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IN THE NAME OF THE ENVIRONMENT

How Litigation Abuse Under the California Environmental Quality Act Undermines California's Environmental, Social Equity and Economic Priorities – and Proposed Reforms to Protect the Environment from CEQA Litigation Abuse

Jennifer Hernandez, David Friedman and Stephanie DeHerrera | Holland & Knight



Figure 1

CEQA Lawsuits Targeting Taxpayer-Funded and Privately-Funded Projects

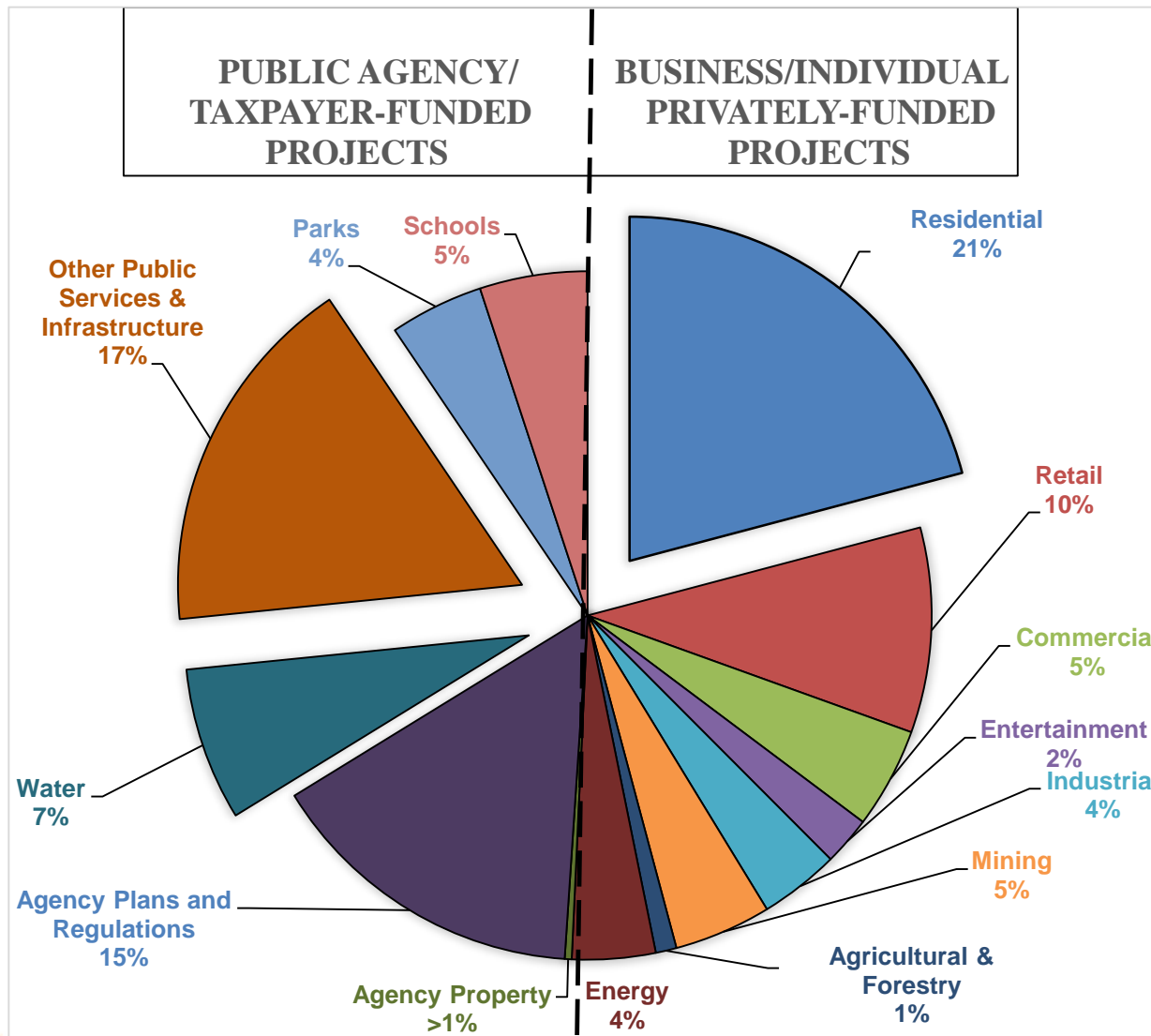


Figure 2

CEQA Lawsuits Targeting Greenfield Versus Infill Projects

(Select Project Types Shown – See Tables 2B through 2D for all Project Types)

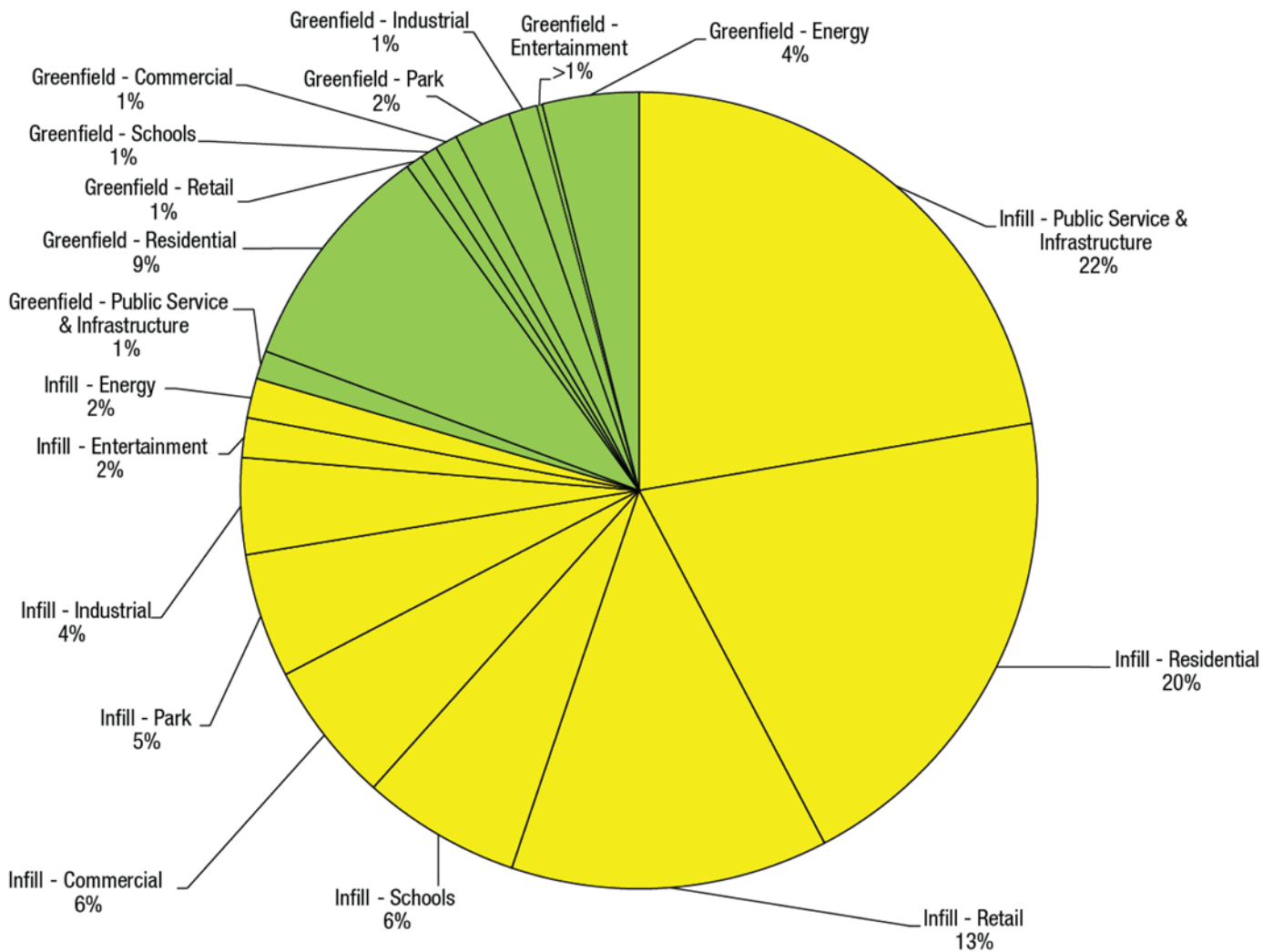


Figure 3 CEQA Lawsuits Targeting Infill Projects

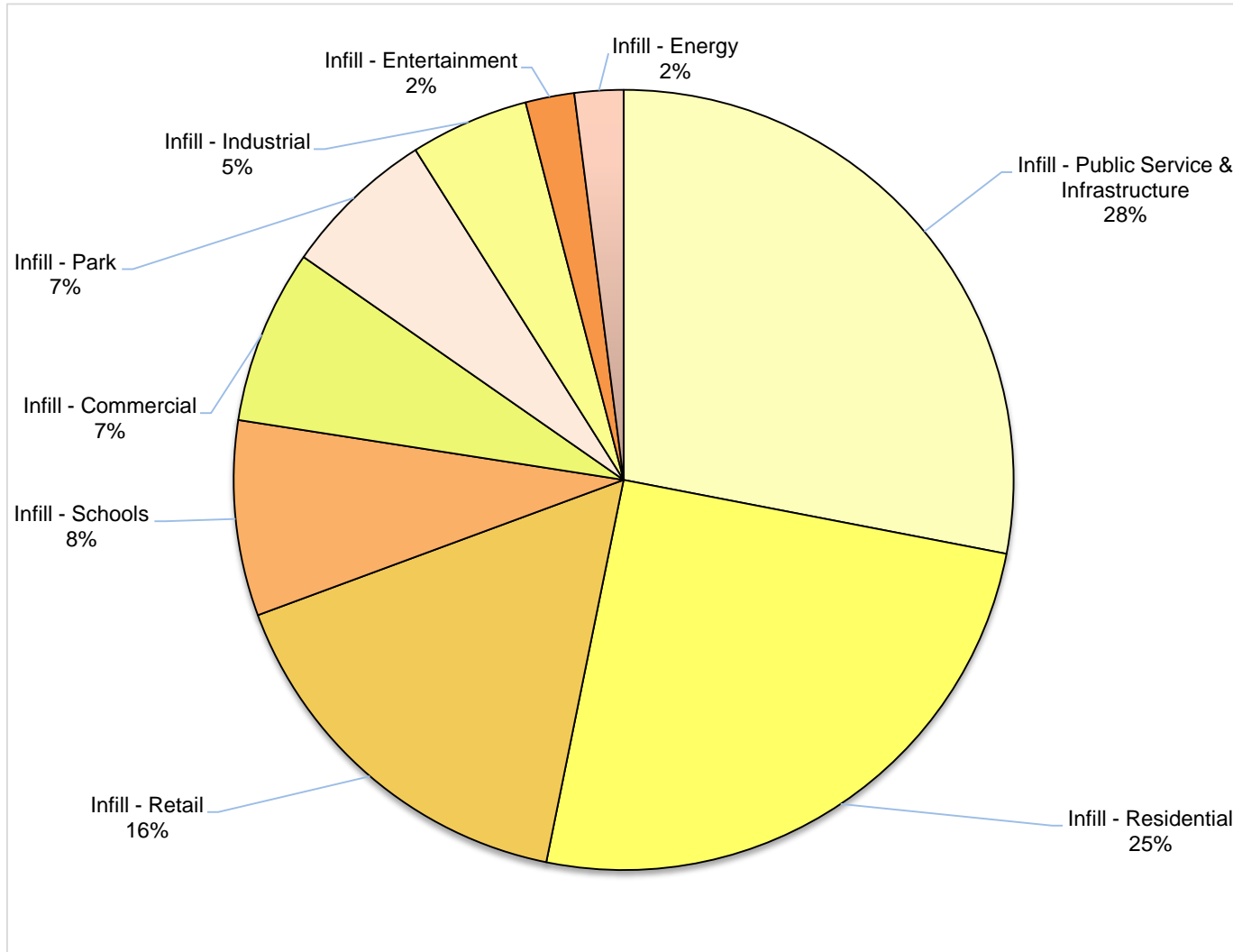


Figure 4 CEQA Lawsuits Targeting Infill Housing

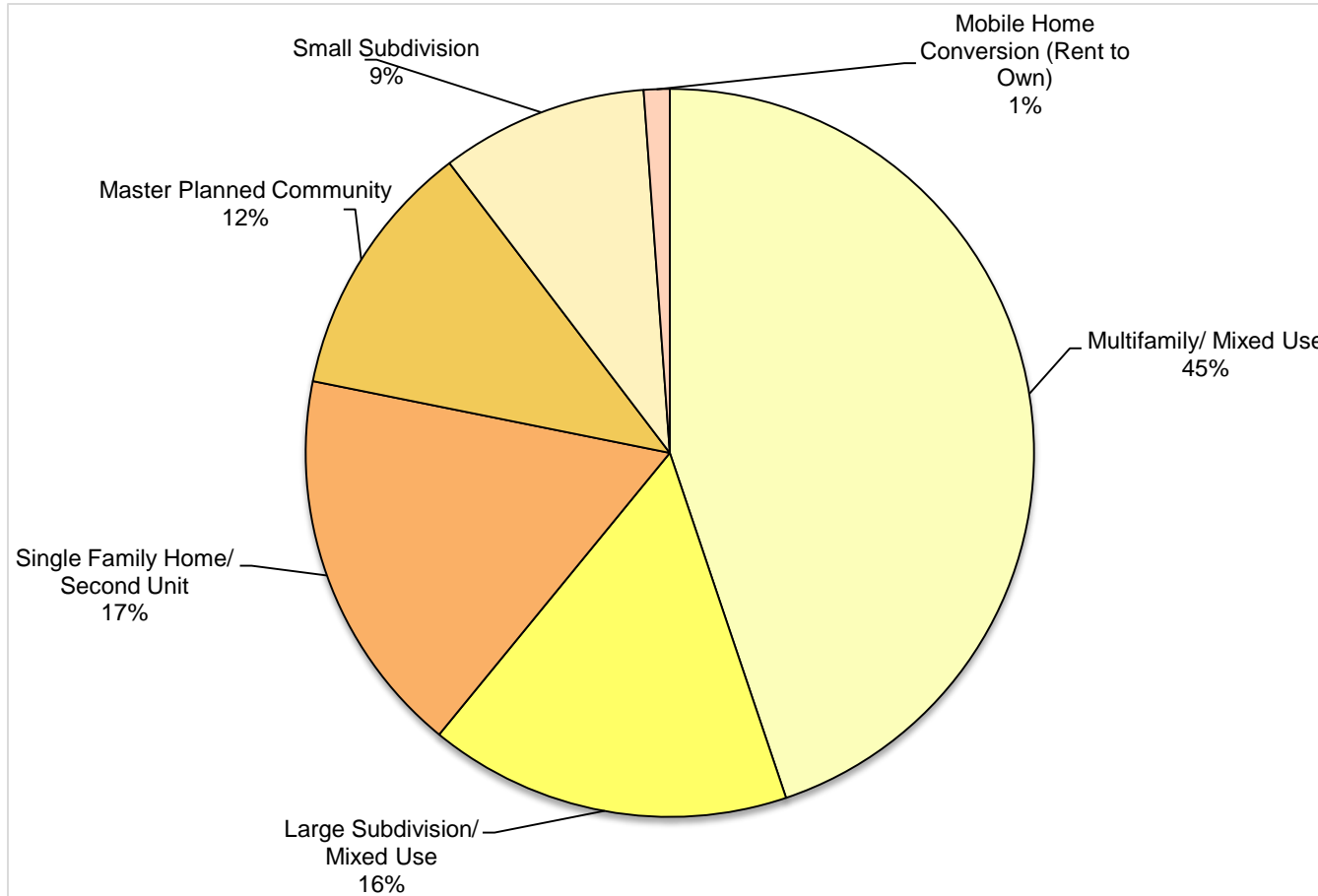
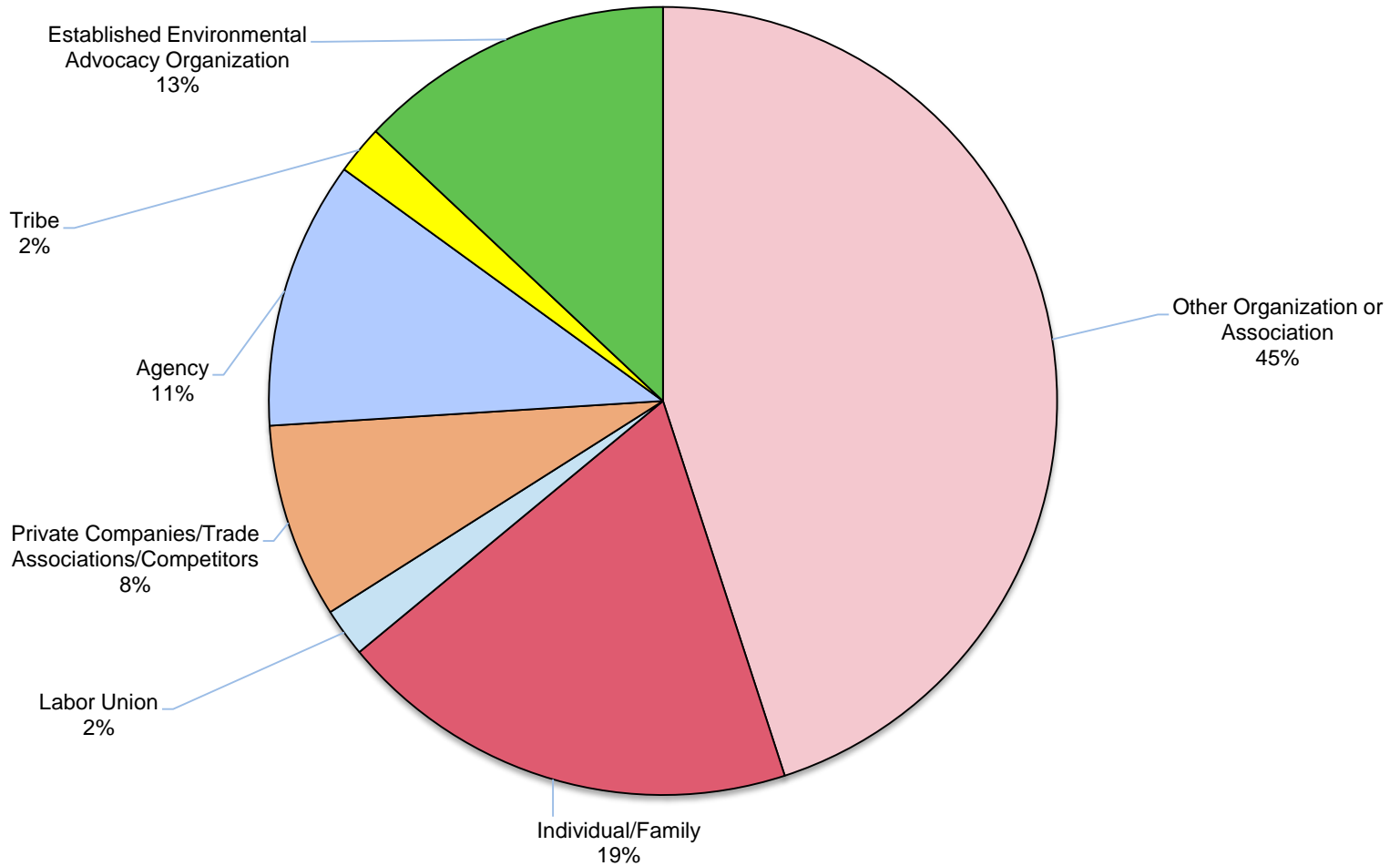


Figure 6: Types of Petitioners Filing CEQA Lawsuits



Bar Graph 2: Percent Decline in Rate of Private Construction Union Membership 1983-2012

Decline 1983-2014

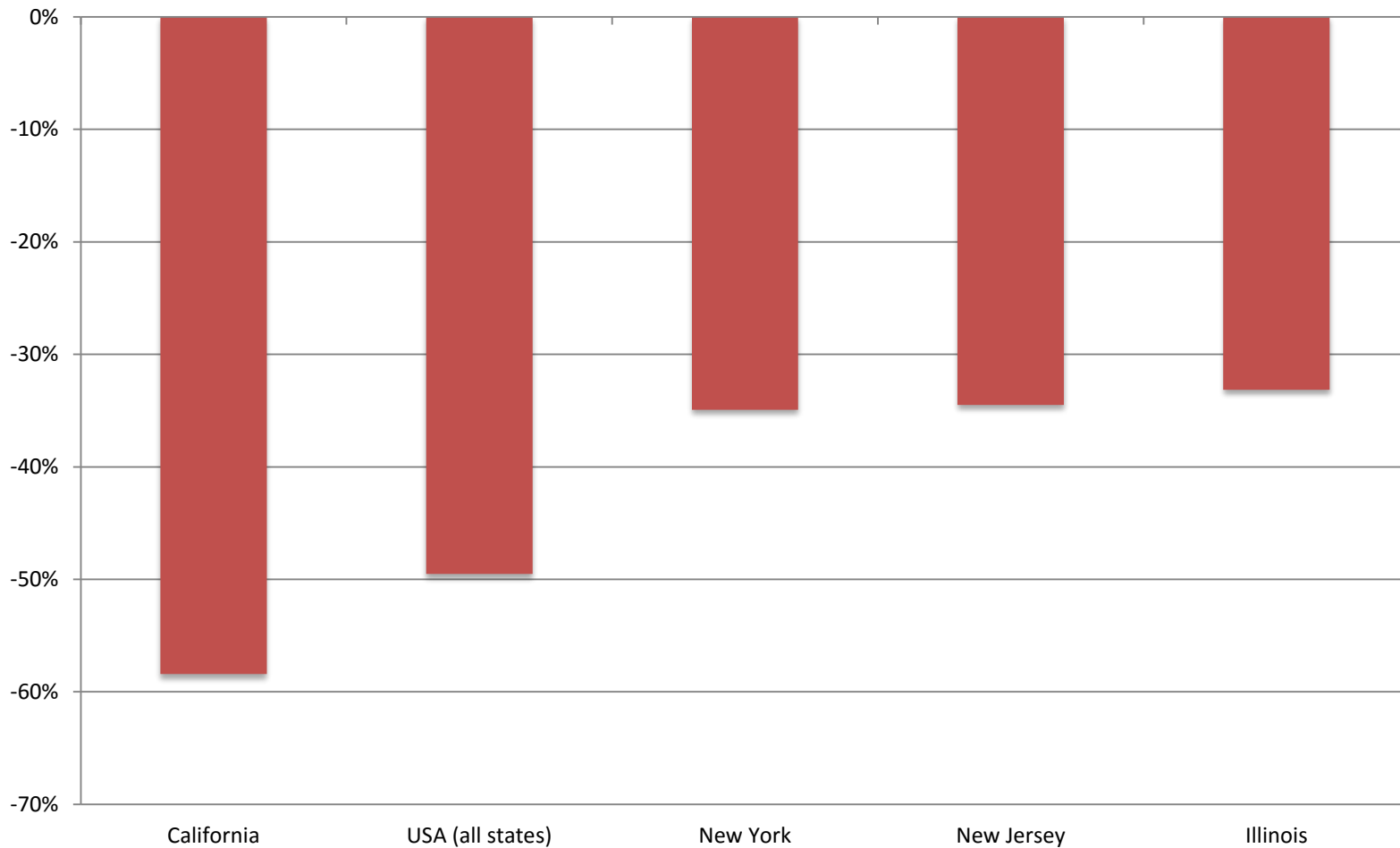
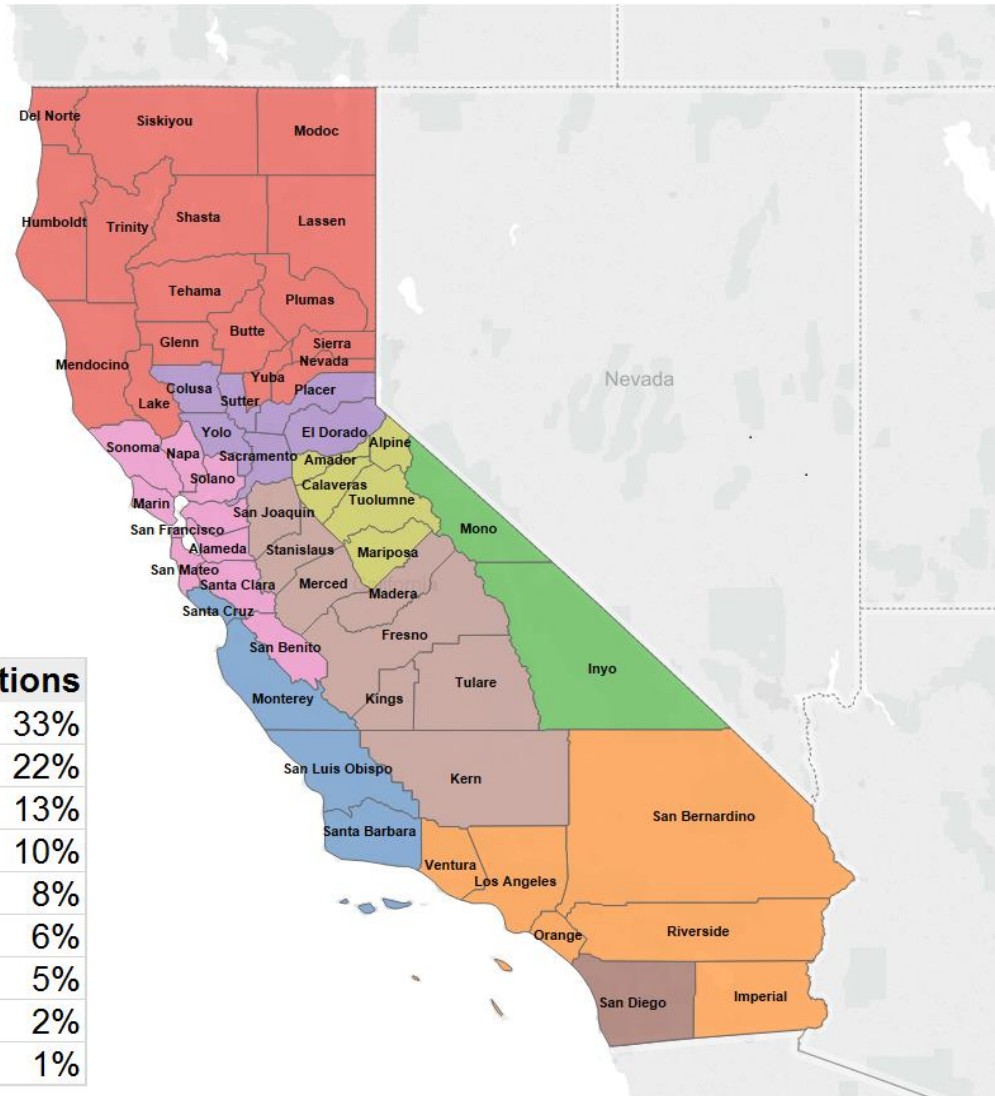


Figure 7: Distribution of CEQA Lawsuits in California Regions



Map Region	Petitions
Los Angeles & Inland Empire	33%
San Francisco Bay Area	22%
San Joaquin Valley	13%
San Diego	10%
Sacramento Area	8%
Central Coast	6%
Northern California	5%
Sierra Foothills	2%
Mojave Desert	1%

Figure 8: CEQA Compliance Tracks Targeted by CEQA Lawsuits

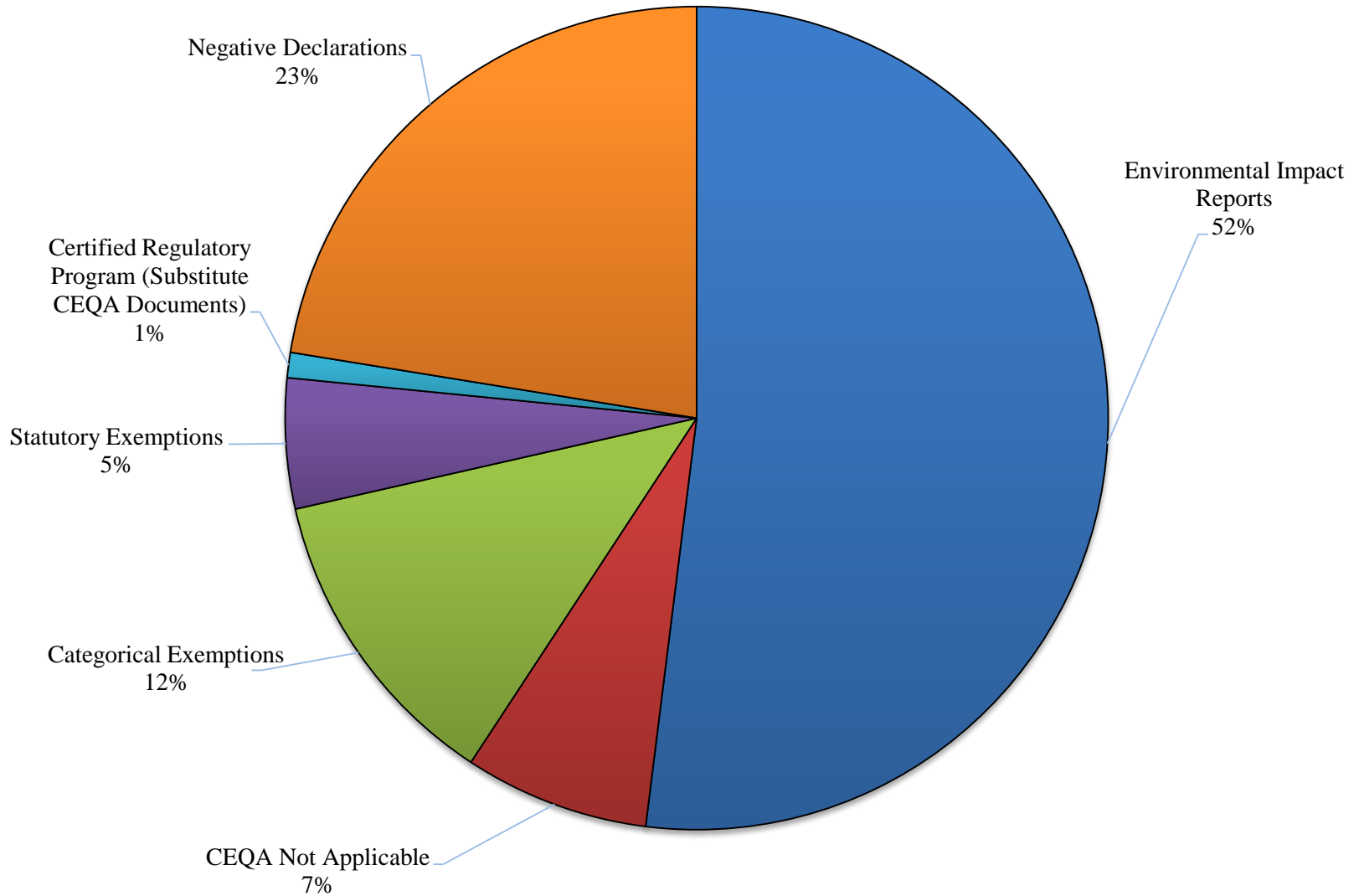


Figure 9: CEQA Petitions Targeting Taxpayer/Ratepayer Projects

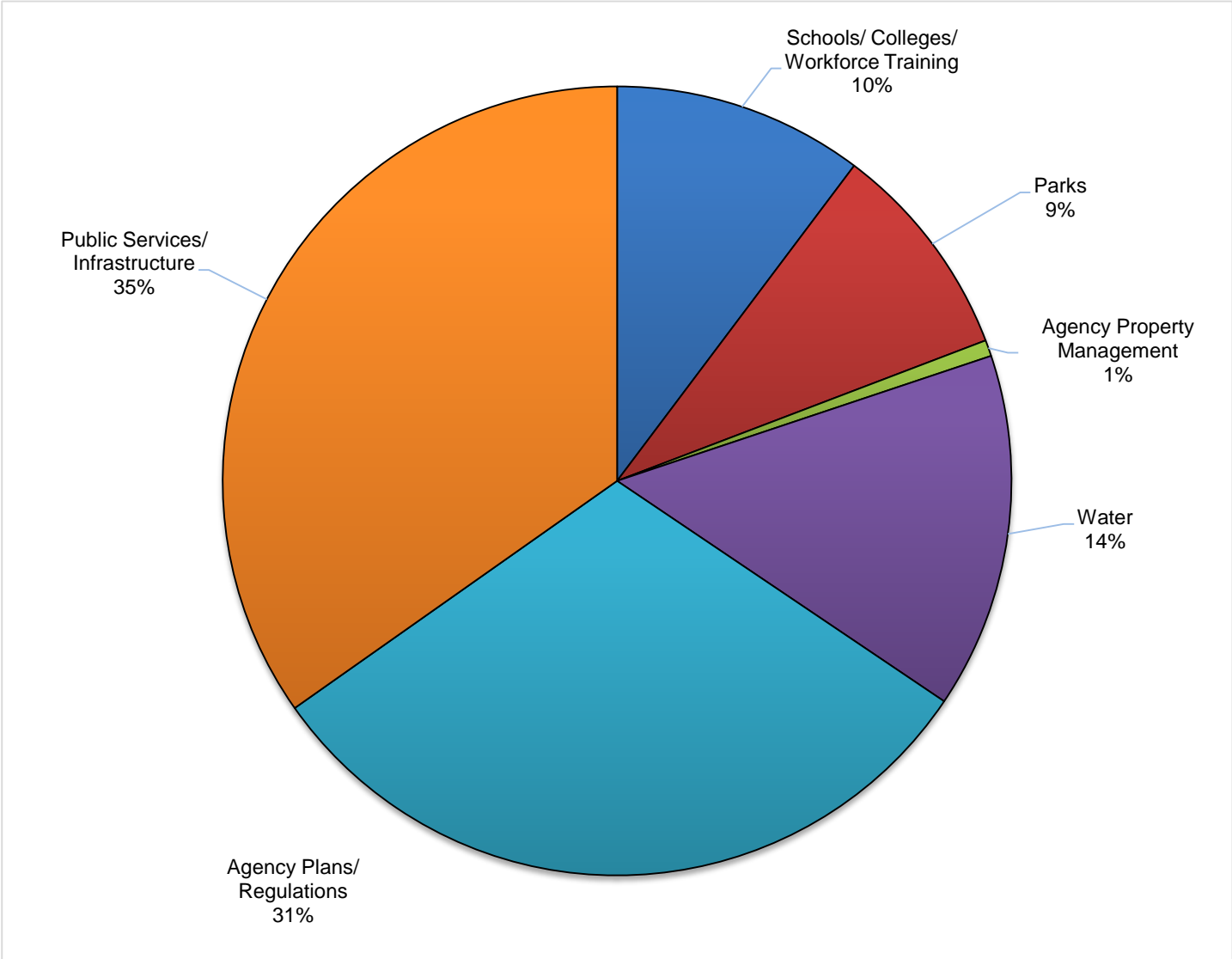
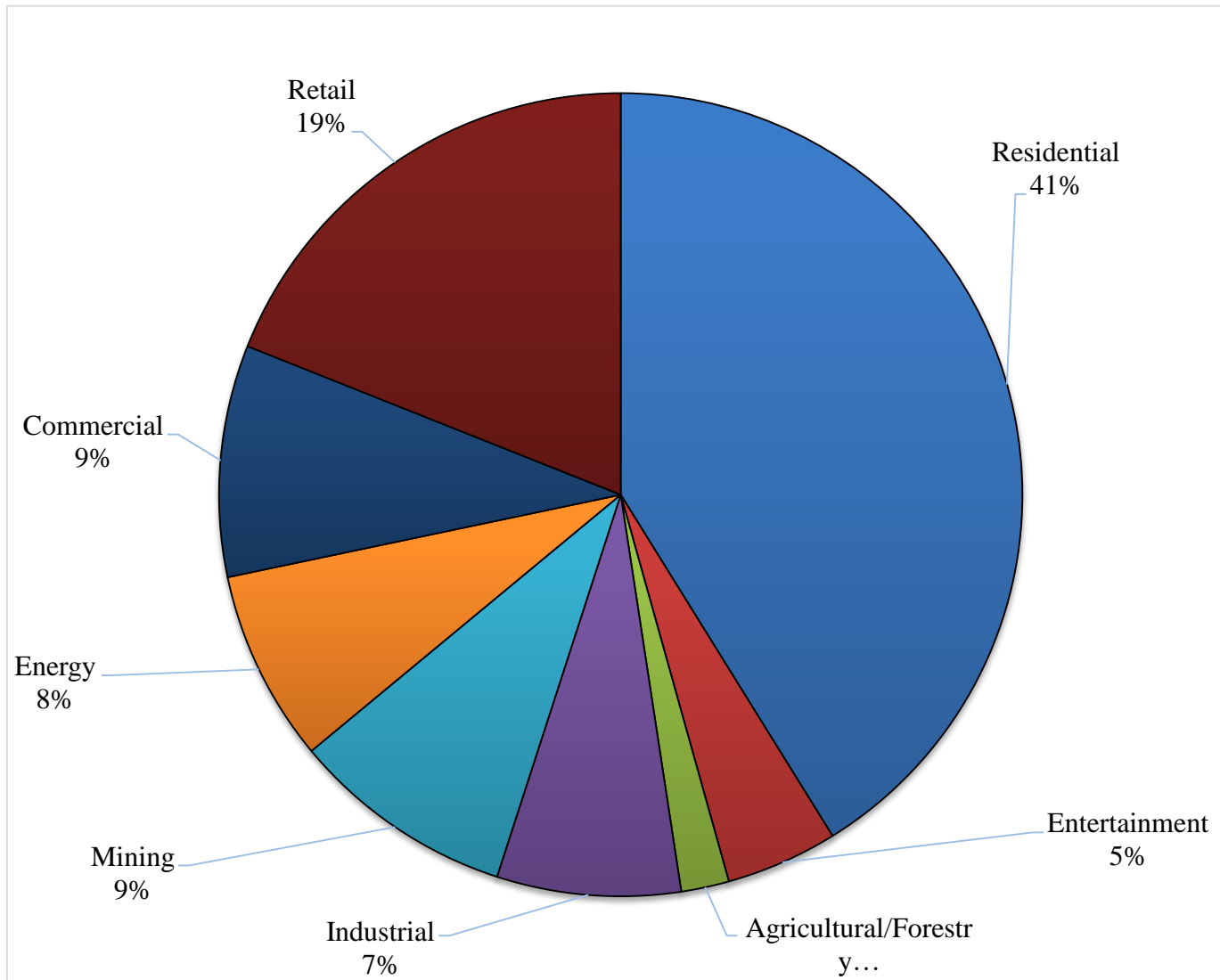


Figure 10: CEQA Petitions Targeting Private Sector Projects



CEQA was not etched onto stone tablets or penned with a feather quill centuries ago. Over the past four decades the courts have issued hundreds of judicial interpretations of CEQA that have morphed this great environmental law into a “blob” of contradictions and uncertainty – often misshapen, misused, mismanaged and, as shown by this study, used to thwart important environmental policies like climate change.

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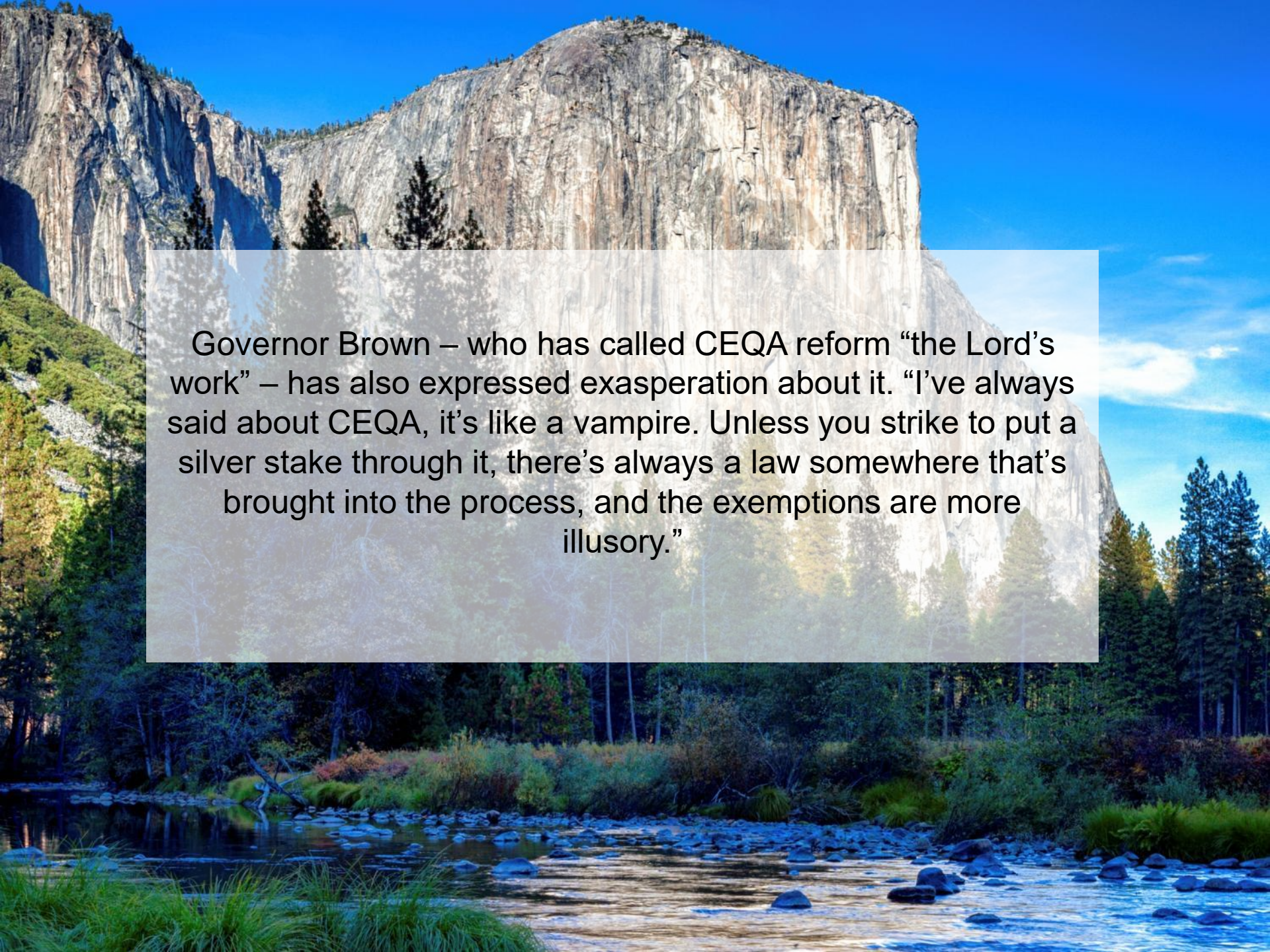
...government focused on the 100,000
...ish prisoners released every year."
...advisor added: "It gives totally the

...package can include help
...school and university



Editorialists United:

“As an environmentalist, I am ashamed that environmental regulation is preventing low-income housing from being built, is significantly increasing the cost of building in California, is allowing groups to blackmail developers into a variety of concessions and is wasting government resources to negotiate an out-of-control process.”



Governor Brown – who has called CEQA reform “the Lord’s work” – has also expressed exasperation about it. “I’ve always said about CEQA, it’s like a vampire. Unless you strike to put a silver stake through it, there’s always a law somewhere that’s brought into the process, and the exemptions are more illusory.”

A hand is holding a white rectangular card against a blue background. The card is positioned on the left side of the frame, and the hand is visible on the left edge. The card is blank and appears to be a placeholder for text or an image.

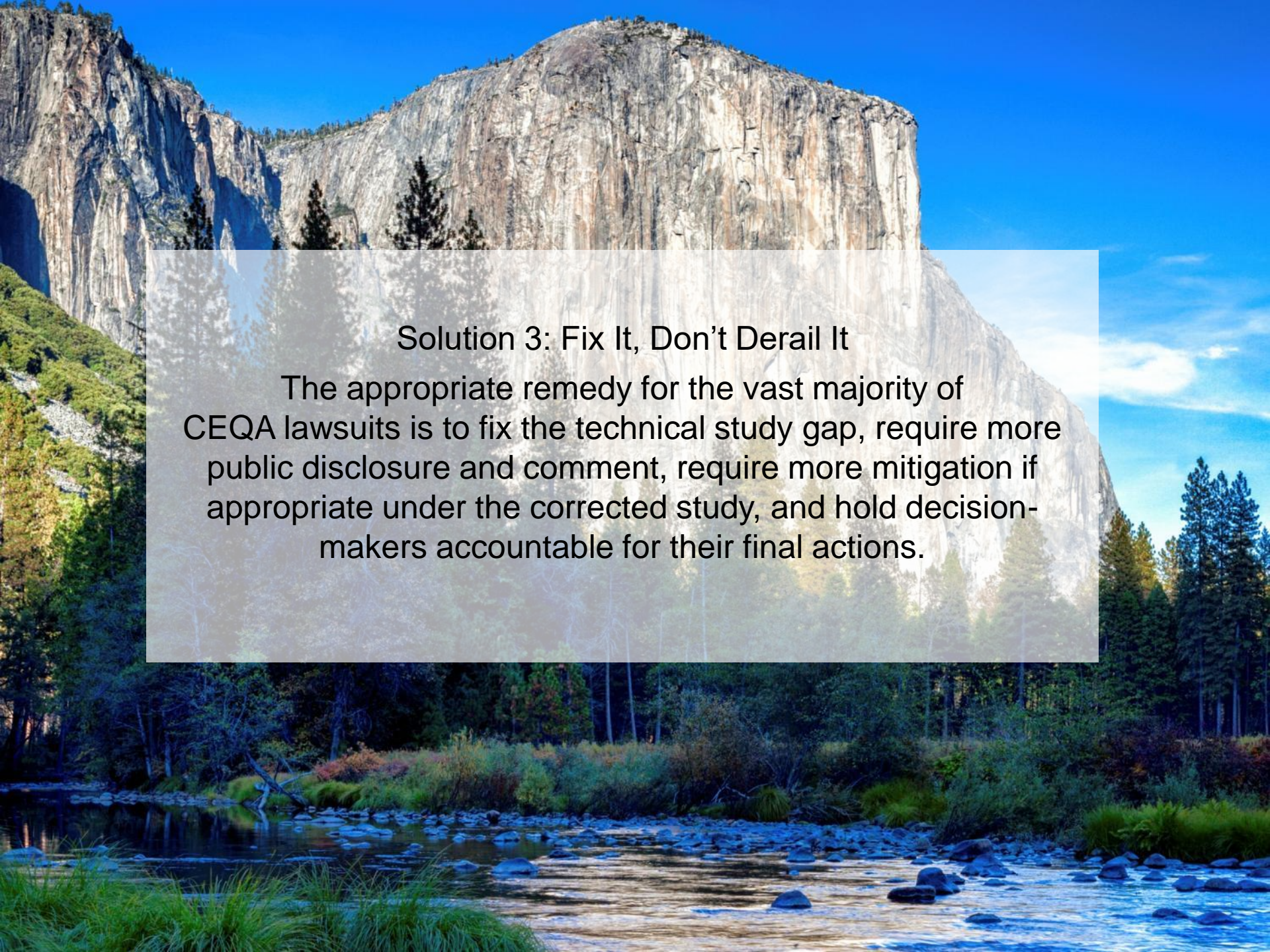
Solution 1: Litigation Transparency

Transparency to reveal the non-environmental interests of CEQA litigants is a powerful weapon against abuse, and it's a fair and long-overdue CEQA litigation reform.



Solution 2: End Duplicative Lawsuits

Duplicative CEQA lawsuits create a strong deterrent against comprehensive community planning such as General and Community Plans, and can result in a “project-by-project” review and approval pattern that is driven solely by opportunistic private sector development applications.



Solution 3: Fix It, Don't Derail It

The appropriate remedy for the vast majority of CEQA lawsuits is to fix the technical study gap, require more public disclosure and comment, require more mitigation if appropriate under the corrected study, and hold decision-makers accountable for their final actions.

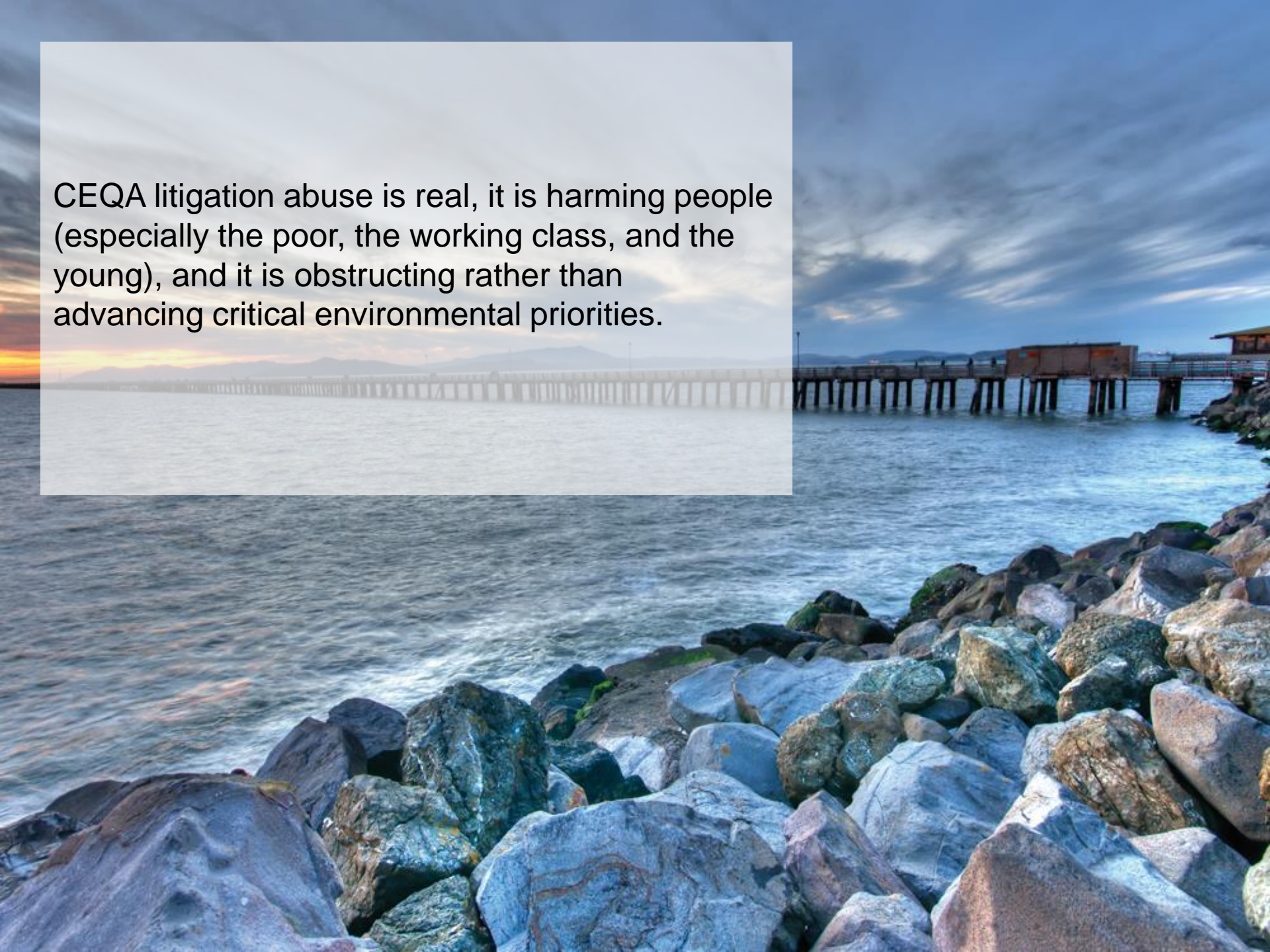


Vacating project approvals after six or more years of public and judicial review is a nuclear threat that stops environmentally beneficial and widely-supported projects.

CEQA's litigation abuse status quo defenders have been politically agile in periodically enacting illusory CEQA "reforms" that have no effect – and even expand – abuse of CEQA for non-environmental reasons.



CEQA litigation abuse is real, it is harming people (especially the poor, the working class, and the young), and it is obstructing rather than advancing critical environmental priorities.



CEQA Reform Prospects and Priorities – Sacramento 2016

Election Year

Transportation Funding

- Exemption for Repairs and In-ROW
- Remedy Reform for Transportation Projects included in Approved SB 375 Plans

Water Infrastructure

Recycling service extensions

Floodwater/stormwater storage/recharge

Defeat CEQA Guidelines Amendment Proposals That Expand CEQA and Increase CEQA Litigation Risks for Infill Projects

New “Jobs-Housing Fit” Impact

New Vehicle Miles Travelled Impact (LOS Not Eliminated)

CEQA Practice Improvements by Local Government to Reduce CEQA Litigation Risks

- » Practice Improvements Not Requiring Code/Guideline Amendments
 - Expand use of Addenda (and stop using Negative Declarations for contested Projects) – add Public Review Process
 - Standardize conditions of approval/mitigation measures/development standards – and staff report/memoranda explaining why these avoid or minimize impacts
 - Avoid deferral of mitigation decisions to later plans/discretionary decisions
 - Create more flexible CEQA project “envelopes” and document absence of significant new or worse impacts with subsequent project approvals
 - NEVER use “Program” in front of “EIR”
- » General Plan/Zoning Code/Zoning Practice Modifications
 - Adopt realistic standards for construction noise, traffic congestion, aesthetic changes, etc. (also serve as CEQA significance thresholds)
 - Amend zoning to increase MINISTERIAL permitting for development projects
 - Increase use of smaller-scale Specific Plans and Community Plans
 - Include environmental BENEFITS in CEQA documents and findings
- » CEQA Guidelines/CEQA Handbook

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