

It seems likely at this point that the Cal Chamber initiative to significantly rewrite CEQA will pass this fall. A recent PPIC poll found over [70% support for the initiative](#). As [I've noted earlier](#), a real concern with any change to CEQA is that key parts of California's system of environmental protections depend on CEQA. That's why claims that repealing CEQA does not affect underlying environmental protections in California are naïve or disingenuous. [Many of the state's environmental laws were written](#) depending on CEQA as a mechanism of enforcement or implementation. So it would behoove the state legislature to rework those provisions so that they no longer depend on CEQA, assuming the initiative passes this fall. Below I've identified what I see as the most important provisions, but I welcome suggestions by others as to key environmental protections that should be enacted separate from CEQA, so that they are not affected by the initiative's passage.

Species and habitat: [As I've noted elsewhere](#), California's Endangered Species Act (CESA) does not explicitly protect habitat for state-listed species. The state has generally relied on CEQA for those protections. Moreover, CESA only covers state-listed species, but we may care about a wider range of species and habitats. The current CEQA thresholds of significance are broader than CESA, and apply when

The project has the potential to . . . substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species.

14 Cal. Code Reg. 15065

The legislature could enact those thresholds as standalone wildlife and biodiversity protections, separate from CEQA, that are binding on all state and local agencies, including when those agencies approve permits for private activities. The revisions could make compliance with pre-initiative CEQA review as presumptively sufficient to meet those standards. Otherwise, agencies could conduct their own independent review, subject to traditional judicial review standards. One possible tweak would be to allow state and local agencies to consult with the state Department of Fish and Wildlife (DFW) in assessing their compliance with those standards. If DFW concludes the project meets those standards, or provides recommendations to alter

projects to meet those standards, and agencies adopt those recommendations as binding changes to the project, then courts could review agency compliance with significantly greater deference.

Air pollution: The primary mechanisms by which California considers neighborhood or community-level cumulative impacts from air pollutant emissions is through CEQA review. Currently, standard practice is that regional air quality management districts provide cumulative significance thresholds for air quality that generally are used by local and state agencies under CEQA (though agencies can use their own standards if they wish).

The legislature could mandate that air districts set binding standards for cumulative air pollution that state and local agencies must comply with, including when those agencies approve permits for private activities.

Climate/VMT: The state Air Resources Board [scoping plan](#) relies significantly on [land-use changes to reduce vehicle miles travelled](#) (VMT) and therefore greenhouse gas emissions from auto-dependent development projects. But the main mechanism for implementing those changes currently is through CEQA review. That would likely disappear for residential and mixed-use projects under the Cal Chamber initiative.

The legislature could empower CARB (or another agency, such as the Office of Land Use and Climate Innovation) to set VMT standards that would apply for all state and local agency actions that trigger or enable physical development projects – including approvals of land-use planning documents and housing elements.

Wetlands: Finally, the state legislature [still has not codified](#) changes in state law that would respond to the Supreme Court's significant retrenchment of federal wetland protections under Sackett. (The state water board has [filled the gap for deposit of fill materials in wetlands no longer covered under federal law](#), but discharges from point sources into these wetlands remain to be addressed.) While CEQA might provide protections in the absence of changes to state law, the initiative would eliminate those protections for many projects. Codifying pre-Sackett federal standards for wetlands protection in state law would address this gap.

Setting these objective legal standards for these environmental resources separate from the CEQA guidelines would likely also make them enforceable under the

revised CEQA process under the initiative.