



LEAGUE OF  
CALIFORNIA  
CITIES



May 4, 2022

The Honorable Henry Stern  
Member, California State Senate  
1021 O Street, Room 7710  
Sacramento, CA 95814

**RE: Senate Bill 1404 – OPPOSE  
As Amended April 27, 2022**

Dear Senator Stern:

On behalf of the Rural County Representatives of California (RCRC), the California State Association of Counties (CSAC), the League of California Cities (CalCities), the Association of California Water Agencies (ACWA), and the California Special Districts Association (CSDA), we regrettably oppose your Senate Bill 1404, relating to the California Environmental Quality Act (CEQA).

Senate Bill 1404 establishes a statewide threshold of significance for the removal of oak trees under CEQA. The bill also eliminates an important safe harbor under which a project's implementation of locally-adopted mitigation measures is deemed to satisfy CEQA's requirements related to the project's effects on oaks and oak woodlands. Unfortunately, the April 27 amendments create additional ambiguity about the scope of the statute, further increase litigation risk, and fail to effectively narrow the bill's reach.

***SB 1404's prescriptive mandate and increased litigation exposure is unwarranted given the extent and diversity of California's oak woodlands.*** California is home to expansive oak woodlands that support a rich diversity of plant and animal species; however, they are far from endangered. California has over 800 million oak trees larger than 5" in diameter at breast height. These are spread across over 8.5 million acres of oak woodlands and 4.5 million acres of oak forests.<sup>1</sup>

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<sup>1</sup> Tom Garman and Jeffrety Firman, *Oaks 2040: The Status and Future of Oaks in California*.

Distribution of oak woodlands and forests is highly variable. Compared to Southern California's 500,000 acres of oak woodlands and forests, the North Coast has 2.5 million acres, the northern interior region (Lassen, Modoc, Shasta, Siskiyou, and Trinity) has 2.1 million acres, the central coast has 1.9 million acres, the San Joaquin Valley has 2.8 million acres, and the Sacramento region has 2.1 million acres.

Development risk for oak woodlands varies across the state. Only 8% of oak woodlands have been developed in the North Coast, with just 4% at risk of near-term development. In the northern interior region, only 3% is at risk for urban development in the near term. While development pressure in Southern California may be heightened compared to other areas, that is no reason to establish a statewide threshold when oak woodlands are common and not at risk of development in many other areas.

***SB 1404 establishes an arbitrary statewide threshold of significance for conversion of oaks woodlands that ignores diverse local conditions.*** Under existing law, counties are required to determine whether a project will have a significant effect on the environment. Despite the fact that California has over 800 million oak trees, SB 1404 arbitrarily declares that removal of just three oak trees over 5" in diameter at breast height constitutes a significant effect on the environment under CEQA. The same threshold applies for projects involving 1/10 of an acre and for projects involving hundreds of acres. Given the substantial acreage of oak woodlands in many regions, local agencies are best suited to determine whether a particular project's removal of oak trees will constitute a significant effect on the environment. Unfortunately, SB 1404 ignores the fact that oak trees and woodlands are common in many areas of the state, usurps local control, and inhibits the ability for local agencies to balance the biological, sociological, and economic interests of private landowners, public agencies, and the environment.

***SB 1404 expands the universe of projects subject to CEQA.*** By establishing such an arbitrarily low threshold of significance without respect to local conditions, SB 1404 subjects many more projects to the CEQA process. Projects involving the removal of oak trees where local governments would have legitimately determined there was not a significant impact on the environment will now have to prepare either a Mitigated Negative Declaration or Environmental Impact Report. Existing CEQA exemptions and Negative Declarations will no longer be authorized for those projects, thereby adding costs and delays.

***SB 1404 significantly increases CEQA litigation risks for projects.*** Under existing law, if a county determines a project will convert oak woodlands and have a significant effect on the environment, it must require one or more mitigation measures to reduce those impacts. Once those measures are incorporated, the project is deemed compliant with CEQA with respect to oaks and oak woodlands. SB 1404 removes this safeguard and opens the door to CEQA litigation challenging local determinations about the project's impacts and adequacy of mitigation measures. This change opens the door

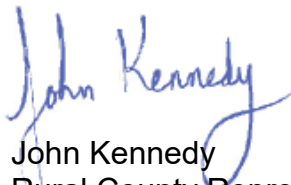
even wider for “Not In My Back Yard” (NIMBY) groups to oppose projects that impact as few as three oak trees. For projects that would have been subject to CEQA anyway, SB 1404 adds yet another avenue to delay or derail projects.

***SB 1404 will increase costs for and delay many important projects.*** Aside from being exploited to delay housing and economic development projects, SB 1404 will also impact many different types of public purpose projects. This bill could restrict the ability for local governments to quickly remove oak trees killed by sudden oak death and that pose a risk to life and property because of compromised structural integrity. SB 1404 is also likely to impact local forest fuel reduction projects, groundwater recharge and water reliability projects, and levee maintenance projects. Aside from merely triggering the CEQA process, SB 1404 opens the door for lengthy delays associated with NIMBY groups challenging those projects, and the adequacy of oak mitigation measures, in court.

***April 27 amendments fail to meaningfully narrow the bill, create additional ambiguity, and increase litigation risk.*** The April 27 amends attempt to narrow the scope of SB 1404’s reach to those areas “mapped by state or local agencies as critical to habitat linkage, natural resources protection, or otherwise related to biodiversity and conservation.” It is unclear which maps will be used; however, the phrase “otherwise related to biodiversity and conservation” is broad enough to encompass any and all lands within the boundaries of a state conservancy. For example, take the [vast Sierra Nevada Conservancy](#), which is statutorily charged “to protect, conserve, and restore the health and resilience of the watersheds and communities of the region.” This new language appears to ensure that SB 1404’s expansion of CEQA will impact projects in those 24 counties within its boundaries. The Coastal Conservancy is similarly massive, and this language could be read to apply SB 1404’s changes to all those lands [mapped under its jurisdiction](#). If SB 1404 applies to lands within the boundaries of a state conservancy, then there are few areas of the state (other than the central valley) where SB 1404 wouldn’t apply.

For the above reasons, we must regretfully oppose your SB 1404. Please contact John Kennedy (RCRC) at [jkennedy@rcrcnet.org](mailto:jkennedy@rcrcnet.org), Julia Bishop Hall (ACWA) at [JuliaH@acwa.com](mailto:JuliaH@acwa.com), Christopher Lee (CSAC) at [clee@coounties.org](mailto:clee@coounties.org), Derek Dolfie (CalCities) at [ddolfie@calcities.org](mailto:ddolfie@calcities.org), or Rosario Kapeller (CSDA) at [rosariok@cdda.net](mailto:rosariok@cdda.net).

Sincerely,



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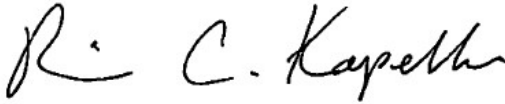
The Honorable Henry Stern  
Senate Bill 1404  
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Page 4



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