

Substantial Evidence and Significance Determinations: Considering the Values Underlying the California Environmental Quality Act’s Fair Argument Standard

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ABSTRACT

The California Environmental Quality Act (“CEQA”) is as contentious as it is consequential. Standing as California’s most prominent and influential environmental law, CEQA is responsible for producing far more environmental review reports proportionally than its national predecessor, the National Environmental Policy Act (“NEPA”). CEQA’s controversial reputation for generating paperwork stems in major part from its seemingly ambiguous statutory language and inherently precautionary approach to environmental protection. The fair argument standard, which dictates when an Environmental Impact Report (“EIR”) is required, exemplifies both ambiguity and precaution, making it a prime subject for exploring the deeper values operating within CEQA. Although sometimes criticized for setting a generally low threshold for EIR production, the fair argument standard is moderated by two seemingly substantive terms—substantial evidence and significance determinations. This Article examines how these two terms have been interpreted, through regulatory language and case law, to ultimately reinforce CEQA’s precautionary nature through various underlying values (i.e., constitutive and contextual values). By illuminating the underlying values shaping the fair argument standard, this Article provides a framework for

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refining CEQA policy discussions, reconciling conflicting perspectives, and reducing the attitude polarization that CEQA often engenders. Upon considering these values, regulatory agencies and courts seeking to decrease CEQA litigation and improve policy clarity may find the fair argument standard a productive focal point for reform. At a minimum, acknowledging the value-laden nature of CEQA's fair argument standard has the potential to foster more constructive discussions—encouraging thoughtful consideration of how, through redefining terms such as substantial and significant, CEQA has tilted the regulatory scale once more towards precautionary environmental protection

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I. INTRODUCTION

Environmental policy is structured by a complex interplay of statutes, regulations, and court decisions that dictate how we protect natural resources. But beneath the surface of our policies lies something far more profound: a reflection of our ethical commitments and societal values. Every balancing test, significance threshold, and standard for environmental review is shaped by underlying values—whether explicitly acknowledged or not. However, when values go unrecognized, they guide our policy without our awareness that they are doing so,¹ which may contribute to feelings of confusion, frustration, and attitude polarization.²

This article examines the values underlying the California Environmental Quality Act (“CEQA”)³—particularly those values operating within the fair

¹ MARION HOURDEQUIN, ENVIRONMENTAL ETHICS: FROM THEORY TO PRACTICE 5 (2015).

² It is well established that behaving in a way that is contradictory to one's values can lead to cognitive dissonance and result in feelings of discomfort, confusion, and frustration. *See generally, e.g.,* Eddie Harmon-Jones & Judson Mills, *An Introduction to Cognitive Dissonance Theory and an Overview of Current Perspectives on the Theory*, in COGNITIVE DISSONANCE: REEXAMINING A PIVOTAL THEORY IN PSYCHOLOGY, 3 (2d ed. 2019). Reflecting on one's core values (often conceptualized as “self-affirmation”) has been shown to reduce the psychological discomfort associated with cognitive dissonance. *See* Steele, Claude M., *The Psychology of Self-Affirmation: Sustaining the Integrity of the Self*, 21 ADVANCES IN EXPERIMENTAL SOC. PSYCH. 261, 271 (1988). This Article explores this concept at the societal level, presuming that social discomfort may be experienced when a societies' policies conflict with unexamined societal values.

³ California Environmental Quality Act, CAL. PUB. RES. CODE § 21000 et seq. (West 2025).

argument standard, which is the threshold for producing an environmental impact report (“EIR”) under CEQA. In doing so, this article contributes to a growing body of scholarship directed towards elucidating the values underlying environmental policies, thereby providing a means for refining our policy discussions, decreasing attitude polarization, and highlighting areas for potential policy reform.⁴

Environmental law is a contentious field, and as polarization grows throughout the nation, our environmental policies are increasingly becoming a battleground for advancing competing political agendas.⁵ Amidst ongoing regulatory rollback, CEQA, California’s strongest environmental law, stands as a striking example of prioritizing caution over the potential for long-term environmental harm. Understanding the values underlying CEQA’s precautionary stance, through developing a framework for value analysis, may serve as a

⁴ See generally, e.g., Erin Ryan et al., *Environmental Rights for the 21st Century: A Comprehensive Analysis of the Public Trust Doctrine and Rights of Nature Movement*, 42 CARDOZO L. REV. 2447, 2541 (2020); HOURDEQUIN, *supra* note 1; Jedediah S. Purdy, *American Natures: The Shape of Conflict in Environmental Law*, 36 HARV. ENVTL. L. REV. 169 (2012); Rita Yi Man Li, et al., *The Impact of Sustainability Awareness and Moral Values on Environmental Laws*, 13 SUSTAINABILITY 5882 (2021); Holly Doremus, *Shaping the Future: The Dialectic of Law and Environmental Values*, 37 U.C. DAVIS L. REV. 233 (2003).

⁵ Consider, for example, the changes made to the regulations applying the National Environmental Policy Act, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended in scattered sections of 42 U.S.C.), during the first Trump Administration. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (July 16, 2020). These changes were largely reversed during the Biden Administration, National Environmental Policy Act Implementing Regulations Revisions, 87 Fed. Reg. 23453 (April 20, 2022), only to be entirely revoked during the second Trump Administration, Removal of National Environmental Policy Act Implementing Regulations, 90 Fed. Reg. 10610 (Feb. 25, 2025). Similar back-and-forth regulatory battles are seen with respect to the “M Opinions” interpreting the Migratory Bird Treaty Act of 1918, 16 U.S.C. §§ 703–712, between 2016 and 2025. See Memorandum from Gregory Zerzan, Acting Solicitor, to Sec’y of the Interior, Opinion M-37085, *Withdrawal of Solicitor Opinion M-37065 “Permanent Withdrawal of Solicitor Opinion 37050 ‘The Migratory Bird Treaty Act Does Not Prohibit Incidental Take’”* (Apr. 11, 2025) (withdrawing a 2021 M Opinion which, itself, previously withdrew a 2017 M Opinion interpreting the Migratory Bird Treaty Act to not prohibit incidental take).

starting point for fostering more productive and nonpartisan conversations around potential policy reform. At a minimum, considering the values underlying our laws provides us with the much-needed vocabulary to discuss our differences in ways that bring us closer to a shared sense of respect and understanding for how we manage our natural resources.

Part II of this article begins by providing a background to CEQA, highlighting its precautionary nature and the ambiguity of many of its key terms. Next, Part III introduces value analysis, and the constitutive-contextual value spectrum is outlined as a practical tool for elucidating the values underlying the CEQA fair argument standard. Finally, an ethical analysis of the CEQA fair argument standard is performed in Part IV, with a focus on the two substantive elements operating within the standard – substantial evidence and significance determinations. This ethical analysis is applied to both the regulatory language and the case law surrounding these two elements, demonstrating how each serve to bolster the precautionary nature of CEQA, albeit via distinct underlying values. The Article concludes by noting that, through redefining terms such as substantial evidence and significance, the fair argument standard aligns with the overall precautionary nature of the CEQA statute itself, tipping the regulatory scale once more towards precautionary—and often controversial— environmental protection.

II. CEQA – PRECAUTION AND AMBIGUITY

California is widely recognized for its rigorous environmental regulations, which rank among the most comprehensive in the United States.⁶ These laws play a critical role in preserving the state’s rich natural environment, which has earned it recognition as a “global biodiversity hotspot.”⁷ Indeed, California boasts the highest diversity of plant and animal species in the nation,⁸ and its geography—including the Sierra Nevada mountains, the Mojave Desert, and the Central Valley—is similarly diverse. Of the many laws that regulate these diverse natural resources, CEQA is arguably the most prominent and important.⁹

Enacted in 1970, CEQA establishes administrative procedures for environmental analysis of state projects to “[e]nsure that the long-term protection of the environment . . . shall be the guiding criterion in public decisions.”¹⁰ CEQA applies broadly, but not without exception, to proposed projects undertaken by, financed by, or requiring discretionary approval from state agencies.¹¹ For such projects, the responsible, lead agency must conduct an initial threshold study of

⁶ See Per G. Fredriksson & Daniel L. Millimet, *Is There a ‘California Effect’ in US Environmental Policymaking?*, 32 REG’L SCI. & URB. ECON. 737, 738 (2002); DAVID VOGEL, CALIFORNIA GREENIN’: HOW THE GOLDEN STATE BECAME AN ENVIRONMENTAL LEADER 4 (2018).

⁷ See *Science: California Biodiversity*, CAL. DEP’T OF FISH & WILDLIFE, <https://wildlife.ca.gov/Science-Institute/Biodiversity> (last visited Jan. 20, 2025).

⁸ *Id.*

⁹ See John Watts, *Reconciling Environmental Protection with the Need for Certainty: Significance Thresholds for CEQA*, 22 ECOLOGY L.Q. 213, 216 (1995); Robert B. Olshansky, *The California Environmental Quality Act and Local Planning*, 62 J. AM. PLANNING ASS’N 313, 313 (1996).

¹⁰ CAL. PUB. RES. CODE § 21001(d) (West 2025). See generally *id.* § 21000 *et seq.*

¹¹ See *id.* §§ 21080(a),(b); CAL. CODE REGS. tit. 14, § 15002(b). Beyond the statutory and administrative categorical exceptions, CAL. PUB. RES. CODE § 21080(b) (West 2025), a project is not considered subject to CEQA if “the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment.” CAL. CODE REGS. tit. 14, § 15060 (2025).

environmental effects.¹² Notably, eligible projects with minimal likelihood of impacting environmental resources may qualify for a statutory or categorical exemption, which could negate the need to undergo CEQA review. However, for non-exempt projects in which environmental effects are deemed to be potentially significant and are not clearly mitigated, a more comprehensive analysis, known as an EIR, is required.¹³ An EIR, long considered the “heart of CEQA,”¹⁴ must contain detailed descriptions encompassing all significant environmental effects of a proposed project, mitigation measures to minimize such effects, and project alternatives.¹⁵ By arming state agencies with this analysis, CEQA orients regulators towards “preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.”¹⁶

CEQA follows closely in the legislative footsteps of the National Environmental Policy Act (“NEPA”)¹⁷ and is responsible for producing a high volume of environmental review reports—fueling a controversial reputation that began with CEQA’s enactment and continues into the 21st century.¹⁸ The

¹² CAL. CODE REGS. tit. 14, § 15063 (2025). *See* CAL. PUB. RES. CODE §§ 21080(c)–(d) (West 2025). Note that an Initial Study may not be required if a project is statutorily exempt, CAL. PUB. RES. CODE § 21080(b) (West 2025), categorically exempt, CAL. PUB. RES. CODE § 21084 (West 2025); CAL. CODE REGS. tit. 14, §§ 15300–15333 (2025), or if the lead agency decides to directly prepare an Environmental Impact Report, CAL. CODE REGS. tit. 14, § 15063(a) (2025).

¹³ CAL. PUB. RES. CODE §§ 21080(d), 21100, 21151 (West 2025). If, in the alternative, the initial study results in a finding of no significant environmental effect or a finding that the potentially significant effects can be mitigated or avoided by project revision, the responsible agency may adopt a negative declaration to that effect. *Id.* § 21080(c).

¹⁴ *Cnty. of Inyo v. Yorty*, 108 Cal. Rptr. 377, 388 (Ct. App. 3d 1973); CAL. CODE REGS. tit. 14, § 15003(a) (2025).

¹⁵ CAL. PUB. RES. CODE § 21100 (West 2025).

¹⁶ *See id.* § 21000(g).

¹⁷ National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970) (codified as amended in scattered sections of 42 U.S.C.).

¹⁸ *See* Olshansky, *supra* note 9, at 314 (“CEQA has been a center of controversy for its entire 24 years.”); LISABETH D. ROTHMAN, CEQA TURNS FORTY: THE MORE THINGS CHANGE, THE MORE THEY REMAIN THE SAME 2–3 (2011), <https://perma.cc/54NE-2GT6> (discussing the amount of CEQA litigation since its inception).

controversy surrounding CEQA is reflective of the clash of values at work and evinces the statute's ripeness for value analysis.¹⁹ CEQA's remarkable footprint, and the resultant controversy, are likely attributable to at least two qualities of the statute: its fundamentally precautionary approach, and the ambiguity of its key terms.

First, CEQA takes a fundamentally precautionary approach to environmental review which necessitates expansive application of the statute. The statute's first section declares a set of legislative policies including a broad directive that agencies should regulate "so that major consideration is given to preventing environmental damage."²⁰ In *Friends of Mammoth v. Board of Supervisors*,²¹ the first California Supreme Court case to interpret CEQA, these policies, among other evidence, gave rise to an interpretive rule: CEQA is to be interpreted so as "to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."²² This precautionary maxim, which has developed into a guiding principle for CEQA disputes, is bolstered by the generally low, and often non-explicit, thresholds set by the regulatory language implementing the statute.²³

For example, although CEQA requires identification of significant environmental effects of a project, neither the statute nor the *CEQA Guidelines*

¹⁹ See *infra* Part IV.

²⁰ CAL. PUB. RES. CODE § 21000 (West 2025); *id.* § 21000(g).

²¹ 8 Cal. 3d 247 (1972).

²² *Id.* at 259.

²³ See, e.g., CAL. CODE REGS. tit. 14, §§ 15064, 15064.7 (2025).

provide explicit thresholds for making such significance determinations.²⁴ Instead, the regulatory language calls for “careful judgement,”²⁵ and encourages public agencies to develop their own significance thresholds.²⁶ Even where a project complies with such significance thresholds, the need for an EIR may not be eliminated, since threshold compliance “does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant.”²⁷ Lowering the threshold to EIR preparation even further, the *CEQA Guidelines* state that “[i]f there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and prepare an EIR.”²⁸ In sum, CEQA lacks explicit significance thresholds, while highlighting that neither compliance with agency thresholds nor reliance upon expert opinion is necessarily sufficient for ruling out preparation of an EIR.

CEQA’s precautionary approach is especially apparent when the statute is compared to NEPA, its less-restrictive federal antecedent. Although the two statutes share the purpose of promoting informed environmental decision-making,²⁹ CEQA differs from NEPA in important ways, particularly with respect to determining when an environmental review document must be prepared.

²⁴ See *id.* §§ 15064, 15064.7 (defining a ‘threshold of significance’ only as “an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency”).

²⁵ *Id.* § 15064(b).

²⁶ *Id.* § 15064.7(b).

²⁷ *Id.* § 15064(b)(2).

²⁸ *Id.* § 15064(g).

²⁹ Compare 42 U.S.C. §§ 4321, 4331 (describing the purpose and policy of NEPA), with CAL. PUB. RES. CODE §§ 21000–21006 (West 2025) (describing the similar policy of CEQA).

Under NEPA, an environmental impact statement (“EIS”) is required for all “major Federal actions significantly affecting the quality of the human environment.”³⁰ Until recently, regulations issued by the Council on Environmental Quality (CEQ) imposed the framework for agency compliance with NEPA.³¹ For most of NEPA’s history, these regulations directed agencies to determine whether the effects of a proposed federal action are “significant” via an analysis of those effects’ context and intensity.³² Assuming a project does not qualify for a Categorical Exclusion,³³ agency significance determinations dictate whether preparation of an Environmental Assessment (“EA”) or an EIS is required.³⁴ Such determinations are subject to challenge under the Administrative Procedure Act.³⁵

Like NEPA, CEQA’s statutory text directs agencies to prepare an EIR for any project “they intend to carry out or approve which may have a significant effect on the environment.”³⁶ However, binding precedent and longstanding regulatory guidelines supplement and give greater form to this directive through

³⁰ 42 U.S.C. § 4332(2)(C).

³¹ *See, e.g.*, 40 C.F.R. §§ 1500–1508 (2024). In February 2025, the second Trump Administration removed the CEQ NEPA implementing regulations. 91 Fed. Reg. 618 (Jan. 1, 2026) (final rule). Several federal agencies have since made significant changes to their rules and guidance implementing NEPA. *See, e.g.*, 91 Fed. Reg. 8738 (Feb. 24, 2026) (Department of the Interior final rule rescinding most of its NEPA regulations and relocating them to the non-binding department handbook, among other substantive changes).

³² Between 1978 and 2019, NEPA’s implementing regulations defined “significantly” to “require considerations of both context and intensity[.]” 40 C.F.R. § 1508.27 (2019). CEQ rollbacks implemented in 2020 under the first Trump Administration deleted the definition of “significantly,” 85 Fed. Reg. 43304 (July 16, 2020), but the “context” and “intensity” analysis was restored in 2024. 89 Fed. Reg. 35442 (May 1, 2024) (amending 40 C.F.R. § 1501.3(d) to require agencies to “examine both the context of the action and the intensity of the effect” when undertaking significance determinations).

³³ 42 U.S.C. § 4336(e)(1).

³⁴ *See* 42 U.S.C. § 4332(2)(C).

³⁵ 5 U.S.C. § 706.

³⁶ CAL. PUB. RES. CODE §§ 21100, 21151 (West 2025).

the operative ‘fair argument’ standard: under CEQA, an EIR is required “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact.”³⁷

Compared to NEPA, CEQA’s fair argument standard limits agency discretion when determining whether an EIR must be prepared.³⁸ Whether a ‘fair argument’ exists is a determination made on the whole record and, notably, a fair argument can be made to support requiring an EIR “even though other conclusions might also be reached.”³⁹ In other words, an EIR may be required, even if there is additional substantial evidence supporting the conclusion that the environmental impacts of a given project will be insignificant.⁴⁰ This reflects CEQA’s precautionary approach; by “resolv[ing] doubts in favor of environmental review when the question is whether any such review is warranted,” CEQA mandates enhanced environmental review in circumstances where NEPA does not.⁴¹

CEQA’s controversial reputation is further amplified by the statute’s ambiguous language which fuels litigation and incentivizes potentially

³⁷ *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 66, 70 (Cal. 1974); CAL. CODE REGS. tit. 14, § 15064(f)(1) (2025). *See also* *Sierra Club v. Cnty. of Sonoma*, 8 Cal. Rptr. 2d. 473, 478 (Cal. Ct. App. 1d. 1992) (noting the fair argument standard’s derivation from CAL. PUB. RES. CODE § 21151 (West 2025)).

³⁸ *See Sierra Club*, 8 Cal. Rptr. 2d. at 478 (explaining how the fair argument standard and § 21151 “create[] a low threshold requirement for initial preparation of an EIR and reflect[] a preference for resolving doubts in favor of environmental review when the question is whether any such review warranted”).

³⁹ CAL. CODE REGS. tit. 14, § 15384(a).

⁴⁰ *See, e.g., Sierra Club*, 8 Cal. Rptr. 2d. at 478 (“If there is substantial evidence of [significant] impact, contrary evidence is not adequate to support a decision to dispense with an EIR. . . . [I]f there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant and prepare an EIR.”).

⁴¹ *Sierra Club*, 8 Cal. Rptr. 2d. at 478; *Georgetown Preservation Soc’y v. County of El Dorado*, 30 Cal. App. 5th 358, 370 Cal. Rptr. 3d 421 (Ct. App. 2018).

burdensome over-compliance. CEQA's centerpiece EIR requirement relies on opaque concepts such as "significant effect,"⁴² "substantial evidence,"⁴³ and "fair argument,"⁴⁴ which invite varied interpretations in the absence of precise statutory definitions. Furthermore, where the statute purports to define these terms, it merely exchanges one fuzzy concept for another. A "significant effect on the environment" is defined as "a substantial, or potentially substantial adverse change in the environment."⁴⁵ Similarly, "substantial evidence" is defined to include "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."⁴⁶ There is no statutory guidance to determine at which point such facts or effects become 'substantial.' Although the *CEQA Guidelines* attempt to supplement the paltry statutory definition of "substantial evidence," they do so in reliance to the courts' operative "fair argument standard."⁴⁷ The fair argument standard itself is mentioned in the *CEQA Guidelines*, but not analyzed in a way that clarifies what a "fair argument" actually is.⁴⁸

Throughout CEQA's history, disputes over these terms have spawned extensive litigation. Decisions under CEQA are litigated almost ten times as

⁴² See, e.g., CAL. PUB. RES. CODE §§ 21068, 21100 (West 2025).

⁴³ See, e.g., *id.* § 21082.2.

⁴⁴ See, e.g., *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 66, 70 (Cal. 1974); *Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Cmty. Coll. Dist.*, 378 P.3d 687, 700 (Cal. 2016).

⁴⁵ CAL. PUB. RES. CODE § 21068 (West 2025).

⁴⁶ *Id.* § 21082.2(c). Note that "argument, speculation, unsubstantiated opinion or narrative" among other things are *excluded* from the definition of "substantial evidence," but no helpful positive account of the term is offered. *Id.*

⁴⁷ CAL. CODE REGS. tit 14, § 15384 (2025) (defining "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached[.]").

⁴⁸ *Cf. id.* § 15064(f)(1).

frequently as decisions under NEPA.⁴⁹ Commonly, these disputes center on CEQA's indeterminate terms, contributing to their characterization as “frivolous lawsuits brought under definitional guise.”⁵⁰ As a result, CEQA has been framed by some critics as a “litigation lever”⁵¹ and “a plaintiff's sandbox.”⁵²

On the other hand, the opacity of CEQA's terms incentivizes precautionary overcompliance in instances where heightened review may not be necessary. A lack of uniform standards and inconsistent application of terms such as “substantial evidence” and “fair argument” contribute to the unpredictability of CEQA that cause developers to be “deeply afraid” of CEQA lawsuits.⁵³ Such unpredictability forces a high degree of overcompliance and, in the words of one author, an “accumulation of litigation scar tissue.”⁵⁴ The fair argument standard,

⁴⁹ Compare JANET SMITH-HEIMER ET AL., CEQA: CALIFORNIA'S LIVING ENVIRONMENTAL LAW 22 (2021), <https://perma.cc/K7YP-NKWW> (reporting a 2% litigation rate for projects subject to CEQA review between 2013 and 2019), with John C. Ruple & Kayla M. Race, *Measuring the NEPA Litigation Burden: A Review of 1,499 Federal Court Cases*, 50 ENV'T L. 479, 503–04 (2020) (reporting a .22% litigation rate for NEPA decisions between 2001 and 2013). Although there has been only a two percent CEQA litigation rate from 2013-2019, this low litigation rate is buffered by the sheer volume of EIRs produced, likely as a precautionary overcompliance response to the uncertainty engendered by the statute's vague language. See generally Watts, *supra* note 9.

⁵⁰ See Sean S. Varner, *The California Environmental Quality Act (CEQA) After Two Decades: Relevant Problems and Ideas for Necessary Reform*, 19 PEPP. L. REV. 1447, 1453 (1992). See also Noah DeWitt, *A Twisted Fate: How California's Premier Environmental Law Has Worsened the State's Housing Crisis, and How to Fix It*, 49 PEPP. L. REV. 413, 425–26 (2022) (nothing how, in contrast to NEPA, CEQA's vague statutory language has led to extensive judicial interpretation); Jennifer Hernandez, *In the Name of the Environment Part III: CEQA, Housing, and the Rule of Law*, 26 CHAP. L. REV. 57, 66 (2022).

⁵¹ Alastair Bland, *Weakling or Bully? The Battle Over CEQA, the State's Iconic Environmental Law*, CALMATTERS (May 13, 2019), <https://perma.cc/W9QH-SV25>.

⁵² Arthur F. Coon, *When CEQA Litigation Turns Tortious: First District Affirms Order Denying Anti-SLAPP Motion, Allows Malicious Prosecution Action To Proceed Against Counsel Who Brought Unsuccessful CEQA Challenge To Single-Home Project*, CEQA DEVELOPMENTS (2023), <https://perma.cc/BCA4-5VJ9>.

⁵³ Diego A. Zambrano, *Litigation Scar Tissue and Construction Costs*, in RESEARCH HANDBOOK ON LAW AND TIME 165, 185 (Frank Fagan & Saul Levmore eds., 2025); Ha Chung, *Moving CEQA Away from Judicial Enforcement: Proposal for A Dedicated CEQA Agency to Address Exclusionary Use of CEQA*, 93 S. CAL. L. REV. 307, 315 (2020).

⁵⁴ Zambrano, *supra* note 53, at 185.

which dictates whether a costly EIR must be produced, is a prime focal point for overcompliance, since failing to draft an EIR makes a project substantially more vulnerable to CEQA lawsuits.⁵⁵

As the EIR is “the heart of CEQA,”⁵⁶ and the fair argument standard is the threshold for determining whether an EIR is required,⁵⁷ the fair argument standard’s precautionary nature and opaque terminology are foundational to CEQA’s implementation. Therefore, the fair argument standard presents a unique opportunity to explore the values operating within the standard and CEQA generally, as well as the ways such values are balanced in the spirit of environmental caution. Considering the values operating within the fair argument standard may prove fruitful to CEQA reform efforts. Indeed, the fair argument standard has been in the crosshairs of recent CEQA legislation, with one proposed bill going so far as to suggest overwriting the standard completely.⁵⁸ Despite other recent CEQA reform successes, this proposal was unsuccessful, and as of this article’s publication, the fair argument standard remains unmodified.⁵⁹

Contemplating the fair argument standard through value analysis may provide the tools to effectively articulate legislative reform that is more nuanced than eliminating the standard altogether. Part III of this article provides an introduction

⁵⁵ See Chung, *supra* note 53, at 325–26.

⁵⁶ CAL. CODE REGS. tit. 14, § 15003(a) (2025).

⁵⁷ *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 66, 70 (Cal. 1974); *Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Cmty. Coll. Dist.*, 378 P.3d 687, 700 (Cal. 2016).

⁵⁸ See Cal. S.B. 607, 2025–2026 Reg. Sess. (Cal. 2025) [hereinafter S.B. 607].

⁵⁹ See Cal. Assemb. B. 130, 2025–2026 Reg. Sess. (Cal. 2025) (enacted) and Cal. S.B. 131, 2025–2026 Reg. Sess. (Cal. 2025) (enacted). While these bills represent the most significant successful CEQA reform in decades, they focus primarily on housing development exemptions and special legislation. These measures do not make changes to the threshold for EIR preparation as proposed in S.B. 607. See also Arthur F. Coon et al., *State Budget Bill Includes Landmark CEQA and Housing Law Changes*, CEQA DEVELOPMENTS (2025), <https://perma.cc/2JHZ-X473>.

to value analysis, outlining a framework which will then be applied to the regulations and case law surrounding the CEQA fair argument standard in Part IV.

III. VALUE ANALYSIS – A FOUNDATIONAL APPROACH TO UNDERSTANDING CEQA

Values operate within every discipline, and considering the values underlying various policies can help sharpen one's understanding of such policies.⁶⁰ That CEQA's fair argument standard is precautionary is clear; however, the underlying values producing such caution are less so. Although fields such as science and law operate according to underlying value assumptions, these values often remain hidden, guiding our decisions "without our awareness that they are doing so."⁶¹ Furthermore, as environmental law is structured by political and cultural conflict,⁶² the underlying values of our laws are often in conflict with another. In the case of CEQA, such conflict is evidenced by CEQA's controversial reputation—a reputation that is fueled by notably ambiguous and precautionary language which famously pushed California Governor Jerry Brown to despondently call CEQA reform "the Lord's work."⁶³

⁶⁰See generally Martin Rein, *Value-Critical Policy Analysis in ETHICS, THE SOCIAL SCIENCES, AND POLICY ANALYSIS*, 83 (Daniel Callahan et al. eds., 1983); Paul P. Craig, Harold Glasser, & Willett Kempton, *Ethics and Values in Environmental Policy: The Said and the UNCED*, 2(2) ENV'T VALUES 137 (1993).

⁶¹ HOURDEQUIN, *supra* note 1, at 5.

⁶² See Purdy, *supra* note 4, at 172.

⁶³ Adrian Glick Kudler, *There's a Last Minute Rush to Completely Overhaul California's Big Environmental—Development Law*, CURBED L.A. (Aug. 23, 2012), <https://perma.cc/8C25-YUEV>. See generally Michelle Ouellette & Ali Tehrani, *The Lord's Work: an Overview of CEQA's Judicial Remedies and Recommendations for Reform*, 25 HASTINGS ENV'T L.J., 85 (2019).

However, by considering such values openly, society will be better equipped to reconcile conflicting values⁶⁴ and avoid situations in which “short-term goals and narrow interests lead to longer-term outcomes desired by no one.”⁶⁵ Additionally, considering underlying values can lead to a decrease in attitude polarization as a result of forming more neutral attitudes.⁶⁶ Indeed, the complex reasoning involved in evaluating conflicting values may lead to an increased ability to reconcile conflicting values,⁶⁷ all while fostering a positive emotional response.⁶⁸ Considering the language of CEQA’s fair argument standard, it’s clear that the underlying values have given rise to a highly precautionary standard that favors environmental protection. But what are these values themselves?

When discussing caution and risk in environmental law, it is helpful to consider certain values operating within science. Law takes its values from extra-legal value systems,⁶⁹ and as environmental law is highly scientific, it follows that

⁶⁴ Paul M. Kellstedt et al., *Does Political Sophistication Minimize Value Conflict? Evidence from a Heteroskedastic Graded IRT Model of Opinions Toward Climate Change*, 49 BRIT. J. POL. SCI. 1309, 1309 (2017).

⁶⁵ See Craig et al., *supra* note 60 at 151.

⁶⁶ See Akiva Liberman & Shelly Chaiken, *Value Conflict and Thought-Induced Attitude Change*, 27 J. EXPERIMENTAL SOC. PSYCH. 203, 211 (1991); Matthew Feinberg & Robb Willer, *Moral Reframing: A Technique for Effective and Persuasive Communication Across Political Divides*, 13 SOC. & PERS. PSYCH. COMPASS 1, 1 (2019) (noting that framing an argument in terms of one’s moral values can be an effective means for forming more neutral opinions). *But see* Magdalena Wojcieszak, *Deliberation and Attitude Polarization*, 61(4) J. COMMUN 596, 596 (2011) (noting that general deliberation, which exposes deliberators to dissimilar views, may increase or decrease attitude polarization).

⁶⁷ Kellstedt et al., *supra* note 64, at 1309.

⁶⁸ Craig et al., *supra* note 60, at 139. *See also*, e.g., Daniel G. Lannin et al., *Can Reflecting on Personal Values Online Increase Positive Beliefs About Counseling?* 64(3) J. COUNSELING PSYCH. 261, 261 (2017) (noting that reflecting on personal values is an effective approach to bolster positive self-worth).

⁶⁹ See Yehezkel Dror, *Values and the Law*, 17 ANTIOCH REV. 440, 440 (1957); Tom R. Tyler & John M. Darley, *Building a Law-Abiding Society: Taking Public Views About Morality and the Legitimacy of Legal Authorities into Account When Formulating Substantive Law*, 28 HOFSTRA L.

scientific values underlie much of environmental legislation.⁷⁰ A classic value dichotomy in the scientific field pits intrinsic, ‘constitutive values’ of scientific practice against the external, ‘contextual values’ that characterize the broader context in which science takes place.⁷¹ In contrast to constitutive values such as accuracy and consistency, a contextual perspective might consider such values as social justice, public health, or economic prosperity.⁷² To see this dichotomy in action, consider how constitutive norms may hold that a premise of policy-making interest is only empirically satisfied when the associated null hypothesis is rejected with an adequate degree of statistical certainty;⁷³ nevertheless, policy-makers might propose that such strict statistical criteria should be relaxed in consideration of contextual values. For example, rigorous experimental trials for vaccine approval can be fast-tracked in favor of protecting public health,⁷⁴ and empirically-rooted environmental regulations can be rolled back to encourage economic growth.⁷⁵

REV. 707, 726 (2000) (noting that “political and legal systems reflect the operation of democratic political processes through which the values of the public are translated into public policies”).

⁷⁰ See, e.g., 16 U.S.C. § 1533(b)(1)(A) (requiring that decisions to list or delist a species under the Endangered Species Act of 1973 be based “solely on the best scientific and commercial data available”); 33 U.S.C. § 1314(a)(1) (requiring the Administrator of the EPA to develop and publish criteria for water quality “accurately reflecting the latest scientific knowledge...” under the Clean Water Act).

⁷¹ HOURDEQUIN, *supra* note 1, at 7.

⁷² See *id.*

⁷³ For example, in many scientific fields, rejecting a null hypothesis usually requires a statistical analysis that results in a p-value of 0.05 or less. For insights into the appropriateness of implementing this standardized threshold in scientific research, see generally, e.g., Giovanni Di Leo & Francesco Sardanelli, *Statistical Significance: P Value, 0.05 Threshold, and Applications to Radiomics—Reasons for a Conservative Approach*, 4 EUR. RADIOLOGY EXPERIMENTAL 2 (2020); Sanggyu Kwak, *Are Only p-Values Less Than 0.05 Significant? A p-Value Greater than 0.05 Is Also Significant!*, 12 J. LIPID & ATHEROSCLEROSIS 89 (2023).

⁷⁴ See, e.g., Jason C. Wong et. al, *Fast Tracking-Vaccine Safety, Efficacy, and Lessons Learned: A Narrative Review*, 10 VACCINES (BASEL) 1256, 1256 (2022) (discussing the fast-tracked development of COVID-19 vaccines under emergency use authorization in 2020).

⁷⁵ See, e.g., Exec. Order No. 14154, 90 Fed. Reg. 8353 (Jan. 20, 2025) (calling for rapid environmental deregulation in the spirit of national economic growth).

For our purposes, the constitutive-contextual dichotomy is reflected in CEQA's consistent emphasis on precaution throughout its framework. The 'precautionary principle'—most famously popularized in the environmental context by Rachel Carson in her seminal work, *Silent Spring*⁷⁶—proposes that strict statistical criteria guiding policy-making should, in certain high-risk scenarios, be relaxed by in favor of exercising caution.⁷⁷ In the context of *Silent Spring*, Carson presented evidence about the potential risks of widespread pesticide use, arguing that early warning signs should not be ignored, despite some scientific uncertainty about the long-term effects of such pesticide use.⁷⁸ However, the question remains: where along the constitutive-contextual value spectrum do the values informing the precautionary principle fall, and are such values illustrative of those operating within CEQA's fair argument standard?

Generally, the precautionary principle is viewed as operating based on contextual values.⁷⁹ Carson's precautionary stance in *Silent Spring* certainly took a contextual approach, emphasizing the importance of exercising caution in proportion to the magnitude of external risks, even when evidence of such risks' probability was sometimes lacking.⁸⁰ CEQA's fair argument standard, with its

⁷⁶ See generally RACHEL CARSON, *SILENT SPRING* (1962). See also Robert W. Hahn & Cass R. Sunstein, *The Precautionary Principle as a Basis for Decision Making*, 2(2) *The Economists' Voice* (2005) (arguing instead that the precautionary principle does not help individuals or nations make difficult choices in a non-arbitrary way).

⁷⁷ See generally *id.*; Soren Lokke, *The Precautionary Principle and Chemicals Regulation: Past Achievements and Future Possibilities*, 13 *ENV'T SCI. POLLUTION RSCH.* 342 (2006).

⁷⁸ See CARSON, *supra* note 76, at 176–80..

⁷⁹ See generally Kenny Walker & Lynda Walsh, "No One Yet Knows What the Ultimate Consequences May Be": How Rachel Carson Transformed Scientific Uncertainty Into a Site for Public Participation in *Silent Spring*, 26 *J. BUS. & TECH. COMM'N* 3 (2011).

⁸⁰ See, e.g., CARSON, *supra* note 76, at 13 (arguing that the lack of evidence for immediate harm does not equate to an absence of risk: "We are accustomed to look for the gross and immediate effect and to ignore all else. Unless this appears promptly and in such obvious form that it cannot

emphasis on “significant effects” and “substantial evidence,” evokes constitutive values. However, the actual operation of the fair argument standard aligns more with the contextual approach demonstrated in *Silent Spring*.

Examining a law’s plain meaning provides only a limited understanding, while analyzing how a law is implemented is essential to understanding the values embedded within it.⁸¹ Therefore, through a careful analysis of both the regulatory language and the case law surrounding CEQA’s fair argument standard, Part IV of this Article will shed light on the standard’s current interpretation, highlighting the ways in which constitutive values and contextual values cooperate to balance accuracy and uncertainties associated with environmental review in California.

IV. THE FAIR ARGUMENT STANDARD – A VALUE ANALYSIS OF SUBSTANTIAL EVIDENCE AND SIGNIFICANCE DETERMINATIONS

This Part examines the CEQA fair argument standard, with a focus on the underlying values that shape its application and influence the broader implementation of environmental review in California. By analyzing how constitutive and contextual values are embedded within this standard, the section explores how CEQA’s precautionary approach is both constructed and maintained through interpretive practices via regulations and case law.

To begin, section IV.A provides an overview of the fair argument standard and identifies its two operative elements: substantial evidence and significance

be ignored, we deny the existence of hazard”); *id.* at 43 (conceding that, despite the need for caution, “the full scope of the dangerous interaction of chemicals is as yet little known”).

⁸¹ See Alyson C. Flournoy, *In Search of an Environmental Ethic*, 28 COLUM. J. ENV’T L. 63, 107 (2003).

determinations. Sections IV.B and C then delve deeper into these individual elements. Section IV.B analyzes how substantial evidence has been interpreted by courts and regulatory agencies, highlighting how certain constitutive and contextual values bolster CEQA’s precautionary stance toward environmental protection. Section IV.C turns to significance determinations, again exploring its interpretation through regulations and case law, and the role of contextual values in supporting CEQA’s precautionary framework. Ultimately, this Part serves as a case study in how value analysis can illuminate key features of CEQA and provide fertile ground for discussions on CEQA reform.

A. Overview

The fair argument standard has its origins in CEQA’s requirement that agencies shall prepare an EIR for “any project . . . which may have a significant effect on the environment.”⁸² First articulated in *No Oil, Inc. v. City of Los Angeles*⁸³ and subsequently incorporated into CEQA’s regulatory guidelines,⁸⁴ the standard guides the application of this directive: an EIR is required “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impacts.”⁸⁵ By articulating the fair argument standard in this way, the *No Oil* court applied the precautionary approach outlined in *Friends*

⁸² CAL. PUB. RES. CODE § 21151(a) (West 2025). *See also id.* § 21068 (defining the phrase “[s]ignificant effect on the environment” as “a substantial, or potentially substantial, adverse change in the environment”).

⁸³ 529 P.2d 66 (Cal. 1974).

⁸⁴ CAL. CODE REGS. tit. 14, §§ 15000 *et seq.*

⁸⁵ *No Oil*, 529 P.2d at 70. *See also* CAL. CODE REGS. tit. 14, § 15064(f)(1) (2025) (“[I]f a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”)

of *Mammoth*,⁸⁶ creating a markedly low threshold for EIR preparation by using broad terms such as fair, substantial, and significant. As previously discussed, what constitutes a ‘fair’ argument is not broached in the *CEQA Guidelines*,⁸⁷ nor does the issue of ‘fairness’ per se receive attention in the case law. Rather, determinations under the fair argument standard hinge on its two operative terms: ‘substantial evidence’ and ‘significant environmental impacts.’ These operative terms are themselves opaque⁸⁸, and it is therefore unsurprising that the courts have struggled to interpret them.⁸⁹ Some courts have interpreted these terms to narrow the fair argument standard, while others have used them to broaden it.⁹⁰

The remainder of this Article undertakes a value analysis of the fair argument standard, overlaying the previously described constitutive-contextual ethical spectrum to help illuminate underlying values. Overall, it’s clear that, by interpreting Public Resources Code § 21151 broadly, the courts have purposefully elucidated a low threshold for EIR preparation, and this low threshold reflects a contextualist preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.⁹¹ Nevertheless, the fair argument standard is still moderated by two constitutive elements: substantial

⁸⁶ *Friends of Mammoth v. Bd. of Supervisors*, 502 P.2d 1049 (Cal. 1972). In *Friends of Mammoth*, the California Supreme Court considered whether CEQA applied to a county’s approval of a permit for a private condominium development near Mammoth Lakes, California. The Court held that it did, marking a pivotal expansion of CEQA’s reach to include private projects requiring discretionary government action, thereby greatly broadening environmental review in land use planning.

⁸⁷ See *supra* note 48 and accompanying text.

⁸⁸ See *supra* notes 45–47 and accompanying text.

⁸⁹ See Hernandez, *supra* note 50, at 66 (noting that varying interpretive approaches in CEQA jurisprudence have long made CEQA litigation outcomes “entirely unpredictable”).

⁹⁰ See *id.*; Varner *supra* note 50, at 1447.

⁹¹ *Sierra Club v. Cnty of Sonoma*, 8 Cal. Rptr. 2d 473, 478 (Cal. Ct. App. 1992).

evidence and significant impacts. The extent to how regulations and case law have shaped the interpretation of these two elements along the constitutive-contextual value spectrum is the subject of the remainder of this Article.

B. Substantial Evidence – Bolstering CEQA’s Precautionary Stance

This section discusses the first operative element within the CEQA fair argument standard: substantial evidence. By analyzing how regulations and courts have interpreted the term, this section highlights how constitutive and contextual values operate within the substantial evidence element to bolster CEQA’s precautionary approach to environmental protection, particularly through illustrating how substantial evidence favoring EIR preparation is weighed against substantial evidence to the contrary.

1. Regulatory Language

The *CEQA Guidelines* reiterate the statute’s barebones definition of substantial evidence as “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.”⁹² Though this positive definition tells us little, it is clear that facts are foundational: even reasonable assumptions or expert opinion must be supported by them. The prioritization of facts, and therefore of accuracy, points to the substantial evidence element being constitutive in character. This point is further demonstrated by the insufficiency of public controversy over the environmental effects of a project to negate the need for substantial evidence of significant environmental effects,⁹³ even though “the

⁹² CAL. PUB. RES. CODE § 21082.2(c) (West 2025); CAL. CODE REGS. tit. 14, § 15384(b) (2025).

⁹³ See CAL. PUB. RES. CODE § 21082.2(b) (West 2025); CAL. CODE REGS. tit. 14, § 15064(f)(4) (2025).

existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable.”⁹⁴ In this sense, the constitutive values operating within the regulatory language of the substantial evidence element function to cut against the contextual values of the precautionary principle.

Although the regulatory language does not define what constitutes “facts,” the *CEQA Guidelines* do give examples of what are *not* facts, stating that “argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.”⁹⁵ By qualifying the factual basis of the substantial evidence element with terms such as accuracy and credibility, the constitutive nature of the substantial evidence factor becomes even more clear: regardless of the contextual extent of controversy, speculation, or opinion, only a strong factual basis supporting the potential for significant environmental effects is sufficient to trigger the preparation of an EIR.

However, the constitutive values operating within the “substantial evidence” term *are* moderated with a tendency towards caution, particularly when considering how substantial evidence is weighed within the fair argument standard. Under the *CEQA Guidelines*, “[i]f there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.”⁹⁶

⁹⁴ *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 66, 78 (Cal. 1974).

⁹⁵ CAL. CODE REGS. tit. 14, § 15064(f)(5) (2025). *See also* CAL. PUB. RES. CODE § 21082.2(c) (West 2025).

⁹⁶ CAL. CODE REGS. tit. 14, § 15064(g) (2025).

Such a regulatory preference for resolving doubts in favor of environmental review reflects the substantial evidence term's incorporation of the precautionary principle, despite its constitutively narrow focus on "facts." Though the accuracy-focused substantial evidence term gate-keeps EIR preparation based on the existence of sufficient facts, where there is a dispute over those facts, the threshold at which the body of facts is considered adequate shifts to facilitate heightened environmental review. As discussed in the following section, the case law interpreting the fair argument standard reflects this balance of underlying values by applying a narrow view of what qualifies as substantial evidence, while ultimately softening the threshold for fact-sufficiency where there exists a dispute over similarly credible, opposing evidence.

2. *Case Law*

Case law has applied the restrictive, regulatory definition of the substantial evidence element in terms of how substantial evidence is defined, but has also clarified how such substantial evidence should be weighed within the fair argument standard. Section IV.B.2.a looks at an exemplary case demonstrating how courts have reinforced the regulatory definition of substantial evidence by emphasizing that fact-based, expert opinion grounded in relevant technical knowledge qualifies.⁹⁷ Section IV.B.2.b examines how courts have also clarified that the existence, not the quantity, of such evidence is what matters—so long as

⁹⁷ Note that while relevant and qualified expert opinion is typically sufficient to qualify as substantial evidence, expert testimony isn't strictly necessary. For example, fact-based lay testimony may qualify as substantial evidence for non-technical issues. *See, e.g., Keep Our Mountains Quiet v. Cnty. of Santa Clara*, 187 Cal. Rptr. 3d 96 (Cal. Ct. App. 6d 2015).

it supports a fair argument that the project may have a significant environmental impact.

a. Defining Substantial Evidence

The limited positive definition of substantial evidence—“facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts”⁹⁸ — still leaves plenty of space for judicial interpretation: namely, when do facts and expert opinion in the record either constitute substantial evidence or fail to do so? In answering this question, the courts have applied the regulatory text’s constitutive-value oriented approach and excluded information deemed inadequately accurate or reliable. A 2021 case, *Newtown Preservation Society v. County of El Dorado*,⁹⁹ is illustrative of this approach. highlighting that lay opinion based on technical information that requires expertise does not qualify as expert opinion under the substantial evidence element.

In *Newtown*, petitioners challenged the approval of a bridge replacement project, arguing that the project would have significant impacts on resident safety, and therefore an EIR should have been prepared.¹⁰⁰ Specifically, petitioners argued that the project would block fire evacuation routes during construction, and the county had impermissibly deferred analysis of this risk.¹⁰¹ To substantiate these claims, petitioners relied on statements of concern from affected residents including a current and retired firefighter.¹⁰² However, the appellate court ruled

⁹⁸ CAL. PUB. RES. CODE § 21082.2(c) (West 2025); CAL. CODE REGS. tit. 14, § 15384(b) (2025).

⁹⁹ *Newtown Pres. Soc’y v. Cnty. of El Dorado*, 279 Cal. Rptr. 3d 915 (Cal. Ct. App. 3d 2021).

¹⁰⁰ *Id.* at 917–1875.

¹⁰¹ *Id.*

¹⁰² *See id.* at 923–24.

that the statements did not constitute substantial evidence.¹⁰³ As such, the project approval was upheld under the fair argument standard.¹⁰⁴

The *Newtown* court applied the regulatory text’s restrictive approach to the line-drawing of acceptable fact. Without needing to address the potential merits of residents’ concerns about exacerbated wildfire risks, the court excluded those statements from the scope of fair argument analysis.¹⁰⁵ Per the court, some concerns related primarily to “existing wildfire hazards” and failed to draw an adequate connection to the effects of the actual project as issue.¹⁰⁶ More damningly, each and every statement failed to identify some requisite foundational facts.¹⁰⁷ In the absence of a specific factual foundation, the residents’ concerns were analyzed as “mere speculation,” incapable of constituting substantial evidence.¹⁰⁸

Even where the court acknowledged the existence of some premises to support the statements of concern, it found other factual insufficiencies to render the statements unavailing. For example, after half-heartedly engaging the concerns raised by a local resident and firefighter, the court held that petitioners had failed to argue her specific expertise in determining, directing, or effecting evacuations.¹⁰⁹ As such, her “lay opinion based on technical information that

¹⁰³ *Id.* at 928.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 928–30.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *See, e.g., id.* at 929. *See also* CAL. CODE REGS. tit. 14, § 15064(f)(5) (2025) (“Argument, speculation, unsubstantiated opinion or narrative . . . shall not constitute substantial evidence.”).

¹⁰⁹ 279 Cal. Rptr. 3d at 930.

requires expertise” did not constitute substantial evidence, despite her qualifications.¹¹⁰

The *Newtown* ruling can be read as a fairly straightforward application of regulatory rules to what might even be considered a sloppily-litigated CEQA challenge. The court’s analysis is not groundbreaking, nor is its conclusions surprising. Indeed, *Newtown* is a typical case in its application of the substantial evidence term. It clearly demonstrates the function of that term in the CEQA case law: to establish a threshold limiting judicial review of agency significance determinations. Though the fair argument standard sets a low threshold for overturning such determinations, by imposing constitutive value-oriented limits on exactly what evidence can support a ‘fair argument,’ the substantial evidence term cuts against the precautionary approach of the fair argument standard as a whole.

b. Weighing Substantial Evidence

While the above case illustrates the restrictive application of the substantial evidence term’s regulatory definition, courts have balanced the narrowness of that definition by returning to a precautionary approach when considering how substantial evidence is weighed; specifically, courts accord determinative weight to substantial evidence showing significant environmental impacts, even when the record contains substantial evidence to the contrary.

¹¹⁰ *Id.* See also *id.* at 929 (similarly discounting the statement of a retired firefighter, “[w]hile petitioners note that Barnes is a retired aerial firefighter, they identify no evidence in the record establishing he has experience in determining, directing, or effecting evacuation routes”).

The leading precedent on this issue is *Friends of “B” Street v. City of Hayward*.¹¹¹ There, the court built upon *No Oil*, making clear that, if the record contains substantial evidence of significant environmental effects, an EIR is required, even if substantial evidence to the contrary is also presented.¹¹² *Friends of “B” Street* furthermore clarified the role substantial evidence plays in judicial review of agency determinations under CEQA. Section 21168 of CEQA provides that a court reviewing an agency determination “shall not exercise its independent judgment on the evidence but shall only determine whether the act or decision is supported by substantial evidence in light of the whole record.”¹¹³ Accordingly, prior to *Friends of “B” Street*, some courts limited review of an agency’s adoption of a negative declaration, asking only whether that agency was presented with substantial evidence that the proposed ordinance would *not* have a significant environmental impact.¹¹⁴ *Friends of “B” Street*, however, held that the fair argument standard has teeth: if an agency is to be meaningfully held to the fair argument standard, “then an agency’s adoption of a negative declaration is not to be upheld merely because substantial evidence was presented that the project would not have such impact.”¹¹⁵ Rather, “[t]he trial court’s function is to determine whether substantial evidence supported the agency’s conclusion as to whether the prescribed ‘fair argument’ could be made. . . . Stated another way, if the trial court perceives substantial evidence that the project might have [a

¹¹¹ 165 Cal. Rptr. 514 (Cal. Ct. App. 4d 1980).

¹¹² *Id.* at 523.

¹¹³ CAL. PUB. RES. CODE § 21168 (West 2025).

¹¹⁴ 165 Cal. Rptr. at 522–23 (citing *Pac. Water Conditioning Assn., Inc. v. City Council*, 140 Cal. Rptr. 812 (Cal. Ct. App. 1977)).

¹¹⁵ 165 Cal. Rptr. at 523.

significant] impact, but the agency failed to secure preparation of the required EIR, the agency's action is to be set aside because the agency abused its discretion by failing to proceed 'in a manner required by law.'"¹¹⁶

Friends of "B" Street demonstrates how courts have weighed substantial evidence in a manner that effects precaution and gives teeth to judicial review of the fair argument standard. By denying the reviewing agency the opportunity to rebut substantial evidence of significant environmental effects and mandating heightened environmental review, the fair argument standard sacrifices empirical accuracy in order to prioritize environmental protection. In contrast to how substantial evidence is defined, this is more aligned with contextual values that favor a precautionary approach.

In summary, though the substantial evidence element is defined in a manner that moderates the fair argument standard's low threshold for EIR preparation, substantial evidence is weighed in a manner that reinforces the fair argument inquiry's orientation towards contextual precaution.

On one hand, the substantial evidence element is defined in a way that centers the constitutive values of accuracy and credibility in the fair argument inquiry. By requiring relevant, specialized expertise and requiring all claims to be supported by facts, the courts have gate-kept what qualifies as substantial evidence in a manner that can make it difficult for plaintiffs to challenge the adoption of a negative declaration.¹¹⁷ While the fair argument standard broadly

¹¹⁶ *Id.* (quoting CAL. PUB. RES. CODE § 21168.5).

¹¹⁷ *See generally, e.g.,* Newtown Pres. Soc'y v. Cnty. of El Dorado, 279 Cal. Rptr. 3d 915 (Cal. Ct. App. 3d 2021).

facilitates heightened environmental review in consideration of the seriousness of environmental harms, the narrow definition of the substantial evidence element has a countervailing influence. By limiting what evidence can support a fair argument, the substantial evidence element appears to give some teeth to the otherwise low threshold of the fair argument standard

On the other hand, the substantial evidence element is weighed in light of the contextual values expressed in the precautionary principle. As a result, the substantial evidence element functions to reinforce the precautionary orientation of the fair argument standard, setting a low threshold to trigger heightened environmental review. Both the regulatory language and case law demonstrate that substantial evidence of significant environmental effects is determinative of whether an EIR is required; if such evidence is found, it need not—and should not—be weighed against evidence to the contrary.¹¹⁸ Case law further clarifies that substantial evidence, in light of the entire record, must only be sufficient to support a “fair argument” that a project may have significant environmental impacts.¹¹⁹ Therefore, the substantial evidence element, while largely holding to the constitutive values of factual accuracy and expertise through its definitional interpretation, still functions overall in support of the precautionary approach embodied by CEQA through its contextual implementation. In this way, the substantial evidence element actually bolsters CEQA’s precautionary stance and likely has minimal impact in moderating the quantity of EIRs produced and the litigation that often ensues.

¹¹⁸ See *Friends of “B” Street*, 165 Cal. Rptr. at 523.

¹¹⁹ *Id.*

C. Significant Impacts– Precaution from Contextual Values

The second operative element of the fair argument standard is ‘significant impacts.’ The concept of significance plays an important role in CEQA, both in determining the extent of environmental review required¹²⁰ and in determining what environmental effects should be considered for mitigation.¹²¹ The fair argument standard relates to the former, establishing that an EIR is required “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impacts.”¹²² Similar to the substantial evidence element, significance is a broad and ambiguous term that contributes to the fear of litigation instilled into CEQA practitioners.¹²³ By examining the regulatory language and judicial interpretation of the significance element, this section argues that the “significant environmental impact” term also contributes to the overall precautionary nature of the fair argument standard, despite the high threshold it seems to present within the standard.

1. Regulatory Language

Significance is used in different ways within different disciplines. For scientists and statisticians, it is typically defined constitutively. For example, “statistical significance” is a familiar measure of confidence in experimental inquiry.¹²⁴ On the other hand, in the context of law and policy, significance may be interpreted more flexibly; becoming a matter of judgment rather than

¹²⁰ CAL. PUB. RES. CODE §§ 21102, 21151 (West 2025).

¹²¹ See, e.g., *id.* § 21081(a)(3).

¹²² See *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 66, 70 (Cal. 1974).

¹²³ See generally Watts, *supra* note 9.

¹²⁴ See *supra* note 73 and accompanying text.

calculation, grounded in contextual values and societal impact rather than statistical probability alone.

Aligning with the latter of these two approaches, CEQA regulations define a “significant effect on the environment” as “substantial, or potentially substantial, adverse changes in physical conditions which exist within the area.”¹²⁵ CEQA’s use of “substantial” and “adverse” do little to clarify the underlying meaning, as these terms are not explicitly defined in the *CEQA Guidelines*. However, the inclusion of the modifier “potentially substantial” adds a strong contextual valence to the term. Rather than requiring at least 95% certainty,¹²⁶ an impact that is merely *potentially* substantial can be considered significant—a threshold that demonstrates how CEQA functions, even through the operation of constitutive values, as a highly precautionary statute.

This Article has previously discussed how the fair argument standard constrains agency discretion. However, agency discretion still plays a key role in making significance determinations.¹²⁷ For one thing, the *CEQA Guidelines* encourage agencies to develop and publish their own significance thresholds.¹²⁸ Although agencies may rely on *Appendix G* of the *CEQA Guidelines*, *Appendix G* merely highlights various impacts that should be considered when making

¹²⁵ CAL. PUB. RES. CODE § 21100(d) (West 2025).

¹²⁶ See *supra* note 73.

¹²⁷ See CAL. CODE REGS. tit. 14, § 15064 (2025) (“the determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data”).

¹²⁸ CAL. CODE REGS. tit. 14, § 15064.7(b) (2025).

significance determinations.¹²⁹ Accordingly, the ultimate judgment call remains with the agency.

Still, the *CEQA Guidelines* do, in narrow circumstances, constrain agency authority with respect to significance determinations. There are four scenarios in which an agency *must* make a mandatory finding of significance—three of which bolster the precautionary nature of CEQA, as discussed below.¹³⁰

First, the *CEQA Guidelines* illustrate a precautionary interpretation of the significance element by making a finding of significance mandatory if “the project has the *potential* to substantially degrade the quality of the environment; 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; or eliminate important examples of the major periods of California history or prehistory.”¹³¹ Similar to the substantial evidence term, significance is not determined here via a balancing test. Instead, this determination is subject to a bright line rule: for certain categories of resources, even *potential* harm qualifies as significant.

¹²⁹ See CAL. CODE REGS. tit. 14, app. G (2025) (“the sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance”).

¹³⁰ CAL. CODE REGS. tit. 14, § 15065 (2025). In the fourth scenario, a mandatory finding of significance shall be made when “the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” CAL. CODE REGS. tit. 14, § 15065(a)(4) (2025). Although tangentially related to the precautionary principle through its emphasis on indirect adverse effects, this scenario is based more so on anthropocentric values that prioritize human wellbeing. Therefore, this scenario will not be discussed further in this section.

¹³¹ CAL. CODE REGS. tit. 14, § 15065(a)(1) (2025) (emphasis added).

Similarly, in the second scenario, a finding of significance is mandatory if the project “has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.”¹³² Otherwise known as a “social trap,”¹³³ the prioritization of short-term societal goals at the expense of potential long-term environmental harm has resulted in countless environmental catastrophes, despite initial optimism surrounding the short-term societal benefits of such decisions. Tetra-ethyl lead stopped engine knocking and yet poisoned our cities.¹³⁴ Chlorofluorocarbons made refrigeration safe and yet exposed us to harmful ultraviolet radiation.¹³⁵ And, in an example that spurred Carson’s allusion to the precautionary principle in *Silent Spring*, DDT delivered us from malaria and pests, and yet poisoned our ecosystems.¹³⁶ In shifting the focus to less certain, long-term environmental harm, this second scenario acts as a precautionary lever in the machinery of significance determinations.

Finally, in the third scenario, a finding of significance is mandatory if a project “has possible environmental effects that are individually limited but cumulatively considerable.”¹³⁷ By qualifying possible effects that may be “cumulatively considerable” as significant, the *CEQA Guidelines* highlight the importance of the systems-level thinking indicative of the precautionary principle. This systems-level perspective aligns with the precautionary principle by

¹³² CAL. CODE REGS. tit. 14, § 15065(a)(2) (2025).

¹³³ Craig et al., *supra* note 60, at 151 (citing John Platt, *Social Traps*, 28(8) AM. PSYCH. 641 (1973); JOHN G. CROSS & MELVIN J. GUYER, *SOCIAL TRAPS* (1980); Robert Costanza, *Social Traps and Environmental Policy*, 37(6) BIOSCIENCE 407, 409-12 (1987)).

¹³⁴ See generally Jamie L. Kitman, *The Secret History of Lead*, THE NATION (Mar. 20, 2000).

¹³⁵ See generally Sherwood F. Rowland, *Chlorofluorocarbons, Stratospheric Ozone, and the Antarctic ‘Ozone Hole,’* 15 ENV’T CONSERVATION 101 (1988).

¹³⁶ See generally CARSON, *supra* note 76.

¹³⁷ CAL. CODE REGS. tit. 14, § 15065(a)(3).

requiring consideration of incremental contributions to broader environmental conditions, recognizing that seemingly minor effects may become significant when viewed cumulatively.

Section 15065(a)(1) highlights that, for certain categories of resources, even potential harm qualifies as significant. And if section 15065(a)(2) presents the imperative to consider the potential for long-term harm, then section 15065(a)(3) suggests one method for considering such harm. Taken together, these three regulatory scenarios highlight that, although significance determinations are left to agency discretion, significance should not be based on statistical certainty, but instead on a precautionary approach rooted in contextual, long-term thinking.

2. *Case Law*

a. Significance, Generally

Case law has interpreted significance, in light of the fair argument standard, both generally and with respect to the criteria for the previously discussed mandatory findings of significance. Beginning with the former, a substantial body of case law underscores preexisting regulatory directives. For example, courts have held that a lead agency is not bound to using the *Appendix G* Checklist when making significance determinations,¹³⁸ and may instead develop their own significance thresholds in reliance on (non-CEQA) regulatory standards or expert opinion.¹³⁹

¹³⁸ See, e.g., *Rominger v. Cnty. of Colusa*, 177 Cal. Rptr. 3d 677, 701 (Cal. Ct. App. 2014).

¹³⁹ See, e.g., *Citizens for Responsible Equitable Env't Dev. v. City of Chula Vista*, 127 Cal. Rptr. 3d 435, 442 (Cal. Ct. App. 2011); *Save Cuyama Valley v. Cnty. of Santa Barbara*, 153 Cal. Rptr. 3d 534, 541 (213 Cal. Ct. App. 2013).

Although agencies are afforded the freedom to rely on regulatory standards or expert opinion when making significance determinations, a finding of non-significance cannot be mandated where there exists evidence to the contrary.¹⁴⁰ In *Communities for a Better Environment v. California Resources Agency*, the court invalidated a *CEQA Guidelines* regulation that directed agencies to determine an environmental impact is not significant if it complies with a regulatory standard, as defined by *CEQA Guidelines* § 15064(h)(3).¹⁴¹ Prior to *Communities*, § 15064(h) directed lead agencies to conclude that impacts meeting qualifying regulatory standards are not significant – even if other substantial evidence indicated there may be a significant environmental effect. As the court explained, “this direction relieve[d] the agency of a duty it would have under the fair argument approach to look at evidence beyond the regulatory standard.”¹⁴² Rather, agencies may consider regulatory standards, as defined by *CEQA Guidelines* § 15064(h)(3), as significance thresholds, but that does not preclude the consideration of additional evidence beyond or in contravention of the regulatory standard being used.¹⁴³ In fact, courts have ruled that reliance on

¹⁴⁰ See *Communities for a Better Env’t v. California Res. Agency*, 126 Cal. Rptr. 2d 441, 451–52 (Cal. Ct. App. 2002), *as modified* (Nov. 21, 2002) and *disapproved of on other grounds* 343 P.3d 834 (2015).

¹⁴¹ *Id.* Although the *Communities for a Better Environment* decision was later disapproved of in *Berkeley Hillside Preservation v. City of Berkeley*, 343 P.3d 834 (Cal. 2015), the latter decision concerned the application of categorical exemptions and the “unusual circumstances” exception, and does not affect the principle cited here regarding the role of regulatory standards in significance determinations.

¹⁴² *Id.* at 451.

¹⁴³ *Id.* at 451–452 (“[A] lead agency may determine on the basis of substantial evidence in light of the whole record that a standard is inappropriate to determine the significance of an effect for a particular project; if this happens, the lead agency is to determine whether the effect may be significant as otherwise required”).

significance thresholds, regardless of their origins, does not relieve agencies from their duty to consider additional evidence of significant impacts.¹⁴⁴

The overarching theme in these cases, then, is rooted in providing agencies with tools to make significance determinations, whilst also being careful not to bind agencies to any single methodology. This reflects a contextualist approach that sacrifices predictability and precision in favor of flexibility and caution. The California Supreme Court's decision in *Berkeley Hillside Preservation v. City of Berkeley*¹⁴⁵ illustrates the tension within this framework.

There, the California Supreme Court considered an appeal involving the application of the “unusual circumstances” exception to categorical exemptions.¹⁴⁶ Under the “unusual circumstances” exception, “[a] categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.”¹⁴⁷ Relying on this exception, the California Court of Appeal had invalidated the permit approval for a proposed residential building project.¹⁴⁸ The Court of Appeal decision treated there being a reasonable possibility of significant effects on the environment as an unusual circumstance in and of itself, rendering

¹⁴⁴ *E.g.*, *Mejia v. City of Los Angeles*, 29 Cal. Rptr. 3d 788, 802 (Cal. Ct. App. 2005).

¹⁴⁵ 343 P.3d 834 (Cal. 2015).

¹⁴⁶ *Id.* at 837. As background, under CEQA, categorical exemptions are identified for “classes” of projects that have been determined not to have a significant effect on the environment and are therefore exempt from review. CAL. PUB. RES. CODE § 21084 (West 2025); CAL. CODE REGS. tit. 14, §§ 15300-15333 (2025). However, projects that may otherwise qualify for a categorical exemption may be excluded from such an exemption based on a series of *exceptions*. CAL. CODE REGS. tit. 14, § 15300.2 (2025).

¹⁴⁷ CAL. CODE REGS. tit. 14, § 15300.2(c) (2025).

¹⁴⁸ *Berkeley Hillside Preservation*, 343 P.3d at 837.

inapplicable a categorical exemption for certain single-family residences.¹⁴⁹ The California Supreme Court reversed.¹⁵⁰

In doing so, the California Supreme Court rejected the Court of Appeal's broad interpretation of the exception,¹⁵¹ but nevertheless preserved an important contextualist feature within the second prong of its analysis. Specifically, the court held that while an agency's determination with respect to the existence of unusual circumstances (the first prong) is reviewed deferentially under the substantial evidence standard, the question of whether those unusual circumstances give rise to a reasonable possibility of significant environmental effects (the second prong) is reviewed to determine whether the agency properly applied the fair argument standard.¹⁵² Accordingly, the court retained CEQA's comparatively low threshold for significance determinations in circumstances where unusual project conditions are first established. Thus, although *Berkeley Hillside* constrained the scope of the exception overall, the decision simultaneously reaffirmed CEQA's preference for environmental caution where substantial evidence supports a fair argument of potentially significant impacts arising from unusual circumstances.¹⁵³

Finally, courts have occasionally gone beyond applying the standard regulatory or fair argument frameworks and have instead engaged in broader

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ See *Berkeley Hillside Preservation*, 343 P.3d at 841.

¹⁵² *Id.* at 852.

¹⁵³ *Id.* at 854 (“[W]hen unusual circumstances are established, the Secretary’s findings as to the typical environmental effects of projects in an exempt category no longer control. . . . An agency must evaluate potential environmental effects under the fair argument standard, and judicial review is limited to determining whether the agency applied the standard ‘in [the] manner required by law.’”).

interpretations of significance that reflect underlying value judgments about how environmental impacts should be assessed. For example, in *Porterville Citizens for Responsible Hillside Development v. City of Porterville*, the court applied a seemingly utilitarian interpretation of significance, concluding that aesthetic impacts from a proposed development were *not* significant because only a small group of people would be affected.¹⁵⁴ Ignoring environmental impacts because merely a few people would be affected goes against the precautionary tone set by previous case law. However, on closer examination the court seems to have come to this conclusion not from a mathematical weighing of harm, but rather because “the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons.”¹⁵⁵ In light of this decision, significance determinations should be made with consideration given to the big picture (“environment of persons in general”) rather than particular individuals—a perspective one could argue is rooted in the systems level thinking characteristic of the recent period of environmental policymaking.¹⁵⁶ Such a perspective serves to bolster the precautionary principle, as it mandates the ecological, long-term risk valuation that was often absent from the decisions which led to many of the environmental catastrophes of our time.¹⁵⁷

¹⁵⁴ *Porterville Citizens for Responsible Hillside Dev. v. City of Porterville*, 69 Cal. Rptr. 3d 105, 117–18 (Cal. Ct. App. 2007).

¹⁵⁵ *Id.* at 117 (citing *Mira Mar Mobile Community v. City of Oceanside*, 14 Cal. Rptr. 2d 170 (Cal. Ct. App. 2004)).

¹⁵⁶ *Cf.* Purdy, *supra* note 4, at 207-14 (discussing the “ecological interdependence period”).

¹⁵⁷ For example, *see supra* notes 109-12.

b. Mandatory Findings of Significance

In addition to addressing significance generally, case law has also spoken to the criteria for the previously discussed mandatory findings of significance. These cases demonstrate how significance has been interpreted cautiously and narrowly, while also highlighting the difficulties that arise from CEQA's often ambiguous language.

CEQA Guidelines § 15065(a)(1), which states that an agency must make a finding of significant impacts when a project has the potential to, among other things, “substantially reduce the number or restrict the range of an endangered, rare or threatened species,”¹⁵⁸ is addressed in *Mountain Lion Foundation v. Fish & Game Commission*.¹⁵⁹ In *Mountain Lion*, plaintiffs argued that delisting the Mohave ground squirrel, a threatened species under the California Endangered Species Act (“CESA”), constituted an agency action with significant environmental impacts and therefore was subject to the EIR requirement of CEQA.¹⁶⁰ Although defendants argued the delisting action was an integral part of the statutory scheme of CESA,¹⁶¹ the Court affirmed that because a delisting removes, rather than secures protections, it triggers CEQA's requirement to evaluate potentially significant impacts.¹⁶² The Court went on to note that,

¹⁵⁸ CAL. CODE REGS. tit. 14, § 15065(a)(1) (2025).

¹⁵⁹ *Mountain Lion Found. v. Fish & Game Comm'n*, 939 P.2d 1280 (Cal. 1997).

¹⁶⁰ *See id.* at 1283.

¹⁶¹ *Id.* at 1292-1293. Note that defendants' argument was responsive to plaintiffs' CEQA claim in that, if delisting were considered merely a routine or ministerial component of CESA's statutory framework, it could be viewed as exempt from CEQA review or outside the scope of discretionary actions subject to environmental analysis.

¹⁶² *Id.* at 1292 (“As the interplay between the Commission's regulations and the Guidelines makes clear, the removal of a species from the endangered or threatened species list is an activity that may have a significant effect on the environment. A delisting therefore cannot be categorically exempt.”).

because delisting has the potential to reduce the number or restrict the range of an endangered, rare or threatened species, an agency *must* find that the project may have a significant environmental impact under § 15065(a)(1).¹⁶³ Although delisting may, in some cases, reflect improved species conditions, the Court’s analysis emphasizes that the removal of protections itself carries environmental risk.¹⁶⁴ This interpretation reflects a precautionary approach to significance determinations under CEQA.

Case law has also spoken to how significance is interpreted within CEQA Guidelines § 15065(a)(3). Although the Guidelines define cumulative impacts as those arising from the incremental effects of a project in combination with past, present, and probable future projects,¹⁶⁵ courts have narrowed how that definition is applied in practice. In *Sierra Club v. West Side Irrigation District*, the court held that if a project has no individually significant impacts, an agency can reasonably conclude that the project will not have any cumulatively considerable impacts.¹⁶⁶ In doing so, the court effectively interpreted the *Guidelines* to require a threshold showing of project-level impacts before cumulative significance is implicated. This is because, as described in the CEQA Guidelines § 15355, cumulative impacts are impacts to which the proposed project itself contributes, in addition to contributions from other projects.¹⁶⁷ This approach places an emphasis

¹⁶³ *Id.* at 1292.

¹⁶⁴ *Id.* at 1292. In this case, for example, delisting carried the risk of reducing the number or restricting the range of an endangered, rare or threatened species, as outlined in § 15065(a)(1).

¹⁶⁵ CAL. CODE REGS. tit. 14, § 15065(a)(3) (2025).

¹⁶⁶ 27 Cal. Rptr. 3d 223, 231–32 (Cal. Ct. App. 2005).

¹⁶⁷ *Id.* at 230. See CEQA Guidelines § 15355(b) (“[T]he cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.

on a project's standalone effects and may limit consideration of impacts related to the emergent properties of a project—that is, impacts that only emerge when considered in the aggregate.¹⁶⁸ Thus, this ruling narrows section 15065(a)(3), demonstrating how, as with the substantial evidence term, caution in the fair argument standard is sometimes moderated by narrowly defined terms (e.g. cumulative impacts).

In summary, quantifying significance thresholds remains a bit of a conundrum. Regulatory standards and expert opinion can be used to establish thresholds, but neither is sufficient nor necessary in light of alternative evidence.¹⁶⁹ Instead, by keeping significance determinations flexible, CEQA regulations and case law have cultivated a contextual approach that can adapt to a variety of project scenarios. Regulatory criteria outlining when a mandatory finding of significance must be made further bolster the contextual nature of significance, as assessing cumulative impacts and prioritizing long-term goals over short-term goals are highlighted.¹⁷⁰ Such criteria may be narrowed via case law;¹⁷¹ however, one thing remains clear—CEQA regulations and the courts have taken a distinct approach to interpreting the substantive concept of “significance,”

Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.”).

¹⁶⁸ Emergent properties refer to characteristics or qualities that arise from the interaction of simpler components within a system, which cannot be predicted just by understanding the individual parts. These properties emerge when the system as a whole exhibits behaviors or qualities that its individual elements do not (e.g. weather systems emerging from atmospheric conditions or consciousness emerging from neural activity). *Cf.* Jean-Francois Ponge, *Emergent Properties From Organisms to Ecosystems: Towards a Realistic Approach*, 80 BIOLOGICAL REVIEWS 403, 403 (2005).

¹⁶⁹ *See supra* notes 140–144 and accompanying text.

¹⁷⁰ *See* CAL. CODE REGS. tit. 14, §§ 15065(a)(2), 15065(a)(3)

¹⁷¹ *See, e.g., supra* notes 166–168 and accompanying text.

positioning it somewhere between NEPA's ambiguous definition and the stricter, statistical definition often employed by environmental scientists, whose work underpins policies and regulations like CEQA. Such positioning allows for the balance of contextual values seen here, reinforcing the precautionary nature of CEQA that has been integral to the statute since its inception.

V. CONCLUSION

CEQA is a controversial statute. Producing far more environmental impact reports proportionately than NEPA, CEQA results in frequent litigation that has fueled its reputation as a litigation lever.¹⁷² Such persistent litigation, and such high quantities of EIRs, are likely a result of the precautionary stance of CEQA—a stance that is both inherent in the statute itself and bolstered by its interpretation via regulations and the California courts. A core example of this precautionary approach is seen in the fair argument standard; that is, the threshold for determining whether a labor- and cost-intensive EIR must be produced. Less clear, however, are the values underlying the precautionary approach of this standard. Although the name of the fair argument standard itself reflects the low threshold it establishes, the standard is moderated by two seemingly substantive elements—substantial evidence and significance determinations. However, upon closer examination, it's clear that both elements have been interpreted, through constitutive and contextual values, to align with the precautionary nature of CEQA as a whole.

¹⁷² See *supra* note 49; see also Bland, *supra* note 51.

Consider first the substantial evidence element. Although the criteria interpreting substantial evidence demonstrate that the term is defined narrowly in a way that prioritizes constitutive values (e.g., accuracy, credibility, and precision), substantial evidence is weighed with an eye towards contextual precaution: resolving uncertainty and dispute in favor of heightened environmental review. In this sense, the substantial evidence element is driven by constitutive values that narrow the fair argument standard in their interpretation, but by contextual values that broaden the standard in their implementation. Significance determinations, on the other hand, seem to point, via their flexibility, to a strong contextual and precautionary approach. Although “significance” is defined vaguely, when the regulations do give guidance on the term such guidance tends to err on the side of caution via adopting a systems-level, long-term contextual approach.

The value analysis presented in this Article demonstrates that the fair argument standard, despite the substantive “substantial evidence” and “significance” elements, retains a low threshold that is heavily aligned with the precautionary nature of the CEQA statute. Should regulatory agencies or courts wish to address the controversy surrounding CEQA and EIR production, or reduce the quantity of litigation the statute produces, the fair argument standard may be a strong starting place for reform. However, rather than proposing the elimination of the fair argument standard altogether,¹⁷³ legislative reform efforts should adopt a more nuanced approach that considers the values underlying the

¹⁷³ *Cf. supra* notes 58, 59.

fair argument standard, and how such values may be misaligned with current societal goals. At the bare minimum, thinking about CEQA and the fair argument standard in this manner—via careful consideration of the underlying values—can help to foster conversations around policy reform that are less polarized and better tailored to particular goals of political, societal, and environmental advancement.

Of course, it's understandable that confusion may arise from terms like “substantial evidence” and “significance,” which, in practice, may not consistently function to elevate the threshold for EIR preparation. Nevertheless, such a precautionary approach is aligned with CEQA's initial interpretation, and through redefining terms such as ‘substantial’ and ‘significant,’ CEQA has tipped the regulatory scale once more towards environmental protection. Whether environmental protection could be accomplished through less laborious, litigious means remains an open discussion, and one that will likely be most fruitful by considering the ways CEQA balances accuracy and uncertainty from a foundational, ethical perspective, rather than a superficial one.

Finally, the value analysis applied to CEQA in this Article may be fruitful in highlighting other environmental regulations that could benefit from policy reform.¹⁷⁴ The constitutive-contextual value spectrum described here is merely one of multiple value spectrums that can be used to elucidate the environmental ethics underlying our policies.¹⁷⁵ Considering our policies' underlying values

¹⁷⁴ Even the elements analyzed in this article remain ripe for additional value analysis. For example, future research may consider how values operate within the significant impact/effects element for the purposes of determining which impacts/effects must be mitigated for. *See supra* note 121 and accompanying text.

¹⁷⁵ *Cf., e.g.,* HOURDEQUIN, *supra* note 1 (describing the anthropocentric, ecocentric, consequentialist, and deontological value frameworks).

reintegrates ethics with environmental law, and provides us with the language necessary to navigate our differences in a way that fosters mutual respect and a deeper understanding of both how—and *why*—we steward our natural resources. In this way, ethical analysis allows us to take control of our environmental decision-making, freeing ourselves from the influence of unexamined values that would otherwise guide our decisions without our awareness that they are doing so.¹⁷⁶ Such an approach may be critical to crafting environmental policies that not only safeguard our natural resources, but also garner the broad public support needed to have a lasting impact on our planet.

¹⁷⁶ *See id.*