

The Honorable Gavin Newsom
 Governor, State of California
 1021 O St. Ste. 9000
 Sacramento, CA 95814

The Honorable Toni Atkins
 Senate President pro Tempore
 1021 O St. Ste. 8518
 Sacramento, CA 95814

The Honorable Nancy Skinner
 Chair, Senate Committee on
 Budget and Fiscal Review
 1021 O St. Ste. 8630
 Sacramento, CA 95814

The Honorable Josh Becker
 Chair, Senate Budget Subcommittee #2
 1020 N Street, Ste 502
 Sacramento, CA 95814

The Honorable Anthony Rendon
 Speaker of the Assembly
 1021 O St. Ste. 8330
 Sacramento, CA 95814

The Honorable Phil Ting
 Chair, Assembly Committee on Budget
 1021 O St. Ste. 8230
 Sacramento, CA 95814

The Honorable Steve Bennett
 Chair, Assembly Budget Subcommittee #3
 1021 O Street, Suite 4710
 Sacramento, CA 94249

May 31, 2023

RE: Concerns regarding the Infrastructure Trailer Bill Package—CEQA Judicial Streamlining and Administrative Record Review

Dear Governor Newsom, President Pro-Tempore Atkins, Speaker Rendon, Senator Skinner, and Assemblymember Ting:

The California Environmental Justice Alliance (CEJA) and the undersigned organizations

write to respectfully share our concerns related to the Governor's Infrastructure Package. For one, we are extremely concerned that this process to move such expansive policy ideas lacks transparency and does not provide sufficient time and space for meaningful public engagement and policy debate. As stated in a [letter signed by 75 organizations](#) including CEJA, we strongly oppose the Administration's use of the budget process to move voluminous and broad-reaching environmental policy forward as this eliminates an open and transparent discussion of monumental policy decisions.

As a statewide and community-led alliance, CEJA supports a Just Transition from an extractive and fossil-fuel based energy system to one that is powered by 100% clean, renewable, reliable, and affordable energy. This requires the development of distributed clean energy and storage, clean microgrids, energy efficiency, demand response, and other community-scale resources in a manner that prioritizes the retirement of fossil gas plants and other polluting infrastructure in the State's environmental justice communities. As we build out the clean energy infrastructure and resources needed to safely and reliably phase out polluting resources, it is imperative that we do not continue, exacerbate, or begin a new legacy of harm and abuse. This requires honoring community leadership and expertise, protecting and mitigating against false energy solutions and practices, and ensuring real benefits and investments flow to Environmental Justice (EJ) communities, aligning with the core principles and objectives that the California Environmental Quality Act fundamentally upholds.

Furthermore, our state's premier environmental law is important for environmental justice community members who rely on the current law to have a voice in local land use planning decisions in order to protect their environmental health. By establishing the rights of frontline EJ communities to protections that promote clean air, water, and soil, and providing opportunities for community member input to be meaningfully considered in planning processes, the California Environmental Quality Act (CEQA) plays a vital role in safeguarding the well-being of overburdened populations and communities across the state. While we understand the desire to create greater certainty and faster timelines for CEQA-related lawsuits, such policies can lead to disproportionate harm amongst low-income neighborhoods and Black, Indigenous, and people of color (BIPOC) communities, as well as cause further damage to the environment if implemented poorly and distract us from the real solutions to our environmental and housing challenges. This dynamic is also complicated by the fact that low-income and BIPOC communities often have fewer resources and limited access to the lawyers that they need to advocate for their rights compared to well-resourced industry and other privileged special interest groups—not to mention public agencies which often seek to push through projects that harm EJ

communities.

CEJA and CEJA member organizations would like to share specific concerns regarding the California Environmental Quality Act (CEQA) Judicial Streamlining trailer bill and the Administrative Record Review trailer bill. While we appreciate the Governor and the Legislature's intent to meet our state's critical clean energy and infrastructure needs, we are concerned that these two broadly defined trailer bills, as currently written, will not achieve their intended goals and could even cause greater harm to overburdened EJ communities across the state. The bills may also cause severe challenges for the courts that would have to work overtime to meet the unrealistic judicial review timelines and requirements of the law.

CEQA Judicial Streamlining

This trailer bill would allow certain legal challenges under CEQA to be eligible for expedited judicial review benefits if they are a qualified water, transportation, clean energy, and semiconductor or microelectronic projects. However, we would like to share the following concerns and provide additional questions for further clarification and definition:

- **Requiring a court to resolve an action within 270 days to the extent feasible is harmful to low-income and EJ communities.** Litigation is oftentimes one of the only ways in which low-income and EJ communities can create greater accountability in order to protect public health and wellbeing. Unfortunately, these types of expedited judicial timelines could further disadvantage EJ petitioners if they lack the high-level resources to meet such shortened briefing and filing timelines. Many residents of EJ communities face significant barriers to securing legal representation in the first place, and expedited timelines further challenges their legal right to pursue a claim. EJ communities' legal counsel, also, frequently encounter limited resources when pursuing litigation, in contrast to law firms representing agencies and developers who may have the capacity to retain multiple in-house and external counsel to defend their decisions. Furthermore, requiring projects to be resolved within 270 days may not only hurt low-income and EJ communities, it could also give preference to CEQA-related cases over other cases—including violent crimes and other more serious offenses.
- **Requiring a court to resolve an action within 270 days to the extent feasible is also logistically impractical¹ and legally unnecessary, as CEQA lawsuits already receive**

¹ Dillon, Liam. (January 24, 2017). "A key reform of California's landmark environmental law hasn't kept its promises." Los Angeles Times. Retrieved from: <https://www.latimes.com/politics/la-pol-sac-environmental-law-reform-failures-20170124-story.html>

priority in court. Courts require significant time to deliberate over complex legal issues regarding projects that may bring decades of environmental and public health harms. It is essential to preserve, and not create additional hurdles to, the courts' ability to thoughtfully and accurately deliberate on cases. Furthermore, we are concerned about the feasibility of this judicial review policy proposal and are unsure if the state budget will allocate sufficient funding for additional CEQA judges that would be necessary to handle the increased caseloads.

- **The bill's broadly defined list of proposed clean energy projects for a streamlined CEQA judicial review process may include harmful energy systems and approaches that increase pollution and extraction in EJ communities.** We are specifically concerned about the possibility of expediting review processes for lithium extraction and production, hydrogen, biofuels, carbon capture and storage, among others, and would urge that these be especially excluded from the list.
- **The bill would allow judicial streamlining for a number of specific energy and resource projects that are controversial and deserve to undergo a robust process.** In recent years, different agencies, decision-makers, and politically powerful individuals have been able to provide CEQA streamlining processes to a variety of individually hand-picked projects. We are very concerned with this approach of selecting favorite projects to undergo special benefits in ways that are inequitable and unjust. We are especially concerned about projects that include lithium extraction/production and battery generation facilities which threaten harmful impacts on disadvantaged communities.
- **Overall, it is unclear whether or not CEQA streamlining for large clean energy projects is the best solution for moving faster on our clean energy goals.** In fact, our preferred equitable energy solution of community solar and storage has yet to be funded through the state budget. Many energy professionals and advocates alike do not believe that delays in clean energy progress are attributed to extended CEQA judicial review timelines, but instead due to other more prominent factors including what the market has defined as post-COVID pandemic supply chain issues, the lack of staffing devoted to addressing interconnection queue delays, and the under-investment in local and community-scale resources. In addition, local clean energy resources can secure more benefits for EJ communities, reduce impacts to land and the environment, and protect community members from paying for costly transmission buildout and upgrades through their rates. For years, CEJA has advocated for the State to prioritize local and community-scale clean resources—including community solar and storage, community microgrids, energy efficiency, electrification, and demand response—yet the State has stalled. In the

California Public Utilities Commission's Integrated Resource Plan (IRP) proceeding, CEJA has also advocated for utilities to procure a sufficient amount of clean energy and storage resources to meet climate and air quality commitments, and to site resources in local reliability areas in order to retire polluting gas plants sooner. This year, the Governor has yet to propose *any* funding for equitable community solar and storage access, as requested by environmental justice advocates. Instead, he unveiled a “Clean Energy Transition Plan Roadmap” focused on accelerating transmission and utility-scale procurement, including potential procurement of false energy solutions, while neglecting to include a plan for building or investing in community-scale resources.

Administrative Record Preparation

This trailer bill aims to reduce litigation timelines by streamlining processes related to the preparation of the public record for CEQA-related legal challenges. While some of the bill’s provisions appear to be reasonable and feasible for shortening legal timelines, we are concerned about the bill’s main provisions that create barriers for low-income and EJ communities from adhering to the profound changes.

- **This bill would allow a public agency to take over the preparation of the record if a petitioner initially elects to do so, but either fails to complete it within 60 days or fails to obtain an extension.** If the agency assumes responsibility for preparing the Administrative Record, there is no language stating that the agency would cover the costs of compiling the record. This could potentially lead agencies to hastily take over the record preparation process, alleging that the petitioner caused delays or made mistakes, and subsequently burdening the petitioner with a substantial bill. This change would place EJ communities and public interest petitioners at a comparative disadvantage to their defendants and potentially chill important litigation to enforce EJ communities’ rights, because they are typically far less resourced than respondents.
- **This bill would allow the lead agency to elect to prepare the record, provided the agency notifies the petitioner within 10 days of filing the action.** In the case where an agency elects to prepare the record, petitioners may not have access to the record documents until the agency officially certifies the Administrative Record. This poses barriers for petitioners who are unable to examine the evidence and information contained in the Administrative Record.
- **The bill’s narrowly defined scope of “internal agency communications” is concerning to community-serving lawyers and local residents who are often denied access to important government records and correspondence.** Community-based

environmental justice organizations have traditionally relied on those communications as a critical component of the body of evidence. Internal emails can provide a window into the environmental analysis done by expert agency staff and important communications between staff and developers regarding the project scope and impacts. This change is particularly problematic given that most communications are now done electronically. As a result, these proposed amendments threaten to dilute CEQA's role as a sunshine statute that promotes transparency and accountability in government decision-making and therefore its role in leveling the playing field for vulnerable communities which often lack insider access in that process.

A Step to Address the Environmental Injustices

The state's persistent efforts to weaken CEQA and undermine its role in addressing the harmful effects of polluting and hazardous activities on disadvantaged communities highlights the urgent necessity for the state to establish safeguards that protect these communities from the ongoing clustering of polluting and hazardous facilities in areas already burdened with environmental challenges. We strongly urge prioritizing policies that establish guardrails in the State Planning and Land Use Law. These guardrails would ensure that City and County general plans prioritize environmentally sustainable land uses, equitable community development, and prevent the concentration of polluting facilities near residential areas and sensitive locations in overburdened communities. These measures are crucial for achieving state air quality and climate goals while addressing disparities and promoting vibrant, equitable communities per California's obligations under its civil rights laws. We would be happy to talk more specifically with your office about our proposal.

Lastly, in addition to our concerns regarding the CEQA Judicial Review and Administrative Record trailer bills, we are disappointed that the Infrastructure Trailer Bill package largely omits any mention of equity and labor standards. California has a long history of racist infrastructure policies and investment decisions that have cemented socioeconomic inequities in housing, education, economic opportunity, health, and environmental pollution. Last year, CEJA and various environmental justice, climate, and labor groups supported AB 2419 (Bryan), the California Justice40 Act. Despite strong and diverse support for AB 2419, the legislation died in a bitter failure to deliver on environmental justice and economic justice. Advocates were hopeful that state action would include equity standards as a central component of the state's infrastructure plan; however, the Governor's proposal reveals that equity is not sufficiently being prioritized by this Administration.

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Thank you for your time and for your consideration of these comments. The California Environmental Justice Alliance looks forward to having additional conversations with the current administration and leaders of the Legislature to identify appropriate solutions for increasing clean energy resources and infrastructure in our state without sacrificing the ability of low-income and BIPOC community members from having their fair day in court.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tiffany Eng', with a long horizontal stroke extending to the right.

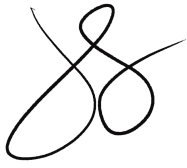
Tiffany Eng, Program Director
The California Environmental Justice Alliance (CEJA)

A handwritten signature in black ink, appearing to read 'Marven Norman', with a long horizontal stroke extending to the right.

Marven Norman, Policy Coordinator
Center for Community Action and Environmental Justice

A handwritten signature in black ink, appearing to read 'Grecia Orozco', with a long horizontal stroke extending to the right.

Grecia Orozco, Staff Attorney
Center for Race, Poverty, & the Environment



Jennifer Ganata, Senior Staff Attorney
Communities for a Better Environment



Agustin Cabrera, Policy Director
Strategic Concepts in Organizing and Policy Education (SCOPE)



Ashley Werner, Directing Attorney
Leadership Counsel for Justice and Accountability



Jazmine Johnson, Land Use and Health Program Manager
Physicians for Social Responsibility-Los Angeles (PSR-LA)



Ameer Raval, Policy & Research Director
Asian Pacific Environmental Network (APEN)

CC:

Lauren Sanchez

Relevant Policy Committees