To: Assemblymembers Charles Calderon and Brian Nestande; Senators Lou Correa and Dave Cogdill
From: Marin Conservation League, San Rafael, California
Date: February 23, 2010
Re: CEQA Litigation Protection Pilot Program of 2010 (SB 1010, SB 42 8x, AB 1805, AB 37 8x)

Marin Conservation League (MCL), founded in 1934 and one of California's oldest environmental non-profits, strongly opposes the attempts by the Governor and the Legislature to exempt 25 selected projects over each of the next five years from judicial protections under the California Environmental Quality Act (CEQA).

California's most important environmental law, CEQA, has prevailed for 40 years as the primary safeguard of the health and well-being of communities and neighborhoods throughout the State. It has also served to protect the State's rich and diverse legacy of natural resources and unique ecosystems as has no other law. The day that CEQA was enacted also introduced a new era of disclosure for the benefit of the public, and accountability on the part of decision-makers at all state and local levels of governance. The public could be assured that governmental decisions on major and even minor projects were based on systematic analysis of potential impacts on the environment. If impacts were not adequately analyzed or disclosed, the public could submit comments, expect responses, and influence decision makers to reject environmentally harmful projects outright, or cause them to be substantially improved (mitigated). Thus, CEQA has given the public extraordinary power to participate in decisions which can affect their lives and the future of the State.

The one weak element in the CEQA process has always been the absence of state oversight or other agency to ensure compliance with the law. As a consequence, judicial review remains the only means of ensuring that environmental review actually does comply with the law. Through precedent, the courts have taken on the responsibility of judging whether the substantive requirements of CEQA are met as well as the procedural requirements. The result is a powerful incentive to provide complete information and full disclosure in EIRs, or risk legal challenge. To remove this protection, which the proposed bills would do, is to remove CEQA's ultimate effectiveness in protecting the environment.

The argument is made that this is an emergency measure only – limited to a relatively few projects over five years to stimulate job growth. Projects would be selected for exemption based on the number of jobs created and amount of capital invested. This process would favor powerful interests ("a race to the trough" – Sen. Alan Lowenthal, D-Long Beach). Absent the opportunity for legal challenge, it would also fail to give the public ultimate assurance that potential environmental impacts were fully disclosed or that affected populations or resources were adequately protected.

CEQA has been threatened on many occasions over its 40 years by special interest groups and legislative attempts to weaken its provisions. We oppose current attempts to favor short-term ends at the expense of the long-term protections that CEQA affords.

Sincerely,

Nona Dennis, President

cc. Tina Andolina, Legislative Director, Planning and Conservation League
Assemblymember Jared Huffman
Senator Mark Leno