



April 1, 2019

The Honorable Ben Allen  
Chair, Senate Committee on Environmental Quality  
California State Senate  
State Capitol Room 5072  
Sacramento, California 95814

**Re: SB 384 (Morell): California Environmental Quality Act: Housing - OPPOSE**

Dear Chair Allen:

We oppose Senate Bill 384. Under this bill, a court would be required to resolve lawsuits brought pursuant to the California Environmental Quality Act (“CEQA”) against a housing development project, defined as “a housing development project with 50 or more residential units”, to the extent feasible, within 270 days and prohibits a court from staying or enjoining construction of these projects unless “the continued construction or operation of the project presents an imminent threat to the public health and safety” or “the project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values.” SB 384 severely interferes with judicial processes and lacks the requisite environmental protection that CEQA was intended to provide.

First, the bill’s expedited judicial review provision is unnecessary. Under current law, CEQA actions are already entitled to calendar preference in both California superior courts and the Courts of Appeal. (§ 21167.1(a)). And many of the projects that the bill seeks to allow for (affordable and infill housing, transit priority) already have other CEQA exemptions that would apply to them. By imposing an arbitrary 270-day requirement on the judiciary, SB 384 will have an adverse impact on other civil cases that have potentially more dire outcomes, such as juvenile cases and civil cases concerning parties that are at risk of dying.

Second, SB 384’s prohibition on injunctive relief for certain projects removes an important tool that plaintiffs often rely on in CEQA proceedings. CEQA provides a public disclosure of environmental impacts from projects, and requires feasible mitigation of those projects to ensure that polluters, not the public, are held responsible for their actions. Litigation that is brought pursuant to CEQA, such as when the public was not provided with enough information about a project or when mitigation measures are insufficient to adequately alleviate the harms, can materially affect how a lead agency concludes that their

project is the environmentally preferred alternative, and a project can change after litigation has taken place.

Because a project can change due to litigation, injunctive relief is often granted by a court to preserve the status quo until a determination of the merits of the CEQA challenge can be made. Staying or enjoining construction of a project is often necessary to prevent potential environmental degradation as well as containing any ongoing degradation. Preventing a court from providing injunctive relief leaves plaintiffs in CEQA cases, and the environment, without an appropriate remedy. The type of projects SB 384 would apply to are massive residential units, the construction of which will undoubtedly have an impact on the environment. Without the possibility of stay, construction and development can continue and can further add to potential environmental harms throughout the litigation process.

CEQA litigation rates continue to remain low, with most housing projects being exempt or only needing to file mitigated negative declarations. CEQA is not a cause of the housing crisis, and its critical protections for Californians should not be weakened to support the building industry's narrative.

For these reasons, we oppose SB 384 and urge you and your committee to vote no when it appears before you.

Sincerely,



Brandon Dawson  
Policy Advocate  
Sierra Club California



Brian Nowicki  
California Policy Director  
Center for Biological Diversity



Melissa Romero  
Legislative Affairs Manager  
California League of Conservation Voters



Matthew Baker  
Policy Director  
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Cc: Senator Mike Morrell

Members and Staff of the Senate Committee on Environmental Quality,  
Members and Staff of the Senate Committee on Judiciary