

CALIFORNIA GETTING IN ITS OWN WAY:

**IN 2018, HOUSING WAS TARGETED IN 60% OF CEQA LAWSUITS
AGAINST CONSTRUCTION PROJECTS**

CENTER FOR
DEMOGRAPHICS & POLICY
RESEARCH BRIEF
CHAPMAN UNIVERSITY

Author:

Jennifer Hernandez

Editor:

Joel Kotkin





CHAPMAN
UNIVERSITY

Center for Demographics and Policy

“Demographics is destiny” has become somewhat overused as a phrase, but that does not reduce the critical importance of population trends to virtually every aspect of economic, social and political life. Concern over demographic trends has been heightened in recent years by several international trends—notably rapid aging, reduced fertility, large scale migration across borders. On the national level, shifts in attitude, generation and ethnicity have proven decisive in both the political realm and in the economic fortunes of regions and states.

The Center focuses on research and analysis of global, national and regional demographic trends and also looks into policies that might produce favorable demographic results over time. In addition, it involves Chapman students in demographic research under the supervision of the Center’s senior staff. Students work with the Center’s director and engage in research that will serve them well as they look to develop their careers in business, the social sciences and the arts. They have access to our advisory board, which includes distinguished Chapman faculty and major demographic scholars from across the country and the world.

AUTHOR

Jennifer Hernandez is a partner and leads the West Coast land use and environment practice group of Holland & Knight, LLC, an international law firm. The practice group periodically publishes analyses of California legal and policy data in support of its continued study of the use, and abuse, of the California Environmental Quality Act of 1970, which allows anyone (even anonymous entities, and entities such as business competitors and labor unions seeking to advance non-environment objectives) to file a lawsuit alleging inadequate environmental evaluation of any type of project requiring any discretionary approval from any state, regional or local agency. As confirmed by several research studies including those completed by the firm, California courts have upheld approximately half of such CEQA lawsuit challenges in reported appellate court cases decided over the past 15 years, most commonly ordering reversal of project approvals pending further environmental studies. The top target of CEQA lawsuits statewide are housing projects located in existing California communities. More transit projects than roadway projects are sued under CEQA, and the most frequent “industrial” target of CEQA lawsuits are solar and wind projects. The delays and uncertainties caused by CEQA lawsuits against environmentally benign or even beneficial projects typically disqualify projects from receiving construction loans or government funding. While there have been repeated calls to end the use of CEQA lawsuits for non-environmental purposes, CEQA reform faces fierce opposition from entrenched special interests led by California’s environmental advocacy groups and some unions such as the Building Trades Council. Current Governor Jerry Brown has blamed unions for blocking CEQA reform, and was particularly critical of union reliance on CEQA lawsuits and lawsuit threats to leverage exclusive union member employment agreements from lawsuit targets. The author’s most recent comprehensive study on statewide CEQA lawsuits was published in the Winter 2018 edition of the *Hastings Environmental Law Journal* in 2017, and is available here: <https://www.hklaw.com/publications/California-Environmental-Quality-Act-Lawsuits-and-Californias-Housing-Crisis-12-13-2017/>

EDITOR

Joel Kotkin is the RC Hobbs Presidential Fellow in urban futures at Chapman University and director of the Chapman Center for Demographics and Policy and executive director of the Center for Opportunity Urbanism in Houston, Texas. He is author of nine books and co-editor of *Infinite Suburbia*. He also serves as executive editor of the widely read website www.newgeography.com and a regular contributor to the *Orange County Register*, *Forbes.com*, *Real Clear Politics*, *Quillette*, the *Daily Beast* and the *City Journal*. His next book: *The Coming of Neo-Feudalism: A Warning to the Global Middle Class* will be out this spring.

ACKNOWLEDGEMENTS

This report was written for the Center for Demographics and Policy. The Center is funded by a generous contribution by Roger Hobbs. The Center is associated with the Chapman University School of Communication, Dr. Lisa Sparks, dean.



School of Communication Studies
Argyros School of Business and Economics

TABLE OF CONTENTS



INTRODUCTION6

CALIFORNIA’S HOUSING CRISIS AND CEQA.....6

 CEQA Round 1 7

 CEQA Round 2 8

 CEQA Round 3 8

 CEQA Round 4..... 8

CALIFORNIA EXCEPTIONALISM EQUALS CALIFORNIA’S HOUSING CRISIS PARALYSIS9

MINORITIES, MILLENNIALS, STUDENTS AND SENIORS NEED HOUSING SOLUTIONS10

Endnotes and Sources..... 15

INTRODUCTION

Although Governor Newsom promised to deliver 3.5 million new housing units in eight years, California severely missed this mark: as reported by the Public Policy Institute of California, housing production actually decreased during each of the past 2 years,ⁱ and in 2019 is on track to fall about 80% short of the annual mark required to build 3.5 million new homes in 8 years.ⁱⁱ At this pace, it will take 39.6 years for the Governor to achieve his 8-year goal.

One clear culprit in the housing crisis is the lengthy and costly environmental review process required under the California Environmental Quality Act (CEQA), even for housing that complies with local General Plans and zoning codes, and the hundreds of applicable environmental, health, safety, and labor laws and regulations.

After new housing is finally approved, any party can – even anonymously – file a CEQA lawsuit seeking to block the housing for “environmental” reasons, resulting in costly, multi-year delays. As explained by the non-partisan Legislative Analyst’s Office in its report on “California’s High Housing Costs: Causes and Consequences:”

Environmental Reviews Can Be Used To Stop or Limit Housing Development. *The California Environmental Quality Act (CEQA) requires local governments to conduct a detailed review of the potential environmental effects of new housing construction (and most other types of development) prior to approving it. The information in these reports sometimes results in the city or county denying proposals to develop housing or approving fewer housing units than the developer proposed. In addition, CEQA’s complicated procedural requirements give development opponents significant opportunities to continue challenging housing projects after local governments approve them.*ⁱⁱⁱ

In two prior comprehensive studies of all CEQA lawsuits filed statewide (the three years beginning in the Great Recession from 2010 to 2012, and the three years of sustained economic growth thereafter from 2013 to 2015), more CEQA lawsuits were filed against housing than any other type of project. In 2013-2015, 25% of all CEQA lawsuits targeted housing, only a slight increase above the 23% of anti-housing CEQA lawsuits filed in 2010-2012.

Last year (2018) ushered in an unprecedented epidemic of anti-housing CEQA lawsuits: as shown in Figure 1, anti-housing CEQA lawsuits now comprise 60% of all statewide CEQA lawsuits targeting private sector development projects.

High density multi-family apartments and condos in existing urban neighborhoods continued to be (by far) the top target of anti-housing CEQA lawsuits - even though this is precisely the type of new housing that the state’s climate and environmental agencies and advocates have decided must be “the” sole, one-sized-fits-all climate-compliance solution to the state’s housing crisis.

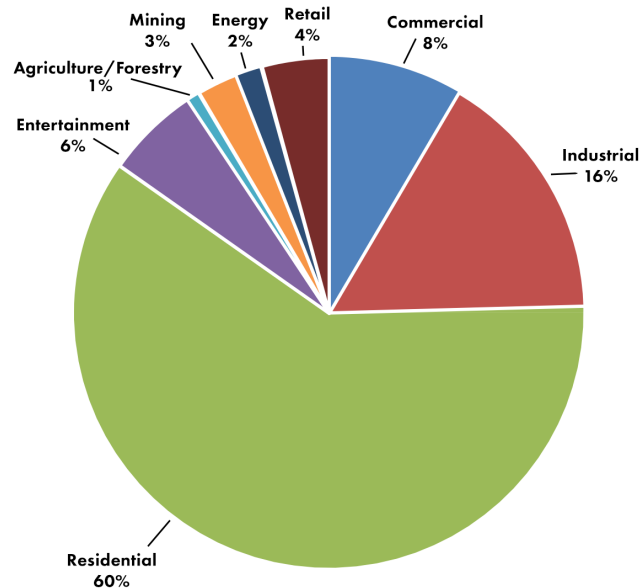
The “my backyard” use of anti-development CEQA lawsuits against even one single family home (e.g., to prevent approved construction based on an aesthetics objection by a neighbor) also dramatically increased to 21% of anti-housing lawsuits in 2018, as contrasted with 13% of the lawsuits filed in 2013-2015.

CEQA clearly remains the go-to litigation choice for housing opponents.

CALIFORNIA’S HOUSING CRISIS AND CEQA

California has the nation’s highest housing costs, the highest poverty rate, and largest homeless population – and greatest housing shortage. United Way of California reported in 2019 that even after nearly a decade of sustained economic growth, 38% of Californians - over 3.8 million families - could not reliably pay monthly expenses, mostly due to the state’s housing shortage

FIGURE 1:
2018 CEQA PETITIONS TARGETING PRIVATE SECTOR PROJECTS



and exorbitant housing costs.^{iv} United Way’s poverty study shows that sixty percent of families with young children, as well as a far higher percentage of Latino and African American than white households, struggle to pay the most basic of monthly living expenses

The Legislature and Governor Newsom agree that California’s housing crisis is an existential emergency that threatens the state’s economic prosperity – and harms Californians. In September, the state housing agency directed the state’s largest (by population and size) region (all Southern California except San Diego is in the “Southern California Association of Governments”) to accommodate 1.34 million new homes in eight years. Based on climate change and other environmental concerns, the region’s elected mayors and other representatives voted to direct SCAG staff to allocate responsibility for building 1 million of the 1.34 million new housing units to the region’s most populated, and high-cost, areas: Los Angeles and Orange counties.

Simply put, the Governor’s housing goals for the state and the region are fantastical at best under “environmental” procedures that are imposed by CEQA. CEQA requires a minimum of three, and likely four or more,

rounds of CEQA compliance before this 1.34 million housing unit vision can be implemented – and the CEQA compliance process alone can easily consume the whole of the next eight years. Here’s how it would unfold:

CEQA Round 1: Under one of the state’s climate laws, SB 375, every four years SCAG must prepare a costly and comprehensive “programmatically” Environmental Impact Report (EIR) for a regional land use plan called a Sustainable Communities Strategy. SCAG is scheduled to issue the draft PEIR for the 2020 SCS, which covers development from 2020-2040, in December 2019. Although the 2020 SCS was initially planned to include far fewer housing units than the 1.34 million now required in 8 years, the SCS must now address the allocation of the 1.34 million new homes in specific properties throughout the region – with 1 million distributed solely in Los Angeles and Orange counties. A related part of the SCAG plan embraces another climate agency mandate – imposed without any Legislative approval and without any approved regulations – demanding that people drive less, even though the people driving the most in the region are minority workers who need to

get to work, get kids to school and practice, and complete other family chores. This “drive less/ride the bus” housing plan mandate to reduce “vehicle mile travelled” (VMT”) is being imposed even though California’s fuel efficient and electric car fleet is the cleanest in the country. Occupants of the 1.34 million new homes needed in the region must also drive nearly 20% less than their neighbors, which the SCAG plan attempts to achieve with measures like much more high density housing (e.g., apartment towers) with less or no parking, near bus stops. Past SCAG plans have not achieved any VMT reduction: regional VMT has been increasing, and public transit ridership has been decreasing, throughout the region including in the most dense cities in Los Angeles County. SCAG is currently completing its PEIR, which is CEQA Round 1 and covers this new RHNA 8 year housing production plan.. The SCAG EIR can be sued (CEQA Lawsuit 1) by anyone, anonymously, for failure to adequately plan for sufficient housing, at legally required affordability tiers, or to adequately study or mitigate more than 100 CEQA “impacts” ranging from aesthetics to transportation, air quality to water supply, for the allocation of housing to any city, county, or neighborhood in the region.

CEQA Round 2: SCAG’s plan is not self-implementing, so each city and county then has a limited time under state housing law to amend its “General Plan” to address the SCAG housing growth allocation to accommodate its share of the 1.34 million new homes, along with the transportation, park, infrastructure, public service, and fiscal changes needed to accommodate the new housing. Amending General Plans also triggers CEQA - CEQA Round 2, as each city or county must decide in its General Plan (and analyze/mitigate in the General Plan CEQA document) whether and to what extent it will accept more housing and traffic congestion in the hope that more people will take the bus, and impose new VMT mitigation fees that apply exclusively to those (again mostly minority) in need of new housing. Housing in any city or county that fails to adopt a SCAG-compliant plan will be subject higher CEQA litigation risks based on inconsistency with the SCAG Plan. Climate agency insistence on reducing car use by restricting housing locations and imposing hundreds

of thousands of dollars of new VMT mitigation fees on new homes, would make any development outside select, and already very costly, neighborhoods like parts of downtown Los Angeles subject to significant, and likely lengthy, CEQA litigation delays as well as huge new fees that make housing even less affordable. Anyone who opposes the General Plan amendments approved by any city or county is free to file its own multi-year CEQA lawsuit challenging the adequacy of the analysis/mitigation of more than 100 impacts (CEQA Lawsuit 2).

CEQA Round 3: Amending its General Plan is just the first step in making housing legal in cities and counties: housing can only be built in compliance with zoning laws and other applicable local ordinances such as design standards, historic preservation requirements, open space and park mandates triggered by population increases, Coastal Act mandates, etc. Cities and counties will also need to amend their zoning codes and other local ordinances to be consistent with updated General Plans (e.g., with cities in LA/Orange county required to zone much more land in existing neighborhoods for higher density residential development). Revising ordinances to increase height limits and otherwise change housing development restrictions triggers CEQA Round 3 – and allows another round of lawsuits in each city (CEQA Lawsuit 3).

CEQA Round 4 (through Round 6,500+): The last step, which will be repeated over and over again, occurs when a city or county approves actual housing – even housing that complies with the SCAG plan, the revised General Plan, and all revised zoning and local ordinances. With very few exceptions, each new housing project triggers yet another round of CEQA, and triggers yet another anti-housing project CEQA lawsuit opportunity (CEQA Lawsuit 4, repeated for each actual housing project).

- In theory and practice, some of the new housing should be eligible for CEQA streamlining and exemptions – but even if such projects qualify for streamlining or exemptions, the exemptions can still be challenged in a CEQA lawsuit. The Legislature has enacted very limited special purpose CEQA exemptions and streamlining, mostly for the political-

ly connected wealthy (e.g., professional sports teams and luxury housing towers), and under very limited and costly conditions for low income housing that comprises less than 5% of the state's housing supply. Increasing the housing supply for the rest of us, including every single union worker household in California, remains subject to the whims of special interests who have weaponized CEQA litigation and litigation threats into their anti-housing tool of choice.

- Not all new housing units need to wait for Round 4: it is lawful for housing project applicants to try to obtain their own General Plan and zoning code amendments from a city, but doing so requires a more politically and legally complex, and risky, approval process – a gauntlet which few housing applicants are willing to bet will succeed in a high-cost, multi-year, political process – that can also be sued under CEQA. One particularly notorious CEQA-exempt single-family home replacement project (which was unanimously supported by neighboring property owners, and the city's Planning Commission and City Council), was held up for 11 years by a lawsuit filed by a single person. In that 11-year ordeal, eventually the family homeowner won in court (and had to pay all of its own attorneys' fees) but gave up and never built the home.
- The bottom line: because permitting each new housing unit can be sued under CEQA, even if every one of the region's 1.34 million housing units are built in 200-unit apartment towers, the region will need to comply with CEQA Round 4 more than 6,500 times to build 1.34 million housing units.

CALIFORNIA EXCEPTIONALISM EQUALS CALIFORNIA'S HOUSING CRISIS PARALYSIS

Unique among all environmental and other laws administered by agencies nationally, those filing CEQA lawsuits win nearly 50% of these lawsuits – not the 20% of such lawsuits won across the country.^v To put this in perspective, imagine that the IRS lost 50% of all lawsuits

challenging tax assessments: those wealthy enough to file a lawsuit will do so, and when and how much tax revenue would be collected would be thrown into chaos. The unpredictability of CEQA lawsuit outcomes creates precisely that chaos: for the wealthy, special interest, and contingency fee law firms specializing in filing CEQA lawsuits, the act of filing a lawsuit is enough to halt construction loans for the 95% of housing not subsidized by taxpayers, as well as halt grants for government-subsidized affordable housing. As explained by Clem Shute (the first supervising lawyer for the California Attorney General at the dawn of CEQA enforcement in 1971, who later founded one of the state's most prolific anti-project CEQA litigation firms):

Moving to the bad and ugly side of CEQA, projects with merit that serve valid public purposes and are not harmful to the environment can be killed just by the passage of the time it takes to litigate a CEQA case.

In the same vein, often just filing a CEQA lawsuit is the equivalent of an injunction because lenders will not provide funding where there is pending litigation. This is fundamentally unfair. There is no need to show a high probability of success to secure an injunction and no application of a bond requirement to offset damage to the developer should he or she prevail.

CEQA has also been misused by people whose motive is not environmental protection but using the law as leverage for other purposes. I have seen this happen where a party argues directly lack of CEQA compliance or where a party funds an unrelated group to carry the fight. These, in my opinion, go to the bad or ugly side of CEQA's impacts.”^{vi}

The serious challenge presented by anti-housing CEQA lawsuits is best illustrated in an analysis we completed with the assistance of the same regional agency now charged with locating 1.34 million new homes in the Southern California region. We examined all – just under 14,000 – housing units challenged in CEQA lawsuits in the SCAG region from 2013-2015.

- Almost all - 98% - of the challenged housing units were located within existing communities (either

cities, or unincorporated county areas surrounded by development). Virtually none of these anti-housing CEQA lawsuits sought to block the “greenfield” development deemed “sprawl” by advocates opposed to expanding by even one acre the approximately 5% of California lands that the U.S. Census Bureau calculates is urbanized (i.e., the combination of the state’s large metro regions and all small and more isolated towns).

- The majority – 70% - of the challenged housing units were located within one-half mile of the public transit stops and corridors, which tend to be among the most densely populated areas of the region. These anti-housing CEQA lawsuits sought to stop housing precisely where climate agencies and advocates--- seeking to force people to stop driving and ride the bus--- had deemed to be the priority locations for new housing.
- An even larger majority – 78% - of the challenged housing units were in the region’s whiter, wealthier, and healthier communities such as the West Side of Los Angeles, and not in the region’s “Environmental Justice” communities with higher minority and poverty rates, and lower educational and health outcomes.
- This was the anti-housing CEQA lawsuit pattern in the region before climate agencies decided that Los Angeles and Orange counties, including many wealthy communities, needed to accommodate 1 million more housing units in eight years. There is zero evidence that anything like this quantity of housing can be built in eight years under our current Four Round CEQA regime.

MINORITIES, MILLENNIALS, STUDENTS AND SENIORS NEED HOUSING SOLUTIONS, NOT CEQA LAWSUITS

The anti-housing weaponization of CEQA is this century’s “redlining” – a state-sanctioned and agency-administered legal tool that is used to block housing needed by “those people” – especially people who will

occupy future housing but aren’t there yet so can’t vote in local elections. “Those people” are also more likely to be younger and more racially diverse, more likely to be burdened by student debt and benefit-free jobs, more likely to live on limited incomes blind to the housing crisis, and not lucky enough to inherit wealth or be the children of homeowners with enough equity to help with down-payments or multi-month rental deposits..

Like other discriminatory housing redlining tools – predatory lending and discriminatory foreclosures, racial covenants and exclusionary zoning, eminent domain, government mortgage and insurance assistance programs denied to minority workers and veterans – CEQA is enforced by an army of bureaucrats, consultants and lawyers who make their living on “process” not “progress,” like the 11-year CEQA lawsuits against one replacement single family home. Construction workers aren’t employed during the CEQA process, teachers and nurses and emergency responders aren’t housed during the CEQA process, and the still-increasing homeless and poor populations live in cars and tents during the CEQA process.

While many of CEQA’s employed bureaucrats and thriving consultant and legal practitioners themselves constitute a militant special interest group in defense of the CEQA status quo, the weaponization of CEQA also appeals to many of California’s most powerful special interests.

- Anti-housing communities can and do use CEQA to indefinitely delay, decrease, or derail new housing. Courts have uniformly declined to enforce any deadline whatsoever for completing the CEQA process, thereby empowering unelected staff as well as local elected officials to take years – sometimes many years and millions of dollars in studies – before approving General Plans and zoning that allows more housing, and as an tool to deny Round 4 approvals even to housing that complies with these local requirements. The CEQA process can also easily be “slow-walked” and manipulated to never quite end at all for politically unpopular housing plans, and these anti-housing CEQA bureaucratic

tactics can easily defeat all but the most well-funded housing applicants and help distort the market to promote more costly housing. Courts have been equally reluctant – from the Legislature’s initial round of laws intended to speed up housing approvals when California’s housing crisis was declared in 1980, up to and through today – to enforce housing approval laws for housing that hasn’t completed the CEQA process.

- As former Governor Jerry Brown has admitted, CEQA can’t be legislatively reformed because unions like to use CEQA lawsuits (and lawsuit threats) to require builders to use specific labor union locals on specific projects.^{vii} Governor Newsom has implored construction trades and builders to reach “a deal” to end reliance on CEQA litigation as a union bargaining tactic, but so far no deal has been reached.^{viii}
- Environmental groups embrace CEQA’s ambiguous regulations and nearly infinite litigation opportunities and uncertainties, and – as proudly reported in a “CEQA at 40” Planning and Conservation League CEQA seminar nearly ten years ago – to leverage projects to accept CEQA “mitigation” requirements which have not and would never have been approved by the Legislature, or survive the scrutiny of any regulatory agency or public rulemaking process.
- The Legislature is itself enamored of “transactional” CEQA statutory exemptions for politically favored projects like professional sports stadiums (and the housing fortunate enough to be bolted onto stadium projects), provided the project sponsors satisfy labor and environmental stakeholders, and have local support. “Transactional” CEQA exemptions may inspire political donations and complimentary game tickets, but they are anathema to the rule of law – and have only the most passing acquaintance with protection of the environment.
- The Legislature is also quite cranky about applying CEQA to itself, and for example granted itself a statutory exemption from CEQA to avoid potential CEQA lawsuits that could result in cost overruns and schedule delays for remodeling the Legislature’s

own office building.^{ix} The Legislature remains unconcerned about cost overruns and schedule delays caused by housing for the rest of us, or taxpayer-funded transportation and other projects important to the rest of us.

Without reforming, streamlining, or updating CEQA – to end anonymous lawsuits, end duplicative lawsuits like Round 1-4 of CEQA described above (and the thousands of separate CEQA processes applicable to actual housing construction), and recognize and respect the fact that there is absolutely no “one-size-fits-all” solution to California’s housing crisis, it’s absolutely clear that Governor Newsom cannot come close to producing anywhere near 3.5 million housing units in 8 years.

CEQA is not the only obstacle to solving the housing crisis, but nothing has worked so spectacularly well in delaying or derailing the construction of approved housing in already-approved locations. Most specifically, the high-density housing solution demanded by current state environmental and climate agencies and advocates – ostensibly so future residents can abandon cars and rely by public transit (bus, rail and ferry) – is not remotely practical in a state where the vast majority (e.g., 98% in some SCAG communities) drive to work, and either cannot or do not want to live in small, urban apartments.

Indeed, nearly all of the new housing for homeowners being built in California’s two major metropolitan regions — Los Angeles and San Francisco — during this decade has been from developments on the urban fringe, which climate agencies are determined to eliminate – slamming the door on attainable homeownership for all but those with inherited wealth or very high income jobs.^x The Federal Reserve has confirmed that homeowners have 44 times more wealth than renters, yet California’s climate advocates (and aligned elected leaders) eagerly embrace adding 3.5 million new largely unaffordable rental apartments near bus stops in existing neighborhoods as the state’s must-do, one-size-fits all housing solution.

At the same time, the state has made virtually no efforts to promote work at home, which for largely white-collar

(more likely white or Asian) workers in the “keyboard economy” is the most effective regional reduction of commuter VMT. In the SCAG region, more people work from home than take public transit. In contrast, as recently confirmed by UCLA’s transportation scholars^{xi}, Latino and African American workers drive much more (and regional VMT has increased dramatically since the end of the Great Recession) because minorities must drive. For those not in the keyboard economy, keeping a job requires showing up on time, kids and relatives need rides, regional jobs are highly dispersed, and attainable homeownership means longer commutes with no transit agency solutions.

The fact that climate advocates demand reduced VMT from housing, when driving is the only practical transportation solution available for the working families most harmed by the housing crisis, is the most regressive (and discriminatory) of many types of greenhouse gas reduction measures that a more transparent and informed Legislative and regulatory approval process would require to be considered. California produces less than 1% of the world’s GHG, and global GHG – not localized GHG – has been determined to cause climate change.

The state’s former state climate leader, Ken Alex, for example, hails GHG measures like converting cook stoves in Africa from burning dung or wood to cleaner fuel as an inexpensive and fast pathway to reduce global GHG – and improve the health of more than a billion people while reducing deforestation and habitat destruction.^{xii} Other readily-available GHG reduction measures that the state’s leading climate agency has calculated would reduce GHG more than the VMT reduction CARB set for the SCAG region include reducing the carbon footprint of the furniture purchased annually by the state’s wealthier families^{xiii} – and wealthier families have higher GHG emissions than poor families struggling to buy their first home and get to work. Finally, the fact that this VMT reduction housing plan doctrine applies equally to emission-spewing 1977 muscle cars and today’s all-electric or hybrid cars^{xiv} confirms this “ride the bus” anti-homeownership regime is not about GHG or any other environmental pollution, it’s just another redlining tool by state bureaucrats to block

attainable homeownership for the now majority-minority population of California.^{xv}

Overall, the entire “one-size-fits-all” ride-the-bus, rent-for-life housing “solution” of 3.5 million \$3000+ per month rental apartments wedged into existing neighborhoods is neither financially or politically feasible. It is also actually counterproductive to the state’s climate leadership goals. The top destination for most of the hundreds of thousands of departing Californians are Texas, Arizona and Nevada – all of which have far higher per capita carbon emissions than California. Making California housing too expensive, and homeownership unattainable, is a key reason families leave California – where they instantly increase their per capita GHG even as California’s climate bureaucrats use their own “special math” to brag that exporting Californians reduces global GHG!^{xvi}

For the hardy intent on staying in California, redlining to block housing – like Marin County, named as “the most racially unequal county in California,”^{xvii} where housing development is illegal in about 80% of the county, as well as anti-CEQA lawsuits that target housing in wealthier and job-rich communities, have forced many working in these communities to drive longer distances to get to housing they can afford, making California the epicenter of “super commuters” slogging through multi-hour daily commutes.

Basic housing math also demonstrates that climate advocates’ housing policies also unlawfully deprive current and future generations of Californians (particularly in the Latino and African-American communities) with access to housing that can be purchased or rented by most California families, in violation of civil rights and housing laws.

- a. High density “transit-oriented development” (TOD) housing is by far the most expensive to construct: dense multi-family housing units have much higher construction costs, while purchasing urban land near frequent transit services requires much higher land costs. In addition, adding new density to aging and undersized infrastructure and frayed public services requires community-scale infrastructure

repairs and service expansions that drive housing costs – and thus rents and purchase prices – even higher, and favor luxury-level housing. makes rents generally those of a high-end . The Los Angeles Controller’s Office has reported that the average cost of a single small new housing unit for the homeless is about \$500,000 – and the recent remodel of a San Francisco affordable housing project that already had land cost a whopping \$890,000 per unit^{xviii} – virtually all of which are built by non-profit developers. Urbanized apartments sound “environmental” – but at these costs (even with no “profit” component built in) are an absurd and entirely unaffordable taxpayer-funded housing “solution.”

- b. Because so few Californians can afford, or desire, to buy these types of very expensive small housing units, the “one-size-fits-all” climate advocacy model consists almost entirely of costly rental housing (i.e., rents of \$3500 or more per month). Although even this rental cost requires households to earn nearly \$150,000, it remains much more affordable than an equivalent condo unit costing \$1,000,000, for which about \$250,000 is required for down payment and closing costs, alongside monthly mortgage/insurance/taxes/fees of over \$5000 per month.
- c. As the Legislative Analyst’s Office has confirmed, homeownership is by far the most common and successful family investment for gaining multi-generational wealth and entry to the middle class.^{xix} Habitat for Humanity in Los Angeles has also compiled a comprehensive, multi-decade set of studies confirming that families who own their own home have better health and educational outcomes and are more likely to vote and volunteer in school and community events.^{xx} A one-size-fits-all housing solution that deprives the vast majority of Californians with access to attainable homeownership, with equally unaffordable rents, is not a housing solution. Instead, like CEQA, it’s just another shameful chapter in the state’s long history of discriminatory housing practices, which has now crept steadily up the income ladder so that hard-working otherwise middle class Californians (most of which are now ethnic minorities) can’t

afford to buy a home.^{xxi}

- d. Political resistance to TOD housing is also fierce: many existing residents of all races and income levels oppose displacement, gentrification, and changes to the character of their community.^{xxii} The transit component of the TOD model fails as Californians have for years reduced public transit ridership notwithstanding billions of dollars in transit investments and expansion. Increasingly long commute durations even on local streets causes intense frustration with even the current status quo densities. The ongoing political and legal war over “local control” of land use decisions shows no sign of abatement, especially in the wealthier coastal job centers with more public transit service. Speedy construction of 1.33 million new homes in eight years in the SCAG region – or 3.5 million new homes statewide – is a fantasy in a democracy where voters choose representatives, and have ready access to the judiciary in four rounds of anti-housing CEQA lawsuits.
- e. Only the smallest fraction of California even has any chance of being a successful “transit-oriented” component of TOD development, as fixed route bus service continues to dramatically decline in ridership and availability,^{xxiii} and new rail service requires about 20 years to complete. Instead, more communities are experimenting with programs such as subsidizing on-demand ride services such as Uber and Lyft, and the public is using an ever-evolving toolbox of cellphone based ridesharing and carpooling – but these transportation options include (ever-cleaner) increases in VMT and are thus condemned by climate bureaucrats free to ignore the mobility and housing needs of actual people.
- f. Other anti-housing fiscal practices are also redlining. For example, many cities have imposed the equivalent of involuntary country-club initiation fees on residents of new housing (without country club amenities or services), which threatens the viability of all but luxury housing. San Francisco, one of the world’s wealthiest cities, imposes \$165,000 in fees for each new apartment unit. Some fees are obviously warranted (e.g., connecting to

sewer and water systems, but others don't actually improve the environment, public services or infrastructure but instead help fund pre-existing obligations such as unfunded pensions. Stressed services and more congestion then fuels more resistance to new housing. Our past and current Governor both vetoed redevelopment to help fund local infrastructure, and the Legislature and special interests in Sacramento routinely and repeatedly block other efforts to share other tax revenues with local government for public services and infrastructure – notwithstanding multiple years of multibillion-dollar state General Fund surpluses, and the high tax burdens already imposed on Californians. Instead, local fees and costs that are uniquely imposed on new occupants – such as the cost of subsidizing inclusionary affordable housing units in the same building – also add to the unsustainable cost of housing, although these new residents did not cause the affordable housing shortage.

California clearly needs new and revised tools if the Governor wants to avoid a housing failure which causes disparate harms to California's minority families. Restoring some form of redevelopment would help fund affordable housing and infrastructure, but cannot return as a redlining tool that is again used to demolish minority neighborhoods and strip minority owners of homes and property through eminent domain (even near transit). Earmarking more state tax revenues to expand public services for cities that approve housing, requiring transparency and accountability for the effectiveness of transportation system improvements funded by multi-layered gas taxes including climate Cap and Trade fees paid by consumers at the gas pump, and effective low-carbon transportation services and technologies, are other necessary solutions. Most importantly, however, is the discipline, public engagement, and transparency required to reduce housing costs rather than piling on every imaginable regulatory priority (including climate) onto housing.

These reforms would need to overcome fierce political resistance to holding the state's climate agencies accountable to transparency, and the importance of protecting civil rights, consumers, housing and transportation legal mandates alongside climate and the environment, such as this year's

defeat of the Legislature's Democratic co-chair's proposal to require a non-partisan audit of the California Air Resources Board's transportation project expenditures. CARB must also correct its climate compliance metrics to no longer count Californians who move to higher per capita GHG states like Texas as a GHG "reduction" because population loss means less electricity and fuel is consumed in California.

Eliminating duplicative and anonymous CEQA lawsuits, incentivizing the conversion of vacant land and underutilized urban land such as redundant retail, building sustainable new communities in 0.3% of the 94.7% of California that is not urbanized, and embracing an "all-of-the-above" instead of "one-size-fits-all" solution to housing that includes attainable home ownership for California's working families, supporting construction worker training programs, and prioritizing regulatory changes that reduce the cost of producing new housing, are all necessary housing solutions.

Housing should not be considered "a burden" but an investment in the future. Housing costs must be reduced: increasing overall tax burdens which are now among the highest in the country is not a solution.^{xxiv}

Overall, the time has come to reform the way California regulates housing, and stops housing from being produced. Unless CEQA and other bureaucratic and litigation practices are reformed, the promises made to solve the "housing crisis" should be considered as little more than political posturing that will not overcome our ongoing housing production paralysis.

ENDNOTES AND SOURCES

- i Public Policy Institute of California, "New Housing Permits Decline Statewide," (July 31, 2019), available at https://www.ppic.org/blog/new-housing-permits-decline-statewide/?utm_source=ppic&utm_medium=email&utm_campaign=blog_subscriber
- ii California Homebuilding Foundation, "California Construction Review," with data through September 2019.
- iii California Legislative Analyst's Office, p. 15, <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf> (emphasis in original); see also, e.g., http://www.ladowntownnews.com/news/the-rising-price-of-downtown-living/article_916184de-e54c-11e4-be4e-a766501f8e40.html see also, <https://www.sfchronicle.com/opinion/openforum/article/Newsom-must-prioritize-affordable-middle-class-13515693.php>
- iv United Ways of California, "Struggling to Stay Afloat: The Real Cost Measure in California 2019," available at <https://www.unitedwaysca.org/realcost>
- v J. Hernandez & D. Golub, "CEQA Judicial Outcomes: Fifteen Years of Reported California Appellate and Supreme Court Decisions," May 2015, available at <https://www.hklaw.com/en/insights/publications/2015/05/ceqa-judicial-outcomes-fifteen-years-of-reported-c>
- vi E. Clement Shute, Jr., "Reprise of Fireside Chat" following receipt of a Lifetime Achievement Award by the environmental section of the California State Bar Association (now called California Lawyers Association) at the Yosemite Environmental Law Conference, 25 ENVIRONMENTAL LAW NEWS, No. 3 (2016).
- vii UCLA Blueprint Magazine, "Gov. Jerry Brown: The Long Struggle for the Good Cause," (Spring 2016), available at <https://blueprint.ucla.edu/feature/gov-jerry-brown-the-long-struggle-for-the-good-cause/>
- viii D. Walters, "Politicians Missing in Action on Housing Shortage," Cal Matters (June 6, 2019), available at <https://gvwire.com/2019/06/06/walters-politicians-missing-in-action-on-housing-shortage/>
- ix Los Angeles Controller R. Galperin, "The High Cost of Homeless Housing," October 2019), available at <https://lacontroller.org/audits-and-reports/high-cost-of-homeless-housing-hhh/#executive>
- x <http://www.newgeography.com/content/006445-greater-los-angeles-area-growth-tanking-and-dispersing>; <http://www.newgeography.com/content/006457-the-expanding-and-dispersing-san-francisco-bay-area>
- xi UCLA Institute of Transportation Studies, "Transit Ridership Trends in the SCAG Region," Dec. 2017, https://www.scag.ca.gov/Documents/ITS_SCAG_Transit_Ridership.pdf
- xii Ken Alex, Black Carbon, 3 Billion Strong, Legal Planet, (Sept. 16, 2019), <https://legal-planet.org/2019/09/16/black-carbon-3-billion-strong/>.
- xiii Furniture estimates from the California Air Resources Control Board, Calculator for Households & Individuals, <https://coolcalifornia.arb.ca.gov/calculator-households-individuals> (last visited Nov. 10, 2019) and U.S. Census Bureau, 2013-2017 American Community Survey (ACS) 5-Year Estimates, Median Income in the Past 12 Months (in Inflation-Adjusted Dollars), Table Series S1903, <https://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t> (search for "S1903" in topic or table name search field and "California" in state, county or place search field)(last visited Nov. 10, 2019); see also Table 13
- xiv US EPA, Clean Air Act Overview, "Progress Cleaning the Air And Improving People's Health - New cars, trucks, and nonroad engines use state-of-the-art emission control technologies." Accessed 11/16/19 <https://www.epa.gov/clean-air-act-overview/progress-cleaning-air-and-improving-peoples-health>
- xv <http://www.newgeography.com/content/006090-more-work-home-take-transit-transit-retreats-niche-markets>
- xvi See generally D. Friedman and J. Hernandez, California Greenhouse Gas Regulation, and Climate Change, Center for Demographics & Policy, Chapman University (2015) https://www.chapman.edu/wilkinson/_files/cas-oc-prio-fn-sm2.pdf.
- xvii Richard Halsted, Report: Marin tops state in racial inequity, Marin Independent Journal (Nov. 20, 2017), <https://www.mariniij.com/2017/11/20/report-marin-tops-state-in-racial-inequity/> referencing Advancement Project California, Race Counts: Advancing Opportunity for All Californians (Winter 2017), at 25, <https://www.racecounts.org/wp-content/uploads/2017/11/Race-Counts-Launch-Report-digital.pdf>; see also, <https://www.latimes.com/politics/la-pol-ca-marin-county-affordable-housing-20170107-story.html>
- xviii "Sues Question \$890K per Unit Cost for Sunnydale HOPE SF Rebuild," SF Examiner Oct 9 2019), available at: <https://www.sfoxaminer.com/news/supes-question-890k-per-unit-cost-for-sunnydale-hope-sf-rebuild/>
- xix Legislative Analyst's Office, "California's High Housing Costs: Causes and Consequences," p. 27, available at <https://lao.ca.gov/reports/2015/finance/housing-costs/housing-costs.pdf>
- xx Habitat for Humanity, "Beneficial Impacts of Homeownership: A Research Summary," available at <http://www.habitatbuilds.com/wp-content/uploads/2016/04/Benefits-of-Homeownership-Research-Summary.pdf>

- xxi <http://centerforcaliforniarealestate.org/publications/Kotkin-Fading-Dream-printable.pdf>
- xxii See, e.g., UCLA Department of Urban and Regional Planning, Oriented For Whom? The Impacts of TOD on Six Los Angeles Neighborhoods (June 2, 2015), at 24, http://www.urbandisplacement.org/sites/default/files/images/spring_2015_tod.pdf.
- xxiii <http://www.newgeography.com/content/005800-los-angeles-transit-ridership-losses-lead-national-decline> and <http://www.newgeography.com/content/006426-2018-commute-data>
- xxiv <https://turbotax.intuit.com/tax-tips/fun-facts/states-with-the-highest-and-lowest-taxes/L6HPAVqSF>