

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-8

REGISTRATION STATEMENT
UNDER
THE SECURITIES ACT OF 1933

NextDecade Corporation
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

46-5723951

(I.R.S. Employer
Identification No.)

1000 Louisiana Street, Suite 3900
Houston, Texas 77002
(713) 574-1880
(Address of principal executive offices) (Zip Code)

NEXTDECADE CORPORATION 2017 OMNIBUS INCENTIVE PLAN
(Full title of the plan)

Krysta De Lima, General Counsel
NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002
(Name and address of agent for service)

(713) 574-1880
(Telephone number, including area code, of agent for service)

Copies of all communications, including communications sent to agent for service, should be sent to:

Sean M. Jones
K&L Gates LLP
214 North Tryon Street, 47th Floor
Charlotte, North Carolina 28202
(704) 331-7400

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See the definitions of “large accelerated filer,” “accelerated filer,” “smaller reporting company,” and “emerging growth company” in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐
Non-accelerated filer ☐

Accelerated filer ☒
Smaller reporting company ☒
Emerging growth company ☒

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☒

CALCULATION OF REGISTRATION FEE

Title of Securities to be Registered	Amount to be Registered ⁽¹⁾		Proposed Maximum Offering Price Per Share ⁽²⁾		Proposed Maximum Aggregate Offering Price ⁽²⁾		Amount of Registration Fee ⁽²⁾
Common Stock, \$0.0001 par value per share	682,285	\$	6.16	\$	4,202,875.60	\$	545.53

- (1) Registered shares are comprised of 682,285 shares (the “Forfeited Shares”) previously issued as restricted stock awards under the NextDecade Corporation 2017 Omnibus Incentive Plan (the “Plan”) and subsequently forfeited and returned to the Plan in accordance with its terms as of November 8, 2019. Any additional shares of common stock of NextDecade Corporation to be issued as a result of stock dividends, stock splits or similar transactions shall be covered by this Registration Statement as provided in Rule 416(a) under the Securities Act of 1933.
- (2) Calculated in accordance with Rule 457(c) and (h) under the Securities Act of 1933 solely for the purpose of calculating the registration fee, which is based on the average of the high and low market prices of the shares of common stock of NextDecade Corporation as reported on the Nasdaq Capital Market on November 6, 2019.

EXPLANATORY NOTE

NextDecade Corporation (the “Registrant”) is filing this Registration Statement on Form S-8 for the purpose of registering 682,285 shares of its common stock, par value \$0.0001 per share (“Common Stock”), that were previously issued as restricted stock awards under the Registrant’s 2017 Omnibus Incentive Plan (the “Plan”), but which were subsequently forfeited and returned to the Plan in accordance with its terms. Pursuant to General Instruction E to Form S-8, the contents of the Registrant’s Registration Statement on Form S-8 filed with the Securities and Exchange Commission (the “Commission”) on December 15, 2017 (File No. 333-222082) are hereby incorporated by reference into this Registration Statement on Form S-8 (except to the extent expressly superseded herein).

PART II

INFORMATION REQUIRED IN REGISTRATION STATEMENT

Item 3. Incorporation of Documents by Reference.

The Registrant hereby incorporates by reference in this Registration Statement the following documents previously filed by the Registrant with the SEC:

- The Registrant’s Annual Report on Form 10-K for the year ended December 31, 2018 filed with the Commission on March 6, 2019, as amended by the Form 10-K/A filed with the Commission on April 10, 2019;
- The Registrant’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2019, June 30, 2019 and September 30, 2019 filed with the Commission on May 7, 2019, August 6, 2019, and November 5, 2019 respectively;
- The Registrant’s Current Reports on Form 8-K filed with the Commission on March 7, 2019, May 20, 2019, May 28, 2019, June 5, 2019, July 15, 2019, October 1, 2019, October 21, 2019 and October 24, 2019; and
- The description of the Registrant’s common stock included in the Registration Statement on Form 8-A filed with the Commission on February 9, 2015, as amended by the Registration Statement on Form 8-A/A filed with the Commission on March 18, 2015.

All documents filed by the Registrant with the Commission pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), subsequent to the date of this Registration Statement shall be deemed to be incorporated herein by reference and to be a part hereof from the date of the filing of such documents until such time as there shall have been filed a post-effective amendment that indicates that all securities offered hereby have been sold or which deregisters all securities remaining unsold at the time of such amendment.

Any statement contained in the documents incorporated or deemed to be incorporated by reference in this Registration Statement shall be deemed to be modified, superseded or replaced for purposes of this Registration Statement to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference in this Registration Statement modifies, supersedes or replaces such statement. Any such statement so modified, superseded or replaced shall not be deemed, except as so modified, superseded or replaced, to constitute a part of this Registration Statement.

No document or information deemed to be furnished and not filed in accordance with rules of the Commission shall be deemed to be incorporated herein by reference unless such document or information expressly provides to the contrary.

Item 8. Exhibits.

Exhibit Number	Description
4.1(1)	<u>Second Amended and Restated Certificate of Incorporation, dated July 24, 2017</u>
4.2(2)	<u>Amended and Restated Bylaws, dated July 24, 2017</u>
4.3(3)	<u>Specimen Common Share certificate</u>
5.1*	<u>Opinion of K&L Gates LLP</u>
10.1(4)	<u>NextDecade Corporation 2017 Omnibus Incentive Plan</u>
23.1*	<u>Consent of Grant Thornton LLP</u>
23.2*	<u>Consent of Marcum LLP</u>
23.3*	<u>Consent of K&L Gates LLP (included as part of Exhibit 5.1)</u>
24.1*	<u>Power of Attorney (included on the signature page to this Registration Statement)</u>

(1) Incorporated by reference to Exhibit 3.1 of the Registrant's Current Report on Form 8-K, filed July 28, 2017.

(2) Incorporated by reference to Exhibit 3.2 of the Registrant's Current Report on Form 8-K, filed July 28, 2017.

(3) Incorporated by reference to Exhibit 4.2 of the Amendment No. 2 to the Registrant's Registration Statement on Form S-1, filed October 10, 2014.

(4) Incorporated by reference to Exhibit 10.1 of the Registrant's Registration Statement on Form S-8, filed December 15, 2017.

* Filed herewith.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the Registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing on Form S-8 and has duly caused this Registration Statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Houston, State of Texas, on November 8, 2019.

NEXTDECADE CORPORATION

By: /s/ Benjamin Atkins
Benjamin Atkins
Chief Financial Officer

POWER OF ATTORNEY

Each of the undersigned officers and directors of NextDecade Corporation hereby constitutes and appoints Benjamin Atkins, Krysta De Lima, and Gabriel Gutierrez and each of them, his or her true and lawful attorneys-in-fact and agents, each with full power of substitution and resubstitution, for him or her and in his or her name, place and stead, in any and all capacities, to sign any and all (i) amendments (including post-effective amendments) and additions to this Registration Statement of NextDecade Corporation on Form S-8 and (ii) to file the same, with all exhibits thereto, and other documents in connection therewith, with the Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in connection therewith, as fully and to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that each of said attorneys-in-fact and agents, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this Registration Statement has been signed by the following persons in the capacities set forth opposite their names and on November 8, 2019.

Name	Title
<u>/s/ Matthew Schatzman</u> Matthew Schatzman	Chairman of the Board and Chief Executive Officer (Principal Executive Officer)
<u>/s/ Benjamin Atkins</u> Benjamin Atkins	Chief Financial Officer (Principal Financial Officer)
<u>/s/ Eric Garcia</u> Eric Garcia	Chief Accounting Officer (Principal Accounting Officer)
<u>/s/ Brian Belke</u> Brian Belke	Director
<u>/s/ Matthew Bonanno</u> Matthew Bonanno	Director
<u>/s/ Frank Chapman</u> Frank Chapman	Director
<u>/s/ David Gallo</u> David Gallo	Director
<u>/s/ Taewon Jun</u> Taewon Jun	Director
<u>/s/ Avinash Kripalani</u> Avinash Kripalani	Director
<u>/s/ David Magid</u> David Magid	Director
<u>/s/ Eric S. Rosenfeld</u> Eric S. Rosenfeld	Director
<u>/s/ William Vratto</u> William Vratto	Director
<u>/s/ Spencer Wells</u> Spencer Wells	Director

November 8, 2019

NextDecade Corporation
1000 Louisiana Street, Suite 3900
Houston, Texas 77002

Ladies and Gentlemen:

We have acted as special counsel to NextDecade Corporation, a Delaware corporation (the “Company”), in connection with the Registration Statement on Form S-8 (the “Registration Statement”) filed on the date hereof with the Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933, as amended (the “Securities Act”), and the rules and regulations promulgated thereunder for the registration of 682,285 shares (the “Shares”) of common stock, par value \$0.0001 per share (“Common Stock”), of the Company, issuable pursuant to the NextDecade Corporation 2017 Omnibus Incentive Plan (the “Plan”).

You have requested our opinion as to the matters set forth below in connection with the issuance of the Shares. For purposes of rendering that opinion, we have examined (i) the Registration Statement, (ii) the Company’s Second Amended and Restated Certificate of Incorporation, as amended through the date hereof, (iii) the Company’s Amended and Restated Bylaws, as amended through the date hereof, (iv) the Company’s stock ledger; (v) the corporate action of the Company’s Board of Directors relating to the issuance of the Shares and the Registration Statement and (vi) the Plan, and we also have made such investigation of law as we have deemed appropriate. We have examined and relied upon certificates of public officials and, as to certain matters of fact that are material to our opinion, we have also relied on a certificate of an officer of the Company. Other than our review of the documents listed in (i) through (vi) above, we have not reviewed any other documents or made any independent investigation for the purpose of rendering this opinion.

For the purposes of this opinion letter, we have made assumptions that are customary in opinion letters of this kind, including the assumptions that each document submitted to us is accurate and complete, that each such document that is an original is authentic, that each such document that is a copy conforms to an authentic original, that all signatures on each such document are genuine and that the Company is and shall remain at all times a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware. We have further assumed the legal capacity of natural persons, and we have assumed that each party to the documents we have examined or relied on has the legal capacity or authority and has satisfied all legal requirements that are applicable to that party to the extent necessary to make such documents enforceable against that party. We have not verified any of those assumptions.

In rendering our opinion below, we also have assumed that: (a) the Company will have sufficient authorized and unissued shares of Common Stock at the time of each issuance of a Share under the Plan; (b) the Shares will be evidenced by appropriate certificates, duly executed and delivered or the Company’s Board of Directors will adopt a resolution, providing that all Shares shall be uncertificated in accordance with Section 158 of the Delaware General Corporation Law (the “DGCL”), prior to their issuance; (c) the issuance of each Share will be duly noted in the Company’s stock ledger upon its issuance; (d) the Plan constitutes the valid and binding agreement of the Company, enforceable against the Company in accordance with its terms; (e) the Company will receive consideration for each Share at least equal to the par value of such share of Common Stock and in the amount required by the Plan (or the applicable award agreement thereunder); and (f) prior to the issuance of any Shares under the Plan, the Company’s Board of Directors will duly authorize each award granted under the Plan, pursuant to an award agreement and in accordance with the DGCL and the Plan.

Our opinion set forth below is limited to the DGCL and reported judicial decisions interpreting the DGCL.

Based upon and subject to the foregoing, it is our opinion that the Shares are duly authorized for issuance by the Company pursuant to, and on the terms set forth in, the Plan and, when, and if, issued pursuant to the terms of the Plan and the applicable award agreement will be validly issued, fully paid, and non-assessable.

We hereby consent to the filing of this opinion letter with the SEC as Exhibit 5.1 to the Registration Statement. In giving this consent, we do not thereby admit that we are within the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations of the SEC promulgated thereunder.

Very truly yours,

/s/ K&L Gates LLP

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 6, 2019 with respect to the consolidated financial statements of NextDecade Corporation included in the Annual Report on Form 10-K for the year ended December 31, 2018, which are incorporated by reference in this Registration Statement. We consent to the incorporation by reference of the aforementioned report in this Registration Statement.

/s/ Grant Thornton LLP

Houston, Texas

November 8, 2019

INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM'S CONSENT

We consent to the incorporation by reference in this Registration Statement of NextDecade Corporation on Form S-8 of our report dated March 8, 2018, with respect to our audit of the consolidated financial statements of NextDecade Corporation and Subsidiaries as of December 31, 2017 and for the year then ended appearing in the Annual Report on Form 10-K of NextDecade Corporation for the year ended December 31, 2018. We were dismissed as auditors on August 24, 2018 and, accordingly, we have not performed any audit or review procedures with respect to any financial statements appearing in such Prospectus for the periods after the date of our dismissal.

/s/ Marcum LLP

Marcum LLP
New York, NY
November 8, 2019