of the recent punches CEQA received from the fist of public opinion.

Conservative Conservation

CEQA sits in direct contrast to the "[move fast, break things](#)" Silicon Valley start-up mentality popularized by Mark Zuckerberg. If CEQA had a motto, it would be "hold up, let's take a look, study some things, talk to some people... okay, now you can proceed slowly." Put more favorably, CEQA helps us avoid irreparable environmental harm by making us look twice before breaking things we might not have known were there.

CEQA is all about conservation. The law was signed by Governor Ronald Reagan in 1970, and it was [part of the budding environmental movement](#) largely centered on conservation and the goal of keeping wild places wild and minimizing unfettered growth. The conservation movement was inspired by wild-lands enthusiasts like John Muir.



Photo by Don Barret via [Flickr](#).

The Law

Even though CEQA is considered an “environmental law,” it doesn’t actually protect the environment; rather, it protects the process of approving projects that may impact the environment. For example, the law does not say you can’t pave over wetlands, it just says that you have to acknowledge and disclose (and possibly mitigate) the damage that will occur as a result of paving over wetlands. The law is not enforced by any one agency. It empowers the people to bring actions asserting that an agency did not follow the appropriate steps before approving a project. In doing so, it gives the [general public a powerful weapon](#) to check the decision-making powers of many of California’s state agencies.

“Weaponizing” CEQA

Because it is relatively easy for anyone to challenge a project using CEQA, critics of the law claim it has been weaponized for purposes beyond the law’s intent. In exploring this “weaponization,” [The Atlantic asks](#) how such a “conservative” institution (CEQA) took root in such a progressive state. To frame CEQA as a conservative institution, critics point to the fact

that projects that support climate-friendly development (like public transit infrastructure, renewable energy projects, and infill housing) are high [on the list](#) of frequently challenged projects.

The “Swiss Cheese” Solution

Along with the exemption for enrollment increases, Senator Scott Weiner has championed [a number of exemptions](#) for projects that have positive social or environmental impacts including: transit projects like bike lanes, developments with affordable housing, and changes to zoning laws for parcels near transit centers to allow higher density. These carve-outs have created what one former CA mayor calls “[Swiss cheese CEQA](#).” Sounds yummy!



Photo by [The Climate Reality Project](#) on [Unsplash](#).

CEQA has Some Important Fans

Throughout its 50-year lifespan, CEQA has given enormous power to vulnerable communities. Critics argue that CEQA is no longer doing what it was created to do – conserve untouched landscapes in remote parts of California and protect these places from human development. However, the environmental movement looks differently than it used to look, and there is a growing emphasis on issues related to environmental justice and protecting vulnerable communities from harmful impacts of industry. For example, conservation focused groups like the Sierra Club have been reevaluating their origins, and have pledged to [invest more](#) of their efforts in racial and environmental justice work. In another post, the Director of Sierra Club

California recently issued an [open letter](#) that defends CEQA against the claim that it has been co-opted for evil where he points to myriad examples of CEQA being used to protect both the environment and vulnerable communities.

A coalition of [environmental justice groups](#) laud CEQA as the most important tool for protecting communities' abilities to participate in the decision-making process and ultimately protect their rights to a clean environment. In 2019, a large number of environmental groups and environmental justice groups co-signed [an impactful letter](#) defending CEQA and its role in protecting vulnerable communities from hasty development projects that may put future residents at risk.

Headlines Versus Data

While CEQA-based delays make good headlines, the scope of the CEQA “problem” may be smaller than it appears. For example, a study commissioned by the California Air Resources Board (CARB) found that [less than 3%](#) of approvals for housing projects faced litigation. On average, there are [fewer than 200](#) CEQA-related lawsuits per year in California, which puts the [rate of CEQA-based litigation at 0.7%](#) for all projects that undergo environmental review.

Conclusion

Californians may develop a more positive view of CEQA if it were more widely celebrated for its wins. CEQA needs a public relations manager that can earn CEQA some well-deserved national coverage to highlight the times it has protected our environment and vulnerable communities. While we still need a bunching back for the existential climate-change induced dread that keeps us up at night, CEQA is not the answer.

Brian Gillis

Brian Gillis is a second-year student at Golden Gate University School of Law where he has worked as a certified law clerk for GGU's Environmental law & Justice Clinic. He has also interned at the Alameda County Public Defender's Office. Prior to law school, he worked in marketing and communications for health and sports nutrition companies in the Bay Area. Brian went to Pomona College and majored in Philosophy, Politics, & Economics. He likes to run on the trails of the East Bay Regional Parks, and he is proud of his daughter for recently learning how to walk.