

OPPOSE – JOB KILLER



Associated General Contractors (AGC)



UPDATED

May 22, 2020

The Honorable Ben Allen, Chair
and Members of the Senate Committee on Environmental Quality
State Capitol, Room 3191
Sacramento, CA 95814

SUBJECT: SB 950 (JACKSON) – CALIFORNIA ENVIRONMENTAL QUALITY ACT: HOUSING AND LAND USE HEARING SCHEDULED – MAY 29, 2020 OPPOSE – AS AMENDED MARCH 19, 2020 – JOB KILLER

Dear Senator Allen and Members:

The California Chamber of Commerce and the organizations listed respectfully **OPPOSE SB 950**, as amended on March 19, 2020, which CalChamber has labeled as a **JOB KILLER** and the California Building Industry Association has labeled a **HOUSING KILLER**. The bill proposes to expand the California Environmental Quality Act's (CEQA) patchwork of existing requirements with costly new mandates that will burden local agencies, add substantial time and costs to the CEQA process and provide project opponents with new legal arguments to delay or block housing and other projects.

Our organizations do not consider **SB 950** as a “CEQA 2.0” that meaningfully addresses known abuses of the statute. The bill appears to be the product of a well-intentioned but small working group of CEQA practitioners selected by one organization who *do not represent* any of the stakeholders signed on to this letter. Even the two developer-side CEQA attorneys that did participate have resigned from that effort. Accordingly, the major changes to CEQA contemplated by **SB 950** share no consensus among the various stakeholders impacted by CEQA. The bill cannot be accurately framed as a “comprehensive package of 21st century updates to the CEQA process.” Meaningful CEQA reform, especially on a scale contemplated by **SB 950**, demands participation from all stakeholders intimately involved with the building and approving of housing and other land use projects in California. Although our organizations were not involved in the formation of **SB 950**, we appreciate your engagement with us on this bill and your commitment to exploring updates to the statute.

Housing construction has been devastated by COVID-19.¹ A new economic report from the United States Commerce Department reveals that housing construction collapsed by 22.3 percent in March.² The Department of Finance recently forecasted that permits for new housing construction will drop by more than 21 percent this year.³ These grim figures represent the worst drop in housing construction activity since March of 1984.⁴ At a time when California is reeling from the impacts of the COVID-19 global pandemic and struggling with an existing housing crisis, **SB 950** attempts to make major changes to CEQA, Elections Code and the California Code of Civil Procedure that will harm California’s economic recovery, place substantial cost pressures on local governments, substantially degrade the state’s ability to build more housing and negatively impact jobs in or related to the construction industry. For the reasons outlined below, we strongly oppose.

Costly and Time-Consuming Requirements Are Unworkable for Lead Agencies

SB 950 proposes amendments to Public Resources Code Section 21083.03 that would require the Office of Planning and Research (OPR) to develop new translation requirements for all CEQA “notices and other documents” into one *or more* non-English languages spoken by a substantial number of people served by the lead agency. The bill enumerates a non-exhaustive list of documents lead agencies would be required to translate and provides OPR with authority to develop translation requirements for any *other CEQA document*. Should OPR include environmental impact reports (EIR), mitigated negative declarations (MND) and technical appendices, lead agencies would be required to translate hundreds or even thousands of pages of CEQA documents into other non-English languages.

In addition to the time and costs associated with translating CEQA documents, **SB 950** also provides project opponents with new legal arguments to challenge housing and other projects on the basis that the documents were not translated accurately. Project opponents can exploit the difficulty in translating CEQA documents into other languages where five decades of CEQA case law is entirely in English and technical terms of art may not necessarily translate well into other languages. The practical result will be that lead agencies will have the almost impossible task of translating CEQA documents into multiple other non-English languages without any errors or else risk invalidation of the project approval.

Will Reduce Citizen Access to the Ballot by Upending a California Supreme Court Decision

SB 950 substantially reduces citizen participation and access to the ballot by overturning the California Supreme Court’s decision in *Tuolumne Jobs & Small Business Alliance v. Superior Court*. When a voter-driven initiative is presented to a local legislative body under the Elections Code, the legislative body must either: (1) adopt the initiative directly; (2) submit the initiative for special election; or (3) order an abbreviated report after

¹ <https://fred.stlouisfed.org/series/HOUST>

² <https://www.sfgate.com/news/article/US-home-construction-collapsed-22-3-in-March-15204596.php>

³ http://www.dof.ca.gov/Budget/Historical_Budget_Publications/2020-21/documents/DOF_FISCAL_UPDATE-MAY-7TH.pdf

⁴ <https://www.cnn.com/2020/04/16/us-housing-starts-march-2020.html>

which the legislative body must either again adopt the initiative or hold a special election. **SB 950** proposes to change the California Election Code so that voter-sponsored initiatives cannot be approved by a legislative body.

Second Public Comment Period Fails to Address “Late Hit” Letters

SB 950 attempts to address a common tactic under CEQA whereby lead agencies are bombarded with extensive written comments and expert reports on or shortly before the day of the final hearing for a project approval. Public comments provide meaningful feedback to lead agencies on projects before them for approval. Public comments about a project submitted at the 11th hour preclude the lead agency from being able to analyze, respond and incorporate any feedback received by members of the public. Although **SB 950** intended to solve the late hit comment issue, a second 20-day comment period will not meaningfully address this abuse of CEQA and could lead to other unintended consequences.

“Late hit” comment letters abuse the CEQA process by allowing project opponents to inject extensive written comments, expert reports, and other evidence into the administrative record as late as the final day of the hearing. By submitting their comments on or just before the final day of the hearing, project opponents prevent lead agencies from being able to meaningfully consider the comments and change any aspects of the project in light of the feedback received. Although this tactic might appear counter-intuitive to improving land use development in California, the strategy is effective for project opponents that want to block or delay the project, not remedy any of their alleged defects. For example, an opponent that wants to block a housing project may prefer to withhold their critiques of the project to the very end so that a lead agency cannot remedy any alleged shortcomings. By submitting their comments at the very last moment, the project opponents ensure the project that all their evidence and comments make it into the administrative record, but without any agency rebuttals or allowing the agency to make changes to the project that could remedy their criticism. The inevitable CEQA lawsuit that follows will allege CEQA violations for which the lead agency never had a chance to meaningfully address, and then seek to overturn the agency approval of the project. This tactic often sends projects back to the beginning of the CEQA process, causing substantial delays and unnecessary costs. For much needed housing projects in California, this tactic is unacceptable.

Unfortunately, **SB 950** does nothing to protect lead agencies from “late hit” comments that abuse the CEQA process. The proposed second comment period only attempts to address issue preclusion, but leaves an obvious workaround that allows the project opponent to simply attend the final hearing and exhaust all issues orally. Worse, a second comment period could have the unintended consequence of incentivizing project opponents to hold their comments during the first comment period and ambush the unexpecting lead agency during the second comment period where the project opponents have the advantage of seeing all of the agency’s responses to other public comments. But most importantly, **SB 950** fails to address the heart of the problem with “late hit” letters. As noted above, project opponents utilize the late hit comment strategy in order to ensure all of their comments and expert reports are included in the administrative record without agency rebuttals and without allowing the lead agency to address any of the issues they raise. Meaningful CEQA reform around the “late hit” comment issue would instead focus on excluding “late hit” comments from the administrative record altogether.

Revises CEQA’s Original Legislative Findings

SB 950 would expand CEQA’s original Legislative findings to explicitly include the consideration of environmental justice to the mandated considerations of the CEQA process. This revision attempts to inject the issue of discriminatory land use policies into an environmental statute that was never intended to deal with this issue. CEQA requires project applicants to analyze all identifiable and tangible environmental impacts associated with proposed land use projects and to mitigate any potentially significant impacts to less than significant. Discriminatory land use policies should be addressed through planning and zoning policies rather than an environmental statute such as CEQA.

Encourages More Lawsuits Against Moderate-Income Housing

SB 950 proposes to substantially amend California Code of Civil Procedure Section 529 by eliminating moderate-income housing projects from qualifying for bond protection. Under existing law, a court may require persons suing to halt low or moderate-income housing projects to post a bond for any costs and damages that may be incurred by the defendant as a result of delay in carrying out the project. A plaintiff loses that bond if the defendant shows that the action was brought in bad faith for the purpose of delaying or impeding development of low or moderate-income housing. This public policy can help to discourage frivolous lawsuits aimed at thwarting low or moderate-income housing projects. **SB 950** would provide project opponents of moderate-income housing projects with carte blanche to sue to delay or halt without any fear of having to pay attorneys costs or damages incurred by a housing developer whose project was unjustly delayed or halted.

Even during the best of times, these proposed changes would damage California's economy, substantially slow the state's housing production and negatively impact jobs all across the state. During these extraordinary times, substantially raising the costs, time and litigation risks associated with land use development in California will be a crushing blow to the state's efforts to bring more affordable housing online and rebound from the economic impacts of the COVID-19 pandemic.

For these reasons, we respectfully **OPPOSE SB 950** as a **JOB KILLER**.

Sincerely,



Adam J. Regele, Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

- American Council of Engineering Companies, California, *Tyler Munzing*
- Associated General Contractors, *Jamie Khan*
- Brea Chamber of Commerce, *Heidi Gallegos*
- Building Owners and Managers Association, CA, *Matthew Hargrove*
- California Apartment Association, *Debra Carlton*
- California Association of Realtors, *Jelisaveta Gavric*
- California Building Industry Association, *Michael Gunning*
- California Business Properties Association, *Rex Hime*
- California Construction and Industrial Materials Association, *Adam Harper*
- California Council for Affordable Housing, *Patrick Sabelhaus*
- California Farm Bureau Federation, *Taylor Roschen*
- California Forestry Association, *Rich Gordon*
- California Retailers Association, *Steve McCarthy*
- Chino Valley Chamber of Commerce, *Zeb Welborn*
- Folsom Chamber of Commerce, *Joe Gagliardi*
- Fontana Chamber of Commerce, *Phil Cothran*
- Gilroy Chamber of Commerce, *Mark Turner*
- Greater Riverside Chambers of Commerce, *Cindy Roth*
- Industrial Environmental Association, *Jack Monger*
- International Council of Shopping Centers, *Matthew Hargrove*
- Laguna Niguel Chamber of Commerce, *Scott Alvey*
- Lodi Chamber of Commerce, *Pat Patrick*
- Long Beach Area Chamber of Commerce, *Christine Bos*
- Murrieta/Wildomar Chamber of Commerce, *Patrick Ellis*

NAIOP of California, *Matthew Hargrove*
North Orange County Chamber of Commerce, *Theresa Harvey*
North San Diego Business Chamber, *Debra Rosen*
Oceanside Chamber of Commerce, *Scott Ashton*
Orange County Business Council, *Rachel Rolnicki*
Pleasanton Chamber of Commerce, *Steve Van Dorn*
San Diego Regional Chamber of Commerce, *Rebecca Lieberman*
San Gabriel Valley Economic Partnership, *William R. Manis*
San Marcos Chamber of Commerce, *Rick Rungaitis*
Santa Maria Valley Chamber of Commerce, *Glenn Morris*
Santa Rosa Metro Chamber of Commerce, *Ananda Sweet*
Southwest California Legislative Council, *Gene Wunderlich*
The Silicon Valley Organization, *Matt Mahood*
Torrance Area Chamber of Commerce, *Donna Duperron*
Tulare Chamber of Commerce, *Donnette Silva Carter*
West Coast Lumber and Building Material Association, *Ken Dunham*
Western Growers Association, *Gail Delihant*
Western States Petroleum Association, *Margo Parks*
Western United Dairies, *Kirk Wilbur*

cc: Rachel Wagoner, Office of the Governor
Scott Seekatz, Senate Republican Caucus
Siddharth Nag, Office of Senator Hannah-Beth Jackson