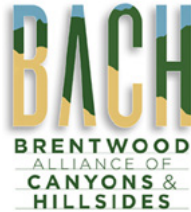
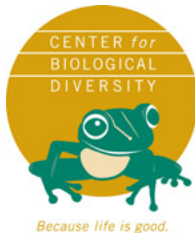


COMMUNITIES  
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Via Electronic Mail only

August 30, 2023

The Honorable Toni Atkins,  
President Pro Tempore of the California State Senate  
1021 O Street, Ste. 8518  
Sacramento, CA 95814

The Honorable Anthony Portantino,  
Chair, Senate Appropriations Committee  
Members of the Senate Appropriations Committee  
1021 O Street, Ste. 7603  
Sacramento, CA 95814

Re: AB 1633 (Ting) – OPPOSE

Dear Senator Atkins, Senator Portantino, and Members of the Senate Appropriations Committee:

The undersigned organizations write to respectfully oppose Assembly Bill 1633. Our groups are a diverse coalition of nonprofit public interest organizations, from longstanding conservation groups to environmental justice organizations who stand on the frontlines of the fight for a healthy environment for all. We care deeply about ensuring that the residents we work with and represent have access to safe homes and neighborhoods, as well as a healthy environment to live in, and agency over how their community is shaped.

This bill, as currently drafted, would significantly weaken the California Environmental Quality Act's protection of our communities and the environment. Our letter focuses on four dangerous features of the bill.

***First, by allowing developers to sue before the administrative process is concluded, the bill will unleash a flood of litigation against public agencies.*** AB 1633 allows applicants who are dissatisfied with an agency's decision regarding the environmental review for a qualifying housing project to sue the lead agency before the project is approved or denied. The bill thus totally upends the existing rules for CEQA litigation, which prohibit lawsuits until the project is approved. As a result, courts will be adjudicating CEQA cases in the dark, without a complete administrative record for the project. Equally troubling, the bill will likely result in a flood of developer-initiated lawsuits against lead agencies, significantly increasing the burden on state courts. For this reason, on August 14, the state Department of Finance opposed the bill before your Committee.

***Second, the bill could cause lead agencies to decline to prepare necessary environmental documents.*** AB 1633 will enable developers to threaten public agencies with litigation if they plan to prepare certain environmental documents (e.g., EIRs) for qualifying housing projects. For example, a developer might insist that a lead agency approve an exemption for a project that should receive environmental review, or prepare a negative declaration for a project that has potentially significant impacts and thus requires an EIR. Facing litigation under AB 1633 and the

prospect of paying the developer's attorney's fees if they lose, lead agencies (particularly small and under-resourced cities and counties) could feel pressure to bow to such demands. As a result, CEQA's core purpose—that proposed projects' environmental impacts are disclosed and mitigated—will be compromised.

A recent project in San Francisco illustrates the problem. There, Chinatown-based community groups successfully argued that a CEQA document was required, rather than a CEQA exemption, for a residential project proposed to be developed on a site with highly toxic chemicals including hexavalent chromium<sup>1</sup>. CEQA review will not impede this project, but ensure that contamination is properly remediated at the site. If adopted, AB 1633 would have allowed the developers of this dangerous project to sue the City for requiring the EIR in the midst of the administrative proceedings, before the analysis is complete.

***Third, the bill could allow developers to avoid public scrutiny of their projects.*** AB 1633 would allow a developer to sue the lead agency for refusing to issue an exemption for its project, as long as the developer gives the agency 90 days to respond to its demands. The developer's lawsuit would then go forward on an administrative record that could include no input from the public. This is unacceptable. The public should have an opportunity to weigh in on the propriety of an exemption before any court makes a determination on this issue. After all, it is often members of the public who bring important public health and environmental issues to the attention of lead agencies. Cutting the public out of the process will be particularly devastating for environmental justice organizations, which depend on the CEQA process to keep low income communities and communities of color healthy and safe. SB 1633 thus undercuts one of CEQA's core purposes—to encourage public participation in the land use process.

***Fourth, the bill will discourage meritorious lawsuits under CEQA to enforce environmental justice.*** By limiting CEQA petitioners' ability to recover attorneys' fees when they prevail, AB 1633 discourages meritorious lawsuits by environmental justice organizations. These organizations bring CEQA actions to ensure that harm to a communities' health, safety and environment is fully disclosed and reduced wherever possible; many low-income communities have experienced substantial and disproportionate harm in the past. Because most environmental justice groups depend on attorneys taking CEQA cases on a contingency basis, AB 1633 will effectively prevent these organizations from enforcing CEQA in their communities.

***Finally, we note that no justification exists for this extreme bill.*** The author cites one isolated housing project—the 469 Stevenson project in San Francisco—as the reason for AB 1633. But the City of San Francisco's actions with respect to this project were entirely reasonable. As the record shows, 469 Stevenson was proposed in a low-income area, and the residents there asked the Board of Supervisors to revise the EIR to include an analysis of (1) the project's potential gentrification and displacement impacts, and (2) the impacts of the project's construction on nearby historic buildings. When the Board agreed to prepare the revised EIR, they were criticized by special interest groups, but the revised EIR was helpful. While it found that the gentrification/displacement impacts were not significant, vibration from the project's construction could harm nearby historic buildings. See [revised EIR](#), p. 3-114. It then identified several mea-

1 1151 Washington Street, San Francisco.



asures to mitigate those construction impacts. See [revised EIR](#), pp. 3-118-121. With the revised EIR completed, the project was eventually approved *with the new mitigation*. See [Mitigation Monitoring and Reporting Program](#), pp. 1-5. CEQA worked exactly as it should: a potentially harmful project was improved as a result of necessary environmental review.

For these reasons, we respectfully oppose AB 1633. If you have any questions regarding our concerns or wish to discuss other ways in which the goals of AB 1633 could be met, please do not hesitate to contact: Matthew Baker of Planning and Conservation League at [matthew@pcl.org](mailto:matthew@pcl.org), Jennifer Ganata of Communities for a Better Environment at [jganata@cbecal.org](mailto:jganata@cbecal.org), or J.P. Rose of Center for Biological Diversity at [jrose@biologicaldiversity.org](mailto:jrose@biologicaldiversity.org).

Sincerely,

**Alameda Creek Alliance**

Jeff Miller  
Director

**Americans for Democratic Action/Southern California**

Clifford Tasner  
President

**Ballona Wetlands Institute**

Robert J. van de Hoek  
President, Environmental Scientist

**Banning Ranch Conservancy**

Terry M. Welsh  
President

**Beverly-Vermont Community Land Trust**

Kasey Ventura  
Director of Organizing & Advocacy

**Brentwood Alliance of Canyons & Hillside**

Wendy-Sue Rosen  
Co-founder

**California Coastal Protection Network**

Susan Jordan  
Executive Director

**California Native Plant Society**

Nick Jensen  
Conservation Program Director

**California Wildlife Foundation**

Janet Cobb

Executive Officer

**Californians for Alternatives to Toxics**

Patty Clary  
Executive Director

**Center for Biological Diversity**

J.P. Rose  
Policy Director, Urban Wildlands Program

**Center for Food Safety**

Rebecca Spector  
West Coast Director

**Center on Race, Poverty & the Environment**

Grecia Orozco  
Staff Attorney

**Central Coast Health Coalition**

Nicole Dorf  
Leadership Team

**Central Sierra Environmental Resource Center**

John Buckley  
Executive Director

**Citizens Committee to Complete the Refuge**

Carin High  
Co-Chair

**Citizens for Affordable Living Morro Bay**

Dan Sedley  
Chairman

**Citizens for Estero Bay Preservation**

Barry Braninn  
Chairperson

**Citizens for Los Angeles Wildlife (CLAW)**

Tony Tucci  
Chair & Co-founder

**Cleveland National Forest Foundation**

Duncan McFetridge  
Director

**Climate First: Replacing Oil & Gas (CFROG)**

Haley Ehlers  
Director

**Coalition for a Better Sonoma County**

Michael Allen  
Co-chair

**Coalition for Valley Neighborhoods**

Gina K. Thornburg  
Executive Director

**Coast Action Group**

Alan Levine  
Director

**Coastal Lands Action Network**

Dee Anna Fromm  
Managing Director

**Communities for a Better Environment**

Jennifer Ganata  
Senior Attorney

**Defend Ballona Wetlands**

Mary Beth Trautwein  
Community Advocate

**Do Good International**

Christina Ku  
President

**Embarcadero Coalition**

Janet Rogers and Susan Simon  
Co-chairs

**Endangered Habitats League**

Dan Silver  
Chief Executive Officer

**Environmental Action Committee of West Marin**

Ashley Eagle-Gibbs, Esq.  
Interim Executive Director

**Esperanza Community Housing Corporation**

Rabeya Sen  
Director of Policy

**Forest Unlimited**

Rick Coates  
Executive Director

**Friends of Harbors, Beaches and Parks**

Michael Wellborn  
President

**Friends of Loma Alta Creek**

Nadine Scott  
Co-founder

**Friends of Rose Canyon**

Deborah Knight  
Executive Director

**Friends of the Eel River**

Alicia Haumann  
Executive Director

**Green Foothills**

Lennie Roberts  
Legislative Advocate

**Hills For Everyone**

Claire Schlotterbeck  
Executive Director

**L.A. Coastal Protection Coalition**

Susanne Cumming  
Coordinator

**LandWatch San Luis Obispo County**

Cynthia Hawley  
President

**Leadership Counsel for Justice and Accountability**

Ashley Werner  
Directing Attorney

**League to Save Lake Tahoe**

Gavin Feiger  
Policy Director

**Los Angeles Audubon Society**

Travis Longcore  
President

**Los Cerritos Wetlands Land Trust**

Elizabeth Lambe  
Executive Director

**Morongo Basin Conservation Association**

Steve Bardwell  
President

**Neighborhood Coalition Sonoma County**

Brantly Richardson  
Communication Director

**NO 710 Action Committee, Pasadena**

Claire W. Bogaard  
Chair

**North County Watch**

Susan Harvey  
President

**Orange Park Association**

Sharry Panttaja  
President

**Pacific Energy Policy Center**

Don Wood  
Senior Policy Advisor

**Petaluma River Council**

David Keller  
President

**Physicians for Social Responsibility - Los Angeles**

Jazmine Johnson  
Director of Health and Environment Programs

**Planning and Conservation League**

Matthew Baker  
Policy Director

**Preserve Calavera**

Diane Nygaard  
President

**Preserve Rural Sonoma County**

Padi Selwyn  
Co-chair

**Preserve Wild Santee**

Van Collinsworth  
Director

**Protect Ballona Wetlands**

Marcia Hanscom  
Board Member

**Protect Monterey County**

Laura Solorio  
President

**Protect San Benito County**

Larry Rebecchi  
President

**Public Interest Coalition**

Marilyn Jasper  
Chair

**Residents for an Equitable San Pedro Community Today**

Danial Nord  
Community Advocate

**Resource Renewal Institute**

Deborah Moskowitz  
President

**San Diego Audubon Society**

James Peugh  
Conservation Chair

**Santa Clara Valley Audubon Society**

Shani Kleinhaus  
Environmental Advocate

**Santa Clarita Organization for Planning  
and the Environment (SCOPE)**

Lynne Plambeck  
President

**Save Napa Valley Foundation**

Mike Hackett  
President

**Save Our Heritage Organisation**

Bruce Coons  
Executive Director

**Save the American River Association**

Stephen Green  
President

**Save the Park**

Betty Winholtz  
President

**Sierra Nevada Alliance**

Jenny Hatch  
Executive Director

**Sierra Watch**

Tom Mooers  
Executive Director

**Solano County Orderly Growth Committee**

Bob Berman  
President

**State Alliance for Firesafe Road Regulations**

Steve Drimmer  
Co-founder

**Surfrider Foundation**

Angela T. Howe, Esq.  
Senior Legal Director

**The Public Trust Alliance,  
A Project of The Resource Renewal Institute**

Michael Warburton  
Director

**The River Project**

Melanie Winter  
Founder & Director

**The Urban Wildlands Group**

Catherine Rich  
Executive Officer

**United Neighborhoods for Los Angeles**

Casey Maddren  
President

**Western Sonoma County Rural Alliance**

Dee Swanhuysen  
Board Member

**Wine & Water Watch**

Janus Holt Matthes  
Board Chair