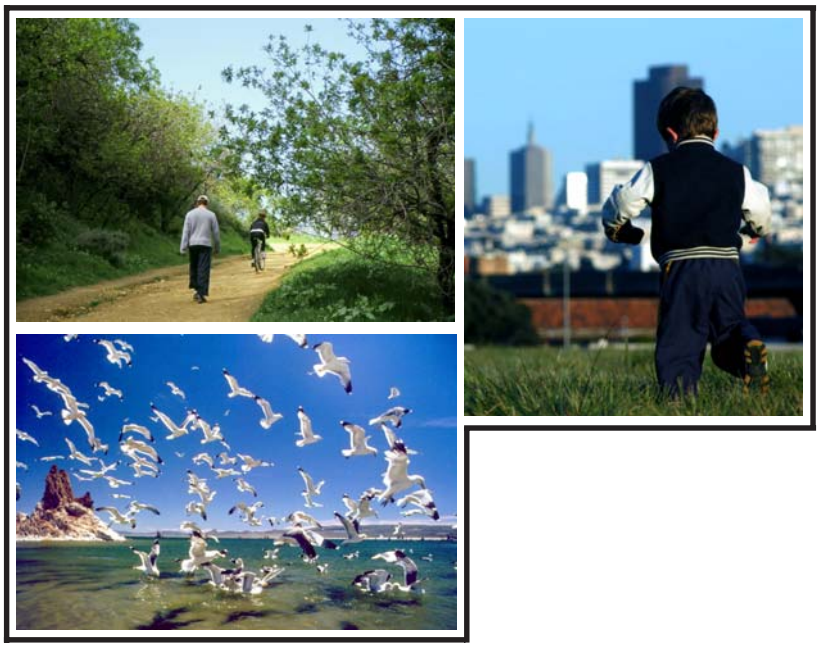
Everyday Heroes Protect the Air We Breathe, the Water We Drink, and the Natural Areas We Prize

Thirty-Five Years of the California Environmental Quality Act

CEQA



california league of conservation voters

Planning and Conservation League
Planning and Conservation League Foundation

1965-2005 40th anniversary
Planning and Conservation League
www.pcl.org

About PCL and the Planning and Conservation League Foundation

The **Planning and Conservation League Foundation** is a nonprofit organization founded in 1972. Its mission is to educate and involve Californians in environmental policy-making. The PCL Foundation publishes handbooks for community action, assists decision-makers in drafting effective policies, and produces action-oriented reports about the California environment.

The PCL Foundation works closely with the **Planning and Conservation League**, which was founded in 1965 to advocate on behalf of the California environment in the State Legislature. To learn more about PCL and the PCL Foundation, please visit our website at www.pcl.org.

About the California League of Conservation Voters

The **California League of Conservation Voters** is the political action arm of California's environmental movement. For thirty-two years, CLCV's mission has been to defend and strengthen the laws that safeguard the wellness of our neighborhoods and the beauty of our great state. We work to elect environmentally responsible candidates to state and federal office who will join us in our mission. And we hold them accountable to a strong environmental agenda. Please visit our website at www.ecovote.org.

CLCV is joined in our work by the **CLCV Education Fund**, a community based advocacy organization that works to expand the universe of Californians who understand and act on the direct connection between the environment, public health, and civic participation. Please visit our Education Fund's website at www.clcveducationfund.org.

To Order This Report

For additional copies of ***Everyday Heroes Protect the Air We Breathe, the Water We Drink, and the Natural Areas We Prize: Thirty-Five Years of the California Environmental Quality Act,*** please send a $21 check made out to PCL Foundation.

To pay by Visa or MasterCard include the following information:

__ Visa __ MasterCard
Card Number
Expiration Date
Signature of Cardholder

Mail to: PCL Foundation
921 11th St., Suite 300
Sacramento, CA 95814

For additional information:

Phone: (916) 444-8726
Fax: (916) 448-1789
http://www.pcl.org
Email: pclmail@pcl.org

Everyday Heroes Protect the Air We Breathe, the Water We Drink, and the Natural Areas We Prize

Thirty-Five Years of the California Environmental Quality Act

Project Manager: Karen Douglas

Research Director and Lead Editor: Matt Vander Sluis
Staff Writer, Design Manager, and Editor: Ian Douglas
Research and Outreach: Erin Beller

Copy Editor: Barbara Barrigan-Parrilla

This publication was made possible by the generous support of Water for California, The Resources Legacy Fund Foundation, Benjamin C. Hammett, and Bob Williams and Meg Caldwell.

Planning and Conservation League
Planning and Conservation League Foundation

1965-2005 40th anniversary
Planning and Conservation League
www.pcl.org

california league of conservation voters

Everyday Heroes Protect the Air We Breathe, the Water We Drink, and Natural Areas We Prize:
Thirty-Five Years of the California Environmental Quality Act

921 11th St., Suite 300
Sacramento, CA 95814
(916) 444-8726

www.pcl.org

1212 Broadway, Suite 630
Oakland, CA 94612
(510) 271-0900

www.ecovote.org

Cover photos courtesy of (clockwise, from bottom left): the Mono Lake Committee, the Santa Monica Mountains Conservancy, and Warren H. White (www.NaturalDiscoveriesPhotography.com).

Printed by Alonzo Printing on recycled paper with soy-based ink.

Dear Reader,

We are very pleased to bring you this publication celebrating the California Environmental Quality Act, California's premier environmental law. As the title suggests, CEQA has empowered Californians to protect California in all its diversity: from safeguarding the urban environment to conserving California's magnificent coasts, forests, mountains, farmland, and more. It has also provided a critical framework for government accountability. No other environmental law has had such broad reach.

We have compiled over 75 CEQA "success stories." These include not only legal victories and settlements, but also projects that were improved through public input, mitigations, and alternatives analysis during the CEQA process.

These stories are organized by issue area, including a special section on CEQA and the Urban Environment. Each chapter is introduced with an overview of CEQA's role within that issue area. The case studies that follow provide real-world examples of benefits achieved through CEQA. The assignment of "success stories" to a particular issue area can be arbitrary, as many if not most of the case studies had multiple benefits. One of CEQA's greatest strengths is that it is a general, catch-all environmental law, addressing the full range of environmental impacts.

We began this report in the summer of 2004, calling community groups and activists and asking for their stories and thoughts about CEQA. We subsequently organized our steering committee and reached out to leading practitioners for articles. The response was tremendous. In a space of four months, more than 80 people contributed to the 98 articles in this report. We would like to thank our steering committee members, authors, and many others whose help and guidance immeasurably improved our work. This report is literally a community effort.

Further thanks go to the participants in the CEQA stories profiled here, and in countless others that we did not cover. The stunning record of environmental achievement under CEQA is also a community effort—the legacy of thirty-five years of vision and commitment to the values of open government and environmental protection.

CEQA has empowered countless Californians to stand up to the powerful forces driving environmental devastation and protect this great state. This report is dedicated to everyone who has ever used CEQA to make California better for all of us.

Karen Douglas
Acting Executive Director, Planning and Conservation League

Susan Smartt
Executive Director, California League of Conservation Voters

Continued on the following page.

PREFACE:

By John Van de Kamp

I was born in Pasadena in 1936. In my early years, I remember the "dew point" warnings that would set the smudge pots humming. I recall the yellow sulfurous smog. I watched orange groves torn down to be replaced by housing developments. And I watched as freeways were built over neighborhoods then abandoned in their wake.

Today, I read that wells in the San Gabriel Valley will be closed because of perchlorate contamination.

That's what CEQA is all about. Care.

The concept behind CEQA is a relatively simple one. It requires a careful, public consideration of the impact of a proposed project on the environment. If a fair argument can be made that such a project may have a significant effect on the environment, CEQA requires the consideration of alternatives as well as mitigation of adverse effects to the extent feasible.

How does one protect oneself against the onslaught of growth, development, and harmful industrial practices?

Answer: By enforcing the exercise of care.

How does one protect oneself against the onslaught of growth, development, and harmful industrial practices? How do we ensure that future generations inherit a cleaner, healthier California? Answer: By enforcing the exercise of care.

In these pages you'll read of case after case in which CEQA has forced care to be taken, resulting in cleaner air, cleaner water, preservation of habitat for animals and plant species, and, above all, better planning.

The following pages are a testimonial to the wisdom of the lawmakers of both parties who established the CEQA process and should compel today's lawmakers to exercise great caution before altering it.

As Attorney General, I encouraged and authorized lawsuits challenging expediently prepared Negative Declarations that allowed planned projects to avoid an evaluation of their potential serious environmental consequences. My purpose was not to defeat projects, but to make project proponents mitigate the very real environmental harm that they would cause. In some cases it was shown through the CEQA review process that the projects were so detrimental to the environment that they were either dropped by the proponent or denied.

Example: An order to prepare an Environmental Impact Report (EIR) caused a company to drop plans to construct a hazardous waste incinerator in the city of Vernon in East Los Angeles (see page 95).

Example: After reading in the EIR about the adverse air effects that would result from the proposed Angeles oil pipeline, then Mayor Bradley went on the offensive and the project was dropped.

Much of the good that CEQA does receives little notice.

That's because, after thirty-five years, CEQA has been integrated into the planning process. Most proponents and designers now address environmental impacts as a matter of course.

Unquestionably efforts will continue to be made to modify CEQA. Some will have selfish origins and should be disposed of quickly. Others should be considered seriously. The best questions to be asked when dealing with these proposals: Does it erode or does it advance environmental protection? Is it fair?

The following pages are a testimonial to the wisdom of the lawmakers of both parties who established the CEQA process and should compel today's lawmakers to exercise great caution before altering it.

John Van de Kamp served as Attorney General of California from 1983 to 1991. As Attorney General, Mr. Van de Kamp created the Public Rights Division, giving new emphasis to environmental, consumer protection, anti-trust and civil rights enforcement. While in office, Mr. Van de Kamp was instrumental in stopping further oil drilling off the California Coast and preventing development endangering Lake Tahoe.

Continued from the previous page.

Norm Flette
Senior Deputy General Counsel, Metropolitan Water District of Southern California.

Carlyle W. Hall Jr.
Akin Gump Strauss Hauer & Feld LLP.

Kevin K. Johnson
Johnson & Hanson LLP.

Mary Nichols
Director of the Institute of the Environment, UCLA.

Joel Reynolds
Senior Attorney, Natural Resources Defense Council.

Antonio Rossmann
Rossmann & Moore LLP.

Will Rostov
Staff Attorney, Communities for a Better Environment.

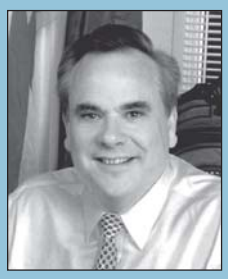
Dan Selmi
Professor of Law, Loyola Law School.

E. Clement Shute Jr.
Shute Mihaly & Weinberger LLP.

John Van de Kamp
Dewey Ballantine LLP.

Peter Weiner
Paul Hastings Janofsky & Walker LLP.

William J. Yeates
Law Offices of William J. Yeates.



CEQA Turns Thirty-Five

By Bill Lockyer,
California Attorney General

"CEQA's purpose is its genius—to foster transparency and integrity in public decision-making while forcing consideration of the full scope of the impacts development activities have on our natural and human environments."

See page 11.

A Legislative Perspective

By Byron Sher,
California State Legislator
1980-2004

"Like many provisions in the Bill of Rights, CEQA does not guarantee a specific outcome; instead it guarantees processes and procedures, and empowers the individual person to enforce them. CEQA is the bill of rights for an environmental democracy."

See page 163.

Executive Summary

Ana Sánchez-Camacho was shocked when she found out there was a two-cycle, turbo-charged diesel generator spewing exhaust just 150 feet away from her six-year-old's kindergarten.

Alarmed by scientific reports that linked these generators to increased cancer risk, Ana and other parents whose children attend the Sacramento Waldorf School joined forces to protest the generator, which the County Department of Water Quality had been operating illegally for years. Now the Department wanted an official permit. The parents won the review of the permit decision through the California Environment Quality Act (CEQA).

Ultimately, the Department agreed to major reforms, including the installation of advanced pollution control equipment that reduce emissions of dirty air toxins by 75 to 85 percent.

Ana's story is just one of many that illustrate how ordinary Californians have relied on CEQA to battle special interests and polluters in their own backyards.

Enacted thirty-five years ago, CEQA is a powerful citizens' tool that gives Californians a voice in government decisions that affect their communities and their environment. CEQA empowers ordinary people to stand effectively against the powerful and well connected. It forces special interests to do their fair share to protect California's natural resources.

Ian Douglas

Ana Sánchez-Camacho poses with her son, Awki, and daughter, Kukuli, in front of a diesel generator located 150 feet from the Sacramento Waldorf School. Through their CEQA comments, Ana and other concerned parents ensured that the most advanced emissions reduction technology available was installed and that the equipment would be routinely cleaned and maintained.

Over the years this premier environmental law has been instrumental in reviewing countless projects that would have spewed toxins into our air, contaminated our land, and poisoned our drinking water. Because of CEQA, ordinary Californians have successfully protected our magnificent beaches, prevented congestion and sprawl, and otherwise safeguarded the health and well being of their families and their communities. The environmental protections they've helped to enact have set standards for the nation and the world, contributed to the Golden State's prosperity and preserved our spectacular natural environment for future generations.

This report by the Planning & Conservation League, Planning & Conservation League Foundation, and California League of Conservation Voters collects 75 "success stories" from the past thirty-five years that show how Californians, invoking CEQA, have contributed to an enduring legacy of environmental and public health protections that have shaped our state for the better.

Ana's story is just one of many that illustrate how ordinary Californians have relied on CEQA to battle special interests and polluters in their own backyards.

Report Highlights

Toppling a Toxic Waste Incinerator in East Los Angeles

East Los Angeles – In 1990, community residents, led by Mothers of East Los Angeles, successfully defeated a plan by California Thermal Treatment Systems to build a towering toxic waste incinerator just 7,500 feet from homes, churches, hospitals and schools. Local residents waged protest marches and filed lawsuits under CEQA demanding environmental review of the health risks associated with the19,000 tons of ash, dust and other hazardous waste that the incinerator would have produced. Their persistence paid off. The waste incineration company, faced with damaging new information about the toxic effects of dioxins released in the burning process, abandoned the project.

Reducing Port Pollution

Long Beach – The ports of Los Angeles and Long Beach are the single largest source of air pollution in Southern California, emitting as much diesel exhaust as 16,000 tractor-trailers idling their engines, non-stop, 24 hours a day. As a result, nearby residents in San Pedro and Wilmington suffer high rates of respiratory illnesses. In 2001, local community members and environmentalists used CEQA to successfully challenge the Port of L.A.'s approval of a 147-acre terminal expansion for China Shipping Container Line. Citing the Port's failure to prepare the required Environmental Impact Report (EIR), the groups convinced the court to halt all construction on the wharf. A year later, the parties reached a historic settlement that requires the Port to reduce air pollution and industrial blight over the next four years.

Cleaning Up ConocoPhillips' Oil Refinery

Contra Costa County – When ConocoPhillips proposed to expand its refinery in Rodeo by 10,000 barrels a day, Contra Costa County issued a Draft EIR under CEQA that indicated that people in neighboring communities would be at higher risk for cancer if the expansion moved forward. Galvanized by these findings, local residents and labor groups worked with ConocoPhillips to implement measures to mitigate the pollution. The chemical company agreed to reduce diesel exhaust during construction and to install a device on its cooling tower that would reduce particulate pollution by over 99 percent.

A Judicial Perspective

By Cruz Reynoso, former Justice of the California Supreme Court

"The principles articulated in these early CEQA cases have compelled parties and courts to take the environment seriously and to take their obligations under CEQA seriously. The environment and the State of California have greatly benefited from the Court's early, insightful wisdom."

See page 164.

Conclusion: Securing the Future of the Golden State

By Herb Wesson, Speaker Emeritus of the California State Assembly

"Residents and businesses are attracted to California because of our quality of life. A healthy environment is as much a symbol of California as the Golden Gate Bridge or the Hollywood sign. CEQA helps make California the great state that it is and, for that reason, we need to preserve it. After all, we are only stewards of this earth. Our job is to safeguard it for the generations to come."

See page 165.

Executive Summary Continued

Reducing Sewage Overflows: The Mission Bay Project

SAN FRANCISCO – Environmental advocates reached an agreement with developers of the massive, 300-acre Mission Bay project in San Francisco through the CEQA process to avert a looming crisis that would have increased sewage overflow into the Bay by 2 million gallons during the rainy season. In the end, Catellus Development Corp. agreed to separate the new development's storm water from the City's sewer system, reducing sewage overflows by about 30 million gallons per year. The company also agreed to adopt state-of-the-art storm water filtration systems and to create a wetland habitat along Islais Creek.

Beating Back Sprawl

ANTIOCH – A commuter town between the Bay Area and Sacramento, Antioch has doubled in population since 1980, resulting in suburban sprawl and worsening traffic congestion. In 2002, local residents successfully blocked a massive 2,700-acre development of residential and commercial units in the south side of town. People rallied against the plan when they learned from the EIR that that the development would result in 140,000 more car trips on Highway 4, destroy a major greenbelt corridor and expose residents to nearby hazardous sand and coal mines. As a result of the public outcry, the Antioch City Council shelved the plan indefinitely.

As we face the challenges ahead, CEQA will play a vital role in protecting public health and ensuring that the state grows in a responsible and sustainable way, so that our land, air, water, and communities are protected.

Protecting the Bay Area's Vanishing Marshes

RICHMOND – In 2002, a San Jose developer proposed building a commercial center on 238 acres of one of the largest remaining marshes in the San Francisco East Bay and the largest remaining intact coastal prairie in the entire Bay Area. Longtime residents of nearby Parchester Village, a post-WWII development that housed African-American shipyard workers, invoked CEQA's public review process to raise concerns about air quality, increased traffic congestion, and the loss of a key linkage to the Bay Trail, a 500 mile trail system being developed in the Bay Area. The developer dropped the project, and the East Bay Regional Park District is now looking into purchasing the site.

Keeping the Santa Monica Mountains Pristine

LOS ANGELES COUNTY – When people in Los Angeles gaze upon the Santa Monica Mountain range, they don't see hillsides of tract homes. There's a reason for that. Thanks to CEQA, over 20,000 acres of prime habitat and parkland have been preserved from the driving interest of big developers who view the mountains as the hottest real estate market this side of Lower Manhattan. This long-sighted protection means one-third of all Californians will have natural areas within touching distance, hopefully forever.

Lakeside: Protecting an All-American River Town

SAN DIEGO COUNTY – In Lakeside, a CEQA public hearing became the catalyst for citizens' revolt against proposed heavy industrial development near the San Diego River, which flows through the center of town. Residents of this low-income town of 50,000 people convinced their leaders to reject the development, which threatened to pollute local drinking water. They also succeeded in raising $15 million toward building a river park in place of the toxic development.

Scott Hein

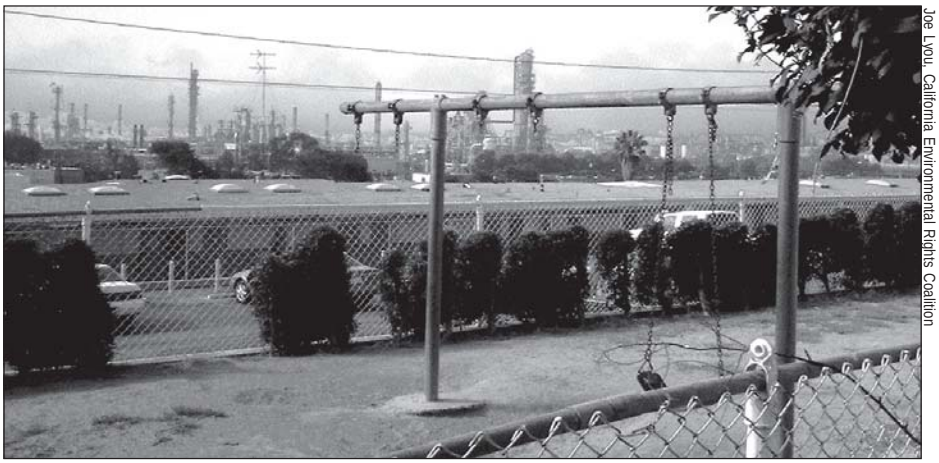
Because of CEQA, residents learned that a 2,700 acre sprawl development planned for this last greenbelt area between Antioch and Brentwood would have resulted in 140,000 more car trips per year on Highway 4 and exposed residents to nearby hazardous sand and coal mines. The public outcry that followed convinced the city council to shelve the plan indefinitely.

Rethinking the Century Freeway

Los Angeles County – At one point in the 1970s, LA County's Century Freeway, was envisioned as a ten-lane artery that would destroy 8,250 moderate income housing units and uproot more than 21,000 people in the South Central L.A. area. Thanks to a coalition of environmental and civil rights groups that filed a CEQA lawsuit against Caltrans, the freeway was reduced to eight lanes, with a light rail line running right down the middle of it. The settlement also provided hundreds of millions of dollars to replenish the affordable housing supply lost to construction, representing 8,500 units.

Preserving California's Farmland Heritage

California is by far the nation's number one agricultural producer and exporter. However, farmland in the state is being overrun by development. California lost approximately 500,000 acres of farmland to urban development between 1988 and 1998. While CEQA has not stopped this dramatic land conversion, it has helped protect agricultural and ranch lands by directing major developments away from prime farmland and requiring conservation easements to be placed on some existing farmland. Because of a recent CEQA settlement, millions of dollars will be dedicated to farmland protection in San Joaquin County.



Joe Lyou, California Environmental Rights Coalition

View from St. Anthony Catholic School overlooking the Chevron refinery in the town of El Segundo. The refinery is among the largest sources of industrial air pollution in Los Angeles County, with direct impacts on community health. Because of CEQA, Chevron implemented additional measures to reduce emissions affecting the community.

Conclusion

By 2010, California's population is expected to grow to 40 million people. The pressure to develop more housing and expand our industrial economy to accommodate this growth will be enormous. As we face the challenges ahead, CEQA will play a vital role in protecting public health and ensuring that the state grows in a responsible and sustainable way, so that our land, air, water, and communities are protected. Now more than ever, CEQA must require that special interests do their fair share to prevent environmental and community harm.

But CEQA's future is not certain. Every so often, special interests eager to fast-track their projects team up to weaken CEQA to avoid having to deal with public concerns. As of this writing, sprawl developers have launched an aggressive campaign to take away basic environmental rights that Californians have enjoyed under CEQA for decades.

As they have many times before, we believe that Californians will resist proposals to strengthen special interests at the expense of the public interest. Californians have stood up time and time again to protect their land, air and water, not only in pristine natural spaces, but also within the cities where most of us live. The stories in this report attest to Californians' deeply held belief that the public has a fundamental right to play a role in governmental decisions that affect our health, our environment, and our neighborhoods. In the words of Senator Byron Sher, the California Environmental Quality Act is the "bill of rights for an environmental democracy." This is why CEQA's future is inexorably bound with the future of our state.

We believe that Californians will resist proposals to strengthen special interests at the expense of the public interest. Californians have stood up time and time again to protect their land, air, and water, not only in pristine natural spaces, but also within the cities where most of us live.

Table of Contents

Introduction

Chapter 1: Air Quality 20

Chapter 2: The Urban Environment 38

PROFILES:

Introduction: CEQA Turns Thirty-Five

By Bill Lockyer

In the upcoming decades, we Californians will confront many environmental challenges stemming from burgeoning growth. Our challenge will be to accommodate the necessary expansions of our infrastructure—housing, roads, and prisons, for example—while at the same time protecting our unique and irreplaceable natural resources, our quality of life and our health.

As Attorney General, I am committed to helping ensure that all of the competing interests are balanced responsibly. The continued growth and prosperity of our great state depends largely on our success in protecting and enhancing our natural resources. After all, it is California's unique environmental attributes and special qualities that make this state an attractive place to live and work.

For the past thirty-five years, the California Environmental Quality Act has been a critically important and powerful tool for protecting California's environmental legacy. CEQA's purpose is its genius—to foster transparency and integrity in public decision-making at the same time it forces consideration of the full scope of the impacts development activities have on our natural and human environments.

As a tool for tackling environmental problems, CEQA is an ideal vehicle for examining an individual development project's effects on our overall environment. Fortunately, the Legislature provided that the Attorney General take an active role in enforcing CEQA, requiring every private action filed under the statute to be lodged with the Attorney General's Office.

Like former Attorney General John Van de Kamp, I have made CEQA enforcement a key component of the actions I undertake as the state's chief law officer. Under our Constitution and state statutes, the Attorney General has broad authority to take actions independent of other state agencies to protect the environment. When I assumed this office in January 1999, I made it a goal to vigorously enforce California's environmental laws, with a particular emphasis on CEQA.

CEQA's purpose is its genius—to foster transparency and integrity in public decision-making while forcing consideration of the full scope of the impacts development activities have on our natural and human environments.

My goal for CEQA enforcement is to ensure that there is full disclosure of a project's environmental impact, consideration of all feasible alternatives and, where possible, mitigation of environmental effects. Here are just a few examples of CEQA enforcement undertaken by my office:

• We have filed comments and briefs in cases where the CEQA documentation has not adequately informed the public about increased air pollution from a project, or where the proponents have not established adequate control for the increased emissions generated by the project. One of these cases involved a massive new docking facility, being built to service part of the expanding U.S. trade with Asia, at the Port of Los Angeles (pg. 25).

The Port took a single project, improperly split it into three phases and committed to all three phases at once, but prepared an Environmental Impact Report (EIR) for only the first phase. We filed legal arguments with the Court of Appeal arguing that the project, and the potentially huge increases in diesel truck and ship emissions it would cause, must all be examined together and before any construction could proceed, since the commitment to the entire project was being made at once and together. The court not only agreed with us, but quoted a portion of our brief discussing the importance of CEQA. Since that decision, the Port of Los Angeles has gone on to adopt groundbreaking new techniques for reducing ship emissions while in port, and is proposing to develop more such techniques. That would not have happened without CEQA.

• My office also fights to ensure that the federal government fulfills its responsibilities under CEQA and the parallel National Environmental Policy Act (NEPA) to be honest with the public about the air pollution—and its public health effects—

that may result from federal decisions that affect California's environment, and to preserve our right to enforce our own environmental laws. In the case of *Cemex, Inc. v. United States of America,* currently pending before the federal Ninth Circuit Court of Appeals, my office argued that the settlement of a district court case over a federal permit to mine gravel could not also declare that the EIR prepared by Los Angeles County for the gravel mine satisfied CEQA, when the public had not had the chance to examine, comment on, or contest that EIR. We will continue to insist that the air pollution that will result from the twenty-year operation of this huge proposed mine must be fully studied and fully disclosed to the California public, and that every step CEQA requires to mitigate that air pollution, and any other significant environmental harm from the mine, is taken.

• My office has filed several CEQA "friend of the court" briefs in land use planning matters, most notably in: *United Water Conservation District, et al. v. County of Los Angeles*, where we successfully argued that the County had failed to adequately review the environmental impacts of the Newhall Ranch housing development project on water availability and endangered species and other wildlife resources (pg. 124); and *Save Our Forests and Ranchlands v. County of San Diego*, where we helped to persuade the court that the County had failed to consider feasible mitigation for its proposal to rezone and allow the clearing and grading over nearly 200,000 acres of significant habitat in the San Diego County "backcountry" (pg. 63). In each of these cases, the court, in a ruling specifically referring to Attorney General's arguments, ordered that additional environmental review and consideration be completed.

• In 1999, my office filed suit against Tulare County (*People v. Tulare County, et al.*) because the county had approved or was in the process of approving the siting and expansion of five major dairies and one feedlot—all without the preparation of EIRs or consideration of how adding hundreds of new cattle that generate tons of waste to the area would cumulatively affect the environment. Fortunately, the cases we filed were settled promptly, resulting in much more comprehensive review and public disclosure regarding these projects.

• My office filed a brief in the "Chinatown Cornfields" case (pg. 41) in support of a broad coalition of Los Angeles environmental and community groups challenging approval of a proposed massive warehouse project near the LA River without a full environmental review. The parties have settled the matter, agreeing to cooperate in seeking funds to create an urban park adjacent to the river; the park will serve a diverse community which currently does not have access to parkland and will be part of a larger effort to restore the LA River and its adjacent lands.

As these cases and many others illustrate, CEQA has been and continues to be a vital tool for assuring the continued health and vitality of California's environmental heritage. And we can only expect that CEQA's next thirty-five years will be as productive and useful to the state as the first.

Californians reelected **Bill Lockyer** as their thirtieth Attorney General in November 2002. Mr. Lockyer continues working to protect the people's personal, civil and economic rights, thus furthering the goal that no one is denied the tremendous opportunities promised by the California Dream.

Notwithstanding Mr. Lockyer's no-nonsense approach to fighting crime, his view of the Attorney General's job is broader than being the state's "top cop." Mr. Lockyer's top priorities have been solving crimes through DNA technology; preventing and punishing elder abuse; developing consumer protection initiatives; expanding enforcement of state environmental protection laws; and fighting for stronger civil rights protections.

Prior to becoming attorney general, Mr. Lockyer served in the state Senate (1982-1998) and the state Assembly (1973-1981). He earned his law degree from McGeorge School of Law in Sacramento while serving in the State Senate. He is also a former teacher and served on the San Leandro School Board (1965-1972).

Justice Stanley Mosk wrote the first California Supreme Court decision interpreting CEQA, *Friends of Mammoth v. Board of Supervisors.*

Noting that "the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society" Justice Mosk established the cardinal principles of CEQA that continue to be applied to this day.

Ruling that CEQA should be interpreted to provide the fullest possible protection for the environment, Justice Mosk decided that CEQA applied not just to public works projects, but also to private projects needing a government permit. No other California court decision has been so beneficial for California's environment.

Justice Mosk, served on the California Supreme Court for 37 years, longer than any other justice. Appointed as a New Deal progressive by Governor Pat Brown, Justice Mosk exercised a keen independent mind that made his decisions impossible to label. Justice Mosk died in 2001.

The Legislative History of CEQA

By Tom Willoughby

The California Environmental Quality Act, one of today's best known and most comprehensive environmental laws, began its statutory career as a modest and largely unheralded product of the 1970 legislature.

CEQA's political roots actually trace back to the 1968 elections, which had produced a slim majority of Republicans in the State Assembly. That majority ensured a Republican Assembly Speaker, moderate Bob Monagan of Stockton, and a Republican agenda for the next two years.

As the 1970 elections approached, the Assembly Republicans strategized on steps they could take to maintain their majority. One stratagem was to establish Republican bona fides—and hopefully support—with an emerging "environmental constituency." To this end, Speaker Monagan set up a special "Select Committee on the Environment" and charged it with formulating proposals that would help safeguard the state's environment.

The National Environmental Policy Act (NEPA) had recently gone into effect and the committee decided that a California version of that statute might go over well. Significantly, the debate on this idea never proceeded much beyond the idea of a "little NEPA." Nevertheless, the idea was incorporated into a bill, along with bits and pieces of NEPA language. The bill failed to define pivotal terms such as "project" or even "environment."

During CEQA's journey through the legislature, the issue of its application to the private sector was never seriously debated. It was generally assumed that CEQA would apply only to the construction of public works. One lobbyist for the realtors did point out that CEQA might potentially be applied to private projects, but even among his private sector colleagues these cautionary observations fell on deaf ears. In the end, there was no concerted opposition to the legislation, and the modest measure passed without difficulty.

In the initial months after they began to implement the law, city attorneys, county counsels, and attorneys for public agencies were virtually unanimous in the view that CEQA applied only to proposed public works. The administration of Governor Ronald Reagan held a similar view.

The landmark *Friends of Mammoth* decision by the California Supreme Court in 1972 dramatically altered this "business as usual" perspective by stating unequivocally that CEQA did indeed apply to privately sponsored projects that are subject to a government approval. Opponents predicted dire

economic consequences as a result of stalled and backlogged projects—from housing developments to office buildings. Public agencies feared bureaucratic gridlock from an avalanche of Environmental Impact Reports (EIRs) that might be required for even the most inconsequential and ministerial permits (e.g., dog licenses).

In all likelihood, a good bit of the public outcry was an effort to spark an outright repeal of CEQA. But a changed political landscape made this an unlikely option. One motivating factor for enacting CEQA had been to help the Republicans in the 1970 elections. Whatever boost CEQA might have provided, it wasn't enough. Democrats had regained a majority of seats in the Assembly in the 1970 elections. And, as 1972 elections approached, it appeared that the Democratic majority would increase when the new session convened for 1973—with little desire to dismantle CEQA.

The political landscape after the *Mammoth* decision offered few options to opponents of the newly expanded statute. Only weeks remained in the 1972 legislative session. Support for reversing the effect of *Mammoth* was scant (and even less for repealing CEQA itself) but the incoming 1973 legislature would likely be even less sympathetic to any such efforts.

Consequently, CEQA opponents decided to negotiate legislative changes that would fill in some of the blanks in the Supreme Court's decision and at least provide for a uniform, statewide approach to administering CEQA.

CEQA's original author, Assemblyman John Knox, made a bill available for that purpose, and the negotiations began. They produced much needed procedural uniformity including: a statute of limitations for challenging decisions, a widely accepted "reasonableness" test for evaluating CEQA decisions, a statutory exemption for ministerial acts of public agencies, the ability of the state Resources Secretary to establish specific categories of activities to which CEQA would not apply, and the concept of "lead agency" to prepare an EIR on projects that involved permits from several public agencies. Finally, there would be a six month moratorium on implementing CEQA while detailed, uniform ground-rules were prepared.

The final version of Knox's bill passed with widespread support and the moratorium period ended on April 5, 1973. It was then that CEQA began to be applied uniformly throughout the state and began its transformation into what we recognize it as today, the state's most comprehensive, pre-eminent environmental law.

*Tom Willoughby, now retired, was chief consultant to Assemblyman John Knox's Local Government Committee during the passage of CEQA and the post-*Mammoth *legislation. Mr. Willoughby was subsequently Chief Consultant to the Assembly Energy and Natural Resources Committee, before moving to the private sector where he managed PG&E's state governmental programs.*

Key Concepts of CEQA

Fair Argument Standard:
An Environmental Impact Report (EIR) is required if there is a fair argument based on substantial evidence that the project may have a significant effect on the environment. An EIR is a detailed statement that describes and analyzes the significant environmental effects of a project and discusses ways to mitigate or avoid the effects.

Project Description:
CEQA requires a complete description of the project.

Alternatives:
CEQA requires that an EIR consider a range of feasible alternatives that meet most of the objectives of the project.

Mitigation Measures:
CEQA requires that the significant effects on the environment be mitigated to the extent feasible.

Cumulative Effects:
CEQA requires that an EIR disclose the cumulative environmental effects of a project including the effects of other past, present, and reasonably foreseeable projects.

Public Participation:
CEQA requires that the public have notice and an opportunity to comment on any negative declaration, mitigated negative declaration, or EIR prepared under CEQA. If an EIR is prepared, the lead agency must prepare written responses to the comments.

CEQA and Judicial Review

By Daniel P. Selmi

When first adopted by the Legislature in 1970, the purpose of the California Environmental Quality Act, modeled after the federal National Environmental Policy Act, was to institutionalize the consideration of environmental values in the day-to-day decisions of California public agencies.

The task of fleshing out the law's requirements was left largely (although not exclusively) to the courts. Thus, the judicial role in CEQA's development undeniably has been important. Below I identify eight themes that have recurred in the CEQA case law or in the development of CEQA over the thirty-five years since the Act's passage. I also argue that, on balance, the courts have played a positive role in CEQA's development.

The Interpretive Framework

The case law, largely through a series of California Supreme Court decisions, has established a general interpretive framework for the consideration of issues arising under CEQA. In the seminal decision *Friends of Mammoth v. Bd. of Supervisors*, 8 Cal. 3d 247 (1972), the court held that CEQA should be interpreted to accord "the fullest possible protection to the environment within the reasonable scope of the [Act's] language." Id. at 259. The court utilized the principle in determining that CEQA's requirements apply to public agency approvals of private development applications.

This interpretative principle has been a guiding force for parties subject to CEQA. It has also led lower courts interpreting the law to decide close questions in favor of CEQA's applicability, and over the years the courts have been consistent in employing the principle. For example, seventeen years after *Friends of Mammoth*, a California Supreme Court with vastly changed personnel decided *Laurel Heights Improvements Assn. v. Regents*, 47 Cal. 3d 376 (1989). In that decision, the court refused to countenance a truncated discussion of alternatives and required analysis of longer-range impacts. In doing so, it cited the key "fullest possible protection" interpretive principle. Id. at 390.

CEQA can and has made sure that the environmental voice—the voice that cautions against precipitous action without thinking through the consequences—is heard.

Patterns in the Case Law

Over the years, court decisions have fallen into recognizable patterns that provide important guidance to practitioners. For example, the courts have established a low threshold for the preparation of Environmental Impact Reports (EIRs), refusing to allow agencies to skirt the EIR process when important environmental consequences could result from a project. See *Friends of "B" Street v. City of Hayward*, 106 Cal. App. 3d 988 (1980) (EIR required whenever there is a "fair argument" concerning significant environmental impacts). This decision served notice to agencies that they could not "short-cut" the CEQA process by finding that impacts would not occur, and therefore that no EIR was needed, when this conclusion was subject to conflicting evidence.

The Commenting Dialogue

The courts have emphasized the public nature of CEQA by authorizing the public to comment on the environmental consequences of projects and requiring public agencies to respond specifically to those comments. See *People v. County of Kern*, 62 Cal. App. 3d 761 (1976). The result has been a new kind of dialogue between the agency and members of the public on environmental issues. The dialogue has been an important tool for resolving inconsistencies, clarifying impacts, and ensuring agency accountability.

If an agency tries to brush off the comments through vague responses, the courts have not hesitated to invalidate the project approval. See, e.g., *Cleary v. County of Stanislaus*, 18 Cal. App. 3d 348, 357 (1981). Furthermore, sister public agencies also comment on proposed projects, thus assuring that resource agencies will be heard during consideration of those projects.

Judicial Deference Toward Environmental Analysis

While the courts have broadly interpreted the Act, they have not proven overly receptive to environ-

mental nitpicking. They will apply the usual substantial evidence test and, absent some indication of patent inadequacy or bad faith, will defer to the agency's decision about how much discussion of an environmental impact is needed. See, e.g., *San Francisco Ecology Center v. City and County of San Francisco*, 48 Cal. App. 3d 584, 594 (1975). Perfection is not required, and the standard of review for judging the adequacy of EIRs favors the proponent and the public agency. Nor have courts been overly receptive to arguments that subsequent or supplemental EIRs are needed.

Open and Transparent Public Decisions

In CEQA cases, the courts have promoted openness and transparency in public decisions. Where agencies appear to be hiding important facts, the courts have stepped in. For example, the promotion of openness and transparency is evident from the series of decisions over the efforts by the City of Los Angeles to increase the transfer of water out of the Eastern Sierra Nevada Mountains and Mono Lake to Southern California. By continually changing the project description, the City rendered the exact nature of its project unclear. The courts would not countenance what seemed to be deliberate imprecision in describing the project, especially where that imprecision could have masked large differences in the project's environmental effects. See, e.g., *County of Inyo v. City of Los Angeles*, 124 Cal. App. 3d 1 (1981).

Calendar Priority in Litigation

The Legislature has ordered that CEQA cases receive priority on judicial calendars. See Cal. Pub. Res. Code § 21167.1. The purpose, of course, is to delay projects as little as possible if the plaintiffs lose. The evidence, mostly anecdotal, indicates that the courts have strived to give CEQA cases priority both at the trial and appellate levels. Like any other litigation, CEQA litigation takes time—but not as much time as typical civil litigation.

Autonomy in the Exercise of Substantive Discretion

While some observers initially feared that CEQA would unduly constrain the agency's substantive discretion in approving projects, that has not happened. There are almost no cases overturning a project approval on the grounds that the agency's substantive decision—as opposed to the agency's compliance with the procedural EIR requirement—was arbitrary, or that its balancing of environmental versus economic benefit was erroneous. In short, the courts have insisted that agencies adhere to CEQA's procedure in project approval but have deferred to public agencies on the correctness of the actual decision. As a result, these types of claims are rarely raised by plaintiffs challenging a project.

Forum for Settlements

Finally, to an extent not widely recognized, CEQA has provided a forum for settling land use disputes. CEQA requires parties to convene at a "CEQA Settlement Conference" and determine whether the dispute underlying the litigation may be settled. Some busy practitioners groan about attending the conference. But when you ask them if these conferences have led to settlements, they will agree that the process has proved useful in a fair number of cases.

Conclusion

In sum, over the last thirty-five years the courts have tried to carry out the legislative intent of the Act, and by doing so they can be accused of "favoring" the environment. On the whole, however, the case law has been relatively even-handed and consistent. There are, of course, the one or two CEQA cases that every practitioner, whether representing plaintiffs or defendants, will cite as an example of a wrongly decided case. (Usually, it is a case that they lost). But the case law is not polarized or heavily politicized.

In short, CEQA has ensured that both project proponents and public officials who have little concern about the environment cannot ignore environmental effects. Is CEQA perfect? No. Few laws are. Moreover, as a broad law concerned about environmental effects over a wide range of public agency decisions, CEQA can never attain the precision of implementation that is characteristic of much narrower laws applicable to public agencies. However, it can and has made sure that the environmental voice—the voice that cautions against precipitous action without thinking through the consequences—is heard. And in doing so, I submit that CEQA has, in the best sense, served the distinctly Californian value of concern about harming the vast environment entrusted to our care.

Daniel P. Selmi is a Professor of Law at Loyola Law School in Los Angeles, CA.

Nuts & Bolts: The CEQA Guidelines

By Norm Hill

The CEQA Guidelines, adopted by the Resources Agency, were designed to be a single source for public agencies and the public to use in following the requirements of CEQA. The Guidelines describe requirements from the CEQA statute, codify interpretations from State courts, and describe principles from federal interpretations of the National Environmental Policy Act that state courts could be expected to follow. The Guidelines fill in details absent from the CEQA statute.

The Legislature directed the State Resources Agency to adopt guidelines in the 1972 amendments to CEQA responding to the State Supreme Court's *Friends of Mammoth* decision, 8 Cal.3d 247, (1972). Developed in cooperation with the Governor's Office of Planning and Research (OPR), the Guidelines were adopted by the Secretary of the Resources Agency on an emergency basis in early 1973. All public agencies were directed to adopt their own CEQA implementing procedures consistent with the Guidelines within sixty days.

The Legislature required the Guidelines to include criteria for evaluating projects, preparing Environmental Impact Reports (EIRs), and determining whether a project would have a significant effect on the environment. Pub. Res. Code sec. 21083. The Guidelines were also required to contain a list of classes of projects that the Secretary determined would not have a significant effect on the environment. These classes of projects then became exempt from CEQA as "categorical exemptions." Pub. Res. Code sec. 21084.

The Guidelines needed to define terms used in the statute such as "project," "approve," "discretionary," and "ministerial." For these definitions, OPR and the Resources Agency looked to California case law and paraphrased language from appellate court decisions.

Where the statute was not specific, the Guidelines followed the lead of the *Friends of Mammoth* decision and looked to the National Environmental Policy Act and the federal NEPA guidelines for principles applying to CEQA. This led to the Guidelines' inclusion of features such as draft EIRs, negative declarations, and public involvement. Over time the Legislature gradually picked up these and other terms from the Guidelines and put them into the statute.

Unusual for state regulatory efforts, the Guidelines contain mandatory, advisory, and permissive elements. 14 C.C.R. sec. 15005. This blend of elements has led to a debate as to whether the Guidelines are regulations. The Guidelines went through the procedures for adopting regulations and declare that they are regulations. 14 C.C.R. 15000. The Office of Administrative Law treats them as regulations. District Courts of Appeal have taken different views of whether the Guidelines are binding or merely advisory. The California Supreme Court declined to label the Guidelines as regulations but declared that "at a minimum, [courts should] afford them great weight . . . except when a provision is clearly unauthorized or erroneous." *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 391, fn.2. This is remarkably close to the standard of review for administrative regulations.

Perhaps the most important function of the Guidelines was codifying court interpretations of CEQA. This approach enabled public agencies and people without legal training to follow the Guidelines with a high degree of assurance that they would meet all legal requirements.

Perhaps the most important function of the Guidelines was codifying court interpretations of CEQA. This approach enabled public agencies and people without legal training to follow the Guidelines with a high degree of assurance that they would meet all legal requirements. In turn, the Guidelines gave the public a relatively clear picture of

the standards which the public agencies needed to meet.

The Guidelines were amended at least annually for their first ten years to keep them up to date with legislative changes and new court interpretations. In the late eighties, the Guidelines went through a period of inattention and failed to keep up with changes in the statute and court decisions. More recently amendments started occurring again but more work needs to be done to make the Guidelines a reliable guide to safe harbors.

Although the courts have generally shown deference to the Guidelines, the courts have not given a blank check to the Resources Agency. In *Communities for a Better Environment v. California Resources Agency* (3rd Dist. 2002) 103 Cal. App. 4th 98, the court reviewed a challenge to a package of amendments and rejected some as being inconsistent with the statute and case law. Among other points, the court rejected:

(1) a "de minimus" standard that would avoid cumulative impact analysis when a project made a very small contribution to a severe cumulative condition;

(2) a limitation on including probable future projects in cumulative impact analysis that would scale back existing requirements from case law;

(3) making a project that complied with an existing standard not have a significant effect even if a fair argument with supporting evidence showed a likely significant effect; and

(4) allowing an agency to avoid an EIR where the only reason for the EIR was to address an unavoidable significant effect identified in a previous EIR.

On the last point, the court said that the guideline would have allowed agencies to avoid the public accountability provided in a statement of overriding considerations. The court would not accept an effort to undo judicial interpretations through administrative regulations. The rejected guideline amendments were sent back to the Resources Agency for further consideration. In 2004, the Resources Agency adopted new amendments to comply with the court's ruling.

The importance of the Guidelines as a single source statement of the requirements of CEQA has gradually diminished over time. Private CEQA handbooks and legal treatises have become available to perform the same function. But the Guidelines continue to need amendments to reflect some existing provisions of the statute and important interpretations from the courts. Where discretion is available to the Resources Agency, there is still room for identifying ways to improve the administration of the act.

Norm Hill served as Assistant Secretary with the Resources Agency with staff responsibility for CEQA. Mr. Hill worked in the legal office of the Department of Water Resources and retired as Chief Counsel of the Department of Forestry and Fire Protection.

To learn more about how the CEQA process works, take a look at the *Community Guide to CEQA*, authored by J. William Yeates, Esq. Available in English or Spanish, the *Community Guide* is one of the most popular publications produced by PCL Foundation. It explains CEQA's procedural and substantive provisions simply and clearly, including requirements for preparing Environmental Impact Reports (EIRs) and reducing the harmful environmental impacts of projects (mitigation). It also provides a useful glossary of terms.

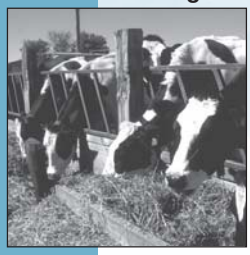
For information on ordering the *Community Guide to CEQA*, go to www.pcl.org or call 916-444-8726.

Another important resource is the CERES website at http://ceres.ca.gov/ceqa/. CERES is an electronic information system developed by the California Resources Agency. The site provides the full text of CEQA and the CEQA guidelines, information on CEQA case law, a directory of CEQA judges, an interactive flowchart of the CEQA process, and much more.

CHAPTER 1
Air Quality

See Pg...25

See Pg...27



See Pg...31

See Pg...35

CEQA & the Air We Breathe

By Mary Nichols and Gail Ruderman Feuer

California has the unfortunate distinction of having three of the ten smoggiest regions in the country within its borders. On top of that, many regions in California, including the San Joaquin and South Coast Air Basins, are plagued by unhealthful levels of tiny soot particles, or "particulate matter." Californians also face some of the highest cancer risks in the country from the air they breathe; 70 percent of this cancer risk comes solely from diesel exhaust.

While the federal Clean Air Act contains provisions designed to ensure that new industrial projects, such as a refinery or power plant, "offset" any projected increases in the emissions of the two chemical precursors to smog—volatile organic compounds (VOCs) and oxides of nitrogen (Nox)—as well as particulate matter, the Act does not protect against increases in emissions from other sources, such as housing and commercial developments, distribution centers, and port expansion projects. Thus, there are no provisions under the Federal Clean Air Act, or even the California Clean Air Act, to protect the public from the health hazards posed by an increase in emissions from additional vehicle traffic associated with a 10,000 unit housing development, the increased diesel truck traffic from a new "big box" warehouse or distribution center, or the increased pollution from the ships, trucks, trains, and equipment that will move containers at a new port shipping terminal.

These indirect sources of pollution are the products of a land-use planning and permitting system that relies on local governments, who have every incentive to compete with each other for new development, and few if any tools to analyze, much less mitigate the regional impacts. While local and state air agencies may comment on the impacts of the largest projects, they have no legal authority to prevent the local land use agency from issuing the necessary development permits.

Further, while the Federal and California Clean Air Acts control the levels of pollution that may be emitted by a particular source, these laws typically do not distinguish between sources based on their location; thus, a chrome-plating facility will typically face the same limits on its emissions regardless of whether it is sited next to an elementary school or industrial factory. This problem was highlighted in the late 1990's when children at Suva Elementary School in Bell Gardens in Los Angeles County experienced serious (and deadly) health impacts from high levels of toxic chemicals emitted by a chrome-plating facility sited next to the school. While the facility met all applicable air quality regulations, its emissions were unsafe for children spending the day immediately adjacent to the facility.

Only CEQA protects the public from the health hazards posed by the increased vehicular emissions associated with a new 10,000 unit housing development, warehouse distribution center, or port shipping terminal.

Only through the CEQA process can neighboring communities, citizen groups and concerned agencies affect the land use decisions that can make or break California's efforts to ensure that regions with air quality problems reduce their pollution levels to meet federal clean air standards. Indeed, without this protection, the dramatic growth projected for California will mean more, not less pollution over the upcoming decades. In Southern California alone, the Southern California Association of Governments projects that the region will experience a 25 percent increase in population over the next twenty years. This means ever increasing pressure for more housing, more commercial developments, and more warehouses and distribution centers. Similarly, California ports are currently projecting a doubling or tripling of container traffic through the ports over the next twenty years. These containers will be moved by diesel ships and cargo handling equipment, and carried to

their destinations by polluting trucks and trains.

CEQA addresses these pollution sources by requiring public agencies before they approve a project to analyze the impacts on air quality. Specifically, CEQA directs the agency to consider all adverse environmental changes resulting from the project, including on land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. If the agency finds substantial evidence that the project may have a significant impact on air quality, then an Environmental Impact Report must be prepared, which analyzes the impacts and mitigation measures that would reduce these impacts below a level of "significance."

Most regional air quality agencies in California have developed guidelines for when an air quality impact is considered significant. For example, in the Sacramento region, if a project's operation would increase emissions of VOCs or Nox by more than sixty-five pounds per day, these levels are considered significant. High emissions of cancer-causing or other toxic air contaminants can also render a project's emissions significant. For example, an increase in cancer risk of more than ten additional cancer cases out of 1 million people exposed is considered significant under guidelines adopted by the South Coast Air Quality Management District.

CEQA's teeth come from the obligation of the agency to mitigate all significant environmental impacts where "feasible." This is a central provision when it comes to air quality impacts because typically there are measures that can be implemented that are feasible and would reduce the project's environmental impacts. These "solutions" include mitigation of the project's traffic impacts (for example by structural changes to roads and intersections or the provision of public transit options) and adoption of control technologies to reduce emissions, such as requirements for the use of cleaner trucks and equipment and cleaner fuels.

CEQA's teeth come from the obligation of the agency to mitigate all significant environmental impacts where "feasible."

Moreover, CEQA requires consideration of more environmentally benign alternatives as well as the "no project" alternative. With respect to air quality, these alternatives can make a big difference. For example, a change in the design or size and intensity of a project can often dramatically impact the emissions from car and truck traffic associated with the project. Local permitting authorities often choose to make controversial projects more acceptable to surrounding neighborhoods by requiring measures to reduce traffic impacts. Without the analysis and disclosure required by CEQA, these officials would generally lack the knowledge of a project's impacts and the tools needed to devise feasible mitigation measures.

For many years, a parade of distinguished California business-leaders, planners, and environmentalists have recommended strengthening state planning laws in ways that would encourage what is typically called "Smart Growth." As early as 1982, the Governor's Office of Planning and Research produced an Urban Growth Strategy that called for regional plans that would discourage loss of open space and link transportation, air quality and other environmental and public health goals to "infill" development in urban centers. An effective growth management system would address many of the air quality burdens currently dealt with by CEQA on a project-by-project basis.

Until California enacts meaningful growth management legislation, however, CEQA remains the only effective tool for assuring that the hard-won gains in air quality that have been brought about by tough regulations on industry and motor vehicles are not wiped out by the unchecked sprawl of housing and commercial development serving our growing population.

Mary Nichols recently joined UCLA as Director of the Institute of the Environment. Prior to this, Ms. Nichols served as Secretary of Resources for the State of California, Assistant Administrator of the U.S. EPA under President Clinton, and Secretary for Environmental Affairs under former Gov. Edmund G. (Jerry) Brown.

Gail Ruderman Feuer is a senior attorney in the NRDC's Los Angeles office. Prior to this, Ms. Ruderman Feuer served as a deputy in the environment section of the California Attorney General's office. Ms. Ruderman Feuer has successfully litigated a broad range of environmental cases, and specializes in air quality, energy, transportation, toxics and California's Proposition 65.

Gordon Nipp, a recently retired math professor at Cal State Los Angeles, knew that he wanted to dedicate more time to the Kern-Kaweah Chapter of the Sierra Club. But it wasn't until he saw a stack of negative declarations for proposed housing developments that he decided to really get active and protect his community's air quality.

"They said there were no cumulative impacts to air quality, traffic, and biological resources from development, but of course there are. This is one of the most rapidly growing parts of the state, and there are profound impacts. So I took it upon myself to learn all I could about how to use CEQA to protect the community. A number of the developers were willing to work with us because they too realized the importance of clean air."

As a retiree, Gordon is especially concerned about the quality of the air he breathes. "If we're going to have a decent quality of life then something has to be done. People are getting sick from the air. They're developing emphysema and cardiovascular disease just from going outside. I live here. I have to breathe this stuff. It's an issue whose time has come."

Breathing Easier in Bakersfield:

Activists Use CEQA to Reduce the Air Impacts of Sprawl

"How do you tell your daughter that she can't go out and play because the air is too dirty?" **– Bakersfield resident and activist Renee Nelson**

Bakersfield, California would like to be known for its historic downtown and its lush agricultural setting. Unfortunately it has become increasingly identified with something much less appealing; Bakersfield's residents suffer from some of the worst air pollution in the United States.

According to a 2004 report by the American Lung Association, Bakersfield has the third highest levels of smog and particulate pollution in the country. A wealth of data confirms what local residents know; as the city grows, air quality gets worse. "Bakersfield is building 5,000 houses a year. That's a lot of houses when you think about local air quality," says recently retired Cal State professor and Sierra Club member Gordon Nipp.

The Brookings Institute found in a 2001 study that Bakersfield was the worst sprawling city in California. As the city grows, residents suffer from worsening levels of air pollution.

New developments spring up primarily at the edge of the city, meaning more commuting to get to downtown jobs. In fact, the number of vehicle miles traveled in Kern County has grown at twice the rate of population since 1981. Combine car travel, fireplaces, gas lawn mowers, construction emissions and a host of other pollutant sources, with the natural bowl shape of the local topography, which traps bad air in the city, and it's no surprise that residents endure an average of twenty-five "Save the Air" days per year.

While every new housing development contributes to worsening air quality, not every developer had to mitigate these impacts until the local chapter of the Sierra Club got involved. As Sierra Club member Harry Love explains, most new developments are between 50-300 homes. Because of their relatively small size, developers asserted that air quality impacts from their projects were insignificant, averting mitigation requirements. The Sierra Club used its right to litigate under CEQA to push the City and local developers to mitigate the impact of all new development on air quality.

When the city approves a project that fails to mitigate for its contribution to air pollution, the Club takes the city to court, asserting that the project must address cumulative impacts of air pollution. In nine consecutive cases developers have agreed to revise their projects and implement air quality mitigations, including landscaping with drought resistant plants, solar panels on model homes and a per unit air quality mitigation fee.

To determine the fee, Sierra Club member Gordon Nipp uses a computer program developed for the public by the California Air Resources Board called URBEMIS 2002 (Urban Emissions Model). URBEMIS is an on-line, user-friendly program that estimates air pollution emissions in pounds per day or tons per year for various land uses, construction projects, and project operations. By entering data about a proposed project, such as the estimated number of car trips per family and the construction schedule, Nipp can estimate the amount of air pollution generated by each additional unit of housing.

"It's in the best tradition of American justice that the ordinary citizen can have this sort of attention from the government and from the development community."

What does it currently cost for a housing development in Bakersfield to offset its impact on air quality? "$1,200 per unit," says Gordon Nipp. All the fees collected from the settlements will go to local air mitigation projects.

The Sierra Club doesn't want to continue using the courts to make sure developers respect Bakersfield's air, but until the city decides to address the cumulative impacts from small development projects, it will. And already, there are signs that the Club's legal actions are providing the needed impetus to help motivate the city to step in and provide more comprehensive leadership to protect air quality.

Before retiring as Bakersfield's Development Services Director in December of 2004, Jack Hardisty worked hard to draft a city-wide voluntary zero-emissions policy for new development. Although the plan was not adopted, it did signal the willingness of local government to listen to concerned community members and begin thinking creatively about the city's growth.

In early 2005, at the direction of a City Council committee, new Development Services Director Stan Grady convened an air quality task force to figure out how to improve air emissions to satisfy CEQA requirements. The task force consists of representatives from the City, the County, the Building Industry Association, developer's consultants, the Central Valley Air District, and the Sierra Club.

Gordon Nipp acknowledges CEQA's role in empowering the people and local government to clean up his city's air. "It's in the best tradition of American justice that the ordinary citizen can have this sort of attention from the government and from the development community. We're not wide-eyed radicals. We're asking for clean air."

Written by PCLF staff.

For more information on URBEMIS or to download a free copy see:
www.arb.ca.gov/planning/urbemis/urbemis2002/urbemis2002.htm

Bakersfield Air Quality Facts

The **American Lung Association's *State of the Air Report* (2004)** gave Bakersfield a **Failing** grade. It found that the city:

• Ranked **Third** in the nation for having the highest levels of short-term and year-long **particle pollution**. These tiny, airborne particles can lead to heart attacks, cardiac arrhythmias (irregular heartbeat), asthma, slowed lung function growth in children and teenagers, and premature death.

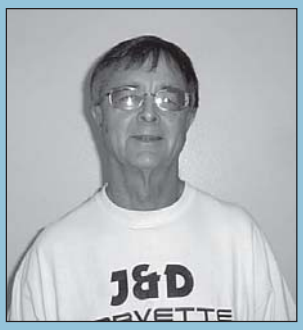
• Ranked **Third** in the nation for having the highest levels of **ozone pollution**. (The Regional Air Quality Board has updated Bakersfield's ozone status from **Severe** to **Extreme**.) Ozone attacks lung tissue and can cause pulmonary inflammation and asthma.

****

The Brookings Institution found that Bakersfield was the **Worst-Sprawling City** in all of California, fourth in the entire nation (2001).

****

In 1999, 13,000 Bakersfield residents participated in **Vision 2020**, an unprecedented 18-month effort to draft a picture of the area's future. Their number one concern was **air pollution**. **Sprawl** ranked second.



Noel Park has lived in the town of San Pedro, adjacent to the Port of Los Angeles, for thirty-five years. He runs a car parts company and drives a pick-up truck. For most of his life he assumed that the Port was looking after the needs of the community. "It's the largest Port in the US, with giant ships, diesel trucks and hundreds of thousands of shipping containers. But I never got involved. I was interested in the same things everyone else is, my kids, my house, my cars."

That is, until his Homeowners' Coalition received a copy of the Port's Environmental Impact Report (EIR) for China Shipping. "I delved into the EIR and what I read there made me so angry I began attending hearings, testifying and writing letters along with other members of the Coalition. The document was dishonest and disingenuous, calling major impacts insignificant or making declarations of overriding considerations. They were in essence saying that the money they were going to make was

Continued on the following page.

CHINA SHIPPING & THE PORT OF LA

By Gail Ruderman Feuer

Despite the availability of technology to cut pollution, major seaports every year emit ever-larger amounts of toxic diesel exhaust and other contaminants that damage public health, disrupt local communities, and harm marine habitats. For example, the ports of Los Angeles and Long Beach are the single largest source of air pollution in Southern California, emitting as much diesel exhaust as 16,000 tractor-trailers idling their engines twenty-four hours a day. As a result, residents of San Pedro and Wilmington are plagued by acute and chronic respiratory illnesses, such as asthma and bronchitis, and suffer some of the highest cancer risk in the region.

In June 2001, after decades of expansion by the Ports of Los Angeles and Long Beach without mitigation of the environmental impacts, local community members joined forces with the Natural Resources Defense Council and Coalition for Clean Air to challenge the Port of L.A.'s approval of a 174-acre terminal expansion for the China Shipping Container Line. According to port documents, as many as 250 of the world's largest container vessels planned to call at the terminal, with cargo being moved by as many as 1 million trucks on local streets every year.

Joe Lyou, California Environmental Rights Alliance

Over 100 people gather to protest excessive air pollution at the Port of Los Angeles.

Despite the clear impact on the local communities, the port and city chose to rely on prior environmental documents prepared for other related projects, and refused to prepare an Environmental Impact Report (EIR) that would focus specifically on the impacts of this terminal expansion. None of the other environmental reviews revealed to the public the true impact the China Shipping project would have on its neighbors and the region nor did they provide any real mitigation for those impacts.

The groups filed suit under CEQA, challenging the failure to prepare an EIR. After an eighteen-month-long legal battle, in October 2002 the Court of Appeal permanently enjoined further construction and operation of the terminal until the port and city prepared a full environmental review in full compliance with CEQA.

The three-judge panel unanimously rejected arguments by the port and city that the project had been reviewed years ago in prior environmental documents, and held that these documents failed to address "any site-specific environmental issues related to the China Shipping project."

After the court decision halted all construction and operation of the project, the parties returned to the negotiating table to see if a settlement could be reached. Five months later, the parties reached an historic settlement that allowed the first almost completed wharf to open pending completion of the EIR, but in exchange provided dramatic mitigation of both the China Shipping project and impacts from prior projects that had never been mitigated.

Among other things, the settlement requires the Port to spend $50 million over the following four years on the reduction of air pollution and industrial blight in the bordering communities of San Pedro and Wilmington, and *in addition* to implement specific significant mitigation measures at the China Shipping terminal that will make it a "green" terminal. The other "green" measures include a requirement that 70 percent of the ships using the berths plug into electric power while at berth instead of running their diesel engines, 100 percent of the yard tractors run on cleaner alternative fuels like natural gas or propane, 100 percent of other yard equipment to install pollution controls and use cleaner diesel fuels, and installation on the second wharf of "low profile" cranes that are half the height of traditional cranes and thus will have less of an aesthetic impact on the local community.

A cargo ship plugs into the new electric power station at the Port of Los Angeles. Because of CEQA, China Shipping will be one of the first "green" terminals in the state and will include a number of other measures intended to minimize its negative impacts on nearby communities.

In June 2004, China Shipping's first vessel docked at the new terminal, and plugged into dockside power—the first container ship in the world to do so. Every time a ship plugs in to electric power at the terminal, this technology will mean three fewer tons of smog-forming nitrogen oxides and 350 fewer pounds of diesel particulate matter will be spewed into the air. Community and environmental leaders are hopeful that the China Shipping saga will lead to more complete environmental reviews of new port projects and "greener" terminals at the ports in the future.

Gail Ruderman Feuer is a senior attorney in the NRDC's Los Angeles office. Prior to this, Ms. Ruderman Feuer served as a deputy in the environment section of the California Attorney General's office. Ms. Ruderman Feuer has successfully litigated a broad range of environmental cases, and specializes in air quality, energy, transportation, toxics and California's Proposition 65. Ms. Ruderman Feuer is a graduate of Harvard Law School and former law clerk to federal Judge A. Wallace Tashima.

Continued from the following page.

more important than our health."

Noel questions the image of the Port as an engine of the economy. He cites a 2004 study by the non partisan Public Policy Institute of California, which claims that the Port may actually cost the state of California more each year in health costs from air pollution than it generates in jobs and economic activities.

The Coalition's success in challenging the EIR hinged on a single phone call. "One of our friends had read an article about the National Resources Defense Council so we contacted them and got their help. They were unbelievable. They deserve the real praise," says Noel.

"The Port spent nearly $10 million dollars trying to defeat us. It's hard to stand up to that sort of pressure. When the Attorney General's office filed a brief in support of our cause, it was a new supply of confidence."

Noel knows that the battle is not over. "This recent settlement covers about 5 percent of the Port. We've still got 95 percent that is going along with business as usual and fifteen EIRs in the cue. But I'm hopeful. We've woken up out of our thirty year slumber and we're finally taking a stand."

Teresa de Anda knows firsthand what it is like to not have clean air. A long time resident of the agricultural town of Earlimart in the San Joaquin Valley, she suffered severe health problems when a nearby vineyard accidentally released pesticides into the air near her home in 1999.

Teresa helped form El Comitè para el Bienestar de Earlimart to address such community health concerns. She now works for Californians for Pesticide Reform, advocating for breathable air in agricultural towns like her own.

One of Teresa's most rewarding experiences was organizing community support for SB 700 by Senator Florez. "We gathered a bus load of Central Valley residents and brought them to Sacramento. Many of them were children with asthma. From pesticide drift victims to families living by dairies, these residents understood that agriculture should not be exempted from clean air standards."

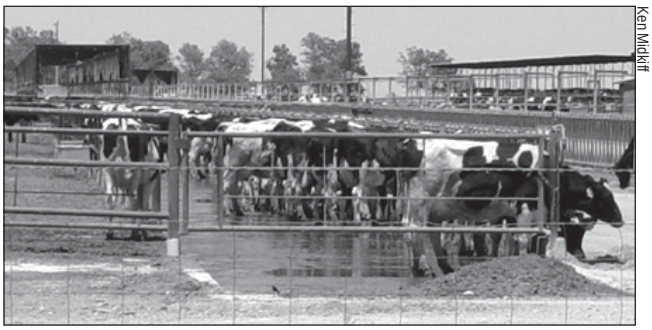
Teresa is motivated by the knowledge that her children's and grandchildren's health is at stake. "It's horrible being a mother and you can't even protect your kids," she explains. "It feels good to be doing something about it."

Mega-Dairies & Agricultural Air Pollution

By Caroline Farrell

In recent years, the Central Valley has seen an influx of dairies moving in from Southern California's Chino Basin. As stronger water and air regulations come into effect in the rapidly developing Chino area, dairymen are selling their farms to housing developers and buying large tracts of land farther north to relocate and expand their operations. Between 1998 and 2002, one such proposal stirred up a great deal of controversy in Bakersfield and helped lay the foundation for statewide change.

George and James Borba, two cousins with dairies in the Chino Valley, applied to build two 14,400 cow dairies on adjacent pieces of property in Kern County, in effect creating a 28,000 cow dairy. The County quickly approved these proposals without CEQA review, stating that there would be no potential adverse environmental impact from these dairies. Fearing that unregulated dairies of this size could have far-reaching environmental consequences, the Center on Race, Poverty & the Environment (CRPE) challenged the County's avoidance of an environmental analysis. When the initial analysis failed to adequately analyze the dairies, the Sierra Club joined with CRPE in another suit against the County.



Ken Midkiff

California's largest dairies hold 14,000 cows at a single site. The CEQA review of the Borba proposals revealed the impacts of these "mega-dairies" on California's air quality.

After a protracted legal battle in which the courts ruled three times in favor of the environmental organizations, a new Environmental Impact Report (EIR) and supplemental analyses for the Borba dairies were finally prepared. These documents painted a radically different picture of dairy farming, demonstrating that dairies do have significant and unavoidable impacts on the environment, particularly on the air. The findings surprised everyone. "We thought that the greatest impacts would be on water quality from the animal waste-laden runoff. Although there was clear evidence that manure wastewater could seep into the ground, eventually contaminating groundwater supplies, it turns out that the greatest impact was on air quality from reactive organic gases, particulate matter, ammonia, hydrogen sulfide, and methane" explains Brent Newell, staff attorney for CRPE.

Growing data on emissions from San Joaquin dairies called into question California's exemption of agriculture from the Clean Air Act.

Based on the information disclosed during the Borba permit process, the effects of dairies began to gain local and statewide attention. Local papers, including the Bakersfield-Californian and the Fresno Bee, began publishing editorials critical of dairies practices.

Kern County agreed to re-examine its "by right" policy for dairies, which allowed the county to grant permits without any public hearing or additional operating conditions if the proposed dairy met certain basic siting requirements. In addition, Kern County and neighboring counties in the air basin realized that they needed to prepare an EIR for each new dairy or adopt a program EIR for all dairies. While these new EIR requirements helped stem the tide of unregulated "mega-dairies," even larger improvements lay ahead.

The accumulating data on emissions from San Joaquin Valley dairies called into question California's exemption of agriculture from the Clean Air Act. Up until 2003, nearly all air pollution caused by agricultural practices in California, including diesel irrigation pumps and livestock facilities, escaped the oversight common to other industries. Because of the growing concerns

Were it not for the information generated in the Borba Dairy CEQA cases and the public outcry that followed, California's agricultural industry might still be exempt from the Clean Air Act.

of valley residents and the Federal Environmental Protection Agency, Senator Dean Florez sponsored SB 700 in September of 2003. The passage of SB 700 removed the agricultural exemption from air quality laws and instituted substantive permitting requirements for agricultural pollution sources. Were it not for the information generated in the Borba Dairies cases and the public outcry that followed, this historic improvement to air quality and public health in the Central Valley may never have occurred.

Caroline Farrell is the directing attorney of the Delano Office for the Center on Race, Poverty, & the Environment (CPRE). CRPE continues to work with Central Valley communities for regulation of the dairy industry.

Agriculture & Air Quality

The primary sources of air pollution from agricultural practices are manure from confined animal facilities and exhaust from diesel equipment.

A November 2004 report by the California Senate Office of Research found that large dairy operations and their wastes pose an immediate threat to air quality, emitting large quantities of toxic and greenhouse gases, including reactive organic compounds, particulate matter, ammonia, hydrogen sulfide, and methane.

California's largest dairies hold 14,000 cows at a single site. Toxic airborne chemicals emitted from lagoons of manure at these sites can cause inflammatory, immune, and neurochemical problems in humans.

Of the nearly 200,000 pieces of agricultural equipment currently in operation in California, more than half are so old that no emission standards existed at the time the equipment was purchased.

Agricultural equipment is the fourth largest source of diesel particulate pollution in the state. Diesel particulate has been linked to low birth weight, sudden infant death syndrome, and other health problems.

Elimination of manure lagoons and the application of stricter diesel emission standards could prevent thousands of asthma attacks and premature deaths each year.

The Trouble with BUGs

Though diesel backup generators (BUGs) produce up to 100 times more pollution than conventional power plants, they are often clustered near where people live, work, and go to school.

A person's lifetime cancer risk increases by 50 percent if he or she lives near a single one-megawatt diesel generator that runs for as little as 250 hours annually.

Diesel exhaust is responsible for more than 70 percent of the air toxin cancer risk in the US, ten times higher than all other pollutants combined.

Diesel exhaust also has numerous serious noncancer effects—involving the respiratory, neurological and immunological systems—and contains smog precursors.

Fine particles in diesel exhaust have been linked to asthma, cardiovascular and respiratory problems, strokes, and heart attacks.

Diesel BUGs are far more likely to be located near low income, elderly, and minority populations.

A study of four CA school districts (South Coast, San Diego, San Joaquin Valley Unified, and Sacramento Metro) estimates that more than 150,000 children in these regions may be exposed to unacceptably high diesel BUG emissions.

Diesel Generator
Next to Sacramento School

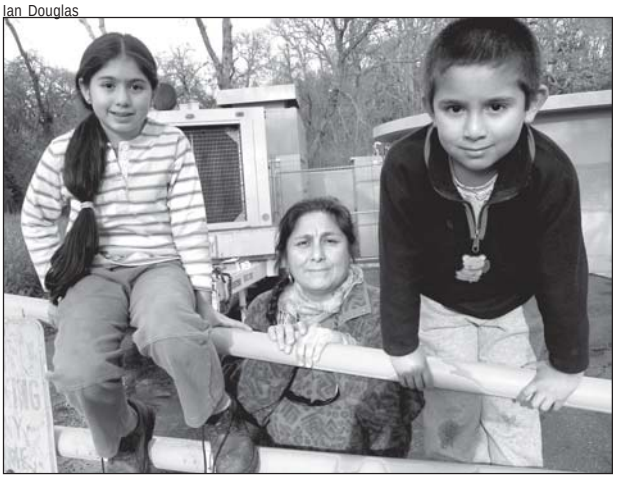
By Daniel L. Cardozo

Diesel exhaust from backup diesel generators is a leading threat to public health. This is because diesel exhaust is a potent human carcinogen, and because backup diesel engines usually have absolutely no pollution control equipment. In addition, backup diesel engines are often located very close to where people live, work or attend school.

In late 2003, the Sacramento County Department of Water Quality ("Department") applied to the Sacramento Metropolitan Air Quality Management District for a permit to operate a backup diesel generator 150 feet from the Sacramento Waldorf School, a K-12 school with 420 students and 50 toddlers enrolled in pre-school. The generator was a two-cycle, turbocharged, diesel powered internal combustion engine.

The Department had actually been operating the engine illegally, without a permit, since November 1999. This was a violation of both the Federal and State Clean Air Acts. The public notice of the permit action raised community awareness of the diesel generator, which was of significant public concern, especially among parents of children at the Waldorf School.

Ian Douglas



Ana Sánchez-Camacho, her son, Awki, and daughter, Kukuli, pose in front of a diesel generator located 150 feet from the Sacramento Waldorf School. Through their CEQA comments, Ana and other concerned parents ensured that the most advanced emissions reduction technology available was installed and that the equipment would be routinely cleaned and maintained.

Parents of children at the Waldorf School organized the Concerned Parents of Waldorf Children and sought out legal assistance to help them understand the environmental risks posed by the diesel engine.

The California Air Resources Board (CARB) has concluded that stationary backup diesel engines pose one of the greatest threats to human health of any common source of pollution. (*See* CARB fact sheet "California's Plan to Reduce Diesel Particulate Matter Emissions" Oct. 2000).

Expert analysis indicated that the emissions from the diesel engine created a cancer risk comparable to some of the largest pollution sources in Northern California, including several of the Bay Area refineries. For example, the largest pollution source in the Sacramento Metropolitan Air Quality Management District database creates a cancer risk of 9 per million, and the cancer risk posed by Bay Area refineries ranges from 6 to 9 per million. The diesel engine that the Department was operating next to the Sacramento Waldorf School created a cancer risk of between 5.6 and 16.7 per million.

The California Air Resources Board has concluded that stationary backup diesel engines pose one of the greatest threats to human health of any common source of pollution.

The Parents and the Coalition for Clean Air filed comments urging CEQA review of the permitting decision and requesting installation of "best available control technology" (BACT) under the Federal Clean Air Act.

The CEQA process provided a forum for the provision of extensive expert comments analyzing the project's risks and proposing mitigation measures. Ultimately, the Department agreed to install advanced pollution control equipment called a "BUGtrap" in order to make the backup generator safer for the schoolchildren who would be exposed to diesel fumes.

The BUGtrap is capable of achieving a minimum reduction in emissions of 75 percent for particulate matter; 85 percent for hydrocarbons; and 85 percent for carbon monoxide. The manufacturer of this technology, Cleaire Advanced Emission Controls, donated the pollution control equipment.

The Department also agreed to conduct all routine maintenance and testing during non-school hours to avoid exposing children even to the controlled emissions of the diesel engine.

This agreement was based on the requirement under CEQA that the project proponents implement "all feasible mitigation measures." In this case, this requirement proved stronger than requirements of the Clean Air Act because the Air District would have been able to argue that the BUGtrap was beyond best available control technology required by the Clean Air Act.

BACT is defined by U.S. EPA and various air districts, and does not yet include the BUGtrap, since it is a very new and advanced technology for back-up diesel generators. However, the technology meets CEQA's "feasible mitigation measures standard" because it is currently available, has been used in practice on hundreds of diesel engines, and is cost-effective.

Daniel L. Cardozo is a partner at Adams Broadwell Joseph & Cardozo. Mr. Cardozo's firm provided pro bono representation to the Waldorf School Parents.


Ian Douglas

Ana Sánchez-Camacho, a mother with a six-year-old son and a nine-year-old daughter at the Sacramento Waldorf School, was one of the main organizers of Waldorf parents. "We didn't know that there was a functioning diesel generator sixty feet from where our children were playing in the kindergarten yard."

Many parents were shocked. "I think they expected the school and the county to be vigilant in taking care of their health and safety. Soon a large number of parents became concerned and got engaged."

"Our first major hurdle was that the Air Quality Management District didn't have a venue to receive comments from concerned citizens. They said we had to pay a $1,000 fee. Finally, our lawyers helped us get the fee waived. Their expertise and knowledge of the process was essential to us."

Ana considers the installation of new pollution control technology to be a victory for the school. She hopes that other communities near diesel generators will learn from this example and use CEQA to demand the best available technology to protect their health.

CEQA Cleans Up California's POWER PLANTS

By Marc Joseph

Modern power plants are less damaging to the environment than older plants, but they still create numerous environmental impacts that can and should be avoided. To centralize efforts to protect Californians against the ongoing effects of pollution from power generating facilities, the state legislature established the California Energy Commission, a regulatory body that oversees permitting for all new power plants with generating capacity of at least fifty megawatts.

As the CEQA lead agency, the California Energy Commission (CEC) is responsible for evaluating all of the environmental impacts of a proposed power plant or plant expansion, from the construction stages to the daily operation and eventual plant retirement. The CEC's process invites community members and organizations such as California Unions for Reliable Energy (CURE) to help identify potential impacts and suggest necessary improvements. Air quality is often the largest area of concern.

The authority derived from CEQA enables the CEC to require mitigation for significant air quality impacts of construction, including dust from earthmoving and exhaust from construction equipment. For example, the CEC now routinely requires extensive watering to reduce PM10 emissions during construction and the use of ultra-low sulfur diesel and soot filters on construction equipment. These measures greatly reduce the impacts to air quality from the construction process itself, and there is usually no authority other than CEQA to limit these impacts.

The CEC can also ensure that stack emissions, which almost always present significant adverse impacts on the physical and human environment, are mitigated. Some of these air quality impacts often would not be addressed by any other regulations. For example, in cases where power plants fully comply with the requirements of the local air district, there are still chances that the plants will generate air pollution in neighborhoods outside of that specific air district. Yet because of the CEQA process, the Energy Commission can require the project proponents to pay for emissions offsets near the pollution source and near affected populations. This process helps to protect local communities from impacts that the air district may be unable to prevent.

When Midway Power proposed the Tesla Power Plant, CEQA protected air quality downwind in the Valley when no other regulatory process was available.

For example, when Midway Power LLC, proposed the Tesla Power Plant just inside the boundaries of the Bay Area Air Quality Management District, that Air District only specified that required offsets for the power plant had to be within the

Bay Area. CEQA analysis showed that emissions would primarily impact downwind communities in San Joaquin County, part of the San Joaquin Valley Unified Air Pollution Control District (SJVAPCD). Because of its authority under CEQA, the CEC required that offsets be implemented in the affected areas outside of the local air district's jurisdiction. CEQA protected air quality in the Valley when no other regulatory process was available.

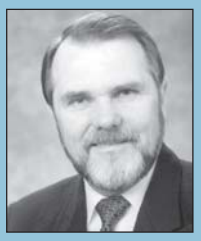
CEQA also allows the CEC to protect fresh water supplies and the marine environment. Power plants can require large amounts of water for cooling. This can deplete fresh water supplies and lower groundwater levels, which directly affects other water users such as nearby agricultural operations. Using its authority under CEQA, the Energy Commission has started to require power plants to utilize reclaimed water and sometimes a dry air cooling process, rather than the normal fresh water cooling process. In the case of the Three Mountain Power Plant, the CEC included CURE's request for a better cooling process design that reduced the plant's groundwater consumption by 80 percent. The CEC also sometimes requires plants to use "zero discharge" cooling systems that both minimize water use and prevent discharge of pollution into surface water supplies. Through the examination of cooling policies, the CEC has lessened the impacts on coastal wetlands and fisheries caused by the traditional "once through" cooling process design.

CEQA also empowers the CEC to address the risks that toxic and hazardous materials pose to the environment and to worker health and safety. Such was the case at the High Desert Power Plant, where CEC required that the plant use less hazardous aqueous ammonia to avoid the dangers of highly concentrated anhydrous ammonia. This protected the public and workers from the risk of an accidental release of deadly concentrations of ammonia. Again, the only authority for the CEC's requirement was CEQA.

From mandatory local air quality offsets to increased protection from toxic chemicals, none of these essential improvements would be possible without the tools provided by CEQA.

From mandatory local air quality offsets to increased protection from toxic chemicals, none of these essential improvements would be possible without the tools provided by CEQA.

Marc Joseph is a partner at Adams Broadwell Joseph & Cardozo. Mr. Joseph's firm represents California Unions for Reliable Energy (CURE).



CEQA & the Building Trades

By Bob Balgenorth

The Building Trades have seen what happens when environmental issues are not addressed. During the late eighties, air quality was so bad in parts of the state that there was a moratorium on large construction projects. The Clean Air Act requires withholding funds for highway projects if clean air standards are not met. Some communities have reacted to environmental problems by prohibiting new development. Construction workers lose jobs when the environment is not protected. CEQA is one of the main tools for achieving sustainable growth in California. By mitigating the effects of projects, CEQA protects the opportunity for sustainable growth.

Also, emissions from construction are a direct danger to the health of construction workers. These emissions are not normally regulated by air districts. CEQA is often the only protection for construction workers and nearby residents. By requiring that the impacts be mitigated, the health of construction workers, the people most at risk, is protected.

Robert Balgenorth is president of the State Building and Construction Trades Council of California, AFL-CIO. The Council, representing more than 200 local unions and regional councils, works to improve the economic condition, health, and job safety of approximately 400,000 working men and women in the state's construction industry.

Doreen Caetano-Jungk is getting ready for another GRAPE (Goshen Residents Against Polluting the Environment) meeting in her living room. "Goshen is a primarily low-income community," she explains. "We don't have the money to mail a newsletter. We walk from door to door instead."

CEQA first entered Doreen's vocabulary when she attended a public hearing for a proposed slaughterhouse at the edge of town. After the hearing, she and other residents gathered to discuss their concerns. When those same residents met with Caroline Farrell from the Center on Race, Poverty and the Environment, they decided to form GRAPE and have been actively researching and speaking out on topics of concern since then.

Soon after the County approved the slaughter house, Doreen's husband Ron told her about the proposed ethanol plants. Ron's union had just hired a Berkeley professor to write expert comments on the proposed Pixley ethanol plant, thirty miles south of Goshen.

Continued on the following page.

Building Better Ethanol Plants

By Caroline Farrell and Richard Drury

In early 2004, several companies proposed the construction of ethanol plants in the Central Valley. All of the plants were designed to produce ethanol from corn distillation to be used as a gasoline additive. Ethanol makes gasoline burn more cleanly and also replaces toxic MTBE, which has been banned due to groundwater contamination problems. A good product in many respects, the production of ethanol does, however, create emissions of its own.

While there are currently no operating ethanol plants in California, many mid-western ethanol plants have been identified as major sources of air pollution and odors. For example, many ethanol plants built in the Midwest prior to 2000 had exceeded their air permits by hundreds of tons, and

Ronny Jungk

Construction continues on the Western Milling ethanol plant in Goshen, CA. The Pixely plant will be built just thirty miles south.

nearby residents brought numerous nuisance suits because of odors from the plants. The United States Environmental Protection Agency sued several of the plants under the Clean Air Act to force them to install best available control technology (BACT).

Tulare County prepared Negative Declarations for two new ethanol plants in the summer of 2004. A "Negative Declaration" is a written statement briefly describing the reasons that a proposed project will not have a

significant effect on the environment and does not require the preparation of an Environmental Impact Report (EIR).

This prompted attorneys representing Goshen residents and a consortium of unions to file extensive legal and technical CEQA comments challenging the appropriateness of the Negative Declaration.

The commenters provided extensive expert comments on the environmental impacts of the ethanol plants and proposed feasible measures to reduce those impacts. After receiving the comments and holding several public hearings, the County urged the proponents of the plants and the commenters to attempt to resolve the environmental issues raised in the hearings and comment letters.

Ronny Jungk

In the CEQA settlement agreement, the plant owners agreed that if VOCs are found to exceed two pounds per day the plant will install best available control technology to reduce emissions below that level.

Ultimately, the parties reached an agreement that resulted in numerous mitigation measures to reduce project impacts. Of particular importance, the plants agreed to retain an independent consultant to monitor volatile organic compounds (VOCs) from the wet mash or wetcake produced at the plants. If volatile organic compounds are found to exceed two pounds per day, the companies agreed to install best available control technology to reduce emissions below that level. No emission factor currently exists for these emissions and they would have gone unanalyzed and unmitigated under the County's Negative Declaration.

The companies also agreed to implement measures to reduce particulate matter emissions during project construction. Because of CEQA, the plants were allowed to proceed, while addressing their impacts on local air quality.

Caroline Farrell is an attorney with the Center on Race, Poverty and the Environment. Ms. Farrell represented GRAPE and other Central Valley residents in their challenge to the Goshen ethanol plant.

Richard Drury is an attorney with Adams Broadwell Joseph & Cardozo. Mr. Drury represented Plumbers and Pipefitters Local 246 and the International Brotherhood of Electrical Workers Local 100 in their challenge to the Pixley ethanol plant.

Continued from the previous page.

When the ethanol plant proposal for Goshen came before the county, she helped organize GRAPE members, met with county officials, attended public meetings, and prepared comment letters.

Doreen found that her degrees in Special Education and Agricultural Sciences paid off when trying to decipher the Environmental Impact Reports.

"What really amazed me though, was that when I showed the planning staff exactly where the problems were in their environmental documents they thanked me and submitted the same documents to the county without any changes. I had to keep attending public meetings to make sure the agencies finally followed through. Did they expect me not to keep showing up?"

Several public agencies claimed they weren't responsible. "We had to work hard to ensure accountability. We told them in essence, the buck does stop here. It stops here with you."

The CEQA process opened Doreen's eyes to the role of the public in civic life. "I'll never be able to just sit in my yard and garden and not be concerned anymore. I was naively thinking that the government would be balancing all the issues. Now I know someone needs to be watching to see that those issues are taken care of."

Reducing Construction and Mobile Source Emissions

By Tanya A. Gulesserian

CEQA has provided the only mechanism to control construction and mobile source emissions in California. Construction sites expose workers, nearby residents, and children to elevated concentrations of dust and diesel exhaust. Mobile sources, including vehicular traffic, street sweeping, garbage pick-up and landscape maintenance, increase emissions after a project is built, affecting air quality and public health in the local community.

These emissions are a serious public health concern. Inhalation of particulate matter has been linked to a range of serious health problems including an increase in respiratory symptoms and disease, lung damage, cancer, and premature death. These health impacts are particularly adverse for the most vulnerable segments of our population: the elderly, children, and people with respiratory illnesses.

The CEQA process has been extremely effective in minimizing air quality and public health impacts from construction and mobile source emissions associated with residential, commercial, and industrial projects. For example, in 2003, the City of Richmond issued a Mitigated Negative Declaration (MND) under CEQA to analyze a residential project proposing several hundred homes. A coalition of labor unions and their members reviewed the MND, submitted extensive comments on the project and proposed additional mitigation measures to reduce the project's impacts.

CEQA has provided the only mechanism to control construction and mobile source emissions in California.

Mobile sources, including vehicular traffic, street sweeping, garbage pick-up and landscape maintenance, increase emissions after a project is built, affecting air quality and public health in the local community.

Expert analysis indicated that the project would cause significant adverse public health impacts from increased dust and diesel exhaust emissions. These emissions would increase the cancer risk in the surrounding community, including a nearby school. The project would also expose workers and residents to hazards associated with adjacent railroad tracks and industrial facilities. Feasible mitigation measures were proposed to reduce these impacts.

Based on information disclosed during the CEQA process, the developer, the City, and the unions reached an agreement to implement numerous additional measures to reduce the project's impacts. The developer agreed to use ultra-low sulfur diesel fuel in all construction equipment to reduce emissions during construction. The developer also agreed to apply water or dust palliatives and install gravel pads to minimize dust on and off the construction site. The agreement also required the developer to install high-efficiency particulate air filters on all residences in the project to improve indoor air quality. To reduce emissions from operation of the project, the developer agreed to install EPA-certified fireplace inserts and to require landscape companies to use electric-powered equipment. As a result of the CEQA process, the project will provide much needed housing, while minimizing air quality and public health impacts on the local community.

The CEQA process has also been effective in minimizing air quality and public health impacts associated with construction and operation of industrial projects. In 1997, the Port of Oakland proposed to expand its facilities to meet the anticipated demand for transportation services in northern California and to serve markets across the U.S. However, expansion of the Port facilities would increase construction and mobile source emissions in the already polluted Oakland area due to increased ship, rail, and truck traffic.

Construction sites expose workers, nearby residents, and children to elevated concentrations of dust and diesel exhaust.

The Port and the U.S. Navy issued a Draft Environmental Impact Statement / Environmental Impact Report (DEIS/EIR) to analyze the project. Oakland area neighbors, represented by Alan Ramo at the Golden Gate Environmental Justice Law Clinic, submitted comments on the DEIS/EIR. However, the Port approved the program without major changes, and the case ended up in court. Ultimately, the Port and community members reached a settlement in which the Port agreed to fund the hiring of an expert and to analyze specific air quality issues in future environmental review of specific projects under the program.

In 1998, the Port issued a DEIR under CEQA for construction of four berths planned in the expansion. Expert analysis indicated that construction of the berths and increased truck and cargo traffic would result in adverse public health impacts in the surrounding community. After extensive negotiations, Oakland area neighbors and the Port reached an agreement to implement additional measures to reduce the air quality and public health impacts from the project.

The Port agreed to use low-sulfur diesel fuel to reduce diesel exhaust emissions from construction equipment. The Port also agreed to commit over $6.5 million dollars to subsidize retrofit of diesel truck engines, cargo-handling equipment, and a tugboat with new engines meeting higher emission standards, or to add-on exhaust treatment devices to reduce particulate matter and toxic emissions. In addition to mitigating a variety of other operational features of Port facilities, the agreement included a commitment to subsidize retrofit of diesel engines on some transit buses that operate in West Oakland in order to reduce cumulative impacts from increased development in the area. For air quality mitigation measures for which the Port did not have the authority to require implementation, the Port allocated $7.5 million to encourage voluntary action through financial subsidies and similar incentives. As a result of the CEQA process, the Port of Oakland will meet increasing demands for transportation services, while minimizing air quality and public health impacts on the local community.

As these examples demonstrate, the CEQA process has been an invaluable tool for controlling construction and mobile source emissions and minimizing air pollution and public health impacts in California.

Because of CEQA, the Port of Oakland will meet increasing demands for transportation services, while minimizing air quality and public health impacts on the local community.

Tanya A. Gulesserian is an attorney at Adams Broadwell Joseph & Cardozo. The firm represented construction unions in the City of Richmond example discussed in this article.

CHAPTER 2
The Urban Environment

CEQA Protects the Urban Environment

By Louise Renne

When we think of the California environment, it is all too easy to think of our state's unique and beautiful natural heritage: our magnificent coastline, scenic bays, glaciated mountains, towering forest canopies, rugged deserts, and more.

CEQA has been an essential tool for those dedicated to creating and preserving green spaces within urban neighborhoods. Read more on page 41.

However, while Yosemite Valley or the Big Sur coast may leap to mind as obvious symbols of California's environment, more than 70 percent of Californians live in highly urbanized areas. For this reason, protection of the urban environment is critical both to the economic future of this state and the quality of life of its increasingly urbanized population.

What are urban environment issues? What makes California's cities healthy and attractive places to live? Some answers to these questions are obvious. The air quality in cities needs to be healthy for families. We should be able to swim in our public waters, especially close to urban centers. The residents of California's cities should have clean water to drink and green spaces in their neighborhoods for recreation.

Contaminated urban brownfields need to be recycled to productive use, without exposing neighbors to toxic chemicals during the cleanup and removal of contaminants. The transportation of toxic chemicals to business customers must be safe.

Residential areas should be buffered from the negative health and other impacts of commercial and industrial activities, including idling diesel trucks and ships, and emissions from incinerators and refineries. Where large facilities are sited within or adjacent to residential areas, residents should have the ability to ensure that the development will be done in such a way that it minimizes negative impacts on the community and, ideally, that it also brings direct benefits to the community that it impacts.

We have to attract people back to California's urban centers by protecting and improving the urban environment.

Urban Californians spend much time in their cars. Horrendous traffic congestion has become a part of everyday life, not only in Los Angeles and the Bay Area, but also in every urban area throughout California. As people are choosing to move further and further from urban centers where many jobs are, driven in part by housing prices but also in search of a cleaner, quieter environment, commute times have become almost intolerable.

Century Housing

A CEQA settlement for the Los Angeles Century Freeway created the city's first metro line, and required the construction of affordable housing. Read more on page 111.

Mass transit is one solution, and it should grow exponentially in our urban centers. Mass transit provides low income residents with critical mobility to access jobs, schools, shopping, and other opportunities. It reduces traffic congestion, improves air quality, and should help many Californians spend less time in their cars and more time with their families.

Luis Sinco, LA Times

Historic St. Vibiana's Cathedral (above), in downtown LA, was saved from demolition by CEQA. It will be adaptively reused as a performing arts venue. Read more on page 157.

Our urban areas still include natural areas such as bays and estuaries that are not only scenic, but also serve significant environmental values. We have many great urban parks, and the urban parks movement is growing. Urban creeks and streams, long neglected, are now the objects of a growing restoration effort.

Robin Doyno

CEQA has been an important tool for preserving affordable housing in San Francisco. Read more on page 47.

Another critical solution is to provide more housing opportunities within urbanized areas. Our state is expected to grow by 18 million more residents by 2025. Already, sprawling development is consuming important habitat and agricultural lands at an unsustainable rate. This sprawl imposes its own costs on residents, including longer commutes and degraded air and water quality. If we are to preserve the quality of life for urban residents and the natural heritage of our state, we have to attract people back to California's urban centers. To do this, we must protect and improve the urban environment.

We have laws in California to encourage sound urban planning; and we have many public servants who are dedicated to protecting and enhancing the urban environment. Yet, there is only one statute that requires a systematic examination of the environmental impacts of projects proposed for urban areas. That statute is and has been CEQA.

There is only one statute that requires a systematic examination of the environmental impacts of projects proposed for urban areas. That statute is and has been CEQA.

CEQA will examine the effects of a project on urban parks, on bays and estuaries, on air quality, on water quality, on exposure to toxic chemicals, on transportation opportunities, and on other issues of importance in urban communities. It gives communities an opportunity to be heard. Most importantly, the CEQA process will examine ways to mitigate the harmful effects of projects and to redesign projects to be more environmentally friendly and compatible with community needs.

The application of CEQA in the urban context could not be more important. If we are to succeed in channeling our growing population into urban communities, those future residents will want an attractive urban environment. Success in that challenge is critical not only for those future residents and for the urban environment, but it is also essential if we are to have any hope of protecting the great natural heritage of California that is outside the cities.

CEQA empowered a Northeast LA community to stop the construction of an industrial development at the old Taylor rail yard (left). Instead, the site is to become part of the 103 acre State Park at Taylor Yard (right), a project that will revitalize the neighborhood and contribute to the greening of the LA River. Additional community input ensured that the park would meet the needs of an urban community by providing both natural areas and recreational facilities like tennis courts and soccer fields. Read more on page 41.

Louise Renne was City Attorney of San Francisco from 1986 to 2001. Ms. Renne served as a deputy Attorney General from 1967 to 1978 and was a member of the Environmental Unit. She was appointed to the San Francisco Board of Supervisors in 1978 and served on the Board until she became City Attorney. Ms. Renne is currently a partner at the San Francisco law firm, Renne Sloan Holtzman & Sakai.

Nobel Peace Laureate Rigoberta Menchú is honored at the Tournament of Liberty and Peace by children of the Anahuak Association with (left to right) director Raul Macías; Robert García, Executive Director of CLIPI; and LA City Councilman Antonio Villaraigosa.

Raul Macías, founder of Northeast LA's non-profit Anahuak Youth Soccer Association, provided critical community support in the fight against industrial development at Taylor Yard. By mobilizing the 1,400 Anahuak soccer players, ranging in age from four to seventeen years, he ensured that the concerns of those living in the neighborhoods around Taylor Yard would be heard. Further, as the only community-based organization to join the CEQA lawsuit against the proposed warehouse complex, Macías and Anahuak let the state's elected officials know that the needs of young people in urban LA could not be ignored.

Macías, who emigrated from Mexico over thirty years ago, began promoting youth soccer in 1994, after a group of neighborhood kids asked him, as a local business owner, to donate $30 a week to help them pay for referees and other expenses. He agreed on one condition: that the youths come by each week to tell him the results of the game.

Continued on the following page.

CEQA and the Urban Park Movement

By Robert García and Jan Chatten-Brown

The California Environmental Quality Act has been a critical tool for the urban park movement that is transforming the Los Angeles region into a more sustainable, democratic, and just community. The movement has engaged in strategic campaigns to create a thirty-two acre state park in the Chinatown Cornfield in the heart of downtown Los Angeles, a forty acre state park in Taylor Yard along the Los Angeles River as part of a planned 100 acre park, and in the Baldwin Hills as part of a two square mile park that will be the biggest new urban park in the United States in over a century.

The history of the State Park in the Cornfield demonstrates the importance of CEQA to the urban park movement. Initially, the City of Los Angeles and developers proposed a warehouse project on the abandoned rail yard in the Cornfield, the last, vast open space in downtown Los Angeles, with significant taxpayers' subsidies for the developers and without full environmental review.

A diverse alliance stopped the warehouse project and persuaded the State to buy the land and create a park instead. The alliance used CEQA as part of a strategic campaign that included a collective vision for parks, playgrounds, schools, and transportation; coalition building drawing on the diverse values at stake; public education and advocacy outside the courts; strategic media campaigns; multidisciplinary research and analyses on public finance, demographics, history, and law; and litigation as a last resort.

Advocates secured the support of the community, a Cardinal of the Catholic Church, Guatemalan Nobel Peace Laureate Rigoberta Menchú, a Cabinet member in the Clinton administration, Governor Gray Davis, and the state legislative leadership to make the dream of a park come true. The Center for Law in the Public Interest organized the civil rights challenge that claimed the warehouse project was the result of discriminatory land-use policies that had long deprived minority neighborhoods of parks and recreation. The community within five miles of the Cornfield is 68 percent Hispanic and 30 percent live in poverty.

When the alliance was not able to persuade the City to require full environmental review on the warehouse project, members of the alliance filed a CEQA suit in state court and an administrative complaint under federal civil rights and environmental laws. In response, then-HUD Secretary Andrew Cuomo refused to provide any subsidies for the warehouses without full environmental review that considered the park alternative and the impact on communities of color and low income communities.

This prompted the developers to strike a deal with the alliance, settling the litigation. If the alliance could persuade the state to buy the Cornfield for a park, the developers agreed to withdraw the warehouse proposal. If not, the alliance would

withdraw their opposition to the warehouses. In a win-win victory for all the people of the Los Angeles region, the alliance persuaded the governor and state legislature to buy the site for a park using funds from bonds passed in 2000.

In addition to creating playing fields and open space in a neighborhood that has none, a park in the Cornfield will help improve the quality of life, create quality jobs, increase tourism, increase property values, promote economic revitalization of the community and preserve invaluable cultural and historic resources at the birthplace of Los Angeles.

The Los Angeles Times called the Cornfield victory "a historic monument" and "a symbol of hope."

Drawing on the lessons of the Cornfield, a community coalition stopped an industrial/retail project in Taylor Yard. Members of the coalition filed a successful CEQA suit demanding a full Environmental Impact Report as part of a strategic campaign. The court agreed after trial, leading to a settlement in which the state bought the site for a state park as part of the greening of the fifty-one mile Los Angeles River.

An imminent CEQA suit over a proposed sixty-five acre development in the Baldwin Hills resulted in that parcel becoming part of the planned two-square mile park in the historic African-American heart of Los Angeles. The Center has also led efforts to stop a power plant and a garbage dump in the park. Easily accessible to millions of people, and with stunning views of the Los Angeles basin, the Pacific Ocean and surrounding mountains, the Baldwin Hills offers an extraordinary opportunity to create a world-class park and natural space. A remarkable variety of native plants and wildlife persist within sight of downtown Los Angeles, with more than 160 bird species, and fox, raccoon, and other wildlife. The park in Baldwin Hills will be bigger than Golden Gate Park and Central Park.

Fundamental, democratic values underlie CEQA and the urban park movement.

Fundamental, democratic values underlie CEQA and the urban park movement: the need for information so people can understand the impact of public policy decisions on their lives, and full and fair public participation for people to decide the future of their community for themselves and future generations. Los Angeles is park poor, and there are unfair disparities in access to parks based on income, race, ethnicity, and access to cars. CEQA is helping the urban park movement ensure the fair distribution of parks, recreation, and other public goods for all.

Robert García is Executive Director of the Center for Law in the Public Interest in Los Angeles, CA (www.clipi.org). The Center has worked and published extensively on the urban park movement.

Jan Chatten-Brown is the principal of a small, public interest oriented law firm (cbaearthlaw.com) specializing in land use, environmental, and natural resource law.

Continued from the previous page.

Macías eventually took over coaching the team: "They kept losing," he says, "week after week. They were good players but they needed a coach. They needed somebody to push them to do things right, to show them how to be winners."

As one team grew into two and then three, the Anahuak organization was born. Macías realized that he'd been presented with a real opportunity: "I wanted to give these kids an alternative to drugs and gangs and crime. I could use soccer as a hook to keep children off of the streets, children whose families can't afford to pay for league fees and equipment."

Macías joined the Coalition for a State Park at Taylor Yard because he recognized it as similar opportunity: "In the end, it had nothing to do with soccer fields," he says. "These parks, they're an investment, an investment in our community and in our young people. We can teach our children about nature, to respect nature, to love open spaces, fresh air, and trees."

"The people," he continues, "are excited—the real people, who never believed it was possible, the gardeners and mechanics. They feel very happy. 'It's a dream,' they say. 'We're going to have a park right here. I don't believe it.'"

The Staples Center Community Benefits Agreement provides:

Living Wage Jobs:
70 percent of new jobs will be unionized and/or pay a living wage.

Local Hiring / Job-Training:
50 percent of new jobs will be hired locally through a community-run job-training and placement center funded with $100,000 from the developer.

Affordable Housing:
A minimum of 20 percent of housing units must be affordable to low income people. In addition, the developer will provide a $650,000 revolving loan fund at 0 percent interest towards the building of new affordable units by community non-profits.

Parks and Recreation:
The developer will provide $1 million for parks and recreation facilities within a one mile radius, and between $50,000 and $75,000 to involve community members in site identification and planning.

Environmental Planning:
An ongoing Coalition Advisory Committee will address such issues as construction, traffic, pedestrian safety, waste management, air quality, and "green" buildings.

Parking:
The developer will help to establish preferential parking and pay resident parking costs for five years.

From the SAJE.net website.

The Staples Center Arena & Its Neighbors: A Community Benefits Agreement

By Jerilyn López Mendoza

In spring 2000, the developer of the Staples Center in Los Angeles, home to the Lakers, Clippers and Kings, presented the outline of a proposal for a Sports and Entertainment District to the Los Angeles City Council. The massive, twenty-seven acre project included plans for two hotels, a 6,000 seat theater, up to 800 market-rate housing units and thousands of square feet of office and retail space.

Robin Doyno

The Staples Center project included plans for two hotels, a 6,000 seat theater, 800 market-rate housing units and thousands of square feet of office and retail space.

For many residents in the surrounding neighborhood, the presentation was not cause for celebration. They worried that while they would suffer the negative consequences of such a massive undertaking—air pollution from construction equipment, displacement from nearby affordable housing, increased traffic and decreased pedestrian safety, and more security problems—they would see few of the benefits.

After several months of talking to each other about the project, the predominantly low-income neighboring residents and community leaders came together through the Figueroa Corridor Coalition for Economic Justice. They approached the developer and asked for the opportunity to present their concerns directly, as well as their ideas of how the development could benefit them to offset the burdens of the development.

Robin Doyno

Residents from the surrounding, predominantly low-income neighborhoods feared that they would disproportionately suffer the impacts from the massive sports and entertainment facility.

As those informal discussions began, the Coalition also began drafting a formal response to the Draft Environmental Impact Report (DEIR) the developer had prepared for the expansion. Environ-

mental Defense's Environmental Justice Project, a Coalition member, took the lead in coordinating the comments. The document included traditional environmental issues, such as worries about air pollution and its link to local residents' health and suggestions for the inclusion of green building principles. Beyond those concerns, the comments incorporated Coalition discussion of the expansion's impact on redevelopment plans and affordable housing for the area, thus combining the environmental and economic justice issues together. Most importantly, the Coalition's DEIR comments highlighted the DEIR's failure to address energy concerns at all. As this was early 2001, during California's "rolling blackout" energy crisis, it seemed a glaring omission.

By working with the community to prepare a benefits agreement, the Sports and Entertainment District sped through the development process, winning approval and public support in record time. Meanwhile, community residents will benefit from the resulting parks and open spaces, quality jobs, and affordable housing.

Faced with a united community front and a potentially legally deficient DEIR that could lead to both political and legal opposition to the project, the developer began a formal, five-month negotiation process with the Coalition that resulted in a comprehensive Community Benefits Agreement, a legally-binding legal settlement requiring a broad range of community benefits to be included in the project. In exchange, the Coalition members agreed to not sue the developer over the expansion plan unless the commitment to benefits was not met. In this way, the developers met with over twenty-nine community and other organizations simultaneously, enabling them to plan for all obstacles up front and deal with problems as a package, and the impacted residents were assured of specific benefits from the agreement.

The result was that the Sports and Entertainment District sped through the development process, winning approval and public support in record time. Meanwhile, community residents will see more parks and open space, more quality jobs, and more affordable housing than in any project before in Los Angeles.

The negotiations were mutually beneficial, according to Ted Tanner, Vice-President for Real Estate Development at AEG. "Our goal…was to win true support and advocacy for the project," Tanner told the *Los Angeles Times*. "Their goal was the same—to see if we could make this project better and improve benefits for the community."

Jerilyn López Mendoza is an attorney and Policy Director for Environmental Defense's Environmental Justice Project Office. Working with community groups and other stakeholders, Ms. Mendoza coordinated the coalition's comments to the draft EIR for the Staples Arena expansion.

Lizette Hernández works for Strategic Action for a Just Economy (SAJE), coordinating the implementation of the Community Benefits Agreement (CBA).

"When the Staples project came up for CEQA review, it caused nearby residents to ask, 'Will our livelihoods be threatened? Will employees have a living wage? Will the housing be affordable to our families?' It broadened the spectrum of how a project can benefit our community," she explains.

CEQA was essential in mobilizing support for the CBA. "For Figueroa residents, especially the low-income tenants who were going to be displaced by eminent domain, having an avenue to express the needs of their community inspired them to create the vision behind the Agreement."

The tangible benefits of the Agreement are already evident in the CBA-funded Figueroa Corridor Jobs Program - a SAJE pilot program promoting local hiring.

Lizette speaks highly of her counterparts on the Staples Center Staff. "We think that their professionalism with regards to the CBA is outstanding. People feel their own sense of power when this level of accountability exists in their community."

San Diego River Park Foundation

Residents enjoy a walking path along the San Diego River. Thanks to CEQA, the Federal Highway Administration abandoned plans for concrete channelization of nearby Forester Creek. Community input has resulted in plans for a park and bike path system along the creek, connecting to the San Diego River Park.

"Would a restored **Forester Creek Park** with California Sycamores and migratory bird species encourage **visitor spending** in Santee? Would a creek with running water and cool shade services provided by wetland vegetation reduce local **energy costs** during hot summer days and increase private **property values**? Would a well-planned bike path in Forester Creek bring a sense of **community pride** to the city of Santee? Numerous Santee residents and business owners would answer **yes** to these questions."

- From an editorial in the *San Diego Union Tribune,* by Suzanne M. Michel.

Forester Creek To Be Restored!

By Suzanne M. Michel

At first glance, Forester Creek in Santee, California looks like one of many abandoned creeks in our suburbs, with putrid, cloudy water, trash, and exotic plant infestation. However in the springtime, life somehow finds its way to this seemingly blighted area of the city. Cliff swallows travel thousands of miles from South America every year to forage and live in the creek.

In 2002, the City of Santee and the Federal Highway Administration proposed to convert this haven for swallows to a sterile concrete channel. Concrete channelization was the once preferred choice of creek management in Southern California. Transportation agencies converted waterways into concrete channels and drained adjacent wetlands to allow shorter, less expensive bridges over creeks, and easy flood control near freeways.

However, channelization leads to its own set of problems. Channelization of Forester Creek upstream of Santee, in the City of El Cajon, resulted in increased flooding and pollution in the downstream cities of Santee and San Diego. Nevertheless, the February 2002 Environmental Impact Report (EIR) for the "Forester Creek Improvement Project" proposed completing concrete channelization of Forester Creek through Santee down to its discharge point, the San Diego River. The primary reason for channelization was a proposed freeway project crossing the creek.

This time, however, the San Diego Regional Water Quality Control Board resisted a proposal to destroy another wetland in the name of cost-effectiveness. The Board refused to release the requested $4.8 million dollars of Proposition 13 water quality bond funds for the project. Santee residents also weighed in on the EIR, insisting on restoration of the creek instead of channelization, and citing the success of the City's recently completed riverpark project for the San Diego River.

Ultimately, the City of Santee and the Federal Transportation Agency re-examined the EIR, and in May 2003, a creek park and bike path system that would connect with the San Diego River Park became the preferred alternative. Given the tremendous support for creek restoration by Santee residents, City of Santee planners are examining other abandoned creeks in the City for restoration potential. Even Santee's Mayor Randy Voepel, who strongly supported concrete channels and freeways in streambeds, is now an enthusiastic fan of creek restoration.

Suzanne M. Michel holds a Ph.D. in water resources geography. Currently Ms. Michel is an adjunct faculty of the Department of Marine Science and Environmental Studies at the University of San Diego, where she teaches environmental law and policy.

Damping Down Construction Dust

In California, construction dust poses a serious threat to human health and the environment. Typical releases of construction dust occur during the grading, excavation, demolition, road building, and other earthmoving activities on construction sites, as well as during normal travel by construction equipment on unpaved roads. A majority of construction dust is classified as Particulate Matter 10 (PM10), particles equal to or smaller than ten micrometers, which includes aerosols and fine to coarse dust particles. Such particles can contain compounds of nitrogen, sulfur, and asbestos which travel deep inside our breathing passageways and can eventually enter the bloodstream.

Construction activities are usually limited in duration, but even temporary dust emissions from construction can provoke asthma and lung illnesses. Chronic bronchitis, emphysema, and heart disease can be triggered by prolonged exposure to the PM 10 content of construction dust. The Health Effects Institute, jointly supported by the U.S. Environmental Protection Agency and Industry, has conducted many studies showing the association of PM10 with increased mortality and morbidity rates in the United States.

CEQA is often the only measure that protects workers from health hazards related to construction dust.

Fine dust particles from construction sites can trigger chronic bronchitis, emphysema, and heart disease. CEQA has been used to ensure that developers employ proper mitigation strategies, minimizing the health risks faced by workers and nearby residents.

According to the Bay Area Air Quality Management District (BAAQMD), particulate emissions from construction activities can reduce visibility, impair breathing, and soil exposed surfaces, posing a significant nuisance concern to nearby sensitive receptors.

CEQA is one tool for addressing construction dust impacts at a project or plan level. Many local Air Districts in California have developed CEQA guidance documents to provide lead agencies with feasible control measures for addressing construction dust impacts, such as watering all active construction areas, limiting construction hours, planting vegetation, using soil stabilizers, and other erosion control techniques. Cities, counties and other CEQA lead agencies often use their authority under CEQA to implement these PM10 control measures. CEQA is often the only basis that these agencies have to limit dust from construction.

As Suzanne Bourguignon of the BAAQMD explains, "Our commitment is to achieve clean air to protect the public's health and the environment. CEQA provides us with the opportunity to review local projects and plans and to provide guidance to lead agencies on how best to mitigate potential air quality impacts of those projects and plans. Through the implementation of our mitigations-based approach to controlling construction dust, lead agencies have been able to significantly reduce the localized impacts of PM10 from construction activities and their associated health risks."

Written by PCLF staff.

Preserving Affordable Housing, Protecting Community

By Margaretta Lin

Infill development can be beneficial, but it may displace the poor and disrupt long-standing communities.

For example, one proposed new development in West Oakland would provide 1,600 new market-rate housing units along with commercial uses. However, it would demolish part of a historic Train Station and displace low-income residents through market forces. The 16th & Wood Train Station Coalition, led by Just Cause Oakland and the Coalition for West Oakland Revitalization, is seeking inclusion of affordable housing and other changes to the project.

CEQA has provided a valuable process for community residents to organize, voice their concerns, and hold decision-makers accountable. In this way, CEQA has helped us carry out our mission of alleviating systemic roots of poverty and injustice.

Margaretta Lin is Director of Community Economic Development for the East Bay Community Law Center. Ms. Lin provides legal representation for grassroots efforts on land use and development justice, including the 16th & Wood Train Station Coalition.

Infill, Housing Costs, and Public Health

By Rajiv Bhatia

Today, many propose infill development as an antidote to urban sprawl. Infill development can limit environmental costs resulting from the inevitable population and economic growth of our cities and provide an alternative to dependence on automobiles. Yet, infill development also raises important issues about fairness and the well-being of established central city neighborhoods.

If done right, development can meet the needs of both the environment and central city communities bringing new housing, jobs, and public revenues and addressing long-standing economic isolation. However, if decision-makers do not account for the needs of established residents, development may create new vulnerabilities for health and the environment.

If decision-makers do not account for the needs of established residents, development may create new vulnerabilities for health and the environment.

An important relationship exists between the development of central city communities and the adequacy of housing. In many places, communities are facing significant shortages both of very low and moderate-income housing. For example, in San Francisco, only 7.3 percent of households can afford the median sale price of a house, and the fair market rent for a two bedroom apartment is $1,904, affordable only to those who make 90 percent of the average family's median income of $86,100.

Unmet housing needs result from both new development and economic factors. Because of deindustrialization, many new employment opportunities provide less security, poorer wages, and fewer benefits than the jobs they replace. At the same time, younger professionals and "empty nesters" are creating new housing demands and supporting higher housing costs. Developers do respond to this new demand, but typically only for those who can afford market-rate housing.

Rising housing costs have important consequences for health and well being. Low-income populations must make difficult choices among rent, food, clothing, and medical care. Low-income households typically work longer hours or at multiple jobs to afford rent, reducing time for sleep, recreation, and family. Some low-income households accept unsafe or crowded conditions, resulting in exposure to cold or heat, lead based paint, inadequate ventilation, and mold.

Because of a combination of income gaps, housing costs, and demolition or conversion of rental units, infill development can cause community displacement, with additional costs to health. Displacement results in psychological stress, which can affect the human immune and endocrine systems and increase infection rates. For children, relocation can lead to emotional and behavioral problems.

High housing costs and forced displacement can result a loss of social networks which provide material and emotional support, buffer stressful situations, prevent damaging feelings of isolation, and contribute to a sense of self-esteem and value. Displacement also contributes to segregation by concentrating poor families in poor neighborhoods, increasing the population at risk for failure at school, teenage childbearing, tuberculosis, cardiovascular disease, poor mental health, homicide, and premature mortality.

Recognizing the high health costs of unmet housing needs, in 2002, the San Francisco Department of Public Health began to conduct Health Impact Assessments of development projects and neighborhood land use plans. These efforts challenged city planning officials to analyze a broader set of human impacts through the CEQA process.

The first application of HIA involved a proposed 1600 unit high-rise residential development in downtown. Project proponents argued that the project met both City housing needs and *smart growth* objectives; however, the proposed housing units would be affordable to few of the City's working households. Furthermore, new commercial and retail uses and city services might increase housing demands for low wage workers who would not be able to afford to live in the new development. In our analysis, we described the health and environmental consequences of disparities between housing costs and income, including longer commutes, increased air pollution and roadway congestion, and the human costs of unmet housing needs. City Planning Commissioners ultimately approved the project, but an elected official used our analysis in successfully negotiating for additional developer-funded affordable housing.

In a second application, we critiqued a proposal to demolish and replace an apartment complex with 367 rent-controlled units with market-rate condominiums. Because the demolition involved a net increase of housing units, officials at the Department of City Planning first determined that it would not have adverse impacts on population or housing. According to one planning official, CEQA required analysis of only the project's physical changes—that is the buildings themselves—and not the people who occupied them.

Both apartment residents and supportive community organizations vigorously challenged this position, arguing that displacement would mean difficulty for residents in finding replacement housing and the loss of a cohesive community. The Department of Public Health provided an analysis of the health and social costs of displacement in written comments. We also published a technical report, which reviewed the health impacts of housing affordability and residential displacement and impact assessment best practices for assessing impacts on housing costs and residential displacement. Based on our research, planning officials required the developer to consider the project's impacts on residential displacement in the EIR. Ultimately, the project developer, faced with criticism of the project by community organizations and political leaders as well as new EIR requirements, offered lifetime leases to the current residents at current rents at their present rates. He also offered to delay demolition until the replacement units were built.

This work reflects the simple premise that all public policy making should take into account direct and indirect impacts on human health. CEQA has provided us with one tool for beginning to make this happen.

Our Department continues to work towards an accounting within the CEQA process of the health consequences of impacts on housing, transportation, and public infrastructure such as schools, community centers, parks, and public spaces. We are also working to train and support community organizations to engage with planning analysis and to build supportive and trusting relationships with city planners, business leaders, and sponsors of development projects.

This work reflects the simple premise that all public policy making should take into account direct and indirect impacts on human health. Overall, our efforts in San Francisco suggest that such accounting may significantly influence urban land use policy. CEQA has provided us with one tool for beginning to make this happen.

Rajiv Bhatia, MD, MPH, is the Director of Occupational & Environmental Health at the San Francisco Department of Public Health.

The Union Blowout and Offshore Drilling

In 1969, Union Oil's Platform A experienced an uncontrolled blowout in the Dos Cuadras field, approximately five miles from the Santa Barbara coast. Currents carried the spill—which lasted twelve days and amounted to 80,000-100,000 barrels of crude oil—primarily west, toward the Santa Barbara. Eventually, it spread over 800 square miles of ocean, coating thirty-five miles of coastline with up to six inches of oil.

Clean-up efforts began almost immediately. Because the damage was so extensive, the local community provided an unprecedented level of assistance. People of all ages and backgrounds helped in any way possible: using straw to absorb the oil as it washed onto shore, scrubbing rocks and seawalls, and attempting to save oil-soaked birds at hastily set-up rescue stations.

While the ecological impact of the Union oil blowout was catastrophic, the public's generous and impassioned response to the spill inaugurated an era of heightened environmental awareness, both in California and nationwide. This change in attitude had profound consequences for offshore drilling in the state, including:

• The creation of the California Coastal Commission by statewide initiative;

Continued on the following page.

Blocking Oil Drilling on California's Coast

By Carlyle W. Hall, Jr.

Shortly after the Supreme Court's seminal CEQA decision in *Friends of Mammoth* was issued in September 1972, the City of Los Angeles was presented with one of the first tests regarding whether local governments would have the political will to comply with the newly announced Environmental Impact Report (EIR) requirements. The test involved a proposed "wildcat" oil drilling exploration at the edge of Santa Monica Bay near Will Rogers State Beach.

WatchtheWater.com

The City of LA approved oil drilling exploration near Will Rogers State Beach (above) without an EIR. The CA Supreme Court determined that the case was an "excellent example" of the type of situation where an EIR would provide valuable information about the potential environmental impacts.

Just a few years earlier, the infamous "blowout" and extensive ensuing environmental destruction caused by oil drilling operations off the Santa Barbara coastline had galvanized the environmental movement to declare that similar environmental horrors should never happen again. The political momentum created by these unfortunate events led directly to passage of NEPA at the federal level and CEQA at the state level. The entire purpose of these statutes was to ensure that, before such risky potentially environmentally damaging activities are pursued, adequate studies must first be undertaken to ensure that environmental considerations are at the forefront of an agency's decision and that all feasible mitigations are imposed.

Yet now, shortly after *Friends of Mammoth* ruled that local governments must prepare EIRs before making decisions that may significantly impact the environment, Los Angeles was proposing to allow Occidental Petroleum to set up exploratory drilling rigs at a beach location just a few miles south of the Santa Barbara disaster. It seemed inconceivable to the leaders of No Oil, Inc. that the City could approve the proposed drilling without an EIR.

Going to court for No Oil, lawyers with the Center for Law in the Public Interest (CLIPI) showed that the oil drilling would take place immediately east of Pacific Coast Highway at the base of a highly unstable cliff with fourteen active landslides, including the notorious "killer slide" that had killed a Caltrans engineer who was attempting to remediate it. Both the local Board of Zoning Appeals and the Planning Department's hearing examiner had recommended against

the drilling because the risks, such as blowouts and landslides, were too great. Further, if Oxy's exploratory drilling found supplies of oil extending under Santa Monica Bay, both state and federal governments might find it necessary to allow offshore drilling in order to prevent their reserves from being depleted by Oxy's subsequent production. Nonetheless, following stormy public hearings, the City Council had narrowly voted eight to seven to approve the drilling.

Davidson Library Special Collections, UCSB

Protest following the 1969 Santa Barbara Oil Spill

Rushing to beat the effective date of Proposition 20 (the Coastal Act), Occidental began construction of its drill rigs just one day prior to the date by which the Act would require a permit from the new Coastal Commission. CLIPI's attorneys filed an emergency appeal to the California Supreme Court seeking a stay of the drilling. The


Davidson Library Special Collections, UCSB

Oil-Covered Seals Along a SB Beach, 1969

Court granted the petition in early 1973 and Occidental then halted construction.

Two years later, the case found its way back to the Supreme Court for a ruling on the merits. The Court determined that the case presented an "excellent example" of the type of situation where an EIR would provide valuable information to the citizenry and decision-makers about the potential environmental impacts of a controversial project. The Court also described the type of careful preliminary process by which public agencies should make the initial determination whether to prepare an EIR or a written Negative Declaration.

Following the Supreme Court's *No Oil* decision, Occidental Petroleum kept a fence around its oil drilling equipment at the site for many years. Meanwhile, controversy continued to rage. Mayor Tom Bradley, whose opposition to the drilling was a key plank in his successful run for the first of his four terms as Mayor, was later pleased to discover that his then rival, former Mayor Sam Yorty, who had strongly pushed the Oxy drilling application through the City's bureaucracy, admitted to accepting favors from Occidental. Ultimately, Occidental agreed to deed the site to the City, and the City thereupon incorporated the land into the adjacent Palisades Park.

Carlyle W. Hall Jr. is a Partner at Akin Gump Strauss Hauer & Feld. Mr. Hall represented the plaintiffs in this case.

Continued from the previous page.

• A State Land Commission ban of offshore drilling that lasted for sixteen years, until intervention by the Reagan Administration;

• The strengthening of federal and state regulations governing oil drilling.

Still, the contentious issue of offshore drilling in California has not yet been put to rest. The Bush Administration has consistently endeavored to erode the traditional deference given to state agencies with regards to the environmental impacts of drilling and other activities along their coasts, giving greater influence to federal agencies. After twice failing to overturn a district court decision upholding the Coastal Zone Management Act, a law granting states the authority to review federal actions that may impact their coasts, the administration has begun attempts to fundamentally alter the CZMA.

Public opinion in California is firmly opposed to the idea of off-shore drilling, as is the Democratically-controlled State Legislature. Further, in his bid for office, Governor Schwarzenegger spoke unequivocally against drilling in the State's coastal waters.

Written by PCLF Staff.

For more information about the Santa Barbara oil spill, see: *The Santa Barbabra Oil Spill, A Retrospective*, by K. Clarke and J. Hemphill.

CEQA Protects San Francisco Bay Marshland, Regional Bay Trail

Whitney Dotson (pictured on the following page) is intimately familiar with Breuner Marsh. His father, the late Reverend Richard Daniel Dotson, was one of the earliest residents of Parchester Village and one of the first advocates for the preservation of the area. Whitney, now fifty-nine, has followed in his father's footsteps. A community leader and Parchester Village resident, he has led efforts to protect the Breuner marsh.

The marsh has been a de facto park for the community from its earliest days. Whitney remembers swimming and fishing there as a child in the early 1960s. Even after some of the channels were illegally filled in the 1970s, Parchester residents still crossed the railroad tracks to enjoy this sacred nearby open space.

Since the late 1960s, Dotson has seen repeated attempts to develop the land, first as an airport and later for industrial uses and housing. Each time, the community rallied to stop the development plans. In recent CEQA hearings over the Edgewater Technology Park, the community coalesced into a unified force, advocating for permanent protection of this space.

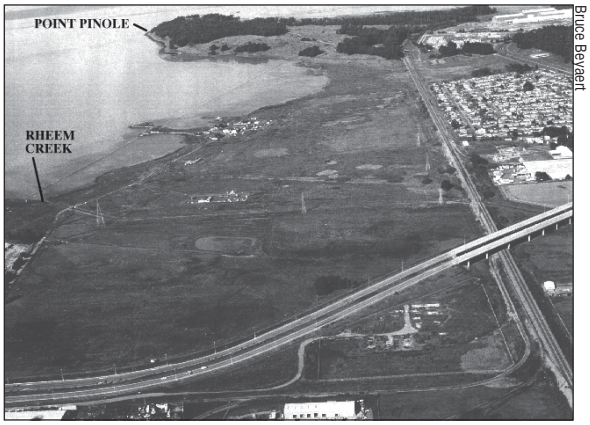
For Dotson, CEQA and the principles of environmental

Continued on the following page.

On cool mornings you can see and hear the marsh birds swooping and chattering. Gentle waves lap lazily along the shoreline. Hikers and bikers pass bird watchers on a multi-use trail, heading to the nearby regional park. Because of CEQA, this idyllic scene may soon become a reality for the citizens of Richmond and the entire San Francisco Bay Region on a parcel of land called the Breuner Marsh.

The Breuner property is a unique combination of upland prairie and coastal marsh located on the south eastern edge of the San Pablo Bay in the City of Richmond. It sits just across the railroad tracks from the historic African-American community of Parchester Village, developed after World War II to provide housing for shipyard workers who were restricted from buying houses elsewhere in the area. Community leader Whitney Dotson explains, "Prior to Parchester Village being built in 1949 there was an understanding that Breuner marsh would remain open space. It was part of an agreement between the developer, the African American community leaders, and the City of Richmond in exchange for their help in recruiting members of their congregations to move to the neighborhood. Unfortunately, those commitments are constantly being challenged."

The 238 acre property contains one of the largest remaining marshes in the northern section of the San Francisco East Bay, along with the largest remaining intact coastal upland prairie in the entire Bay Area. It also provides the only possible path for the Bay Trail, a 500 mile network of paths being developed to link all nine Bay Area counties and the adjacent Point Pinole Regional Park, a 2,315 acre park that has been a primary recreation area in Western Contra Costa County since the 1970s. When a San Jose development company proposed building a commercial center that would cut off trail access to the regional park, the community responded in full force, advocating for preservation of the site and developing a campaign to purchase the land.



The Breuner property lies between San Pablo Bay to the West, Point Pinole Regional Park to the North, and Parchester Village to the East. CEQA allowed the public to express their concerns with the Edgewater Technology Park proposal for this marsh and upland area.

In 2002, the developer, Davis & Associates, sought approval from the Richmond city planning department to build a commercial center called the Edgewater Technology Park on the Breuner Marsh property. They also

proposed a for-profit wetland mitigation bank, where other developers could fund restoration activities to offset the impacts of their own projects. Unlike other shoreline developers, Davis and Associates excluded a connecting spur to the Bay Trail, effectively creating a half mile break in the Trail, even though pre-existing city plans called for a Bay Trail connection.

East Bay Watershed Center

Whitney Dotson, a leader of the Parchester Village Neighborhood Council, explains the importance of Breuner Marsh to local students.

The Richmond planning department received voluminous comments on the Environmental Impact Report (EIR) from over nineteen groups, including the East Bay Regional Park District, the Trails for Richmond Action Committee (TRAC), the Sierra Club, Communities for a Better Environment, and the Parchester Village Neighborhood Council. The residents of Parchester Village made it clear that the negative effects of the project, including increased noise levels, decreased air quality, traffic in surrounding communities, obstruction of panoramic views of San Francisco Bay, and the loss of this valuable community resource were unacceptable.

Responding to public comment, City of Richmond planning staff reversed their original approval of the project and recommended that the city council set up a taskforce and special review body to re-examine the EIR.

With the community united to preserve the land, the developer decided not to pursue the project. The East Bay Regional Park District is considering purchasing the land with the help of the North Richmond Shoreline Alliance, a community group formed during the EIR process. Local legislators are looking at ways to secure funding for this purpose.

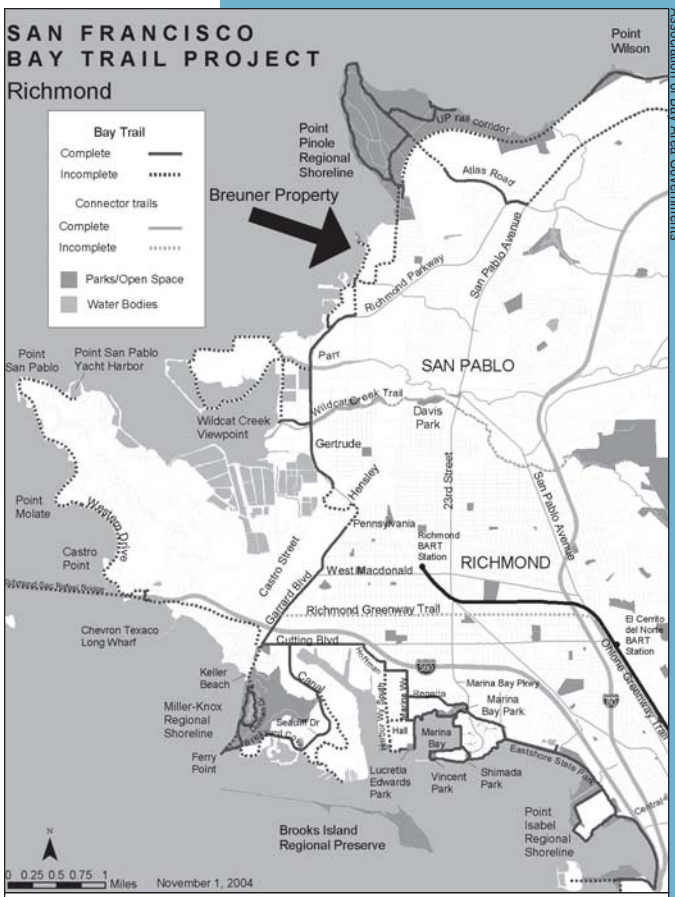
As Bruce Beyaert of TRAC explains, "Since 1989, Bay Area governments have been working together to build the Bay Trail. Yet, Point Pinole Regional Shoreline, which is the largest shoreline park in the entire Bay Area, has remained isolated without any Bay Trail connections. Breuner Marsh represents one of the last steps in a fifteen year process. Thanks to CEQA we were able to express those concerns to our local government. This was a victory for Richmond and the entire San Francisco Bay Region."

Written by PCLF staff.

Continued from the previous page.

justice have been essential tools to demonstrate the effects of a development on adjacent communities of color.

"Exhaust fumes from cars on the Breuner property site would blow right into our communities, where we already have some of the highest asthma rates in the state. We would also have the most to lose if the Bay Trail was blocked, since we would be the most frequent users of that section. With CEQA we had a legitimate public process to address these concerns and now it looks like the marsh may finally be protected."



Association of Bay Area Governments

The Edgewater Technology Park would have cut off access to the Bay Trail, a network of paths connecting all nine Bay Area counties.

CEQA Brings Community Benefits to Hollywood and Highland

By Roxana Tynan

Over the last twenty-five years, several projects were proposed for the northwest corner of the Hollywood Boulevard and Highland Avenue intersection. The first project, proposed in the eighties by Mel Simon, met with significant and justified community opposition. Community members filed a lawsuit via CEQA, which eventually helped to kill the project. The idea for a major new commercial project then lay dormant until the mid-nineties.

At that point, Jackie Goldberg was the Councilmember for the area. She had come to office determined to ensure that new development happened—if it brought with it major community benefits such as quality jobs, local hiring, job training, housing and neighborhood services. When she was first elected, the business community in the neighborhood of Hollywood was nervous that Jackie would stand in the way of new projects. She made it clear, however, that if the business community understood that new development had to lift *all* boats, she would fight hard to make it happen.

Towards the end of Jackie's first term, she was approached by David Malmuth, representing the real estate behemoth, Trizec-Hahn. Malmuth had a vision for the project that made sense, and he was willing to negotiate a package of community benefits. This project would represent the first experiment in that kind of negotiation. Malmuth understood that a project of this size—over 675,000 square feet of commercial space—would require significant community support in order to win approvals.

The project was designed to have a regional draw, and also to be a place to capture the imaginations of tourists. The Hollywood Chamber of Commerce had completed a tourist survey, which found that most tourists were extremely disappointed by their Hollywood experience. As a result, the City was not capturing many of those dollars, as there were few places for tourists to spend outside of a handful of T-shirt shops.

CIM Group, Inc.

The Hollywood and Highland project was designed to capture the imagination of tourists. CEQA ensured that the surrounding community benefited as well.

Malmuth was true to his commitment to engage all community members impacted by the project. He met and negotiated with all of the hillside homeowner associations, and he met with local residents interested in ensuring that the project would provide quality jobs. He also met with a team of local architects and designers appointed by Goldberg to influence the design of the project. The developers organized community meetings in addition to those already required by the City to ensure that everyone had an opportunity to weigh in on every aspect of the project.

As a result, the project Environmental Impact Report was completed and approved in roughly 6 months—an astonishing record for the City of LA. The developer agreed to a number of community demands: that all the jobs on the project be governed by a local hiring agreement with a goal that 30 percent of the jobs would go to residents nearby. For the construction jobs, they reached 20 percent, and for the permanent jobs, they reached above 60 percent of hires coming from the zip code in which the project was located.

The developer also agreed that any direct or subcontracted employees, such as security guards, janitors, parking lot attendants, or workers in the Kodak Theater, would be covered by the City's Living Wage Ordinance. The agreement included money for job training, and a commitment to bring in retail tenants who paid a living wage. Of particu-

lar importance, the developers agreed not to interfere with workers' rights to organize, as a result of which the hotel workers, janitors, parking lot attendants and theater workers hired locally are covered by union contracts with good wages and health benefits.

In addition to all the job concessions, the developer agreed to a lengthy series of environmental mitigations and design changes. One of the environmental mitigations included installing a new traffic light system at over 100 intersections in Hollywood in order to ease traffic. The developer also created a program to subsidize public transportation for employees at the project.

What made the project different was that, for the first time, issues of economic justice were being addressed in addition to environmental issues. In many ways, CEQA paved the way for this new reality by reframing the debate about development. It's not just about profits, it's also about people. Including the economic and social issues in the development process is the next logical step.

CEQA provides a process by which developers can undertake to outreach to the community which, by building support for their project, can help them win necessary approvals. Developers that do not engage constructively in the CEQA process can suffer delays or more significant setbacks to their project if they encounter organized community opposition. In this case, the developer took the high road and received approvals in record time.

We clearly have further to go. The development process remains confusing and opaque for most community members. We need much more transparency in that regard. We also need to institutionalize setting standards for developments which cover economic as well as environmental issues.

For the first time, issues of economic justice were being addressed in addition to environmental issues. In many ways, CEQA paved the way for this new reality by reframing the debate about development. It's not just about profits, it's also about people.

****

Epilogue: Trizec-Hahn lost money on the project due to construction cost overruns and the impact of September 11th on the tourist economy (the project opened in November of 2001) and the project is now owned by the CIM Group. The City of LA, however, is already reaping significant tax benefits, and the environmental and economic mitigations have ensured that the community benefited also. Those mitigations played no part in Trizec's losses.

Roxana Tynan works for the Los Angeles Alliance for a New Economy on the question of holding developers accountable to the communities in which they build.

Hollywood & Highland Site Before Construction

Early Construction

Final Buildout

The Completed Renaissance Hollywood Hotel

Photos courtesy of CIM Group, Inc.

Reducing Dangers from Hazardous Chemicals

Ammonia is a toxic chemical used for a variety of industrial and agricultural purposes, including pollution-control equipment on refineries and power plants. Inhaling ammonia can cause severe respiratory injuries and can burn the skin and eyes. It is fatal in large concentrations. Although the liquid form, called aqueous ammonia, limits these risks, many commercial users continue to request the more dangerous anhydrous ammonia which can create low-hanging toxic clouds when accidentally released.

Every year trucks carrying thousands of gallons of anhydrous ammonia travel across California's freeways, passing by commercial districts and residential neighborhoods. For example, a single power plant near Bakersfield requires the delivery of 750,000 pounds of anhydrous ammonia per year from a supplier halfway across the state in Stockton. Delivery routes can cross areas with population densities of 3,000 individuals per square mile, creating large vulnerable populations far removed from the site of usage.

A number of studies have found that transportation of anhydrous ammonia poses a significant risk to the communities that border these supply routes. In addition to explosions from collisions and accidents, anhydrous ammonia bearing trucks are occasionally susceptible to supply line leaks and hose failure which can slowly release the pressurized gas for several minutes. Although the chances of a catastrophic accident are small, the affected area can stretch for nearly six miles.

Because the CEQA process requires an assessment of toxic chemicals, more and more industrial sites are switching to aqueous ammonia to limit the risk to their workers, neighbors, and the environment. In 2000, the Elk Hills Power Plant agreed to substitute anhydrous ammonia using aqueous ammonia with a concentration of less than 20 percent and develop a safety management plan for delivering ammonia. After substantial testimony from environmental risk consultants, the Sunrise power plant agreed to a similar plan the following year. Without CEQA, there would have been no regulatory basis to require switching to the safer form of ammonia.

Of course, while the switch from anhydrous to aqueous ammonia has reduced hazards, CEQA review is also needed to address the hazards presented by aqueous ammonia.

Hydrogen fluoride

(or hydrofluoric acid) is a highly corrosive acid used at some oil refineries, in a process that boosts gasoline octane, and in the manufacturing of refrigerants and other compounds. HF vapors are known to form dense, fuming clouds capable of etching glass and causing severe damage to human skin and lung tissue, and even death. According to state health officials, HF is so toxic that the release of a teaspoonful in a 500 square foot room would immediately cause a risk to life and health.

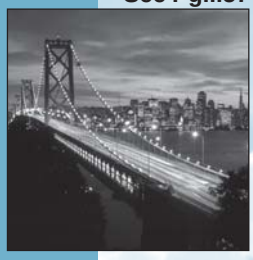
In 1987, an explosion and fire at the Mobile Oil Refinery in Torrance resulted in the accidental release of HF. That same year, an HF accident at the Marathon Refinery in Texas City, TX, sent over a thousand people to the hospital and caused the evacuation of approximately 4,000 people in the surrounding, predominantly low-income and minority communities. These accidents underscore the dangers of HF use to those living in nearby neighborhoods.

In subsequent years, CEQA studies for multiple refinery modernization projects (Mobil's in Torrance, Ultramar's in Wilmington, and Powerine/CENCO's in Santa Fe Springs) and a pesticide manufacturing plant expansion (at the Dow Chemical facility in Pittsburg) examined the potential impacts of HF transportation, storage and use. CEQA-related public comments for these projects highlighted the risks of HF, often leading to the implementation of important mitigation measures. Indeed, aside from one that shut down, all of the facilities have since phased out HF entirely, or have adopted measures that reduce HF risks.

Written by PCLF staff.

CHAPTER 3
Planning

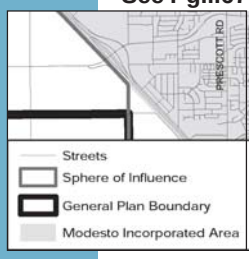
See Pg...57



See Pg...61

See Pg...63

See Pg...67



CEQA and the Coastal Act

By Meg Caldwell

Implementing California's coastal protection program is not easy. Land use planning and regulation are fundamental to the California Coastal Act, the organic law that governs the state's premier coastal management program. In carrying out the law, the California Coastal Commission (CCC) is subject to CEQA and must make compliance findings though it is not responsible for Environmental Impact Reports (EIRs). The Commission's program has been certified as "functionally equivalent" because of the analyses and findings required pursuant to the Coastal Act.

While the CCC does not do or require EIRs, its environmental stewardship work benefits greatly from them, as well as from mitigated negative declarations. CEQA documents provide invaluable information that the twelve person CCC relies on in its decision-making. Especially important are comments from

Continued on the following page.

CEQA Improves Planning

By Tal Finney

Through planning, communities have the opportunity to identify and resolve community issues about growth, determine appropriate use of water and land resources, anticipate future demands for services, avoid potential problems, and establish the vision for a community's future. Good planning can only develop with the active participation of those who live and work in a community and the various agencies responsible for land use and resource decisions.

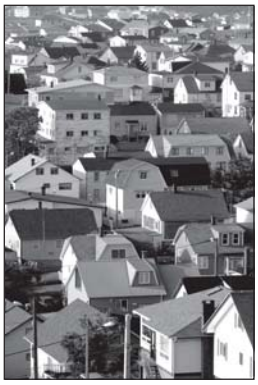
General Plans are the foundation for all local land use planning in California. Other more specific land use plans, zoning ordinances, and resource policies flow from a community's general plan.[1]

Although California has an elaborate system for planning in statute, there is little funding available to implement comprehensive, front-end planning by local government agencies. As a result, many general plans throughout California are considerably out of date or have so frequently been amended that the original vision is no longer intact.

Citizen participation in the development of general plans is a requirement of State law. However, as is often the case with limited funding for planning, citizen participation may well be less than optimum. Visioning processes, workshops, and other popular means of improving community involvement in planning are costly and staff intensive and many do not survive when budgets are tight. The "minimum-required" approach to citizen participation in the planning process, forced on many local governments by fiscal restraints, also undermines the value of the outcome of a planning process.

The lack of local government funding for planning has not slowed development. Instead, developers have filled the fiscal void, proposing and advocating for specific plans or amendments to outdated general plans in order to permit proposed new developments. While California forbids developers to pay for general plans, state law permits developer reimbursement for specific planning. As a result, the system of deliberative, community-based local planning envisioned by state planning law has become strongly influenced by the interests of property owners seeking to develop their land.

The price of this lack of community-based planning is evident all around us—longer commutes because housing opportunities are insufficient close to workplaces, increased air pollution resulting from long commutes, limited investment to create adequate transit choices, substantial stress on water supplies, and losses in agricultural lands and habitat at the edges of urban areas.



In the face of this breakdown in comprehensive community planning, CEQA has come to play an increasingly important role as a backstop where planning fails to address and resolve the real issues facing Californians today. General plan adoption and amendment are subject to the California Environmental Quality Act (CEQA), as is the approval of most planning and development projects. CEQA requires analysis of the environmental impacts of development projects, both at the project level and in terms of larger programs, such as specific plans for development in part of the community or regional plans for infrastructure. In particular, CEQA's cumulative impact analysis requirement has become a surrogate for comprehensive, community-wide planning in many cities and counties. CEQA has also become the vehicle to ensure coordination between local government agencies with land use authority and resource agencies responsible for protection and management of natural resources.

CEQA requires that the impacts of plans and projects be analyzed and disclosed to the public. More importantly, from the perspective of cash-strapped local governments, CEQA requires that environmental review documents be paid for by the project proponent. Thus, CEQA is a critical avenue for funding the development of information about proposed projects, their environmental impacts, mitigation options, and alternatives. By providing a means for the disclosure of project information and alternatives, and a real avenue for public participation, CEQA strengthens the hand of both local governments in ensuring that proposals take community needs and interests into account, and resource agencies in helping projects consider good stewardship of natural resources in project decisions. It also empowers communities and revenue-generating businesses by giving them a voice when local funds are insufficient to ensure a meaningful process pursuant to planning law.

Tal Finney, a partner in the law firm of Dongell Lawrence Finney LLP, has worked extensively on land-use issues and policy in both the private and public sectors. Mr.Finney served as the state's chief planner in his capacity as Director of the Governor's Office of Planning and Research from 2001-2003, served as the Director of Policy to the Governor's Office from 1999-2002, and served a short stint as the Director of the Office of Administrative Law, the state's chief regulator, among other posts before returning to the private sector to focus on land-use, environmental, energy, and corporate law.

Footnote: [1]Zoning ordinances in charter cities are an exception, though most charter cities follow the consistency practice.

Continued from the previous page.

other public agencies and the public, providing valuable data and highlighting issues CCC staff had not thought of. Additionally, the level of detail and graphics are often much better in CEQA documents than the CCC can produce especially relative to issues such as visual impacts, as well as historical and archaeological resources. Technical data, including appendices to EIRs, often include information critical to Coastal Act review. Examples include data associated with dredging and habitat restoration projects.

A great number of projects before the CCC have been improved or changed to avoid adverse environmental impacts identified through the CEQA review process. In a recent case involving redevelopment of Los Angeles International Airport, CEQA documentation was pivotal in the CCC's ability to protect environmentally sensitive sand dune habitat. Similarly, expansion of the Santa Barbara airport resulted in important wetland restoration and protection measures identified through the CEQA process. Indeed, CEQA has proved to be an invaluable tool in coastal conservation.

Meg Caldwell is the Chair of the California Coastal Commission. Ms. Caldwell is also a Lecturer on Law, Stanford Law School, and the Director of Stanford Law School's Environmental and Natural Resources Law and Policy Program.

Setting the **Precedent:**
CEQA Applies to **Sprawl**

By Carlyle W. Hall, Jr.

The California Supreme Court's six to one decision in *Bozung v. Ventura County Local Agency Formation Commission* (LAFCo) nullified the annexation of the 677 acre Bell Ranch to LAFCo activities.

Without preparation and consideration of an Environmental Impact Report (EIR), the Ventura County LAFCo had approved the annexation of prime agricultural land for the proposed development of a 10,000-person "mini-city." The City of Camarillo and the LAFCo argued that an EIR was not required at that early stage in the land use planning process, that the information in it would only be repeated in later EIRs, and that an EIR before the LAFCo would be "wasteful and uninformative."

Representing the plaintiffs, lawyers from the Center for Law in the Public Interest (CLIPI) contended that the LAFCo decision whether to approve an annexation is a key point in the land use decision-making process and can have important environmental consequences. In its 1975 ruling, the Supreme Court agreed with CLIPI observing, "The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind."

Two years later, the proposed annexation application returned to the Ventura LAFCo, this time with a full EIR. The EIR showed that the proposed urbanization of the Bell Ranch would:

- Replace hundreds of acres of "highly productive" and "economically viable" prime agricultural land with urban residential uses, depriving Ventura County of jobs and tax revenues averaging about $1.2 million annually, and contributing to the deterioration of adjacent agricultural lands.
- Require very heavy public expenditures for construction of new schools, sewage systems, roads and fire and police facilities.
- Many alternative development sites within the existing Camarillo city limits presented far fewer adverse environmental impacts and no necessity for developing new fringe area infrastructure.

"The purpose of CEQA is not to generate paper, but to compel government at all levels to make decisions with environmental consequences in mind."

– From the CA Supreme Court's 1975 *Bozung* Ruling

When the proposed Bell Ranch annexation came before the LAFCo again in 1977, residents from all over the County used the EIR to document their case against the project. Several LAFCo Commissioners recognized the importance of the EIR in their decision. One noted that information of the sort marshaled in the EIR required the Commissioners to look at the facts objectively, "not as politicians," and to vote in accord with the purpose of the laws. The final vote against the annexation was unanimous.

Besides its obvious importance in stopping a dramatically large urban sprawl project, the *Bozung* decision has had an enormous influence in the way LAFCos go about making their decisions. As the regional agency authorized to approve or disapprove city and special district formations and annexations, LAFCos exercise very important powers. CEQA provides them with information about the many ways those decisions may have very practical (albeit indirect) environmental and infrastructure impacts.

Beyond this, the Bell Ranch annexation was one of the first successful efforts by Ventura County agricultural and environmental interests to band together to combat widespread proposed urbanization within the agricultural areas of that County. More recently, this alliance has seen its SOAR initiative and other efforts dramatically reduce urban development intrusions into the County's agricultural regions.

Carlyle W. Hall, Jr. is a partner in the law firm of Akin Gump Strauss Hauer and Feld. In 1971, Mr. Hall co-founded the Center for Law in the Public Interest (CLIPI), where he was the lead attorney in the Bozung litigation.

CEQA Slows the March of Sprawl in Antioch

By Seth Adams

Located on the eastern edge of the Bay Area, within commuting distance of the Bay Area and Sacramento, Antioch has been the site of rapid suburban-style growth for the last forty years. It has doubled in population since 1980 to over 100,000 residents, leading to severe reductions of open space, damage to endangered species habitat and some of the worst traffic congestion in the state along Highway 4.

As these quality of life concerns grew, and the development proposals continued, the citizens of Antioch began to demand an end to sprawl. Because of the public process provided by CEQA, the city council recently abandoned one of the worst sprawl development proposals in Antioch in recent years: the Sand Creek Specific Plan.

In 2002, the city council of Antioch was presented with a proposal for a massive 2,700 acre development at the southern edge of town of approximately 4,900 residential and commercial units. The push southward described in the Sand Creek Specific Plan would have eliminated the greenbelt that separated Antioch from Brentwood, in effect blending the two towns and forever destroying the existing wildlife corridors. Traffic problems would be magnified, with some estimates as high as 140,000 more car trips a day eventually funneling onto Hwy 4.

Scott Hein

Higgins Ranch was slated for development under the Sand Creek Specific Plan.

The plan would have turned the rugged Higgins Ranch area into a subdivision, exposing residents to the hazards of nearby sand and coal mines as well as potential landslides and high fire risks. In spite of these dangers, the city was prepared to allow the requested zoning changes. When the Draft Environmental Impact Report (DEIR) was released for public review, it generated intense community interest. The city council received extensive public comments on the DEIR from community based organizations and local agencies, including the East Bay Regional Park District, describing the harmful effects of the new expansion.

Citing "significant budgetary constraints" and a change in the City's priorities, the city council suspended the processing of the Sand Creek Specific Plan indefinitely.

According to David Reid of Greenbelt Alliance, the abandonment of the plan marks a major victory. "CEQA brought much needed attention to this sprawl proposal. It opened people's eyes. We must continue our vigilance to make sure the city protects itself from more poorly planned development."

Seth Adams is Director of Land Programs at Save Mount Diablo, which has acquired land and responded to development proposals around the San Francisco East Bay's Mount Diablo since 1971.

Scott Hein

Higgins Ranch seen from Black Diamond Mines Regional Preserve. Only one quarter of the 2,700 acre project area is visible. According to David Reid of Greenbelt Alliance, "CEQA brought much needed attention to this sprawl proposal. It opened people's eyes. We must continue our vigilance to make sure the city protects itself from more poorly planned development."

Protecting the Grassland Ecological Area Through BETTER PLANNING

By Daniel L. Cardozo

Standing at the eastern end of Pacheco Pass in 1868 on his initial trek to Yosemite, John Muir described the plain that lay before him as knee-deep in "one continuous bed of honey-bloom." The San Joaquin's meandering riparian forest offered the only relief from the flowery carpet of Muir's celebrated "bee-pastures." After arriving at the forest's edge, Muir walked for miles under a great canopy of cottonwood, sycamore, willow, box elder and valley oak. Crossing the river at its confluence with the Merced, Muir marveled at the "fine jungle of tropical luxuriance" as he proceeded east on his portentous journey.

The landscape that inspired Muir's lyricism now lies within the 180,000 acre Grassland Ecological Area (GEA) in western Merced County, encompassing California's largest remaining freshwater marsh complex. The GEA includes several federal and state wildlife refuges, a state park and the largest block of privately owned and managed wetlands in California. The private lands are managed primarily for migratory waterfowl and other wildlife by the approximately 200 hunting clubs that operate within the GEA.

Today the GEA serves as a major wintering ground for Pacific Flyway species. Its diverse and interconnected habitats support large native migratory and resident wildlife populations, including a substantial and growing number of threatened and endangered species. The U.S. Fish and Wildlife Service and international treaties formally recognize the GEA as a resource of national and international significance.

Daniel Cardozo

CEQA has been critical in protecting California's largest freshwater marsh from encroaching development.

Apart from its biological importance, the GEA provides substantial economic and employment benefits to Merced County and surrounding communities. A recent study jointly sponsored by the Grassland Water District, the Great Valley Center and the Packard Foundation found that direct expenditures by public and private land managers in the GEA, combined with expenditures related to hunting and other recreational uses, contribute almost $50 million annually to the local economy and account for 800 jobs.

The last twenty years have clearly demonstrated that land use planning informed by meaningful CEQA review is our only hope of preserving this unique legacy of California's native landscape.

Despite its importance, perennial proposals to develop lands within the GEA or the critical buffer zone adjacent to the core habitat continually imperil the restoration effort. Habitat fragmentation and degradation from encroaching urban development remain the greatest threat to the long-term viability of the resource.

Five separate planning and permitting jurisdictions have adopted spheres of influence or projected growth boundaries that directly conflict with the GEA boundary or that extend into the sensitive transitional lands. No regional planning process or state regulation guides or coordinates local land use decisions or otherwise protects the GEA from incompatible development.

CEQA is the only mechanism for comprehensive and coordinated land use and resource planning in the GEA. It has played an indispensable role in enabling the restoration of the resource by informing and influencing decision-making on a long series of development proposals in or adjacent to the GEA. Even more important for the long-term, the CEQA process is shaping relevant General Plan policies to take into account the protection of the GEA.

Beginning in the mid 1980s, large-scale residential development proposals appeared for the first time in this formerly remote region. More recently, rural subdivisions, industrial and institutional development, a local airport and a high

speed rail line and station have been proposed in the GEA. Several projects proposed east of Los Banos within a narrow biological corridor linking the northern and southern refuge lands have been of particular concern.

The assessment of these projects under CEQA has served essential planning objectives. It has allowed for consultation between the agencies responsible for resource management within the GEA and the agencies responsible for land use planning and permitting. It has provided local jurisdictions with limited staff and financial resources access to sophisticated scientific and expert analysis from a variety of sources. It has created a forum for private refuge managers, waterfowl hunting and habitat conservation groups, agricultural interests and other stakeholders to inform local decision-makers of the biological, economic, and recreational significance of the GEA, an area that local planning authorities had largely ignored.

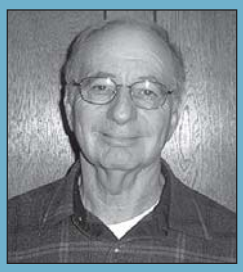
The original research and technical analysis presented in the successive CEQA project assessments has produced a detailed portrait of the GEA and its needs. It has also identified the significant and unavoidable effects that would result from urban encroachment. The cumulative impact analysis prepared with these assessments has effectively bridged a fragmented local planning process by requiring consideration of projects outside of the lead agency's jurisdiction and by ensuring that the needs of the larger GEA ecosystem are taken into account.

As a direct result of the information disclosed though CEQA, every major development proposal in the GEA biological corridor or in the transitional agricultural lands has been either rejected by local land-use decision-makers, abandoned by applicants or deferred for further study. These CEQA studies have also fostered a greater understanding and appreciation of the GEA's broader importance by local decision-makers, which in turn is informing long-range planning decisions.

In 1999, the City of Los Banos substantially revised its General Plan to establish a new eastside urban limit line and to redirect urban expansion away from the GEA. CEQA's mandate for integrated planning and environmental review also enabled the City, through the General Plan Environmental Impact Report, to develop a number of special policies designed to protect the natural resources that lie just beyond the City boundary.

The GEA is a remnant of a vast Central Valley wetland ecosystem that once covered 4 million acres. With 95 percent of this habitat lost to urban and agricultural development, the continued restoration and protection of the GEA is critically important. The last twenty years have clearly demonstrated that land use planning informed by meaningful CEQA review is our only hope of preserving this unique legacy of California's native landscape.

Daniel L. Cardozo is a partner with Adams Broadwell Joseph & Cardozo. Mr. Cardozo has represented the Grassland Water District on land use and environmental matters since 1989 and has served as its General Counsel since 1997.



Working for Waterfowl Habitat Conservation at Grassland

By Douglas T. Federighi

I have been hunting in the grasslands of Merced County for more than 50 years. Over my lifetime I have seen wildlife habitat and hunting grounds eliminated one after the other throughout northern California.

The Grassland Ecological Area provides one of the last remaining major waterfowl conservation and hunting areas in the state. My fellow landowners and I have invested our private dollars and worked with public resource management agencies to preserve and enhance this area.

Our labors are finally showing results in the diversity of ducks and other wildlife and in the increasing recognition of the importance of this resource.

If our sport hunting tradition is to survive in this state, we must protect the grasslands from the same fate suffered by so many of California's former wild places.

Douglas T. Federighi is a member of the Ducks Unlimited National Conservation Programs Committee, a Director of the Grassland Water District, and a long-time Grassland hunter.

The Problem with Rural Subdivisions

By Bob Johnston

Low-density rural residences on the outskirts of cities were originally a method of letting landowners get some economic return for their lands while awaiting urbanization. This concept is still valid, as long as the density is kept very low, so that these properties can be efficiently re-subdivided later, when needed for urban uses. Parcels of eighty or even forty acres, can serve this purpose of temporary income for landowners.

The problem is that this concept has been misunderstood and/or politically compromised over the years, beginning after World War II. Now many local governments permit rural residential parcels in sizes between a half and twenty acres. These properties then are too valuable to be re-subdivided into efficient sizes for small-lot single-family dwellings and for multi-family uses, so they get skipped over. The resulting mix of land use types and densities is very inefficient to service and to provide with transit, or even roads.

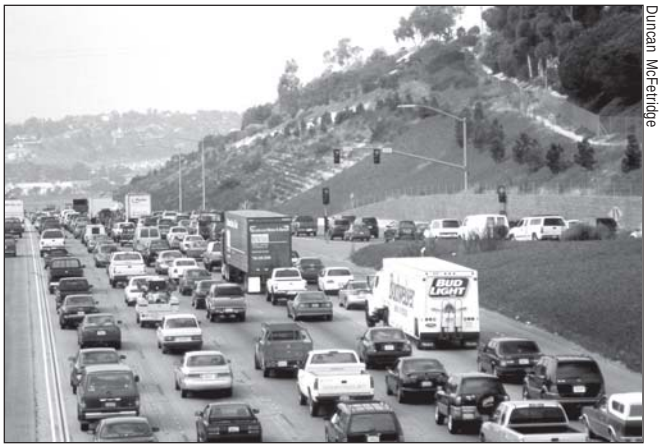
Low-density sprawl consumes significantly more land per capita than efficient subdivisions. Thus, low density rural subdivisions lead to conversion of habitat and

Continued on the following page.

SAVING the San Diego Backcountry

September 18, 2001 should be remembered as the day when the San Diego County backcountry breathed a sigh of relief. That morning, the San Diego County Board of Supervisors called off a five-year campaign to zone nearly 200,000 acres of rural backcountry for ranchettes and "intensive agriculture" without any meaningful environmental review. Thanks to the accountability created by CEQA, this land no longer faces the threat of development.

In 1996, San Diego County proposed to redesignate in the County's General Plan about 200,000 acres of land for "intensive agriculture" and to impose an exceptionally small eight acre minimum parcel size west of the County Water Line. Agricultural grading and clearing would have impacted all of this sensitive habitat. Development of small-parcel farming and ranchettes would have affected water quality and further encroached upon San Diego's scarce water supplies. Worst of all, concerned citizens feared that these small parcels would quickly be converted from farm land to sprawling residential development.



Duncan McFetridge

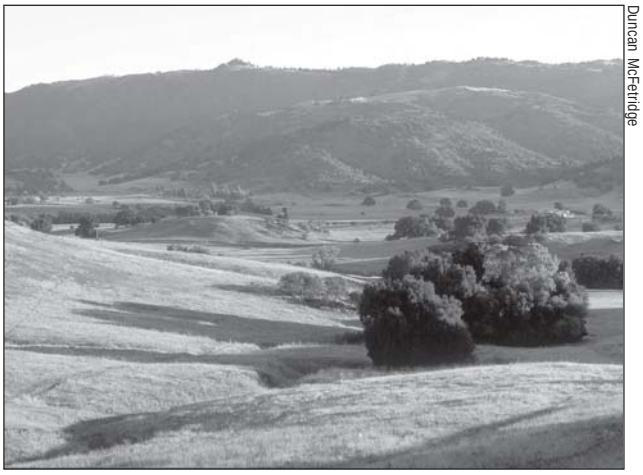
Morning congestion on Highway I-5 in San Diego. Concerned citizens feared that GPA proposal 96-03 would have exacerbated the region's severe traffic problems.

The General Plan Amendment proposal, referred to as GPA 96-03, sparked an avalanche of opposition from local and statewide environmental groups, led by Save Our Forest and Ranchlands (SOFAR). SOFAR and other environmental groups pointed out that the environmental review for this proposal was deficient, but the County pressed forward unconcerned.

When the County approved the deficient Environmental Impact Report (EIR) for the land use changes, SOFAR took the County to court. The Superior Court found the EIR legally inadequate under CEQA and ordered the County to re-do its analysis. The court also placed a subdivision moratorium on the affected lands, removing all permitting authority from the County and designating SOFAR as interim land use authority.

Five years passed, and the County finally attempted to correct the EIR. However, because the analysis was still defective, in 2000 SOFAR returned to court. The case quickly drew national attention when it attracted the interest of the Attorney General of the State of California

and the Environmental Protection Agency (EPA). The Attorney General filed an *amicus* brief in support of SOFAR, stating that "[t]he potential clearing and grading of vast amounts of natural habitat in San Diego County without any further environmental review will impair or destroy the state's biological resources, damaging habitats utilized by numerous sensitive plant and animal species." Like SOFAR, the Attorney General was particularly critical of the EIR's failure to identify mitigations common in other agricultural counties.



Duncan McFetridge

The Santa Isabella Valley Agricultural Preserve was threatened with subdivision under GPA proposal 96-03. Because of CEQA, the County substantially revised its plan.

Other environmental organizations also filed an *amicus* brief in support of SOFAR. These groups included California Native Plant Society, California Oaks Foundation, Center for Biological Diversity, Environmental Health Coalition, Mountain Defense League, San Diego Audubon Society, San Diego Baykeeper, Sierra Club, and Surfrider Foundation.

After expedited litigation, the Superior Court ultimately agreed with the arguments of SOFAR and its *amici*, and ordered the County to rescind its planning approvals. The County was prohibited from proceeding with the project pending its compliance with CEQA.

As a result of this court action, the County finally relented and prepared more rigorous environmental review. Importantly, in a new general plan amendment, the County required the implementation of mitigation for the project's impacts on biological resources, including the adoption of a grading ordinance. This ordinance limits the amount of open space available for conversion to agriculture and ensures additional parcel-level environmental review at the time of subdivision. Lastly, the minimum parcel size west of the county water line was increased from eight to forty acres, a move which substantially limits the potential for this agricultural land to be re-zoned for sprawl development in the future. Today, thanks to the CEQA process, environmental safeguards are in place with respect to San Diego's important agricultural lands.

While it took several years for the County to examine the environmental impacts of this 200,000 acre project, the review ultimately resulted in meaningful protections for the environment. Without CEQA, such review would never have occurred and San Diego's backcountry would have been changed forever.

Written by PCLF staff.

Continued from the previous page.

agricultural lands at a much faster rate. Households on rural parcels and large-lot urban parcels make more trips per day and travel more miles per trip, generating more pollution. Parcel sizes of a half up to about five acres cause the worst runoff and water pollution conditions, as the runoff cannot be treated naturally by the plants and soils. It is currently too expensive to capture and treat runoff at those densities.

Permitting the majority of development at or beyond the urban edge, rather than rebuilding the inner cities, also creates worse conditions for households and businesses in the older central cities, as investment drops in those areas. This pattern, of course, differentially affects poor and minority households and businesses. Sprawl also tends to lead to greater segregation of households by income and unequal school systems and tends to weaken the economies of both the inner cities and the suburbs.

In addition, there is now evidence that sprawl, with its auto-oriented lifestyle, creates health risks due to lack of walking.

Bob Johnston is a Professor in the Department of Environmental Science and Policy at the University of California at Davis. Mr. Johnston is also a Faculty Researcher at the Institute of Transportation Studies at the University of California at Davis.

CEQA, Fringe Area Growth, and the LA County General Plan

By Carlyle W. Hall, Jr.

It took 15 years, but thanks to CEQA, more than 3,000 square miles in the unincorporated areas of Los Angeles County were protected against ill-conceived urban expansion by a legally sound General Plan. In one of CEQA's longest running lawsuits, begun in 1972 and finally concluded in 1987, the Superior Court threw out three separate General Plans approved by the Board of Supervisors before a court-appointed referee convinced the County to approve what the referee advised the Court were "realistic standards and policies to accommodate [new urban] development and [to] discourage inefficient patterns of development."

In 1970, the Supervisors approved the "Environmental Development Guide" to serve as the General Plan for the County's then 7 million residents, about 1 million of whom lived in the 3000 square mile unincorporated area. Under the Guide's "modified centers concept," new development to house about half of the projected population growth of 2.2 million persons over the next twenty years would be encouraged within already existing urban centers, while the other half was to be guided to proposed new "urban expansion areas" totaling approximately 173 square miles. This basic policy was designed to revitalize the County's older cities, while allowing limited new fringe development in the unincorporated area.

In 1972, the Legislature enacted AB 1301 which, for the first time, required localities to promptly bring their zoning into conformity with their General Plans and to follow those plans in their future land use decisions. Thus, the Guide went from being an "interesting study" to a "constitution" for future land development within the County's unincorporated area, where the Supervisors have direct authority to make land use decisions.

The Supervisors responded by ordering County planning staff to embark on a "crash program." In direct conflict with the new legislative reforms, County planners were secretly directed to prepare a new General Plan conforming to pre-existing zoning and to individual requests by certain property owners for particular treatment of specific parcels.

In direct conflict with the new reforms, County planners were secretly directed to prepare a new General Plan conforming to pre-existing zoning and to individual requests for particular treatment of specific parcels.

Many professionals within the Planning Department were horrified by the "crash program" and by the arbitrary planning decisions that responded to the requests of politically powerful landowners. These planners undertook two key environmental studies.

• One, the "conflicts" study, revealed that, despite the fact that the County's twenty year population projections had just been reduced from 2.2 million to only 700,000 new residents, the "crash program" had nonetheless added another 178 square miles of urban expansion areas, fully 99 percent of which were located in environmentally sensitive resource areas (e.g., significant ecological areas and watershed areas) or hazardous areas (e.g., flood hazard areas).

• The second, the "development suitability" study, showed that two-thirds of the areas designated for new urban expansion in the Santa Monica Mountains were the least suitable lands for urbanization.

No attempt was made to modify the "crash program's" land use maps in light of either study, and neither study was revealed or made available to the public. Instead, the Environmental Impact Report (EIR) prepared for the new General Plan claimed to continue use of the Guide's "modified centers" concept, and asserted that the new Plan would direct new urban development to suitable areas, while minimizing hazards and maximizing environmental preservation.

Labeling the County's Plan a "blueprint for urban sprawl," attorneys from the Center for Law in the Public Interest (CLIPI) launched a CEQA challenge to the 1973 County General Plan on behalf of a broad coalition of

environmental and homeowner groups and professional planners.

After a two-week trial, Los Angeles Superior Court Judge David A. Thomas in 1975 invalidated both the EIR and the General Plan. According to the twenty-eight page "Thomas decision," the EIR was "simply a sterile declamation of unsupported generalities almost entirely failing to convey any factual information." The EIR should have provided a "rational appraisal" of why 178 square miles of new urban expansion were added despite the dramatic drop in the projected population growth, and why any of the urban expansion areas should intrude into environmentally sensitive lands and lands unsuitable for urban development. The EIR also should have disclosed the existence of the conflicts/suitability studies and their results. It should have disclosed that the County's actual rationale for adding the urban expansion in question was simply to meet the requests of specific property owners and to conform to pre-existing zoning. It should have analyzed alternative plans for channeling new urban expansion into "areas most suitable for urban development with the least conflict with natural resource and environmental factors."

The County did not appeal any of these rulings. Over the next five years, Judge Thomas' injunction prevented new development within the approximately 3,000 square mile unincorporated area except in accord with strict environmental standards, while the County's Planning Department carefully revised the proposed General Plan. The resulting 1980 Plan created very strong protections for the County's "significant ecological areas" and avoided many of the fundamental errors that the County made the first time around. But it nonetheless still contained far more urban expansion than was needed in light of the still-diminished expected population growth. The plaintiff Coalition and many others suggested that the new Plan should include a "phasing" component to channel any new urban expansion first to the areas that were least environmentally sensitive and most suitable for development.

When the Coalition's follow-up challenge to the new Plan went to trial, then-Los Angeles Superior Court Judge Norman Epstein again ruled in their favor. Judge Epstein ordered the County to supplement its new Plan with a phasing mechanism that would permit fringe area urban development only as population demands materialized and adequate public infrastructure (such as sewers, streets and water) became available. This phasing mechanism, Judge Epstein ruled, must include "specific standards and criteria" that would require new development to "pay its own way," as the new County Plan promised, without additional expense to County taxpayers.

Shortly after the ruling, County planners presented Judge Epstein with a proposed program that they claimed met his criteria for development phasing. Following a series of rapid fire hearings, however, Judge Epstein rejected the County's latest proposal and, at the request of CLIPI's attorneys, appointed a referee to monitor the County's further compliance with his orders.

In late 1986, the Supervisors finally approved a new Development Monitoring System (DMS). Under this system, the County agreed to undertake sophisticated computer and planning analyses to determine whether a proposed residential, commercial or industrial development project within the urban expansion areas would potentially overburden public facilities and services. County planners would keep updated information about each unincorporated community's traffic levels, classroom size and the like and would determine how they would change if a given project were approved. If DMS analysis showed that a proposed development would strain facilities, county planners would determine the cost of providing new or expanded public services and devise ways for the developers to finance them.

In his final report to the court, Referee James A. Kushner, a Southwestern Law School land use law professor, characterized the County's new General Plan as "an extraordinarily significant achievement." In April 1987, Judge Epstein brought an end to fifteen years of litigation, approving the DMS system and calling it "a forward-looking proposal that serves the public interest, that is good for the County, and good for the people of the County."

Carlyle W. Hall, Jr. is a partner in the law firm of Akin Gump Strauss Hauer and Feld. In 1971, Mr. Hall co-founded the Center for Law in the Public Interest (CLIPI), where he was the lead attorney in the Coalition litigation.

Modesto's Cutting-Edge Use of the General Plan Master EIR

By Patrick Kelly

Modesto's experience with Master Environmental Impact Reports (MEIRs) spans approximately eight years and counting. When the City first decided to prepare a MEIR in 1993—following passage of Assembly Bill 1888 (Chapter 1130, Stats. 1993), the enabling legislation for an MEIR—it became one of the first agencies in California to do so. The Modesto MEIR was certified in 1995 with adoption of the General Plan. The MEIR was updated in 2003 to cover primarily traffic modeling and related topic areas, and various General Plan Amendments.

EDAW

Modesto's General Plan and MEIR have resulted in a compact urban form, diversity of housing types, and higher than average densities.

The Modesto General Plan provides for an orderly plan for future growth, of which the MEIR is an integral part. Since 1974, Modesto has maintained policies regulating the quality, quantity, and direction of urban growth in the General Plan. The legacy of these policies has resulted in a compact urban form, neighborhoods offering a diversity of housing types and higher than average densities.

The MEIR allows the City to review projects in the context of a comprehensive environmental review to ensure that later projects would not have greater impacts than already analyzed. The MEIR relies, in large part, upon existing adopted General Plan policies to avoid or reduce potential environmental impacts and identifies mitigation measures for impacts that are not avoided or reduced by the General Plan policies. These mitigation measures must be made a part of project approval when they are pertinent to a project. The City's specially adapted, initial study form includes a master list of policies and mitigation measures contained in the MEIR, to apply to individual projects for inclusion with the list of project conditions.

In addition to the required contents required of other types of EIR's, CEQA requires a Master EIR to include a description of anticipated subsequent projects to be considered within the scope of the MEIR. Modesto's MEIR includes eighteen types of subsequent projects that are declared to be "within the scope of the Master EIR" as defined by CEQA (Public Resources Code Sec. 21157.1). Anticipated subsequent projects addressed in the MEIR include private development projects, such as subdivisions and conditional use permits, public development projects such as capital improvement programs and wastewater master plans that enable future private projects.

At such time as they are considered, subsequent projects are subject to preparation of an initial study, which determines whether they are "within the scope of the Master EIR". Projects that are consistent with the analysis contained in the Master EIR do not, in most cases, require extensive additional environmental review before they can be approved. The Initial Study documents their consistency with the Master EIR, after which a finding of conformance can be made. The key question for the Initial Study is not "Would the project have a significant effect?" It is instead,

EDAW

The Modesto MEIR has helped streamline approvals of infill projects, including this fifty-six unit affordable housing complex.

"Have the project's significant effects been identified in the MEIR and the mitigation measures from the MEIR applied to the project?"

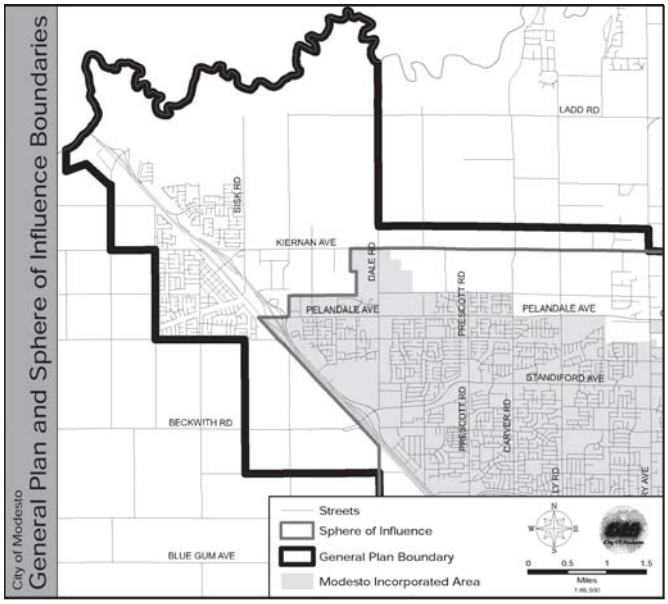
The MEIR also addresses cumulative impacts, growth-inducing impacts and significant irreversible environmental changes related to subsequent projects as required by CEQA.

The MEIR has worked well for infill projects located in the City's baseline developed area within the City's sphere of influence. The baseline area contains lands mostly developed with urban uses plus areas that can be served by sanitary sewer from the City's current trunk sewer system. Most infill developments are determined to be in conformance with the Master EIR because the General Plan anticipates the near-term development of this area.

The MEIR has also served as the foundation for Focused EIR's and Mitigated Negative Declarations prepared for later projects that have project-specific significant effects not analyzed in the MEIR or that require new mitigation measures or alternatives.

Although the MEIR does serve to streamline environmental review, there is a substantial time and cost commitment to keep it current. The 2003 update was initiated in 2000, only five years following certification of the 1995 MEIR. The update took approximately three years to complete at a cost in excess of $200,000.

Although MEIRs do not automatically expire, CEQA requires a MEIR to be reevaluated after five years following certification of the MEIR, to determine that no substantial changes have occurred with respect to the circumstances under which the MEIR was certified or that no new information which was not known and could not have been known at the time the MEIR was certified has become available.



Northwest corner of Modesto's General Plan boundaries. The accompanying MEIR has created substantial streamlining benefits without sacrificing environmental protection.

Based on Modesto's experience, MEIRs have created substantial streamlining benefits without sacrificing environmental protection in the City. Nonetheless, revisions are needed to CEQA that would clarify how updates are handled and establish a reasonable level of importance for the type of new information that would trigger the need to revisit an MEIR. Not all new information should necessitate an update to the MEIR, particularly if the information doesn't relate to any new or more severe environmental impact.

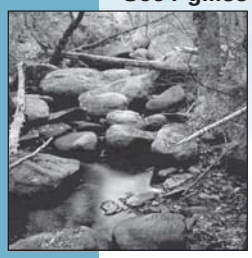
Although keeping the MEIR current requires a major staff commitment with cost impacts to the lead agency, the time and money investment has been worth it for Modesto. Application of mitigation has been more systematic; projects consistent with the General Plan and MEIR have been encouraged by the streamlining benefit; and the environmental review of many projects has been simplified. When considering a MEIR, however, agencies should evaluate the cost/benefit of preparing a MEIR compared to other types of first-tier EIR's, such as a program EIR. For communities experiencing significant growth, the MEIR will likely involve a labor-intensive effort to ensure that the analysis is up-to-date. The MEIR also requires some awareness to maintain the level of analysis to be used for subsequent projects. While CEQA's MEIR provisions need some fine-tuning, all in all, with the right level of commitment by a community, the MEIR can serve as the environmentally protective, streamlining tool it was meant to be by the Legislature in 1993.

Patrick Kelly is the Principal Planner for the City of Modesto Community & Economic Development Department.

CHAPTER 4
Wildlife, Habitat, & Farmland

See Pg...71

See Pg...83



See Pg...79

See Pg...85

California's Ecological Richness

By Kim Delfino

With its unusual and diverse flora and fauna, California stands in stark contrast to other parts of the country. This incredible wealth of unique plants and animals led the late naturalist Elna Bakker to call our state "an island called California."

From our rugged and majestic coastline to the expanse of the Central Valley to the peaks of the Sierra Nevada, California leads the country in its diversity of plants and animals, with nearly 5,000 plant species—nearly half of the United States total—and more than 800 species of native vertebrates—birds, mammals, reptiles, amphibians and fishes.

California's plants and animals exist in a lavish array of specialized habitats found nowhere else. The California Department of Fish and Game's Natural Diversity Database recognizes more than 500 distinct natural community types. These include different types of oak woodlands, grasslands, coniferous forest, desert communities, and chaparral shrublands.

Continued on the following page.

CEQA Protects California's NATURAL HERITAGE

"When you try to pick out anything by itself, you find it hitched to everything else in the universe." **– John Muir**

By William J. Yeates

In 1987, The Nature Conservancy commissioned a report by Jones and Stokes Associates entitled, "Sliding Toward Extinction: The State of California's Natural Heritage, 1987." Prepared for the California Senate Committee on Natural Resources and Wildlife, this study highlighted an alarming trend caused by the increasing demands of California's population—California at an alarming rate is losing native species and their habitat forever. "Sliding Toward Extinction" pointed out:

> Habitat loss and the disruption of species breeding and migration patterns have resulted from the cumulative effects of many independent activities carried out in various locations and at different times.

This report pointed out that "every individual" . . . "ultimately contributes to the loss" and so we all have a responsibility "to ensure that additional losses of natural diversity are minimized through land protection . . . ."

CEQA's substantive mandate that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures helps us address the loss of habitat and disruption of native species that "Sliding Toward Extinction" exposed. CEQA places an affirmative duty on public agencies to show that their decision approving or carrying out projects follows a careful and meaningful evaluation of alternatives and mitigation measures.

Stated another way, CEQA requires public agencies to identify a project's potential significant change, and to identify ways to avoid that change, or to reduce the effect of that change on the existing environment.

All of the following strategies are included within CEQA's concept of mitigation: (1) avoiding the impact altogether; (2) minimizing the impact; (3) repairing, rehabilitating, or restoring the resource; (4) preserving the resource over time; and, (5) replacing or providing a substitute resource. All of these strategies are being used today in order to prevent a "slide toward extinction."

Because CEQA applies at the earliest possible time to public agency actions that may significantly change the existing natural environment, CEQA's

public review requirement invites the interested public to participate in a public decision-making process that seeks to reduce or avoid significant adverse changes to the existing environment. Rather than "slide toward extinction" CEQA provides real opportunities to reverse the trend highlighted by The Nature Conservancy's 1987 report.


B. Peterson, USFWS

As "Sliding Toward Extinction" acknowledges, it is not necessarily one big project that destroys natural resources. It is the cumulative effect of many little changes that we all inflict on our natural communities that result in great change. Quoting from an article Professor Dan Selmi penned for the U.C. Davis Law Review, the Court of Appeal acknowledged:

> One of the most important environmental lessons evident from past experience is that environmental damage often occurs incrementally from a variety of small sources.[1]

CEQA is the only state law that requires public agencies to consider the cumulative effects of individual projects on the environment, so that these agencies don't evaluate projects in isolation. CEQA's cumulative impact analysis forces local agencies to consider the regional consequences of their actions. Public agencies are required to evaluate alternatives that avoid a project's significant adverse cumulative impacts on natural resources.

CEQA gives the state's wildlife and resources agencies the right to recommend mitigation strategies to protect California's diminishing natural resources. CEQA's mitigation requirement has spawned collaborative planning efforts that seek to set aside or protect specific landscapes, in order to reverse the trend of rapidly diminishing or fragmenting natural habitats. It is not uncommon today that local agencies require project proponents to contribute specified land, or funds for the acquisition of land, in order to mitigate the adverse effects new development projects have on existing and diminishing natural habitats.


Scott Frier, USFWS

What follows are but a few examples of the many creative solutions that are being employed in California.

William J. Yeates is an attorney at law focusing on environmental and planning law, as well as zoning law and policies. Mr. Yeates' practice emphasizes litigation and consultation in areas of land use, California Environmental Quality Act (CEQA), California Endangered Species Act (CESA), and election law.

Footnote: [1]Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 720.

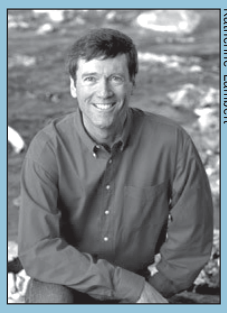
Continued from the previous page.

Among the most interesting of California's many habitats is a type of seasonal wetland known as "vernal pools," ponds that fill with winter rains and dry up slowly through the course of the spring. These unique and beautiful grasslands are home to creatures found nowhere else on earth, including the rare Riverside fairy shrimp and the Slender Orcutt grass.

The diversity of California's terrestrial ecosystems is matched by the diversity of its aquatic ecosystems. The San Francisco Bay / Sacramento-San Joaquin Delta is the largest estuary on the West Coast. The Sacramento and Klamath Rivers are two of the most important rivers for salmon in the lower forty-eight states. California's desert springs and creeks are home to endangered desert pupfish, which can live in waters twice as salty as the ocean and as hot as 113° Fahrenheit.

California faces an important challenge to protect and restore its natural legacy. In the coming decades, California will face increasing pressures from growth. If we are to preserve a "Wild California," we must be willing to undertake this challenge and ensure that future generations will enjoy California's biological treasures.

Kim Delfino is the California Program Director of Defenders of Wildlife.



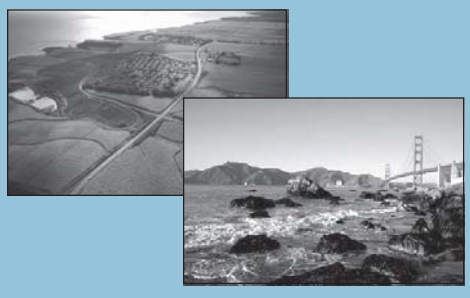
Katherine Lambert

A Vision of Many Californias

By Steve McCormick

California isn't easily imagined or defined. My vision of the state is a complex and colorful one, a blend of landscapes that I've known, explored, and—as a conservationist—worked to protect for many years. Instead of looking at the state as a single, well-defined political and geographic area, I see California's varied natural lands and waters as a tapestry of contrasting yet complementary habitats stitched together by the state's dramatic geology and topography.

There are many Californias. When I think of California in all its marvelous variety, I recall the salty essence of a snow-white fog bank drifting inland from the Pacific, the hot tan smell of a Central Valley grassland in July, and the cool bite of a fresh autumn wind rustling radiant red-gold aspen leaves as it rushes down a



Continued on the following page.

Golf Course Threatens Bighorn Sheep Habitat

By Wayne Brechtel

The Peninsular bighorn sheep are a distinct population of bighorn that is listed as endangered under state and federal law. Their range is limited to the band of peninsular hills that extends from the U.S.-Mexico border to the north end of Palm Springs. Unfortunately, the rough, hillside terrain, with its spectacular views, is an increasingly popular venue

The developer argued strenuously that the project site for a new 18-hole golf course above Palm Springs was not Peninsular bighorn habitat.

for new, links style golf course developments, resulting in a collision between wildlife preservation and new commercial development.

In the late 1990s, this conflict manifested itself in the form of a 359 acre development known as Mountain Falls Golf Preserve ("Mountain Falls"), which included a new eighteen hole golf course within an undeveloped hillside canyon above Palm Springs known as Tachevah Canyon. Most of the property is owned by the City of Palm Springs, which had entered into an agreement to lease it to the Mountain Falls developer.

On December 16, 1998, over the strenuous objections of local residents, resource agencies, and the environmental community, the Palm Springs City Council approved the Mountain Falls project after a marathon session that went into the early hours of the morning. The local Sierra Club chapter responded with a lawsuit alleging various violations of law, including CEQA, marking the start of a three-year legal battle.

Bighorn sheep populations have declined precipitously since the 1850s. Hunting and habitat loss have decimated populations across North America.

Throughout the process, the developer argued strenuously that the project site was not Peninsular bighorn habitat, and that no bighorn had been seen on the property for decades.

As everyone stood outside of the car, a Fish and Wildlife representative exclaimed that a group of bighorn sheep were sitting next to the flag designating the location of a proposed golf course hole.

At the urging of the developer, a meeting at the project site was arranged to provide representatives from the Sierra Club, the City, the U.S. Fish and Wildlife Service, and the Department of Fish and Game with an opportunity to review the project proposal in more detail.

Wayne Brechtel

Endangered bighorn sheep, photographed on the proposed site of a golf course. CEQA ensured that development plans were modified to protect the animal's habitat.

As everyone stood outside of the car getting ready to walk the site, a representative from the Fish and Wildlife Service exclaimed that a group of bighorn sheep were sitting next to the flag designating the location of a proposed golf course hole. Even the developer's attorney, after much anguish, had to admit that he saw the sheep.

The project approvals were set aside twice by the trial court for failure to adequately address significant impacts to the Peninsular bighorn sheep, and ultimately, the developer abandoned its plans to develop a golf course in the Tachevah Canyon. In May 2002, the project was converted into a limited condo development within the residential area outside of the canyon. Tachevah Canyon remains in its undeveloped, pristine condition today.

Wayne Brechtel is a partner at Worden Williams APC and is an expert on environmental laws governing land use in California including CEQA, NEPA, the Federal Clean Water Act, and the Federal and State Endangered Species Acts. Mr. Brechtel represented the Tahquitz chapter of the Sierra Club in this case.

Continued from the previous page.

12,000 foot escarpment on the east side of the Sierra Nevada. In my mind's eye I see California's scenic, rugged coastline and towering snow-capped mountains, scenes famous throughout the world.

I think of Yosemite Valley and Monterey Bay and our unique Channel Islands. I see teeming wildlife in rich sloughs and marshes and in temperate rain forests in the northwestern part of the state. I picture verdant groves of valley oaks and sycamores lining the mighty Sacramento River and its tributaries. I remember hiking in shimmering deserts and gazing in wonder at wildflower-ringed vernal pools blossoming in the Central Valley. My mind lingers on the uniquely Californian scene of golden savannas dotted with rare blue oaks. I recall craggy, wind-sculpted Monterey pines clinging to coastal cliffs pounded by the Pacific.

My memory produces more images: pronghorn antelope galloping across the Carrizo Plain, golden eagles soaring above the voluptuous hills of Mount Hamilton, and tule elk grazing on the peaceful Point Reyes Peninsula.

Excerpt from a 1999 speech by Steve McCormick, Executive Director of The Nature Conservancy of California, at the Irvine Ranch Land Reserve.

Innovative Solutions for Habitat Protection in South Sacramento County

By Mike Eaton

The partnership between The Nature Conservancy, Sacramento County, and the Department of Fish and Game to protect Swainson's hawk habitat in south Sacramento County demonstrates the flexibility public agencies have in meeting CEQA's mitigation requirements. Additionally, because CEQA requires local agencies to look at the environment from a regional perspective and consider the cumulative effect of their decisions, CEQA's mitigation requirements encourage local, regional, and state agencies to work together to address the rapid decline of wildlife habitats in the face of rapid urbanization.

The National Audubon Society recognized the Cosumnes River floodplain as an Area of Critical Concern in the 1970's, because of the extensive wetland and riparian habitat areas within this floodplain. The Cosumnes River hosts one of the last remaining and largest valley oak riparian woodland stands in California's Great Central Valley.

Once stretching continuously along floodplain terraces in swaths from one to three mile wide, valley oak riparian habitat currently occupies less than 5 percent of its historic range–occurring only in sporadic patches along the Sacramento and San Joaquin Rivers. The Cosumnes watershed also contains one of the largest populations of the threatened giant garter snake. The watershed contributes critical habitat to help sustain 50 to 7175 percent of the threatened Greater Sandhill cranes that winter in the area. Additionally, the watershed and surrounding agricultural lands provides one of two breeding centers in California for the threatened Swainson's hawk.

The Nature Conservancy, Cosumnes River Preserve

A student group hikes through the Cosumnes River Preserve. Once stretching continuously along floodplain terraces in swaths from one to three miles wide, valley oak riparian habitat currently occupies less than five percent of its historic range, occurring within patches along the Sacramento and San Joaquin Rivers.

In 1984, The Nature Conservancy began a conservation program to preserve and restore the wetland and riparian habitats within the Cosumnes River floodplain. Working with Sacramento County, Ducks Unlimited, U. S. Bureau of Land Management, California Departments of Fish and Game and Water Resources, and the State Lands Commission, The Nature Conservancy has protected over 45,000 acres of key Cosumnes River habitats.

Yet, rapid urbanization threatens to isolate these protected areas and reduce the floodplain's viability as a refuge for diminishing wildlife species. Sacramento County's population is expected to grow to 2,858,427 and San Joaquin County's population is expected to triple in size by 2050. In the ten-year period from 1988 to 1998, 20,300 acres of farmland were converted to urban uses in Sacramento County.

In late 1993, Sacramento County updated its general plan, which allowed additional urban development in undeveloped areas of South County. In 1996, Sacramento County launched the development of a Habitat Conservation Plan (HCP) for the South County; and, California Department of Fish and Game (CDFG) began seeking more effective Swainson's hawk mitigation in response to the rapid loss of hawk habitat. To mitigate the impact of urbanization on Swainson's hawk habitat in South County, Sacramento County and developers proposed an "interim fee" as an alternative to either waiting for completion of the HCP or to project-by-project mitigation. Sacramento County and CDFG agreed upon a $750 per acre interim mitigation fee for new development that would be used to acquire critical Swainson's hawk habitat.

The Nature Conservancy agreed to assist in implementing the Swainson's hawk mitigation fee program as a short-term solution to reduce the impacts of urban development adjacent to the Cosumnes

River Preserve. A three-party Memorandum of Understanding (TNC, Sac County, CDFG) provided that accumulated mitigation fees would be used to buy easements on lands outside of Sacramento County's Urban Services Boundary and within the Cosumnes River corridor.

When it incorporated in 2000, the City of Elk Grove inherited the County's fee program. The City of Elk Grove in south Sacramento County has been growing like grassfire, issuing, for example, close to 15,000 building permits in 2003 alone. By the middle of 2005, the City will have permitted much of the land within its current boundary to urbanization. The City's new general plan has designated a large area south of the City of Elk Grove within the Cosumnes River floodplain as an Urban Study Area to assess its future growth potential. The new city's study area lies outside the growth boundary adopted by the County in its 1993 general plan.

Elk Grove's action has left the impression with the landowners in this area and with developers that urban development will soon be coming to the Cosumnes River floodplain. Speculation over this expansion below the growth limit line has increased property values. Both Elk Grove and the County responded to rising land values by increasing the mitigation fee in 2003, to $2,833 per acre within the County and $4,682 within Elk Grove. But, this fee increase was still not enough to compete with developers convinced that the City would be annexing land south of the former County growth line.

In the spring of 2004, The Nature Conservancy acknowledged that rapidly escalating property values were outpacing the Conservancy's ability to acquire available land. CDFG also pointed out that Swainson's hawk foraging habitat was being lost throughout the City of Elk Grove. CDFG wanted this cumulative loss addressed under CEQA.

Swainson's Hawk Technical Advisory Committee

The Nature Conservancy, Cosumnes River Preserve

The Cosumnes watershed and surrounding agricultural lands provide one of two breeding centers in California for endangered Swainson's hawk. Now for every acre of habitat lost to development, project proponents must provide an acre of hawk habitat.

In response to The Nature Conservancy and CDFG's concerns, the City revised its Swainson's hawk mitigation strategy by requiring project proponents to provide land instead of money to reduce the direct effects of new development on hawk foraging habitat. So now, for every acre of habitat taken, a new project proponent must provide an acre of hawk habitat.

This new one-for-one land mitigation strategy is admittedly a placeholder, until the City of Elk Grove, Sacramento County, and the Sacramento County Local Agency Formation Commission determine the City's new boundaries. But, as these public agencies contemplate Elk Grove's growth areas, CEQA requires all these public agencies to evaluate the cumulative effect growth will have on those irreplaceable habitat areas that The Nature Conservancy and other agencies started acquiring and protecting back in 1986. CEQA's environmental review and mitigation mandate will require these agencies to work together on an outcome that addresses these cumulative effects. Without CEQA the parochial interests of one entity could result in the situation where difficult planning and growth issues are simply swept under the rug.

Although the solutions have not been found, CEQA's substantive requirements will produce a better outcome as it will require the affected local agencies to work with interested regional and state agencies. CEQA's information disclosure requirements will provide a forum for interested private organizations, like The Nature Conservancy, local landowners, and the building industry to talk with one another about solutions that will balance the interests of Elk Grove's growth with the conservation and protection of diminishing natural habitats.

Mike Eaton is the Senior Project Director for the California Delta & San Joaquin Valley at the Nature Conservancy.

BAHIA MARSH: A TALE OF TWO DEVELOPMENTS

The city of Novato, in Marin County, is home to steep fog-swept hills, beautiful bay-front marshes and stunning wildlife. Sadly, these very qualities have brought an influx of developments that threaten the natural environment. Two starkly contrasting stories of proposed developments in an area of Novato called Bahia demonstrate the importance of robust environmental review under CEQA to protect Marin's natural environment.

U.S. Geological Service - TerraServer-USA

In the mid 1960s, Marin County marshland was dredged to make way for the Bahia Lagoon and 288 housing units.

The Bahia Community

The first development, now referred to as the Bahia Community, was approved and built in the mid-1960s, several years before the enactment of CEQA. To construct the 288 unit development, workers dredged up the existing tidal marsh, creating the Bahia lagoon. Eighty homes with boat docks were constructed on the lagoon and a channel was dredged to provide boat access to the Petaluma River.

This man-made lagoon was an environmental disaster. Because of the lack of environmental review, there was no analysis of siltation rates in the area until the houses were already built. Each year, silt from upstream on the Petaluma River and the San Francisco Bay is deposited by tidal waters, inundating the surrounding marshlands, channel and lagoon.

To complicate the matter, the Bahia Homeowner's Association (HOA) had included a provision in its Codes, Covenants, and Restrictions guaranteeing boat access to the river. Early dredging efforts temporarily restored access, but the results were always short-lived. In addition, public concern about the adverse impacts of disposing of dredged material resulted in increased regulatory oversight and costly limitations on dredging.

Steve Page

Because of inadequate environmental review, the Bahia community has suffered tremendous siltation problems. Now only a thin stream runs by these "waterfront" homes.

The HOA has been trying for more than twenty years to solve the siltation problems to no avail. A number of HOA members sued their board of directors to force them to provide the promised boat access, but project proponents have been unsuccessful in obtaining the necessary permits for regional agencies.

As Susan Ristow, a local activist working to protect Marin's

baylands explains, "This development shouldn't have happened. The absence of environmental review has caused long-term adverse impacts on the environment and the community. Residents have had to spend millions of dollars trying to provide boat access for a few houses. If they continue to pursue plans for a lock and resumed dredging they may never see a resolution."

The Bahia Master Plan

The story of the Bahia Master Plan demonstrates how outcomes can be improved by CEQA. Here, Art Condiotti proposed to complete the originally envisioned project by constructing 424 luxury houses adjacent to the Bahia Community. This time, the CEQA-mandated environmental review ensured that community residents and local organizations were informed of the impacts of the proposed project and gave them the opportunity to voice their concerns.

The Bahia Plan would have threatened one of the few remaining populations of endangered Clapper Rail, a ground-dwelling marshbird, native to the area.

The Environmental Impact Report illustrated the dangers of further development in Bahia. Condiotti planned to build along the ridgetop and hillsides of a rare Blue Oak woodland. Moreover, the development would have adversely impacted approximately eight to ten acres of wetlands, threatening one of the few remaining populations of endangered Clapper Rail and 125 other species of migratory shorebirds and waterfowl. Finally, it would have significantly increased the amount of pollutant-laden runoff contaminating local wetlands before draining into the Petaluma River and the San Francisco Bay. Empowered by this information, citizens attended public meetings, wrote editorials, and submitted comment letters.

The Bahia Homeowner's Association has been trying for twenty years to solve its siltation problems to no avail.

Thanks to impressive community support, preservationists were able to raise enough money to purchase the adjacent 632 acres of oak forest and marshland, previously slated for development.

When, in spite of these efforts, the Novato City Council approved the Bahia Development in 2001, the community again responded. The Marin Audubon Society filed a lawsuit challenging the project approval on CEQA grounds. At the same time, residents gathered signatures for a city-wide referendum. "Our ability to litigate under CEQA was important because it allowed us to show that we had genuine and justifiable concerns about the environmental review, and that we wouldn't disappear until they were addressed," says Barbara Salzman. "After the overwhelming success of the referendum, the developer called us and agreed to begin negotiations that eventually led to Marin Audubon's purchase of the property."

Thanks to impressive community support, preservationists were able to raise enough money to purchase the 632 acres of oak forest and marshland. By January 2003, the Marin Audubon Society had secured over $15.8 million in funding from Marin County Open Space District, CALFED, Caltrans, California Coastal Conservancy, Wildlife Conservation Board, Marin Community Foundation, National Oceanic and Atmospheric Administration through the Bay Institute, and many private groups and individuals. Planning for restoration work has begun.

"Looking out over the development in Bahia makes me shudder at what planning must have been like before CEQA," says Salzman. "Looking at the tidal marsh and upland property we purchased makes me incredibly thankful for the passage of this bedrock environmental law."

Written by PCLF staff.

CEQA and the Santa Monica Mountains

By Joseph T. Edmiston

It is so much fun to bash CEQA that even in this article meant to support it, I can't help speculate on all the forests destroyed for millions of pages of junk science produced under CEQA's rubric. (Putting Environmental Impact Reports on the Web will solve this problem.) And who can avoid noticing the Biostitute profession that has grown, streetwalker wise, around developer's carnal need to find "no significant impact" in their projects.

But when the Planning and Conservation League Foundation asked me to evaluate the impact of CEQA on protection of the Santa Monica Mountains, I had to back down from my cynicism and analyze the true facts. And the facts are these: CEQA is directly responsible for protecting roughly a third of all lands that have been preserved in the twenty-five year history of state efforts to preserve open space in the Santa Monica Mountains. That is no mean accomplishment and that fact alone should cause us to re-examine the critical approach that many, even in the environmental community, have taken toward CEQA.

I was a young Sierra Club activist in law school when the California Supreme Court's *Friends of Mammoth* decision came down in 1972. The court said, in essence, CEQA means what it says about evaluating environmental impacts and, yes, private projects permitted by government action fall within its purview. Suffice it to say that CEQA, then, was seen exclusively as a way to kill projects, certainly not make them better!

Dozens of legislative amendments since then, hundreds of lower court rulings, and scores of appellate court decisions have solidified CEQA practice into a fairly predictable body of law. It is this fact that has had the unintended (by both environmentalists and developers) consequence of making projects more approvable by making them more environmentally friendly. I don't think for a moment that when CBIA, the Realtors, or the Cal-Chamber pushed for "weakening" amendments in the late seventies and eighties they had any intention of making projects better. They wanted to make them unstoppable. Likewise, my old employer the Sierra Club and other environmentalists didn't want to see incrementally less harmful developments, they were looking to keep the holes in the strainer sufficiently small so that the fewest projects possible would emerge from the CEQA process.

Projects mitigated to the maximum extent feasible do tend to get approved and that approval sticks in the courts.

Santa Monica Mountains Conservancy

Because of CEQA, this 7,000 acre contiguous habitat block in the Sierra Pelona Range will be preserved in mitigation of the Ritter Ranch development.

What has happened in reality defies the expectations of both interest groups. Would you believe that some of the most competent professional planners I know work for law firms that regularly advise developers—it is true. Oh yes, there are still those law firms out there who are notorious for advising clients to fight CEQA with every last dollar of their law firm's billings. But the members of the business community who are willing to take such advice is rapidly dwindling as the evidence piles up that CEQA is a vehicle for project approval—given a developer's willingness to accept its basic premise.

So what is that magic "get out of the Planning Commission" card that CEQA offers? At its most basic, it is that projects mitigated to the maximum extent feasible, certainly as close as possible down to the threshold of environmental significance, do tend to get approved and that approval sticks in the courts.

As CEQA works itself out in highly charged development arenas, such as the Santa Monica Mountains in the heart of the Los Angeles Metropolitan Area—probably the most

competitive real estate market this side of Lower Manhattan—CEQA is less a vehicle for environmental impact avoidance, or at least not exclusively so, as it is an engine for mitigation of impacts. Purists seem offended by this, but from an ecological standpoint I've never understood why. Take any given area of land, add a subdivision project (even a "green" one with a semblance of jobs/housing balance) and the net environmental impact, especially in a sensitive ecosystem like Mediterranean chaparral, is going to be far greater under any development scenario than if a mitigation strategy is employed.

It is by environmental mitigation that CEQA's real benefit is felt. We have seen that a far more efficient strategy—for the developer and the conservationist—is to encourage a project to meet its economic objectives so that it can also fund a more "pure" achievement of environmental objectives by way of a compensating mitigation project. To take the Santa Monica Mountains as one example, the numbers are impressive. Since 1980 when the Legislature established the Santa Monica Mountains Conservancy, roughly three-quarters of a billion dollars has been spent by Federal, State, and local sources to protect this resource. Money well spent. Real nature will abide within touching distance of one-third of Californians probably forever. Yet of the roughly 80,000 acres saved since 1980, at least 20,000 of that total was obtained as CEQA driven developer dedications in mitigation of environmental impacts identified in the EIR process at no cost to the taxpayers.

Santa Monica Mountains Conservancy

CEQA mitigations were used to turn Corral Canyon, the last undeveloped canyon in LA County, into a state park with beach access and a state-of-the-art trailhead. The County had approved a plan to develop the canyon into luxury homes and a golf course.

Ten years before all of Ahmanson Ranch was acquired by the Santa Monica Mountains Conservancy for $150 million, 10,000 acres of the key north-south wildlife corridor was preserved as a mitigating condition required by Ventura County as part of the CEQA process. Los Angeles County famously (and many environmentalists would say erroneously) approved the largest housing project in its history (20,000 units) at Newhall Ranch, but not before preserving 4,300 acres of prime undisturbed habitat as the result of a CEQA mitigation measure. A contiguous habitat block of 4,000 acres of the Sierra Pelona north of Santa Clarita has been dedicated, and 3,000 acres remain to be dedicated as a result of CEQA conditions on the Ritter Ranch project. The list goes on and on. From thousands of acres down to neighborhood habitat, CEQA has worked to save land in perpetuity where the environmental impact report process has identified feasible mitigation opportunities.

Through CEQA, over 20,000 acres in the Santa Monica Mountains have been protected at no cost to taxpayers.

Developers don't like to see these figures in print because they represent lost profits. Environmental activists don't like to see these numbers because they don't like figures that show development actually helping the environment. Legislators, taxpayers, and the great body of average citizens, however, should love these figures because they show a successful land use regulatory system that does more than churn out unread paper. Deer, bobcat, and yes, mountain lions, will pad their way through these lands forever.

Santa Monica Mountains Conservancy

Hikers and bikers flock to open space lands in the Santa Monica Mountains. CEQA is directly responsible for preserving roughly a third of these lands.

Joseph T. Edmiston, FAICP, is the Executive Director of the Santa Monica Mountains Conservancy.

Protecting POTRERO VALLEY

By Mary L. Hudson

When Lockheed Martin conveyed thirteen square miles of choice undeveloped Riverside County land into public ownership in late 2003, there were many winners. The Potrero Valley property, previously planned as the site of five small towns with 18,000 homes and two golf courses, is now to be operated as a huge nature preserve. The County's multispecies habitat conservation program gained a critical link between lowland and upland habitats. The valley's rich animal and plant life were spared. The public gained opportunities for hiking, birding, and horseback riding. And Lockheed received $25.5 million in public funds.

Mark Chappell

Lockheed Martin planned to build 18,000 houses and two golf courses on 13 square miles of Riverside County's Potrero Valley, paving over bear, mountain lion, and other endangered species habitat. Because of CEQA, the property will instead become part of the San Jacinto Wildlife Area, nearly doubling its size.

Wildlife agencies had long recognized the extraordinary natural values of Potrero Valley, but Lockheed's $100 million price tag put acquisition out of reach. The valley is traversed by a meandering stream system and dotted with seasonal ponds, unusual in this arid area. With woodlands, grasslands, shrub lands, and 316 acres of wetlands, the site hosts an array of animals including large species, such as bears and mountain lions, and many birds of prey and other avian species, including many that are listed or pre-listed under the Endangered Species Act. Nearly 2,000 acres are occupied by the Stephens kangaroo rat, a federally listed endangered species, and the site is considered to be prime area for recovery of this species. Positioned between dry "badlands" south of Beaumont and the slope of the San Jacinto Mountains, Potrero Valley provides seasonal passage for migratory animals. Much of the property is in pristine condition, a small portion of it having been used by Lockheed for missile testing during the 1960s.

When the City of Beaumont approved Lockheed's development proposal, the Sierra Club sued on the basis that the approval did not meet CEQA standards. (*Sierra Club, Inc. v. City of Beaumont (Lockheed Corporation)).* The Court of Appeal agreed. The Court found that information and analysis of cumulative impacts on wildlife, vegetation, and regional water supply were inadequate, as were the measures to mitigate impacts on wetlands, waterways, and many of the sensitive animal and plant species.

The Court's lengthy and detailed opinion showed the difficulty Lockheed faced in trying to correct the deficiencies for a new round of CEQA review. As that effort proceeded, and the severity of the environmental problems grew more evident, interest in a public acquisition warmed. Federal, state, and county wildlife agencies got involved, pulled together funding from all three sources, and began negotiating with Lockheed. The Conservation Fund, a national nonprofit, stepped in to broker the final deal, preserving for posterity this natural oasis in the midst of urban southern California. The property will become part of the California Dept. of Fish and Game's increasingly impressive San Jacinto Wildlife Area, nearly doubling its size.

Mary L. Hudson is a sole practitioner in Sausalito, California and represented the Sierra Club in the Potrero Valley litigation. Ms. Hudson is former deputy chief counsel for the California Coastal Commission and immediate past President of the Pacific Marine Conservation Council.

Carnegie Foundation & the Tiger Salamander

In 1999, the Carnegie Foundation for the Advancement of Teaching—the third oldest foundation in the country and the only advanced study center for teachers in the world—announced its intention to construct a 21,000-square-foot think tank facility in the Stanford hills on a site leased from Stanford University. This was considered a win-win arrangement: the foundation would gain a shining new facility on land very generously leased at $1 dollar a year for fifty-one years. The University would benefit from the Carnegie Foundation's prestige and from the contributions of its visiting scholars.

Mike Kahn / Kahncious.Net

A CEQA settlement moved the Carnegie Foundation's think tank facility down the hill from this planned site in the Stanford Hills. It also ensured that clearly defined measures were taken to protect the threatened tiger salamander. Stanford's Hoover Tower is visible in the background.

However, local environmental groups, including the Committee for Green Foothills, the Stanford Open Space Alliance, and the Loma Prieta Chapter of the Sierra Club, did not agree. The proposed site was located on beautiful oak woodland in the Stanford foothills, land that has become increasingly valuable to the local community as open space. The development, they maintained, would establish a dangerous precedent for additional construction in the foothills. The City Councils of Palo Alto and Menlo Park, which have been dealing more and more with issues of urban growth, joined them in their objection to the Carnegie development plans.

The proposal also threatened the welfare of the California tiger salamander, a "species of special concern" under state law and a candidate for protection under the federal Endangered Species Act. A 1998 agreement between Stanford University, Santa Clara County, the State Department of Fish and Game, and the Federal Fish and Wildlife Service, had established a tiger salamander management zone to protect the amphibians, limiting development within its boundaries. The Carnegie project lies within the management zone's boundaries.

In November of 2000, the County Planning Commission approved the Environmental Impact Report for the Carnegie project on the grounds that specific mitigation measures for the tiger salamander would be adopted. The Committee for Green Foothills appealed the decision to the county board, maintaining that the specified mitigations were unclear, untested, and failed to adequately provide for the imperiled salamander.

By October of 2001, when the Santa Clara County Board of Supervisors granted its final approval of the Carnegie complex, the project had changed significantly due to public involvement in the CEQA process and the new Stanford Community Plan, passed by the city of Palo Alto in December of 2000. As a result, the developer was required to move the building site downhill, bringing it within the new Academic Growth Boundary, and to plant four mature oak trees to minimize the visual impact of the project. In addition, an undeveloped, 4.5 acre salamander conservation area was established at the lower end of the property. Finally, all other salamander mitigation requirements were clearly defined and enforceable.

Ultimately, Stanford University and the Carnegie Foundation got the think tank facility that they needed and wanted. Through hard work and their involvement in the CEQA process, the Committee for Green Foothills ensured that the concerns of the environment and of the community at large were addressed in the final Carnegie plan.

Written by PCLF staff.

CEQA and California's Forests

By Tom Lippe and Matthew Vander Sluis

The last one hundred and fifty years of logging in California's forests has caused severe, well-documented damage to many environmental values and resources. The list of endangered or threatened wildlife species is long and getting longer. Coho salmon, steelhead, northern spotted owl and marbled murrelet will probably be joined by California spotted owl, and Pacific fisher. Many watersheds have suffered increases in erosion and sedimentation, bank failures, flooding and landsliding, and the loss of their fisheries. Excessive sedimentation from logging has filled gravel streambeds with silt, creating unlivable conditions for local wildlife. Current conservation policies that preserve islands of suitable habitat in a sea of logging have led to what the U.S. Forest Service has called a "prescription for extinction."

Few issues in California have been more controversial or engendered more passionate public debate than the damage to the state's environment from logging. The almost complete disappearance of the primeval old-growth redwood forests that once blanketed the north coast of California has been the focal point for much of that debate. Public concern is also growing regarding the steep increase in clearcutting in the Sierra Nevada and the accelerating conversion of oak woodlands to housing subdivisions and vineyards. A broad coalition of scientists, public agencies, concerned businesses, and community groups are raising the alarm about the plight of the forests and the approval process for new logging.

With the overwhelming majority of California's forests owned by the State and private landholders, CEQA has been one of the most important methods to improve forest management practices statewide.

Current conservation policies that preserve islands of suitable habitat in a sea of logging have led to what the U.S. Forest Service has called a "prescription for extinction."

Logging on non-federal land is regulated by the California Board of Forestry and the California Department of Forestry and Fire Protection (CDF). According to the Z'berg-Nejedly Forest Practice Act, every time a logging company wishes to log a certain area they must have a Timber Harvest Plan (THP) approved by the Department of Forestry. Each plan should also be analyzed by the Department of Forestry, the Department of Fish and Game, the appropriate California regional water quality control board, and the county planning agency. These agencies assess the plan's compliance with a number of important environmental laws including CEQA, the Forest Practice Act, the Clean Water Act, and the Federal and State Endangered Species Acts.

THPs were not subject to CEQA until 1976, when the California Court of Appeal ruled that timber harvest plans had to comply with CEQA. The following year the Legislature amended CEQA to provide a limited exemption from CEQA for "certified regulatory programs." The Secretary of Resources quickly certified CDF's program for approving timber harvest plans and the Board of Forestry's program for adopting forest practice rules as "certified regulatory programs" that were "functionally equivalent" to CEQA.

Unfortunately CDF has had a history of failing to live up to the substantive and procedural requirements of CEQA, and the courts have repeatedly found that CDF's implementation of the certified regulatory program does not measure up. Public agencies and private citizens have used their power to litigate under CEQA to mend some of the major flaws in CDF's approval of timber harvest plans.

Because of CEQA, in 1978, CDF was required to begin preparing written responses to significant environmental comments, greatly increasing government accountability.

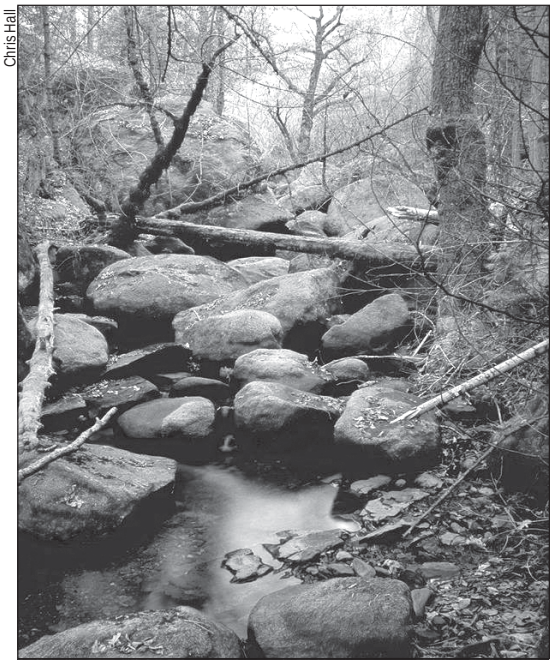
In 1985, the courts ruled that CEQA's cumulative impact analysis requirements also apply to timber harvest plans. A single timber harvest plan usually represents part of a larger plan to log large contiguous areas or interlocking blocks of forest. Requiring the lead agency to look at the big picture is especially important in these situations because many forest-dwelling endangered species require large areas of undisturbed habitat. In the same case CEQA helped close another loophole by prohibiting CDF from relying on nonpublic documents to respond to significant environmental points.

In 1994, the courts found that CDF has authority under CEQA to require the submission of information that is necessary to identify potentially significant environmental impacts, even where there is no specific forest practice rule requiring the submission of such information. This decision marked a major policy change for CDF, increasing both the quantity and quality of information available to decision makers.

In a 1997 Court decision applying CEQA to timber harvest plans, CDF was required to circulate its cumulative impact assessment to the public for review and comment. That same year, another appellate court ruled that, to comply with CEQA, timber harvest plans must consider a range of reasonable alternatives to the current logging proposal.

CEQA has also been instrumental in improving other aspects of forest management, including the conversion of oak woodlands and the management of our state forests. In 1999, CEQA was applied to the conversion of oak woodlands to vineyards under local land use laws governing grading on steep slopes. This has significantly slowed the pace of environmental change in wine growing regions of the Napa Valley, preserving their viability as rural-agricultural areas.

Chris Hall



Under the Upper San Antonio Creek Timber Harvest Plan, logging has occurred within thirty feet of this stream and within forty feet of a state park boundary.

Similarly, Jackson State Demonstration Forest, the largest state forest in California at 50,000 acres, is currently using CEQA to reassess its management plan. A judge recently threw out the existing plan in which one third of logging in the state forest was approved for clearcutting or similarly harsh methods.

Warren Alford

Upstream on the San Antonio Creek. CEQA continues to play a significant role in addressing the inadequacies of forestry certified regulatory programs.

The need to strengthen our forestry management practices is clear. Every year, more species are listed as threatened or endangered. Every year, more public agencies admit that their approval and monitoring processes for logging are deeply flawed. As the substantial impacts from commercial logging become more widely known, concerned citizens are seeking new legal and legislative solutions. Despite the failures of the forestry certified regulatory programs, CEQA continues to play a significant role in strengthening protection for California's forests.

Thomas N. Lippe is an environmental and land use attorney with offices in San Francisco, California. Mr. Lippe has represented numerous nonprofit environmental organizations and public agencies in environmental cases since 1987, including over forty cases involving timber harvesting.

Matthew Vander Sluis is a staff writer for the Planning and Conservation League Foundation.

CEQA and Farmland Protection

By Ed Thompson

California is by far the number one agricultural producer and exporter in the United States. With 2002 production values exceeding $25 billion, California produced more than Texas and Iowa combined—the nation's second and third agricultural states. California is also the nation's most populous state and the fastest growing. The American Farmland Trust's groundbreaking "Farming on the Edge" report ranks three areas of California among the nation's twenty most threatened farming regions: the Central Valley (1), Central California Coastal Valleys (15) and the Imperial Valley (17). Despite wider public awareness of the issue, conversion of agricultural land to urban development is still occurring at a rapid rate in California.

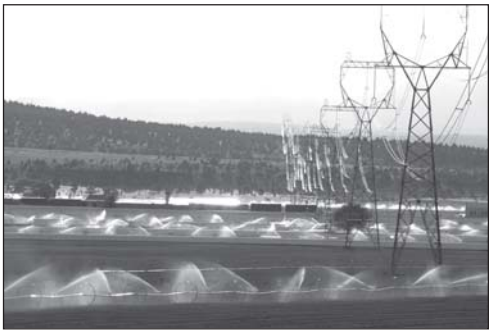
According to a May 2001 report by the Agricultural Issues Center of the University of California, the state lost approximately 500,000 acres of farmland to urban development between 1988 to 1998. As the report states, "Turning that much farmland into developed acres is roughly equivalent to creating three new cities the geographic size of Modesto each year." Or to look at it another way, California has urbanized an agricultural land base over the last ten years equivalent to the size of Orange County.

Recognizing both the economic importance of agricultural lands and the open space and habitat benefits of farm and ranch lands, many cities and counties in California have identified the importance of farmland as a regional and local asset and have goals and policies for farmland preservation stated through their general plans. The loss of prime farmland is often stated as a significant impact when development occurs.

California's Central Valley, Central Coastal Valleys, and Inyo Valley are three of the nation's twenty most threatened farming regions.

The CEQA Guidelines

State CEQA *Guidelines* address farmland conversion impacts directly in two ways. First, cancellation of Williamson Act contracts



for parcels exceeding 100 acres is an action considered to be "of statewide, regional, or area wide significance," and thus subject to CEQA review. Second, Appendix G of the CEQA *Guidelines* states that a project that would "convert prime agricultural land to non-agricultural use or impair the agricultural productivity, would 'normally have a significant effect on the environment.'" Note that in the second case, no set acreage threshold of prime farmland conversion has been determined by case law or regulatory framework which would constitute a significant impact. The Williamson Act has a detailed definition of what constitutes "prime agricultural lands."

Neither CEQA nor the CEQA *Guidelines* provide lead agencies with specific directions concerning the content of, or analytical approaches to be used in, assessing farmland conversion impacts as part of the environmental process. Some local jurisdictions, such as Santa Barbara County, however, have adopted their own CEQA guidelines with numerical thresholds for agricultural land conversion that, if exceeded by a proposed project, would trigger a finding of "significant environmental impact."

CEQA and Farmland Mitigation

A California Court of Appeals recently issued an unpublished opinion concluding that if the environmental impact of a project converting farmland to urban use can not be mitigated below a level of significance, other mitigation measures must still be adopted if they would substantially lessen the

environmental impact of the project. Adopting a statement of overriding consideration does not exempt the local agency from mitigating measures such as the payment of fees for conservation easements to limit future loss of farmland. The name of the case is *South County Citizens for Responsible Growth v. City of Elk Grove, currently unpublished* (3d Dist. Feb. 5, 2004). Since the opinion is currently unpublished it may not be relied upon by other local agencies. There is a request for publication currently pending with the California Supreme Court.

Creative and effective mitigation measures for conversion of important farmland to urban development and other uses have been implemented under CEQA. Potential mitigation measures include:

• Establishing policies and procedures for evaluating the impacts of a project on agriculture and applying these policies consistently to minimize the conversion of prime and important farmland;

• Requiring project proponents to evaluate alternatives and mitigation measures that would direct growth toward less productive agricultural land and minimize the loss of prime and important farmland through higher-efficiency urban land use;

• Requiring project proponents to place an agricultural conservation easement, Farmland Security Zone Contract or other form of long-term reservation on farmland of equivalent quality as a condition of project approval;

• Requiring project proponents to pay a per-acre mitigation fee to be used for the acquisition of agricultural conservation easements or other long-term farmland protection tools on farmland in another location.

As a result of mitigation measures such as those listed above, significant gains have been made in preserving California's agricultural lands. For example:

• The California Energy Commission requires mitigation of farmland at a 1:1 ratio for development of new power plants in California with successful easement projects in San Joaquin and Tulare Counties.

Between 1988 and 1998 California urbanized an agricultural land base equivalent to the size of Orange County.

• Several proposed highway projects in Imperial County, California, will result in hundreds of acres of farmland conversion, including the Brawley Bypass, State Route 111 Realignment, and the State Route 7 Expressway Extension projects. These highway projects are within the territory of the California Transportation Department's (Caltrans) Region 11. Caltrans is developing an overall program to mitigate for this loss of farmland by establishing conservation easements on viable agricultural parcels at an acreage ratio of 1:1.

• The Sierra Club has negotiated several comprehensive farmland mitigation settlement agreements in San Joaquin County that will ensure the availability of millions of dollars for farmland protection to be administered by the new Central Valley Land Trust.

The CEQA process has great potential to provide mitigation of farmland loss. Local organizations can use this tool to protect farmland during the Environmental Impact Report review process if they are aware of the range of potential mitigation practices. It could be especially effective when mitigation is used in conjunction with established local or regional farmland preservation programs. At the moment, however, many lead agencies are still hesitant to require or agree to mitigation and the additional development costs due to the perception that it will place them at a disadvantage when areas compete for economic development. There is a need to strengthen CEQA's farmland protection policies to prevent agencies from "overriding" significant impacts to this state's precious and valuable agricultural resources, while encouraging compact, efficient urban development.

Ed Thompson is the California Director of the American Farmland Trust.

Preserving Agriculture in Orange County

By Kevin K. Johnson and Jared P. Hanson

CEQA has been utilized recently to address the threat that development poses to California's agricultural resources. In particular, areas with important agricultural heritages have been facing increased pressure to convert agricultural property to more economically prosperous uses, such as commercial, industrial, and residential development.

Areas with important agricultural heritages are facing increased pressure to convert land to more economically prosperous uses, such as commercial, industrial, and residential development.

CEQA specifically includes agricultural property as a protected resource. Any significant, adverse impacts to agricultural resources, therefore, must be either avoided or mitigated, if feasible to do so. Potential negative impacts include the conversion of farmland to non-agricultural uses and inconsistency with applicable zoning and planning documents.

Kevin Johnson

The Irvine Company's Spectrum 8 proposal called for the conversion of over 600 acres of Prime Farmland into more than 10,000,000 square feet of general industrial development. The City of Irvine originally approved the project without imposing any mitigation measures whatsoever.

One of the areas in which CEQA has been applied to the conversion of agricultural property is in Orange County, within the sphere of influence of the City of Irvine. In 2000, the Irvine Company sought to convert over 600 acres of prime farmland, the highest classification of agricultural soils, to industrial development. The project, called Spectrum 8, entailed eliminating all agricultural uses on the 730 acre site and replacing it with over 10,000,000 square feet of general industrial and medical/science development.

The City of Irvine and the Irvine Company cooperated in preparing an Environmental Impact Report (EIR) for the project, purporting to analyze the potential mitigation measures for the project's obvious impacts to agricultural resources. Relying upon the circumspect analysis within the EIR, the City of Irvine concluded that no feasible measures existed to mitigate the elimination of agricultural resources. The City, therefore, approved the project pursuant to a Statement of Overriding Considerations without imposing any mitigation measures whatsoever.

Defend the Bay, a non-profit public benefit corporation dedicated to protecting Newport Bay and other public areas from environmental harm, filed suit under CEQA to challenge the EIR and the City's decision to approve the project without mitigating the loss of prime farmland. (*Defend the Bay v. City of Irvine, et al.*, Orange County Superior Court Case No. 01CC07568.)

After exhaustively analyzing the City's and the Irvine Company's

attempt to support the City's decision, the Court concluded that there was absolutely no evidence to support the City's rejection of certain possible mitigation measures. For instance, there was no evidence to support that preserving at least some of the project site for agricultural uses was infeasible. Alternatively, the City might have imposed an agricultural impact fee to mitigate for the elimination of agricultural acreage on the site.

The Court further concluded that the project was inconsistent with the City's General Plan, which had been updated only two years before approval of the Spectrum 8 project. Because of the trend toward urbanization and conversion of agricultural property, the General Plan provided for the preservation of agricultural land uses within the City.

The Court therefore held that the City had failed to comply with the requirements of CEQA, and ordered that the approval of the project be rescinded.

As a result, the City of Irvine and the Irvine Company were forced to return to the table and consider true mitigation measures to address the agricultural impacts. Although the City ultimately concluded that the impacts could not be *fully* mitigated, it did impose mitigation measures that partially lessened the loss of agricultural lands within the City of Irvine.

The City established an Agricultural Legacy Program, which is intended to provide land for small-scale farming operations within the City of Irvine to preserve the historical role agriculture has played in the city. The City committed to preserving at least 300 acres of land within the City for permanent agricultural use. Finally, the City imposed upon the Irvine Company a fee of $100,000 to fund the operation of the program.

Despite overwhelming development pressures, the faithful application of CEQA by the public and the courts has preserved a substantial portion of the City of Irvine's historical agricultural lands and operations.

Accordingly, despite overwhelming development pressures, the large-scale conversion of agricultural property within the City of Irvine has not resulted in the total elimination of the City's historical agricultural land and operations. The faithful application of CEQA by the public and the courts has preserved a substantial portion of these important resources.

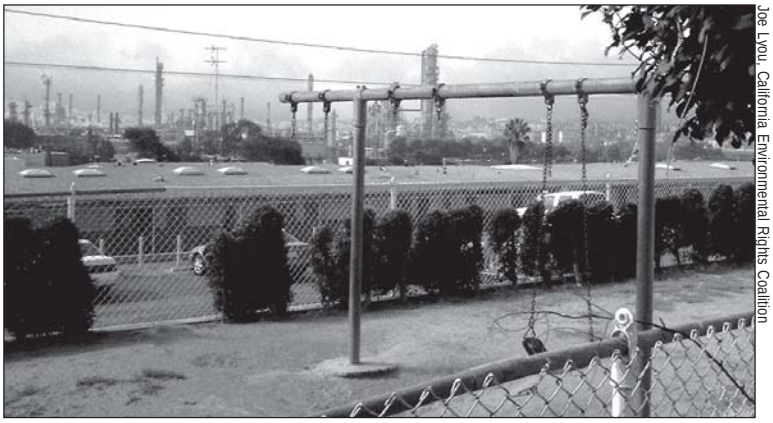
Kevin K. Johnson and Jared P. Hanson are attorneys at Johnson & Hanson, LLP. The firm represented Defend the Bay in this case.

CHAPTER 5
Environmental Justice

See Pg...91

See Pg...92

See Pg...97



Joe Lyou, California Environmental Rights Coalition

View from St. Anthony Catholic School overlooking the Chevron refinery in the town of El Segundo. The refinery is among the largest sources of industrial air pollution in Los Angeles County, with direct impacts on community health. Because of CEQA, Chevron implemented additional measures to reduce emissions affecting the community.

CEQA Promotes Environmental Justice

By Alan Ramo

The environmental justice movement arose out of grassroots resistance to a pervasive pattern of siting the most dangerous, polluting facilities in communities with predominantly low-income residents and minorities. This trend is driven in large part by zoning requirements, low property costs, and the fact that many low-income communities lack the political clout to effectively oppose these projects.

Policies relating to the siting of polluting facilities are facially race neutral. However, in practice they result in low-income communities and communities of color bearing a disproportionate share of the burden of environmental degradation, with direct and sometimes tragic results. The effort to integrate environmental justice concepts into the decision-making process requires recognizing and remediating the disparate impact of these policies on California's most vulnerable communities.

The environmental justice movement, which began to gain momentum at the grassroots level in the mid-1980s, achieved federal recognition through President Clinton's 1994 Executive Order on environmental justice.

Robin Doyno

Residents of Strategic Alliance for a Just Economy (SAJE) march against the loss of affordable housing. Read about SAJE and CEQA on page 44.

This Executive Order established a national policy of addressing disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

California followed suit in 1999, passing its own environmental justice policy. The Legislature declared that Cal-EPA should "conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state."

CEQA, at its heart simply demands that a government agency fully contemplate and disclose the foreseeable consequences of its actions and avoid unnecessary environmental risks. This has turned out to be the primary weapon against environmental injustice in California.

CEQA is unquestionably the most useful legal tool for the environmental justice advocate in California to implement California's environmental justice policy; just as NEPA, CEQA's federal model, is one of the principal legal mechanisms for accomplishing environmental justice at the federal level.

Environmental Justice practitioners have also utilized other laws. For example, an array of pollution specific laws like the Federal Clean Water Act is available. However these laws usually address pollution problems after they have begun. They also systematically fail to address the problem of cumulative impacts and the interaction of social and environmental effects that underlie most environmental justice problems in communities of color.

Unlike NEPA, CEQA does not address environmental justice explicitly. However, CEQA takes direct aim at cumulative impacts, the interaction of physical and social impacts and the need for alternatives that avoid significant impacts. And it does so with a rich set of guidelines and

case law that define how these concepts work in practice.

These CEQA concepts also provide the substantive information that underlies any claim of discrimination under civil rights laws. The alternatives analysis is crucial. Federal civil rights law makes it clear that demonstrating the availability of a nondiscriminatory alternative is a key to rebutting any claim that impacts affecting a particular low-income neighborhood or ethnic or racial group are necessary.

Finally, CEQA supports the environmental justice movement's insight that an environmental decision making process that allows full public participation will more surely avoid injustice. CEQA encourages public hearings. It requires that documents be drafted so that they are useful to the public. CEQA provides that comments and information be available as early as possible and that agencies respond to comments. CEQA ultimately requires that environmental impact reports include a full discussion of environmental impacts, as well as mitigation and alternatives. A court has also required environmental documents to be in the language of those affected by a project, assuring that public disclosure is not mere lip service. All of these requirements provide the basis for a truly informed community.

Other doctrines are coming into the forefront to advance environmental justice, such as the precautionary principle. This principle requires putting the risk upon those seeking to affect the environment and requires a search for alternatives that avoid risks. This approach works hand in hand with CEQA.

Activists using CEQA have achieved victories stopping or mitigating impacts from incinerators, hazardous waste facilities, power plants, port and refinery expansions, and other projects affecting low-income communities and communities of color.

Only CEQA provides that a full environmental review is required if a project "may" cause a significant environmental effect. Only CEQA requires a set of alternatives devoted to avoid significant impacts and prevents a project going forward that cannot mitigate to insignificance. Only CEQA finds that cumulative impacts are significant if a project contributes to such effect even though their individual contribution is insignificant.

Activists using CEQA have achieved victories stopping or mitigating impacts from incinerators, hazardous waste facilities, power plants, port and refinery expansions and other projects affecting low-income communities and communities of color. CEQA, at its heart simply demands that a government agency fully contemplate and disclose the foreseeable consequences of its actions and avoid unnecessary environmental risks. This has turned out to be the primary weapon against environmental injustice in California.

Alan Ramo is a Professor at the Golden Gate University School of Law, and is the Director of the Environmental Law and Justice Clinic.

Editor's Note:

As Professor Ramo points out in this article, CEQA has become the primary weapon for combating environmental injustice in the state of California. In this chapter, we have compiled some of the landmark environmental justice victories in the history of the movement.

But these are by no means the only environmental justice "success stories" you'll find in the pages of our report. From fighting for parks in underserved communities, to ensuring that community well-being is not neglected in the planning and execution of major development projects, to protecting community health in the face of incinerators, ports, mega-dairies, and other industrial facilities, environmental justice issues are central to the CEQA stories found in virtually every chapter of this report.

Hazardous Waste Incinerator in Kettleman City

By Luke Cole

In 1988, Chemical Waste Management, Inc, (Chem Waste) proposed the construction of a toxic waste incinerator 3.5 miles from Kettleman City, a predominantly Latino community of 1,100 residents in Kings County, in California's San Joaquin Valley. Though none knew it at the time, this proposal would spark one of the defining struggles of the early days of the Environmental Justice movement, in which a small farmworker town ultimately used CEQA provisions to take on the largest toxic waste company in the world—and won.

Since the 1970s, Kettleman City has been host to one of the largest toxic waste dumps in the U.S., owned and run by Chemical Waste Management, Inc (Chem Waste). It was built without the community's knowledge or consent. It was not until the early 1980s—after multimillion-dollar environmental fines were levied against the Chem Waste facility—that residents became aware of its existence. At that late date, they saw few ways in which they could challenge the dump. Things changed, however, when they learned of the proposed incinerator.

Perhaps unsurprisingly, the residents of Kettleman City heard about this proposal not from Chem Waste, nor from Kings County or state officials, but from a Greenpeace organizer in San Francisco. They were shocked to learn that the incinerator would burn up to 108,000 tons—216,000,000 pounds—of toxic waste each year. This translates to 5,000 truckloads of waste per year *in addition* to the hundreds already passing through their community daily.

A new community group, El Pueblo para el Aire y Agua Limpio (People for Clean Air and Water), quickly organized and involved itself in the permitting process. However, Kettleman City is 95 percent Latino, with 70 percent speaking Spanish at home, and 40 percent monolingual in Spanish. Thus, language became a critical issue.

> *"I think they thought we would go away. But it was too dangerous to let an incinerator come in here. We had to do something about it."*
>
> **– Mary Lou Mares, KC housewife and leader of El Pueblo.**

When Kings County published a 1,000 page, CEQA-mandated Environmental Impact Report (EIR), city residents urged that the highly technical document be translated into Spanish so they could participate in the environmental review process. The county, however, was unresponsive. After significant pressure, Chem Waste issued a scant, five page executive summary in Spanish.

About 200 Kettleman City residents attended the sole public hearing on the incinerator proposal. Hoping to testify before the Planning Commission, they brought their own translator. However, the Commission refused their request, stating that translation was only allowed in the far back of the room and not during testimony. Residents testified anyway, in Spanish, from the front of the room.

The Planning Commission voted to approve the incinerator, and an appeal of this decision to the Kings County Board of Supervisors also failed. It seemed that the County—already receiving $7 million dollars per year in revenue from Chem Waste's existing dump—had too much to gain from the project. The incinerator promised to almost double the tax revenue that the County received from the toxic waste dump. With the incinerator, the County would have ended up receiving about one-

sixth of its annual revenue from this single company.

Finally, the residents filed a lawsuit under CEQA. The lawsuit ultimately succeeded. The presiding judge ruled that the EIR had not sufficiently analyzed the toxic waste incinerator's impacts on air quality and on agriculture in the San Joaquin Valley. Just as importantly, the judge ruled that the residents of Kettleman City had not been meaningfully included in the permitting process.

> *"The residents of Kettleman City, almost 40 percent of whom were monolingual in Spanish, expressed continuous and strong interest in participating in the CEQA review process for the incinerator project at the Kettleman Hills Facility, just four miles from their own homes. Their meaningful involvement in the CEQA review process was effectively precluded by the absence of Spanish translation."*
>
> **– Judge's ruling in the Kettleman City CEQA suit.**

As the Court eloquently stated, "The residents of Kettleman City, almost 40 percent of whom were monolingual in Spanish, expressed continuous and strong interest in participating in the CEQA review process for the incinerator project at the Kettleman Hills Facility, just four miles from their own homes. Their meaningful involvement in the CEQA review process was effectively precluded by the absence of Spanish translation."

Rather than go back and do the environmental study right, Chem Waste appealed the decision. But by this time, the press had picked up the story and Kettleman City's struggle had become a national struggle, and part of the growing national Environmental Justice Movement. Finally, in September of 1993, Chem Waste announced that it was withdrawing its application. The town's residents had come together to protect the community welfare and, with the aid of the California Environmental Quality Act, had won.

Luke Cole is an environmental justice and civil rights lawyer, and Director of the Center on Race, Poverty & the Environment in San Francisco. Mr. Cole has represented Kettleman City residents in various environmental justice disputes for the past fifteen years, including their successful struggle against the toxic waste incinerator.

Principles of Environmental Justice

Delegates to the First National People of Color Environmental Leadership Summit held in Washington DC in 1991, drafted and adopted 17 principles of Environmental Justice. The first five principles are:

1) **Environmental Justice** affirms the sacredness of Mother Earth, ecological unity and the interdependence of all species, and the right to be free from ecological destruction.

2) **Environmental Justice** demands that public policy be based on mutual respect and justice for all peoples, free from any form of discrimination or bias.

3) **Environmental Justice** mandates the right to ethical, balanced, and responsible uses of land and renewable resources in the interest of a sustainable planet for humans and other living things.

4) **Environmental Justice** calls for universal protection from nuclear testing, extraction, production and disposal of toxic/hazardous wastes and poisons, and nuclear testing that threaten the fundamental right to clean air, land, water, and food.

5) **Environmental Justice** affirms the fundamental right to political, economic, cultural and environmental self-determination of all peoples.

LANCER and the Vernon Incinerator: Protecting Communities from the Projects that "Have to Go Somewhere . . . ."

By Joel R. Reynolds

Los Angeles lies in the dirtiest air basin in the country, with climatic conditions and air inversions that trap air pollution. Thus, Los Angeles would seem an unlikely location for siting large-scale commercial incinerators for the burning of solid waste and toxics. But during the 1980s, that is precisely the proposal that confronted the low income, minority communities of South Central and East Los Angeles.

As an "answer" to the mountains of garbage generated each day by the residents of Los Angeles, the city's Bureau of Sanitation proposed a series of mass burn incinerators, beginning construction in the community of South Central Los Angeles. At almost the same time, California's Department of Health Services was proposing to site the state's first large-scale toxic waste incinerator in the city of Vernon, only blocks from the residential neighborhoods, schools, and churches of East Los Angeles.

In both cases, CEQA was the first and primary, though not exclusive, line of defense for communities in developing and implementing their strategies of opposition.

LANCER and the Concerned Citizens of South Central LA

The Bureau of Sanitation proposed LANCER, an enormous three incinerator, mass-burn complex in the most densely populated and highly polluted area of the city. It would produce or emit nearly 5 million tons of ash—most destined for landfills—of which over 8 million pounds would be spewed into adjacent neighborhoods from its 280 foot main stack, as well as an additional 150,000 pounds of cooling tower particulate matter emissions.

All of its emissions would contain a wide variety of hazardous emissions, including heavy metals, toxic organic compounds, and other carcinogens, totally apart from the air pollution generated by the 600 to 700 garbage truck trips per day to and from the facility. During its design life, the project would consume over 12 billion gallons of water and discharge over 2 billion gallons into the city's already overburdened sewer system.

Meanwhile, city-wide opposition to mass burn incineration continued to grow, fueled by heightened concern about potential health impacts, not just in the surrounding communities but throughout the South Coast Air Basin.

Led by a group called Concerned Citizens of South Central Los Angeles, community residents began to visit City Hall, asking questions, demanding answers, and poring over documents, including the project's Environmental Impact Report (EIR). What they found was disappointing: an environmental review process that understated the potential risks, relied on outdated information, ignored reasonable alternatives, and served as a post hoc rationalization for a decision that appeared already to have been made to proceed with this project because the trash "has to go somewhere . . . ."

Concerned Citizens organized a broad coalition of groups from around the city, including, among others, an activist group in Westwood called Not Yet New York, lawyers at the Center for Law in the Public Interest, and scientific experts at the UCLA School of Public Health. They held rallies, visited city offices, and testified at city hearings, demanding a full and objective analysis of alternatives to mass burn incineration in the heart of their community. And the tide began to turn as the coalition gained strength.

CEQA played a pivotal role by providing an accessible and relatively understandable legal basis for community education, organization, and, ultimately, effective action.

CEQA mandated that an EIR be prepared and made available to the public. Its process incorporated public hearings that served as a focus for community organization and enabled the public to learn about the project and express their views to public officials. And it ultimately provided a right of action in court, should the city decide to proceed with the project.

In this case, litigation proved unnecessary. Faced with new information about the potentially hazardous byproducts of the mass burn incineration process, the city directed that a Supplemental EIR and Health Risk assessment be prepared and circulated. Meanwhile, city-wide opposition to mass burn incineration continued to grow, fueled by heightened concern about potential health impacts, not just in the surrounding communities but throughout the entire South Coast Air Basin.

In the summer of 1987, Mayor Tom Bradley withdrew his support, and LANCER was abandoned. Backing for incineration dissipated, replaced by a renewed resolve to focus seriously on more sustainable alternatives, like recycling. Although their focus had been protecting their own community, Concerned Citizens of South Central Los Angeles created a city-wide movement that changed solid waste disposal policy in LA for decades to come.

The Vernon Incinerator and the Mothers of East Los Angeles

At the same time, incineration was being promoted as a promising alternative for the disposal of toxic waste in California. Leading the way, and proposed by a company called California Thermal Treatment Systems (CTTS), the Vernon Incinerator project would involve two large-scale commercial hazardous waste incinerators, to be constructed in the heart of the South Coast Air basin, in the city of Vernon, within 7,500 feet of homes, schools, churches, hospitals, and food processing facilities. The first of its kind in California, the incinerator would receive, store, and burn a wide variety of hazardous wastes, including solvents, mixed oil, and paint sludge.

As byproducts of incineration, the proposed facility would produce some 19,000 tons per year of ash, dust, and other hazardous waste, all of which would be transported to hazardous waste landfills. The incinerator would continuously emit heated gases at the rate of over 83,000 cubic feet per minute from a 75-foot high, six-foot diameter smokestack. Many of the compounds contained in the gases had been designated by state and federal agencies as toxic air contaminants and proven carcinogens, mutagens, and/or teratogens.

This project generated strong opposition from surrounding community residents, led by the Mothers of East Los Angeles. Remarkably, regulators had allowed the project to proceed without requiring an EIR. Before opponents knew what hit them, the thirty-day statute of limitations under CEQA had expired. With construction permits already issued by the South Coast Air Quality Management District and EPA, and with the support of the California Department of Health Services, and the City of Vernon assured, the project looked unstoppable.

The community, however, refused to give up. Aided by then-Assemblywoman Lucille Roybal Allard and others, they pursued a range of tactics, from protest marches, to legislative and administrative advocacy, to legal action. They recruited lawyers from the Center for Law in the Public Interest and, later, the Western Center for Law and Poverty and the Natural Resources Defense Council (NRDC). Lawsuits were filed under CEQA and NEPA against the Department of Health Services and the U.S. EPA demanding full scale environmental reviews that, in permitting the facility, neither agency had bothered to require.

As the project received more scrutiny, concerns about the health risks it would generate gained traction, including, in particular, significant new information about its potential to generate dioxins and furans too persistent to be destroyed in the burning process. When CTTS applied in 1988 for an extension of its construction permit from the South Coast District, the community opposed it. To the company's surprise, the District, citing the new information, conditioned the extension on the company's agreement to prepare an EIR, incorporate "best available control technology" (BACT), and update its health risk assessment.

When the company challenged the conditions in court, the community intervened on the District's behalf. Although the Superior Court upheld the company's challenge, the Court of Appeal reversed the decision. The company abandoned the project in 1990. Against enormous odds, the Mothers of East Los Angeles had prevailed.

Joel R. Reynolds is a Senior Attorney at the Natural Resources Defense Council and director of its Urban Program. Mr. Reynolds represented Concerned Citizens of South Central Los Angeles and the Mothers of East Los Angeles in their successful opposition to the LANCER and Vernon Incinerator projects.

CEQA: Protecting Communities

By Will Rostov

Communities for a Better Environment (CBE) has been working with people who live in the shadow of industrial facilities for more than 26 years. CBE is a California environmental health and justice nonprofit promoting clean air, clean water, and the development of toxin-free communities. CBE's unique three-part strategy provides grassroots activism, environmental research and legal assistance within low-income communities and communities of color. CBE directly equips residents impacted by industrial pollution with the tools to inform, monitor, and transform their immediate environment.

CBE uses CEQA to help refinery neighbors alleviate the burden of unfair localized pollution. CEQA plays an essential role in CBE's advocacy, because CEQA both informs communities of the environmental impacts that affect them and provides real opportunities for public participation.

CEQA also can inform policy and help stop bad projects. Environmental Impact Report data helped CBE use the Clean Water Act to force 80 to 90 percent cuts in selenium discharge to San Francisco Bay from the Unocal and

Continued on the following page.

ConocoPhillips & Paramount: CEQA and Oil Refinery Expansions

By Richard Drury

ConocoPhillips:

In May 2003, the ConocoPhillips Company proposed to expand its Rodeo Refinery by 10,000 barrels per day and to produce cleaner burning low-sulfur diesel fuel. Production of the new fuel would reduce emissions throughout the State of California, a benefit to all Californians. However, the project would increase emissions in the already polluted community near the refinery due to more extensive refining and increased refinery throughput. This presented a clear environmental justice dilemma.

Contra Costa County issued a Draft Environmental Impact Report (DEIR) under CEQA to analyze the project. Communities for a Better Environment (CBE) and a consortium of five labor unions and their members reviewed the DEIR and proposed additional mitigation measures to reduce the project's impacts.

Expert analysis indicated that the project would increase cancer risk in the surrounding community. Related construction activities would generate high levels of particulate matter and diesel exhaust during project construction. The project would generate significant sulfur-related odor impacts, including significant impacts from the cooling tower and significantly increased emissions from various refinery process units. The experts proposed feasible mitigation measures to reduce each impact.

After extensive proceedings before the County Planning Department, ConocoPhillips, CBE and the unions were able to reach an agreement to implement numerous additional mitigation measures that would reduce the localized impacts of the project while still allowing the project to move forward.

ConocoPhillips agreed to install a high performance drift eliminator on the reactivated cooling tower, which will reduce particulate emissions by over 99 percent. ConocoPhillips also agreed to use ultra-low-sulfur

diesel fuel in construction equipment, which will reduce diesel exhaust emissions dramatically during construction, and to retrofit numerous existing trucks and stationary diesel engines with particulate traps to reduce particulate matter and toxic emissions. The agreement also specified actions to reduce flaring, improve the monitoring system to detect

odor-causing compounds, and to reduce construction noise from pile driving, among other things.

As a result of the CEQA process, the ConocoPhilips refinery will make cleaner burning fuel, will produce more fuel to meet increasing demand, and will do it in a manner that minimizes impacts on the local community.

diesel fuel for sale in California. While the project would result in the production of cleaner burning fuel, it would also result in increased emissions in the local community of Paramount.

CBE and a consortium of five labor unions and their members filed extensive CEQA expert and legal comments identifying the environmental impacts of the project and also proposing feasible mitigation measures to reduce those impacts.

Because of CEQA, the ConocoPhilips refinery will make cleaner burning fuel, will produce more fuel to meet increasing demand, and will do it in a manner that minimizes impacts on the local community.

Paramount:

In late 2003, the South Coast Air Quality Management District (SCAQMD) released a DEIR under CEQA for the Paramount Refinery Reformulated Gas Phase 3 and low-sulfur diesel project.

The Paramount Refinery is located in the City of Paramount near Downey and Bell Flower in Southeast Los Angeles County. The refinery currently processes up to 50,000 barrels per day with a workforce of 180. However, since the refinery's gasoline does not meet state requirements, its products are sold to other refineries for further processing or sold out-of-state. Due to its failure to upgrade, many units of the refinery have been idle since 1997.

The project involved the construction of several new refinery units and modifications to existing units to allow the refinery to produce gasoline and low-sulfur

As a result of the CEQA comments, Paramount agreed to implement numerous additional mitigation measures to reduce impacts on the local community, including: the installation "leakless valves" throughout the refinery; the implementation of measures to reduce construction emissions, such as the use of low-sulfur diesel fuel, particulate traps, and natural gas powered equipment; the implementation of measures to reduce emissions of volatile organic compounds (VOCs) from paints and to reduce refinery flaring; moving certain refinery units away from sensitive receptors such as schools and residences; and others.

Richard Drury is an attorney at Adams Broadwell Joseph & Cardozo. The firm represented construction unions in both refinery proceedings.

Continued from the previous page.

Exxon refineries. CBE used CEQA and the Clean Air Act in a campaign that stopped the reopening of a mothballed refinery in residential neighborhoods of Santa Fe Springs.

In the ConocoPhillips settlement, CBE identified the local environmental effects of the project and ensured that mitigations were put in place. When the Paramount refinery in Los Angeles County wanted to retool, CBE provided CEQA comments and achieved a settlement to reduce emissions and risks to the local community. In 2004, CBE won a lawsuit requiring Chevron to study the cumulative impacts of a project at its Richmond refinery.

In a 2004 CEQA settlement, the Bay Area Air District agreed to analyze pollution reduction rules for five air pollution sources at Bay Area refineries including what might become the first refinery flare control rule in the country. The case was an integral part of multi-year organizing campaign to achieve these rules.

CEQA is so important to CBE's work that when Governor Pete Wilson enacted guidelines designed to weaken CEQA, CBE challenged those guidelines. In 2002, the State Court of Appeal ruled in CBE's favor, reversing most of the guidelines.

Will Rostov is Staff Attorney with Communities for a Better Environment.

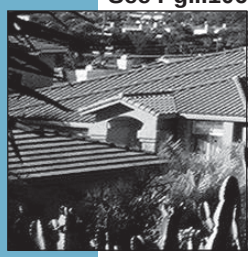
CHAPTER 6
Toxics

See Pg...101

See Pg...102

See Pg...103

See Pg...106



Toxic Substances, CEQA, and the Choices We Make

By Ed Lowrey

Toxic substances surround us. They are in the products we use, the air we breathe, the food and water we drink, and the land upon which we live and work. They get there as intended additives to products, as waste leaching from those products when they are disposed, or as waste byproducts of industrial and other processes.

Choices made during the cleanup of sites polluted with toxic wastes often subject those who will live and work in those sites to real and calculated risks.

It is not hard to understand why CEQA review is warranted and generally accepted for a new factory that will subject us to toxic exposures. Similarly, few would quibble with CEQA review of a facility proposal where hazardous waste is proposed to be treated or stored.

Less accepted, and less common, is the application of CEQA to the cleanup of a site polluted with toxic wastes. After all, a cleanup can only enhance public health and safety, so why subject an environmentally beneficial project to the burden of CEQA review? Based on this logic, the use of categorical exemptions, and indeed, the complete absence of any CEQA review, is commonplace in the site cleanup universe.

Nevertheless, it is in site cleanups where far-reaching and long-lasting choices are made that cry out for CEQA analysis. These choices often foreclose other options and subject those who will live and work in a "cleaned up" site to real and calculated risks. A cleanup is rarely a process of returning a site to a pristine state. Rather than going to the expense of removing all contamination, we engage in a cost-benefit analysis, wherein a site is cleaned to an "intended use," where we select a level of contamination that remains which is considered appropriate for that intended use.

Site cleanups require the sort of far-reaching and long-lasting choices that cry out for CEQA analysis.

Generally, the level of remaining contamination is based on risk to those who will use the site. Toxicologists perform a risk analysis based on the identity of known contaminants, the pathways of exposure to humans, the duration of expected exposure to the likely user, and the effects that exposure will have on people who will live and work at the site. We then select an "acceptable risk." In most cases, the controlling risk is cancer, and an "acceptable risk" can vary from one cancer death per ten thousand people to one death in a million.

In some cases, the fact that treatment will occur can create its own health and environmental risks. For example, trucks transporting contaminated soil expose those in the neighborhood to diesel fumes, noise, and direct contact with

Only CEQA provides the level of public input and environmental inquiry that will hold business and government accountable in a manner that will protect the public and the environment from the short and long term hazards of toxic substances.

inadequately tarped loads of contaminated soil. Or the choice of the particular treatment may create the risk. Thermal treatment systems can vent low levels of toxins to the air, thereby subjecting nearby residents to some additional risk even though a clean site may be the end result. It is not hard to imagine other examples.

The point is that by creating, releasing, and ultimately treating hazardous substances, we present ourselves with far-reaching risks and choices. Only CEQA, or another truly equivalent process, can provide the level of public input and environmental inquiry that will hold business and government accountable in a manner that will protect the public and the environment from the short and long term hazards of toxic substances.

Ed Lowry served as the California Director of Toxic Substances Control from 1999 to 2004.

Rather than removing all contamination, cleanups involve a process of cost-benefit analysis, wherein a site is cleaned to an "intended use." The level of contamination that remains after cleanup is considered appropriate for that intended use.

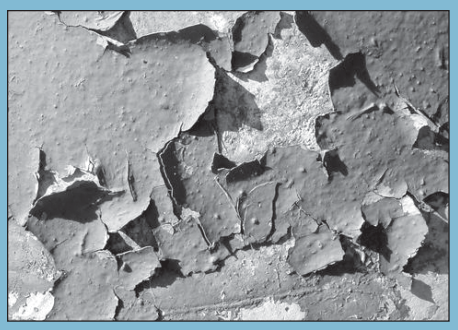
Common Sources of Toxics in California

Oil Refineries

Agricultural Pesticides

Silicon Valley Toxics Coalition

Electronic Waste



Lead Based Paints in Homes Built Before 1978

Labor & the Environment

By Aram Hodess

In 1992, developers proposed a 900 unit residential development in Franklin Canyon, an undeveloped scenic area in Hercules, California. Ignoring overwhelming opposition from the community, environmental and labor groups concerned about the projects impacts on traffic, open space, endangered species, critical habitat and local area working standards, the Hercules City Council unanimously approved the project.

Community, environmental, and labor groups, including Plumbers and Steamfitters Local 159, responded by sponsoring a successful referendum overturning the approval. This success opened a lot of eyes.

For years, the interests of working people and environmentalists have been portrayed as being in essential conflict. Developers and industry have not hesitated to capitalize and encourage the idea that this supposed "conflict" is irresolvable. Frankly, both Labor and environmentalists have contributed to this perception, with labor appearing often more interested in job creation and environmentalists appearing more interested in protecting and increasing open

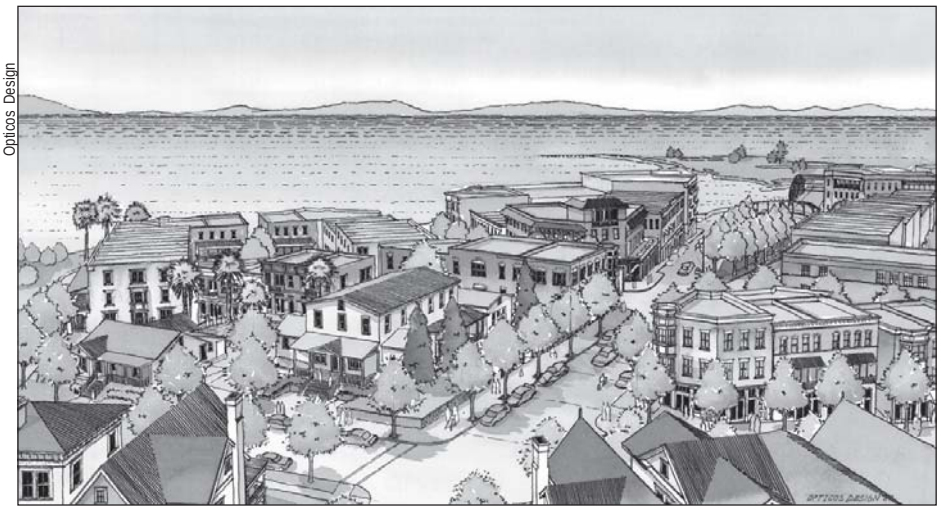
Continued on the following page.

Toxics at **Hercules** **Bayfront** Boulevard

By Richard Drury

In early 2003, the Bixby Company proposed to build a mixed-use commercial/residential development on a formerly contaminated bayfront site in the City of Hercules. The site had been heavily contaminated with lead and other chemicals by the long-defunct gun-powder manufacturer, the Hercules Powder Company.

Optics Design

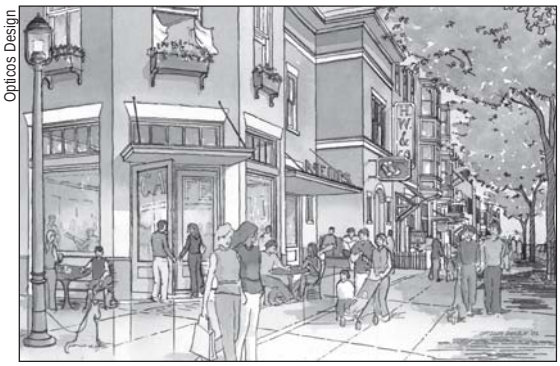


The City of Hercules extends along the San Pablo Bay, just thirty minutes northeast of downtown San Francisco. Today, many of its abandoned brownfield sites are being converted to housing. CEQA has ensured adequate clean-up of toxic materials before construction.

The proposed project appeared to be very beneficial. It would provide a mixed-use "transit village" with up to 123 units, including 39 units of affordable housing, with future access to an Amtrak station and possible ferry service to San Francisco. However, some nearby residents were concerned about the adequacy of the clean-up that had been conducted on the site.

The City of Hercules circulated a Negative Declaration pursuant to CEQA, concluding that the project would not have any significant impacts, other than impacts that were already considered and mitigated through prior CEQA documents prepared for the area.

However, the eight-year-old EIR relied upon by the City was prepared before substantial development projects occurred in the area, including the construction of over 800 residential units on an adjacent property, a Home Depot, and other commercial developments. The old EIR made no consideration of these major projects at all. Clearly, the projects would have cumulative impacts on traffic, air quality, and storm water run-off. In addition, the old EIR did not adequately consider the toxic chemical contamination on the Bayfront site.


Opticos Design

Lead standards had become more than twice as stringent since the original cleanup at the proposed Hercules Transit Village site. In addition, the eight-year-old EIR did not account for major development projects on adjacent properties.

Local residents, together with Plumbers and Steamfitters Local 159, International Brotherhood of Electrical Workers Local 302, and Sheet Metal Workers Local 104, retained legal representation and technical experts to analyze the project's impacts on air, traffic, water quality, and soil contamination.

Extensive legal and expert comments were filed raising concerns about the adequacy of the clean-up. In particular, the experts raised concerns that lead standards had become more than twice as stringent since the site clean-up plan was developed ten years earlier, and that further soil testing was required to determine whether or not residual contamination remained on the site above the new clean-up levels.


KTGY Group

Now that contamination issues have been addressed, construction has begun on the Hercules Transit Village. Each home meets design guidelines to blend-in with Hercules' historic buildings.

After attending several hearings before the Hercules Planning Commission and City Council, the City, the developer, the local residents, and the unions were able to reach an agreement to resolve the issues raised in the CEQA process. This agreement allowed the project to proceed while ensuring that the contamination issues were resolved at the development.

The developer agreed to binding permit conditions to be imposed by the City requiring extensive soil sampling on the site for all of the chemicals of concern. The soil sampling will be conducted by an independent third-party consultant. If the sampling reveals any significant levels of contamination, the developer agrees to implement any and all further site remediation required by the Department of Toxic Substances Control (DTSC).

As part of the agreement, DTSC agreed to review the soil sampling results. As a result of this settlement, the Hercules transit village will be built in a manner that ensures that future residents and construction workers will not be exposed to toxic chemicals.

Richard Drury is an attorney with Adams Broadwell Joseph & Cardozo. Mr. Drury's firm represented the unions and local residents in their 2003 CEQA action.

Continued from the previous page.

space. The 1992 referendum and subsequent experiences taught me that our interests often intersect. By coordinating our efforts, we can encourage good development decisions, benefiting the quality of life of our members, the physical environment, and the communities in which we live.

We understand that environmental advocacy is not limited to the protection of endangered species and open space; working people and poor communities are the most impacted by industrial pollution and poor workplace practices. For example, neither construction workers who work on a project nor the eventual residents of a project should be exposed to toxic chemicals that have contaminated the project soil.

Our coordinated efforts with the community and environmentalists reflect a longer-term view of our self-interest. We've seen how traffic, congestion and overburdened infrastructure can frustrate residents to the point of adopting "no-growth" initiatives. The formation of coalitions with community and environmentalist groups can discourage reckless development proposals. Well-designed projects earn community buy-in and do not sow the seeds for harsh, community sponsored restrictions on development. Our members' livelihoods depend on it, and the entire community benefits from it.

Aram Hodess is the Business Manager of Plumbers and Steamfitters Local 159.

Dow Chemical Plant Expansion

By Will Rostov and Catherine Engberg

In December 2001, the City of Pittsburg approved the construction of a new Dow Chemical pesticide plant without requiring an Environmental Impact Report (EIR). Dow proposed to build the plant at its Pittsburg, California chemical complex, which according to Dow's website is "the largest integrated chemical manufacturing complex of its kind on the west coast." The proposed plant would replace an existing plant that was to be shut down upon project completion. The new plant would triple Dow's production of the toxic pesticide sulfuryl fluoride (SF) to 18 million pounds per year.

The planning commission approved the new plant and found the approval exempt from CEQA, citing the "replacement or reconstruction" exemption. Communities for a Better Environment (CBE) appealed the exemption to the City Council. Four months later, the City issued a *Notice of Intent to Adopt a Mitigated Negative Declaration* and noticed a public hearing before the City Council.

At the hearing and in a lengthy comment letter, CBE argued that the construction of a new pesticide plant required the preparation of an EIR. CBE's lead scientist raised serious concerns about the dramatic increase in use of hydrofluoric acid (HF) and chlorine, two of the constituents of SF. Both chemicals can be deadly on human contact, and HF in particular is one of the most dangerous chemicals known to science. A staff scientist from the Pesticide Action Network North America (PANNA) raised issues regarding the hazards of SF. A third expert analyzed air quality impacts.

Despite clear evidence of potential hazards to workers and community members from increased SF production, and despite corresponding air pollution, noise, traffic, and other cumulative impacts, the City Council approved the project. Further, they disregarded city code provisions requiring a conditional use permit for the plant expansion.

The agreement required Dow to fund two additional projects in the amount of $500,000 each. These projects will benefit public health and the environment in the region, and farm worker safety in California.

CBE and PANNA sued the City for both failing to prepare an EIR under CEQA and for failing to require a conditional use permit under its Municipal Code. The City and Dow quickly came to the negotiating table. Following extensive settlement negotiations, mediated by State Senator Tom Torlakson of Contra Costa County, the parties reached a creative settlement agreement and entered into a consent judgment in July 2003.

The settlement required Dow to hire an independent consultant, agreed to by all parties, to analyze in detail the air quality and hazard impacts of the project, and to develop mandatory mitigation measures for these impacts. The consultant proposed over thirty new measures, designed to reduce emissions and minimize accidental releases during plant operation, which Dow has agreed to incorporate into its final project design. In addition, Dow consented to a 25 percent reduction of certain air emissions from 2001 levels by the end of 2006.

The settlement also required increased public disclosure of Dow's internal SF monitoring studies, performed to determine the health and environmental effects of the pesticide. Dow will provide a number of these studies to the Department of Pesticide Regulation and to the general public for use in setting appropriate health standards.

The City of Pittsburg agreed to retain outside CEQA counsel to train City planning staff on the CEQA process and to establish a list of qualified CEQA consultants.

Finally, the agreement required Dow to fund two additional environmental projects in the amount of $500,000 each, for a total of $1,000,000. To be administered by the nonprofit San Francisco and East Bay Community Foundations, these projects will benefit public health and the environment in the Pittsburg/Antioch area, and farm worker safety in California.

Will Rostov is Staff Attorney with Communities for a Better Environment.

Catherine Engberg, an associate attorney at Shute Mihaly &Weinberger, represented PANNA in this case.

Pesticides Discovered in the Soil at Site of Future San Diego Homes

By Kevin K. Johnson and Jared P. Hanson

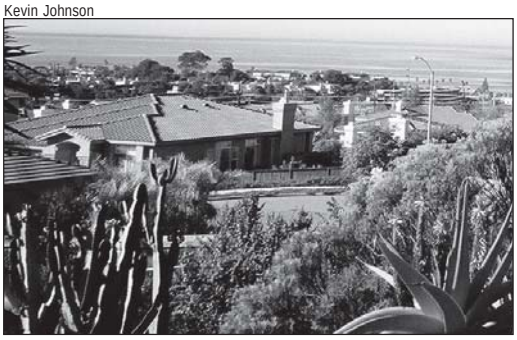
One of the more unique and most important features of CEQA is its ability to require project applicants and lead agencies to take a meaningful second look at the methods used by consultants in evaluating possible environmental impacts. In the case of a proposed forty unit subdivision on land used for decades for greenhouse operations, the future residents ended up with a big win from a public health standpoint.

The City of Encinitas, in North County San Diego, is called the "Flower Capital of the World" based on a rich history of greenhouse and field agriculture. When a respected flower grower decided to sell his land for development the buyer/builder faced a friendly reception at City Hall. The initial studies on the project resulted in a staff recommendation that the applicant proceed by way of a Negative Declaration.

The project site was immediately west of and adjacent to Quail Botanical Gardens, a twenty-seven acre public park known for its rare and endangered plant species. The park is visited annually by approximately 120,000 visitors from around the U.S. and the world.

When initially approached about the proposed subdivision, representatives of the Quail Botanical Gardens Foundation requested that consideration be given to a number of potential impacts, including the spectacular ocean views from the Gardens. The Foundation even offered to take any excess dirt from the planned cut and fill operation on the property.

Kevin Johnson



View from Quail Botanical Gardens. Families in these homes would have been exposed to toxic chemicals on a daily basis if not for CEQA.

As the project then proceeded through the Negative Declaration process a number of concerns came into focus, including view and noise impacts, impacts on the park's indigenous wildlife, and concerns that the dirt from the property might be contaminated.

Thanks to CEQA, forty families living next to Quail Botanical Gardens can garden, dig, and play in yards free of DDT and other toxic compounds.

A close review of the limited soil study revealed that the soil samples were not taken in a random manner. One area, where chemicals like DDT and Toxaphene were mixed for decades, was not even sampled.

It was noted in public testimony that greenhouses in particular had historically used large quantities of chemicals now known to be toxic to the environment and public health.

The applicant and its soils consultant insisted to the City Council that the sampling methodology was trustworthy. In spite of a variety of impacts that the Foundation and the public felt were not being adequately mitigated, and in spite of calls for a full Environmental Impact Report (EIR), the Council approved the forty unit subdivision.

The Foundation and concerned community members took the City to court. In 1994, the Fourth Appellate District Court of Appeal reversed the Superior Court's decision and ordered the City to perform a full EIR. (*Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597.)

Subsequent, random soil testing resulted in the finding that the levels of toxic chemicals in the ground constituted unacceptable risks to human health. The applicant was directed by the City to remove the contaminated soils before it began construction of single family homes.

Today, thanks to CEQA, forty families live in the subdivision next to Quail Botanical Gardens where they can garden, dig, and play in yards free from silent exposure to DDT and other toxic compounds.

Kevin K. Johnson and Jared P. Hanson are attorneys at Johnson & Hanson, LLP. The firm represented Quail Botanical Gardens Foundation, Inc. in this case.

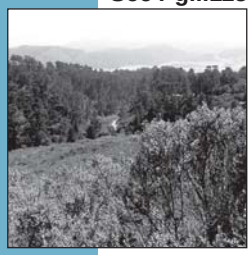
CHAPTER 7
Infrastructure

See Pg...109

See Pg...111

See Pg...113

See Pg...115



CEQA AND LARGE-SCALE INFRASTRUCTURE PROJECTS

By Felicia Marcus

Of all of the projects to which CEQA applies, perhaps none have as much potential to completely change the environment and future patterns of development as large scale infrastructure projects. For example, the proposed high speed rail system linking the Bay Area with Southern California could have dramatic and irreversible effects on communities and the environment in the Central Valley, and statewide. Such projects call for particularly robust environmental review.

In addition, most large infrastructure projects receive massive investments of public dollars. Construction companies, lobbyists, and professional engineers tend to be the primary stakeholders paying attention at all stages of project development and populating the decision-makers' offices, counters, and hearing rooms. Public policy decisions affecting such vast expenditures of public dollars are rarely purely engineering decisions. This is another reason why CEQA, with its requirements of alternatives analysis, public hearings, and materials written in such a manner that it is useful and understandable to decision-makers and the public, is an essential tool that has resulted in far better expenditures of public dollars than could possibly have happened otherwise.

While various land use and environmental requirements apply to large scale infrastructure projects, they are largely met through scattered processes in front of different agencies, or even in front of different agencies within a given jurisdiction. Some of these processes may require public hearing in front of a local board, and others are simply applications at a counter. The CEQA process provides an organizing framework for stakeholders and members of the public to participate in decision-making despite the complexity of these many different processes. Even just the requirement of corralling all of the issues into one readable document makes an enormous difference in accessibility to the public.

When public agencies take full advantage of the benefits of CEQA rather then going through the motions, the result is better projects for the public's dollar and, in many cases, avoidance of significant avoidable harms.

Some project proponents consider CEQA to be a tortuous device designed to slow all good things down. Others view CEQA as a beautiful thing that can lead to a more perfect world, or at least more perfect projects. Naturally, neither view holds true all the time, but in my view, the latter argument is stronger. CEQA has provided project proponents, government agen-cies, and the public with a vehicle for better decision-making on public projects. When public agencies take full advantage of the benefits of CEQA rather then merely going through the motions, the result is better projects for the public's dollar and, in many cases, avoidance of significant avoidable harms.

The actual cause of the "CEQA is a burden" view has to do as much with attitude as anything. If project proponents and/or public agencies view CEQA as a hurdle to be gotten over, and if they pad thick documents with boilerplate and spend little time constructing the document as a useful tool for decision-makers and the public, then they both fail to gain the advantages of CEQA, and they become more vulnerable to challenge and delays.

In contrast, when one approaches CEQA with the intent of developing the best possible project through the interactive and iterative process required by the law, it provides a fabulous tool for improving projects and gaining public support—all of which is the correct thing to do when spending scarce public dollars. For example, the Public Works Department of the City of Los Angeles took this approach in the early 1990s, doing shorter and clearer environmental documents with the clear intention of engaging the public, listening to their concerns, and changing projects accordingly. As a result, they were able to do better projects with more community buy-in and less litigation than had happened previously.

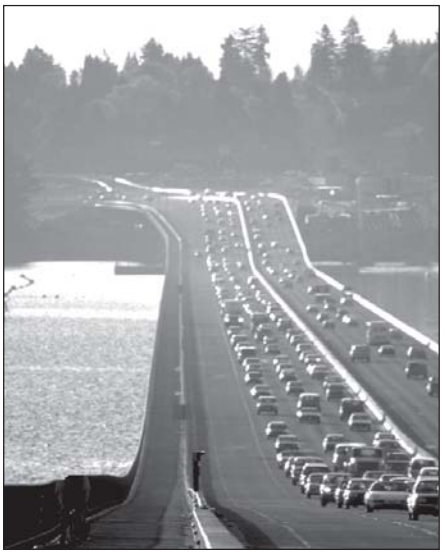
Examples of CEQA improving projects from my experience as President of the Board of Public Works for the City of Los Angeles include the expansion of the Tillman Water Reclamation Plant in the San Fernando Valley, the massive upgrade of the Hyperion Treatment Plant adjacent to El Segundo, and the limited expansion of the City's Lopez Canyon Landfill, the sole landfill owned and controlled by the City of LA. In each case, we found that by listening to the public and crafting projects and project alternatives to be fair and responsive to community concerns, we developed better projects that were accepted by the community. On more than one occasion, we went from encountering a roomful of angry opponents at the Draft EIR stage, to a final approval meeting with residents showing up to say thank you.

Some of the many benefits of the CEQA process include:

• **Getting good information and ideas from public comments:** "We came up with alternatives I'd never considered before…." In a complex project it is difficult to think of everything. Members of the public frequently have expertise or experience that weren't necessarily part of the project team itself (e.g., knowing about a species, the habitual use of an alignment that wasn't necessarily available on GIS maps, the importance of a given landscape to a community).

• **Getting input from the public about what is important to a particular community:** for example, parks and open space, a particular vista, a route that schoolchildren are fond of, historic and cultural uses of property, air quality or noise impacts, and cumulative impacts. As noted earlier, good public policy is not a purely engineering decision when dealing with scarce public dollars. Identifying these community concerns allows for the integration of elements into a project that achieves multiple community benefits.

By crafting projects and project alternatives that were fair and responsive to community concerns, we developed better projects that were accepted by the community.



• **Getting community buy-in for the chosen project.** Listening to the public, responding respectfully to comments, and giving them due consideration has a value all its own and is good public policy, as is having readable and useful environmental documents. With a "bad" document, one can easily end up with an angry community that is convinced that the project proponent has something to hide and has hidden it intentionally.

The examples that follow illustrate some of the ways in which CEQA has led to better large-scale infrastructure projects. The results speak for themselves, clearly illustrating the importance of commitment to environmental review and the public process.

Felicia Marcus is the Executive Vice-President and Chief Operating Officer for the Trust for Public Land. Ms. Marcus served as Regional Administrator of the U. S. EPA Region IX and as President of the Board of Public Works for the City of Los Angeles during a time of massive infrastructure investment. Ms. Marcus also has an extensive background as a private sector and public interest lawyer, litigating under CEQA and other statutes.

NEW DIRECTIONS:
CEQA & the Century Freeway

By Carlyle W. Hall, Jr.

As originally planned, the ten-lane Century Freeway—envisioned as the most expensive freeway, mile-for-mile, ever to be built—would run seventeen miles south from the Los Angeles International Airport. Routed through South Central Los Angeles and other areas comprising the most impoverished, heavily minority areas of the Los Angeles Metropolitan Region, the behemoth freeway would destroy fully 8,250 low and moderate income housing units and would uproot more than 21,000 people.

Seeking an end to Caltrans' "freeway mentality" of the fifties and sixties and thinking there must be a better way, lawyers from the Center for Law in the Public Interest (CLIPI) launched their CEQA/NEPA litigation (*Kieth v. Volpe*) against the Century Freeway in early 1971. CLIPI's lawyers alleged that Caltrans officials had moved ahead in planning the freeway without fully evaluating the overall transportation needs of the region and without analyzing the effects of their plan on air pollution. No consideration had been given to alternative means of moving people through and between these communities. Although thousands of affordable housing units would be removed and tens of thousands of individuals displaced, no comprehensive plan had been prepared for relocating these people.

To underscore the "environmental justice" roots of the litigation, CLIPI's lawyers organized a unique plaintiff's coalition, which included both environmental (the Sierra Club and Environmental Defense Fund) and civil rights (the NAACP) groups. Alleging discrimination in the choice of the freeway's path, they even threw in a claim for relief under the Fourteenth Amendment of the United States Constitution.

Century Housing

The freeway was reduced from ten to eight lanes, with two dedicated to HOVs, and included plans for the "Green Line" light rail route. It also provided for the replenishment of lost affordable housing, displacement assistance, and set hiring goals for minority and female workers.

Within months, then Federal District Judge Harry Pregerson issued an injunction prohibiting further site acquisition or any freeway construction until adequate Environmental Impact Reports were prepared under CEQA and NEPA. Some five years later in 1977, the draft environmental studies were released. The studies revealed the depth of the housing and transportation planning problems associated with construction of the freeway, and helped convince state and federal freeway planners that fundamental changes in the freeway's purpose and design were appropriate.

At that point, CLIPI's lawyers proposed that a cooperative, rather than confrontational, approach be taken. In 1979, a far-reaching settlement was announced. The US Secretary of Transportation called it "a precedent for the rest of the United States." An LA Times editorial proclaimed that the Settlement's "real meaning" is that "the good old ways are gone."

• The landmark settlement reduced the freeway's size from ten to eight lanes, with two of the eight lanes dedicated to high occupancy vehicles. Within the freeway median, the "Green Line" light rail route was designed to become the start of Los Angeles' still-growing Metro system, for the first time

providing lower income residents within the project impact area with public transit access to jobs in more affluent areas.

• The settlement also established employment-hiring goals for minority and women workers in order to provide them with access to the freeway's more than 20,000 jobs. By the time construction ended with the freeway's opening in 1993, a pre-apprenticeship job-training program had trained thousands of entry-level minorities and women. Caltrans' hiring of minorities had more than doubled what it was for any other freeway in Caltrans history, and its hiring of women was many times what it was anywhere else. The settlement's minority and women business enterprise goals also ensured that hundreds of millions of dollars in freeway contracts went to MBE/WBE enterprises.

• The settlement provided hundreds of millions of dollars to replenish the affordable housing supply lost to freeway construction. Approximately halfway through the expenditure of these funds, the housing program was privatized in order to increase its efficiency. The funding will subsidize 8,500 units, effectively replacing the affordable units initially destroyed to make way for the freeway.

• Approximately three-quarters of the 21,000 people displaced as a result of freeway acquisitions were assisted by the Office of the Corridor Advocate, a service organization established to assist Century Freeway displaces in obtaining their full acquisition and relocation benefits under state and federal law.

When he was elevated to the Ninth Circuit, Judge Pregerson took the Century Freeway case with him, and it is now believed to be the oldest case on the federal docket west of the Mississippi River. Although the Century Freeway opened in 1993, the consent decree is still on-going as new affordable housing units continue to be built by the privatized program, now called the Century Housing Corporation.

According to the US Secretary of Transportation, the Century Freeway CEQA settlement set "a precedent for the rest of the United States."

The Century Freeway case has brought enormous social and monetary benefits to the Los Angeles community. It also enabled the Caltrans freeway-planning establishment to rethink the basic purpose and design of the Los Angeles freeway system, and, for the first time, it prompted them to view freeway planning within the greater framework of mass transit options.

Carlyle W. Hall Jr. is a Partner at Akin Gump Strauss Hauer & Feld. Mr. Hall represented the plaintiffs in this case.

The Century Freeway Project cut directly through whole neighborhoods, forcing over 21,000 people to relocate. CEQA ensured that these people had substantial relocation assistance.

The CEQA settlement required that developments like Hawthorne Terrace (above) be built to replace affordable housing lost to freeway construction.

The CEQA settlement set hiring goals for female and minority workers, ensuring that they had fair access to the project's more than 20,000 new jobs.

The Century Freeway Pre-Apprenticeship Training Program was established to help train thousands of minority and female workers.

Photos from *In Our Path*, © Jeff Gates 1982-2005.
For more visit: http://outtacontext.com/iop

Improving Public Transit:
The San Francisco Ferry Expansion Plan

By Stuart Flashman

Ferries are unquestionably a pleasant and romantic means of travel especially compared with driving in rush-hour traffic. Further, ferries are a major transportation mode in the Puget Sound/Seattle area, and there was some hope that expanded ferry service in the Bay Area could reduce congestion on Bay Area bridges. The question was whether this could be done without causing undue environmental harm in the San Francisco Bay Area.

In 1999, the Legislature created the San Francisco Bay Area Water Transit Authority (WTA) to plan the expansion of ferry service for San Francisco Bay. The WTA released an ambitious plan to extend ferry service as far south as Moffett Field, as far north as Port Sonoma, and as far east as Antioch. The Draft Environmental Impact Report (DEIR) appeared to gloss over many of the project's potential impacts.

The first issue that arose was air quality. Ferries, like most large ships, use diesel engines, and conventional diesel engines create a lot of pollution. Bluewater Network quickly raised this issue with the WTA and after numerous consultations, public hearings, and support from air quality officials convinced the new agency to set an air emissions standard for the new fleet that would dramatically reduce the ferries' output of pollutants. The new standard would prevent degradation of the region's air quality by requiring the new engines ten times cleaner than today's, and 85 percent more stringent than new federal standards for ferry engines that will go into effect in 2007. This groundbreaking new standard was set and the major air quality problem addressed by the time the Final EIR was released. Other environmental problems needed similar attention.

The San Francisco Ferry Expansion Project is a prime example of how, with a cooperative public agency, the CEQA process can result in a better and environmentally superior project.

The Sierra Club and Golden Gate Audubon Society raised concerns about the wildlife impacts of some of the extensions, particularly from dredging in the shallower and narrower regions of the Bay where waterfowl tend to nest and to congregate during migration. Both organizations were also concerned about impacts from a proposed ferry terminal within the newly-created Eastshore State Park. Finally, the Sierra Club wanted to ensure that the ferry expansion would not be at the expense of other public transit initiatives, such as expanding rail and express bus service. The two environmental groups submitted extensive

Bay Area Water Transit Authority

Through the CEQA process, the Bluewater Network won assurance that advanced pollution control technologies will be used to make new ferry engines ten times cleaner. The project was also altered to address concerns about potential wildlife impacts.

comments on the DEIR, documenting the evidence of major impacts. Behind the letter was the threat of litigation.

The WTA took the EIR comments seriously. It initiated a series of meetings with Sierra Club and Audubon to address their concerns. As a result of these meetings, the WTA agreed to revise the scope of its preferred alternative to eliminate the most problematic routes. It also expanded its discussion of project impacts and identified additional mitigation measures.

A revised DEIR was reissued and recirculated for a second round of comments. This time, the environmental analysis was more thorough in the DEIR, and the responses to the second round of comments confirmed that the Project would address and mitigate its potentially significant impacts and was not intended to displace other transit improvement projects. The final EIR was certified, and significantly, no litigation was filed to challenge the project or its EIR.

The Ferry Expansion Project is a prime example of how, with a cooperative public agency, the CEQA process can result in a better and environmentally superior project even without litigation.

Stuart Flashman is an environmental and land use attorney with a solo practice in Oakland, California. Mr. Flashman represented the Sierra Club and Golden Gate Audubon Society in their involvement with the ferry expansion project.

Protecting California's Small Towns: The Somis INTERSECTION Widening

Much of California has been designed around the freeway. Like the towns along the famous Route 66, California cities have bloomed along the wide ribbons of asphalt that have been carved across the state. Along with new freeways, road widenings and new intersections often presage a boom in development. In Ventura County, one small town used CEQA to make sure that Caltrans examined these impacts if it decided to widen an intersection in their town as part of a highway expansion project.

Caltrans had long considered a plan to widen a fourteen mile section of Highway 118, stretching from Highway 232 in Saticoy to Tierra Rejada Road in the City of Moorpark. The plan included widening the approaches of the Route 118/Route 34/Donlon Road intersection in the town of Somis from two to six lanes.

In 2000, Caltrans decided to move forward with the 118/34/Donlon Road intersection project. However, when the environmental review team examined the intersection project, they considered the intersection in isolation from the larger route 118 widening proposal. After a cursory review, they declared that there would be no significant impact and approved the intersection project.

In response, a community group called "Save our Somis" challenged the Caltrans approval in court. With help from a traffic expert, they pointed out that intersection must be examined in the context of the larger highway expansion and how the expanded intersection would attract more traffic to the area and induce more growth. They demonstrated that additional traffic would increase noise levels and air pollution for nearby residents. They also showed that the intersection project would result in the loss of Monarch butterfly habitat and agricultural land. These impacts together spelled disaster for the rural character of Somis, a town with just under 3,000 residents.

The Court ruled in favor of Save Our Somis and directed Caltrans to set aside its approval of the project. The Court confirmed that CEQA establishes a very low threshold for initial preparation of an Environmental Impact Report (EIR) whenever a "fair argument" can be made that there may be a significant impact on the environment. They directed Caltrans to conduct an EIR that would address the concerns that Save our Somis had raised, examining the environmental effects of the intersection *together with* the Route 118 widening project instead of segmenting the full road widening plan into smaller sections.

Caltrans is no longer proposing this intersection project, but, if it resurfaces, it is likely that Caltrans will recognize the need to address significant impacts on the town of Somis and other towns along Highway 118.

Written by PCLF staff.

Hatton Canyon SAVED from UNNECESSARY Freeway

By Rachel Hooper

Just east of Scenic Highway 1, near the seaside town of Carmel-by-the-Sea, lies Hatton Canyon, an undeveloped canyon prized by the local community for its breathtaking views, remarkable ecological diversity, and the recreation opportunities it offers. Home to a perennial stream and one of the last remaining genetically pure Monterey Pine forests in California, the 160 acre canyon and right-of-way area was acquired by the state's Department of Parks and Recreation in 2001 with the intention of creating Hatton Canyon State Park. This brought to a close the decades-long struggle over the future of this natural treasure, ensuring that the wetland, forest, unique wildlife habitat and watershed corridor would be preserved for future generations as permanently protected open space.

Kenneth L. Gray

A view from the north end of Hatton Canyon, soon to become a state park. The dark trees in the midground are one of the last remaining genetically pure Monterey Pine forests in California.

Were it not for the open environmental review required by CEQA and NEPA (the National Environmental Policy Act), and the Sisyphusian efforts of the Hatton Canyon Coalition and its partners, Hatton Canyon would today be home to an entirely different creature-the unnecessary Hatton County Freeway. Initially proposed in 1956, during the heyday of big budget freeway projects, and long before the enactment of CEQA, the Hatton Canyon Freeway was revived in the early 1980's by the California Department of Transportation (Caltrans) as a way to alleviate congestion on the two-plus mile section of Highway 1 adjacent the canyon. When Caltrans, in conjunction with the Federal Highway Administration (FWHA), approved the three mile long, $48 million dollar freeway project in 1986, it sparked a legal battle that only recently ended in victory for the Coalition, its partners, local environmentalists, and the greater community at-large.

The Hatton Canyon Coalition and its partners, the Monterey Peninsula Regional Park District, the City of Carmel-by-the-Sea, and the Sierra Club (Ventana Chapter), collectively known as the Hatton Canyon Consortium, alerted Caltrans and the FHWA that the environmental review for the project did not comply with the requirements of CEQA or NEPA.

The Environmental Impact Statement / Environmental Impact Report (EIS/EIR) did not explain, for example, how a wetlands mitigation plan that relied upon polluted freeway runoff for irrigation of replacement wetlands could "fully" mitigate the destruction of pristine wetlands. Agencies and members of the public likewise questioned Caltrans' conclusion that the planting of seedlings could fully compensate for the planned removal of over 7,000 mature Monterey Pines, a unique species. The EIS/EIR failed not only to identify effective mitigation measures for its myriad impacts, but also to include a proper range of project alternatives. To make the latter argument, the Hatton Canyon Coalition hired an independent engineering firm, which demonstrated that widening the existing highway to four lanes could provide nearly the same level of service at a fraction of the financial cost and none of the environmental cost.

The Consortium also worked hard to ensure that the state and federal agencies responsible for the protection of natural resources were fully informed of the Hatton Canyon Freeway's threat to the environment. Ultimately, the Army Corps of Engineers, the U.S. Fish & Wildlife Service, and the California Department of Fish and Game all agreed that the EIS/EIR both

understated the severity of project impacts and failed to document its conclusions.

Rather than reconsider the adequacy of their environmental review, the state and federal transportation agencies rushed through their decisions to approve the freeway. In January of 1992, the Hatton Canyon Consortium filed suit, alleging that the agencies had violated both CEQA and NEPA.

The ensuing litigation followed a course of dramatic twists and turns. In 1996, the Court of Appeal for the Ninth Circuit ruled that the EIS/EIR failed to properly analyze impacts to wetlands and Monterey Pines, failed to assess cumulative impacts on biological resources, and failed to analyze all reasonable alternatives. But the court inexplicably vacated this decision a year later, after the transportation agencies filed a petition for a rehearing, and issued a new ruling that reversed its earlier decision in most respects. The new ruling, however, did maintain that the EIS/EIR's analysis of cumulative biological impacts appeared to violate CEQA and NEPA requirements and remanded the matter to the district court. Finally, in July of 1998, the district court invalidated the EIS/EIR, vacated Caltrans' and the FHWA's respective decisions to approve the Hatton Canyon Freeway, and enjoined construction of the freeway until CEQA and NEPA requirements were satisfied.

Meanwhile, the political winds of fate were changing for the Hatton Canyon Freeway. A newly elected Salinas City Councilperson sympathetic to Hatton Canyon was appointed to the Transportation Agency for Monterey County (TAMC) Board of Directors in 2001. Her weighted "no" vote for local TAMC funding for the freeway effectively killed the project by redirecting local HCF funding to a different highway project. The TAMC Board then directed its staff to consider improvements along the existing Highway 1 alignment. Caltrans' staff was soon directed to begin implementing the improvements, which included adding a new "climbing lane" to the highway.

Thanks to CEQA and its practitioners, Hatton Canyon and its intrinsic natural environmental values are now protected as permanent open space, and an unnecessary and environmentally damaging freeway project was averted.

Kenneth L. Gray

Carmel Valley residents have valued the canyon for its ecological diversity and recreational activities. When the freeway proposal was resurrected in 1986, they united to defend their local treasure.

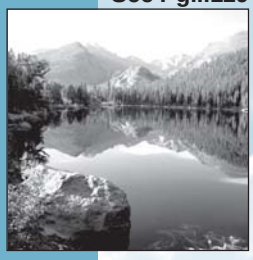
These improvements were subsequently challenged on CEQA grounds in court by the parties supporting the freeway, but the challenges were dismissed. Caltrans has now implemented most of the improvements, which have successfully alleviated the congestion problem. As the Hatton Canyon Coalition had argued from the beginning, it simply was not necessary to build an environmentally destructive freeway in order to solve the traffic woes in the Carmel area.

In Sacramento, Jeff Morales, Governor Davis' Director for Caltrans, took a softer position on the freeway and worked with Fred Keeley, then speaker pro tem of the State Assembly, to sell the freeway right-of-way. Mr. Keeley subsequently acquired $2.75 million to purchase the property and facilitated the transfer of ownership to the Department of Parks and Recreation. Thanks to CEQA and its practitioners, Hatton Canyon and its intrinsic natural environmental values are now protected as permanent open space and an unnecessary and environmentally damaging freeway project was stopped.

Rachel Hooper is a partner at Shute Mihaly & Weinberger. Ms. Hooper represented the Consortium at all stages of the Hatton Canyon litigation.

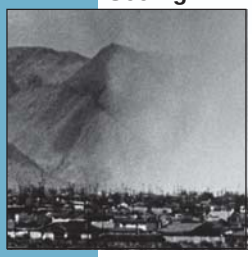
CHAPTER 8
Water Policy

See Pg...119

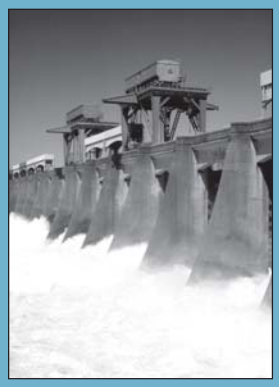


See Pg...121

See Pg...127



See Pg...129



Thomas L. Taylor

CEQA Redefines California WATER LAW

By Antonio Rossmann

The State Constitution and Water Code declare that California's water is a public resource to be dedicated to public use. For more than a century, however, California water law was defined by private parties litigating their competing proprietary claims in one-dimensional judicial contests. Often the courts would eloquently introduce public policy concerns into their resolution of these private disputes, but more often maximum "development" of the resource formed the guiding judicial criterion. Even our magnificent constitutional mandate for "reasonable use" and "conservation" originated to promote more appropriation of water resources to private interests for accompanying economic expansion.

Enactment of CEQA enabled California water law to break free of its proprietary shackles, and, for the first time, allowed environmental considerations to influence and even determine water allocations. This history began in 1972 when Inyo County, owning no water rights and burdened by Los Angeles' ownership of virtually the entire Owens Valley floor, engaged CEQA to challenge Los Angeles' assertion of its "legally-protected" ownership of groundwater rights (see pg. 127).

The city's water bureaucracy gave short shrift to the high desert valley whose government and citizens owned no water rights—after all, Los Angeles had bought out the valley deliberately to eliminate competing claimants. But the Sacramento Court of Appeal found in CEQA the means to force environmental accountability on the Department of Water and Power—and ultimately replace a single owner's control with joint management of the Owens Valley water by both Inyo and Los Angeles. A young environmental law essentially reversed the outcome of the West's most celebrated water war.

The latest and equally dramatic chapter in CEQA's history is being written by our own Planning and Conservation League, again asserting only an environmental public interest to challenge the proprietary prerogative of the holders of entitlement to the State Water Project. In its 1995 CEQA case against the Department of Water Resources (DWR) and the principal state water contractors (see pg. 121 and 123), PCL was motivated by its exclusion and that of other members of the public from the contractors' secret negotiations to restructure the water project that belongs to the people of California. Representatives of the public were excluded because they technically did not have a contractual right to the water.

What began as a modest CEQA challenge to DWR's failure to write the Environmental Impact Report (EIR) on its own project was transformed by

the Sacramento Court of Appeal in 2000 into the first authoritative declaration that the State would have to live within a water project only half that promoted, and a mandate to employ realistic assessments of water availability in land use decisions. Buoyed by the court's courageous declaration of reality, the Legislature responded with mandates that henceforth all major land-use decisions be preceded by proof of reliable water availability.

But CEQA's influence on our water resources has not only resulted from contested cases. As our state and local governments have discovered long ago, CEQA can become a powerful engine of advocacy for public initiatives to improve the environment. My favorite example is Mono Lake—not the celebrated public trust case decided by the Supreme Court in 1983, but the far-less-publicized 1994 decision of the State Water Board to enter the orders that actually put water back into the lake (see pg. 125). What made

Enactment of CEQA enabled California water law to break free of its proprietary shackles.

that decision possible, in both process and substance, was the transparent preparation of an exemplary EIR by the State Water Board staff. The process brought all interested parties to the table and to the hearing room; the substance answered the hard technical questions of how to fulfill the Supreme Court's mandate for a decision that protected the lake and its wildlife while also accounting for the legitimate needs of Los Angeles water consumers.

As CEQA now enters its middle age, its qualifications to frame and influence the governance of our water resources are well-established. Given that existing fresh water resources have been rededicated to their natural use to protect the environments of the Delta, Mono Lake, and Owens Valley, while population continues to grow, CEQA must now rise to a challenge as great as any in its first third of a century: guiding the State in redistributing our consumable supplies to urban demands while protecting our agricultural economy and rural culture and the environment. Employed by progressive leaders to shape the public regulation of this great reallocation, CEQA can secure the state's water future in the 21st century.

I invite you to read the CEQA stories that follow. You'll find examples of CEQA protecting our water supply and cleaning up polluted waters. Because of California's unique reliance on groundwater, we've included a special section on protecting the quantity and quality of this essential resource. Enjoy.

Antonio Rossmann has practiced CEQA law since the early 1970s, has taught at the University of California, Berkeley (Boalt Hall) and other California law schools since 1980, and has served on the PCL board for over twenty years. Mr. Rossmann served as special counsel for 21 years to Inyo County, addressing Owens Valley water issues, and as lead counsel for PCL in the PCL v. DWR *litigation.*

Norm Fiette

Kenneth Gates, USFWS

CEQA Protects Water Supply Reliability

By Roger B. Moore

The close and sometimes tortured relationship between water and land development has been a hallmark of California history since the state's inception. Yet until recently, the prevailing approach to that relationship was founded in a virtual secular faith in the ability of water to follow development wherever it may occur. Reinforcing that "Field of Dreams" approach to water supply reliability—"if you build it, the water will come"—the state's major water providers often responded with an unyielding optimism best captured by the familiar line from speeches of former Department of Water Resources Director Harvey Banks that "we must build now and ask questions later."

These declarations of faith helped shape much of California during the twentieth century. But they stood on a collision course with California's political, environmental, and hydrologic realities at the turn of the new millennium, which found the state's major water projects, many of its groundwater basins, and the Sacramento / San Joaquin Delta overextended and facing an unsustainable future. A series of challenges, ranging from the pressures of expanding population to the onset of climate change, have raised critical questions about the sustainable use of water and left the next generation of Californians with an urgent need to understand that which their forefathers simply assumed.

CEQA has been indispensable to recent efforts in California to move from faith-based development to an approach grounded in a more realistic appraisal of available water. Recent CEQA decisions and legislative changes have begun to usher in a new sense of realism about the reliability of water supplies. Once a footnote in CEQA jurisprudence, water supply reliability has now emerged as a central theme. Assessments of the water supply available to support development decisions are germane to a wide range of CEQA issues, including the assessment and mitigation of environmental impacts, the analysis of growth inducement, the framing of the "no project" and project alternatives, and the definition of the appropriate lead agency.

A handful of CEQA decisions in the late twentieth century foreshadowed the transition toward greater realism in assessments of water supporting land uses. Inadequate water supply assessments led courts to demand a more rigorous environmental review of projects ranging from a major Kern County development in the late 1970s to an Orange County mine in the 1980s. A mid-1990s court decision prevented Stanislaus County from approving a twenty-five year residential development project based upon present assessment of only just five years of water. In these CEQA cases, decision-makers were required to assess the environmental consequences of providing all water needed for the project, as well as the infrastructure needed to supply that water.

But even after California experienced prolonged drought in the late 1980s and early 1990s, the state's historic tendency to base development decisions on wishful thinking about water proved remarkably resilient. A dispute during the 1990s between the East Bay Municipal Utility District (EBMUD) and Contra Costa County over water supplies to support the controversial Dougherty Valley development project, although eventually settled, left little doubt that the reliability of California's water supplies closely related to statewide debates over sprawl and sustainable development. Researchers at EBMUD identified more than a hundred communities throughout California that had barely considered, or even ignored, water supply issues in approving new development.

These lingering questions, linking California's future in land and water, set the stage for the 2000 Sacramento appellate ruling in *Planning and Conservation League v. Department of Water Resources*

(DWR). After years of drought, Californians faced the grim reality that the State Water Project, which supplies some water to more than two-thirds of California's population, has historically been able to deliver only half or less of its total "entitlements" to water. Agricultural and urban water contractors disputed enforcement of the provision that would have required those entitlements to be brought in line with existing supplies based upon the system's long-term inability to meet full entitlement levels. Rather than making that adjustment, DWR met secretly with a select group of contractors in Monterey, California. The resulting "Monterey Agreement" gave rise to the most drastic contractual restructuring in the State Water Project's forty-five year history. Among other major contract revisions, it deleted the permanent shortage provision.

After five years of litigation, the *PCL* decision vindicated the role of CEQA in requiring responsible and accountable discussions of water reliability. The court affirmed that DWR, as CEQA "lead agency," must conduct the programmatic study of these amendments and could not delegate that task to a local agency. It also held that the permanent shortage provision could not be eliminated without DWR first studying the consequences of its enforcement. The court spoke bluntly about the "huge gap" between entitlements and existing supplies, connecting its holding to the risk of land-use planning decisions grounded in "paper water" rather than real, deliverable water. "Paper water," the court noted, was "always an illusion," steeped in the "unfulfilled dreams" of a water culture that had fostered an inflated expectation of what could be reliably delivered.

Three developments since the *PCL* decision have bolstered hope for a new era of water realism. First, the settlement agreement in the *PCL* case deletes the term "entitlement" from key contract provisions, requires new statewide programmatic study, and requires biennial DWR reliability reports. Second, courts following *PCL* have invoked CEQA against the approval of sprawl development north of Los Angeles due to faulty reliance upon "paper water." Lastly, key legislative reforms have tightened the required nexus between water supply and development approval. These include SB 221, which requires land use agencies to verify a "sufficient water supply" before approving subdivisions exceeding 500 units; and SB 610, which requires water utilities to prepare detailed water supply assessments supporting local land use agencies' CEQA documents, and strengthens the state's Urban Water Management Plan law. These improvements are hardly a panacea against the powerful currents that marginalized the role of water in land use decisions for more than a century. But taken together, they offer promise that California's development future, unlike its past, will no longer rest on articles of faith.

Roger B. Moore is a partner at Rossmann & Moore, LLP. Mr. Moore has represented public and non-profit entities in a wide variety of cases involving CEQA, water allocation, water quality, and environmental accountability, including the landmark "Monterey Amendments" litigation and negotiations framing a later settlement agreement.

Toward Collaborative Water Supply Planning: **SB 221**

By Randele Kanouse

Historically, collaboration has been the exception rather than the rule between California's water utilities and local planning departments, leading to unsubstantiated claims of available water and poor planning decisions. SB 221 begins to reverse this trend, ensuring that water utility and city and county planners emerge from their isolated bunkers and plan together to meet future water needs.

SB 221 modifies one of the most important areas of water supply policy, the approval process for new subdivision maps. It requires that city or county determinations regarding the sufficiency of water supplies to meet local growth needs must be based on evidence in the record and verified by the water utility. This statute makes the city or county a partner in integrating land use planning with water supply considerations, and ensures that the water utility and city/county closely collaborate in order to render the joint findings to support subdivision map approval.

The jury is still out on whether SB 221 has improved planning by changing the "bunker mentality." We hope it will usher in a new era of collaborative planning for California's scarce water supplies.

Randele Kanouse is Special Assistant to the General Manager of the East Bay Municipal Utility District.

Planning and Conservation League v. Department of Water Resources:

Putting a Stop to Paper Water

By Antonio Rossmann

The California State Water Project, approved in 1960, is one of the largest publicly-funded infrastructure projects in the world, diverting millions of gallons of water to the Bay Area, the San Joaquin Valley, the Tulare Basin, and metropolitan Southern California. It has been the focus of some of the most contentious and far-reaching water policy decisions in California.

The so-called "Monterey Amendments" to the 1960 State Water Project had been negotiated in secret in 1995 by the Department of Water Resources (DWR) and a handful of the most influential contractors.

In 2000, the Sacramento Court of Appeal set aside the Environmental Impact Report (EIR) prepared to justify the so-called "Monterey Amendments" to the 1960 State Water Project, which had been negotiated in secret in 1995 by the Department of Water Resources (DWR) and a handful of the most influential contractors. *PCL* not only led to reassessment of the State Water Project with the public and environmental community at the table, but laid the foundation for realistic water-to-land-use planning statewide.

The *PCL* decision condemned the failure of the EIR to recognize the reality that the State Water Project will not be built out as anticipated in 1960 and that, because of this, its "entitlements represent nothing more than hopes, expectations, water futures, or as the parties refer to them, 'paper water.'" Of equal importance, the court connected this error to the greater risk of statewide land-use decisions based on the false expectation that the State Water Project will ultimately deliver twice as much water; that land-use decisions would be based upon paper entitlements and not actual supplies.

PCL can be seen as signaling the passage of CEQA into the ranks of fully mature statutes that frame our modern legal culture, comparable to the

Norm Flette

Constructed as part of the State Water Project, the California Aqueduct runs 444 miles, stretching from the San Francisco Bay Delta to Lake Perris in Riverside County.

The Monterey Amendments, which proposed sweeping changes to the 1960 State Water Project contracts, were drafted behind closed doors. The EIR was conducted by a single local agency with no ability to analyze the dramatic, statewide implications of the Agreements.

The original contracts required proportional reductions in so-called water "entitlements" if the State became chronically unable to deliver originally-anticipated amounts. The Monterey Amendments eliminated this safety plan, promoting the illusion that the state could divert, on average, twice or more the level of historic deliveries from Northern California rivers.

The original contracts required the State to prioritize the water needs of urban populations during temporary shortages, cutting back first on agricultural deliveries. The Amendments eliminated this.

The Amendments also gave a state-owned groundwater storage facility to the largest agricultural water contractor. This facility had received $70 million in public funds.

In *PCL v. DWR*, the Court required the state to prepare a new EIR. Through CEQA, the public will be able to examine the reasoning behind proposed changes and suggest better ways for the state to plan for droughts, manage state-owned facilities, and protect California's water resources.

Written by PCLF Staff.

Norm Flette

The "Monterey Amendments" gave rise to the most drastic contractual restructuring in the State Water Project's (SWP) forty-five year history. Among its principles was the deletion of a key provision of SWP contracts which addressed permanent water shortages in the State Water Project, further obscuring the ecological limits of California's water resources.

securities acts or antitrust laws. In natural resources administration, *PCL* marks the end of paper dreams and the restoration of reality to water and land-use planning assumptions. As many editorials proclaimed in response to the decision, finally someone in authority spoke the unspeakable truth-that the State Water Project has reached its limit. The decision not only spares communities from unsustainable development; in the end it spares the watersheds and Delta from destructive demands backed by a population created on false expectations.

By its pragmatic and realistic assessment of the State Water Project through the lens of CEQA, the Court of Appeal provoked an historic restructuring of that project and empowered a competent but historically disenfranchised public. Under a comprehensive settlement hammered out with DWR after more than two years of negotiation, the state water contracts have been amended to eliminate the misnomer "entitlement" and to require empirically-based assessments of project reliability. A "Monterey Plus" EIR is being prepared by DWR with PCL and others as advisors, which will attempt to determine how the project can be operated to improve the environment statewide.

The *PCL v. DWR* decision can be seen as signaling the passage of CEQA into the ranks of fully mature statutes that frame our modern legal culture, comparable to the securities acts or antitrust laws.

Antonio Rossmann has practiced CEQA law since the early 1970s, has taught at the University of California, Berkeley (Boalt Hall) and other California law schools since 1980, and has served on the PCL board for over twenty years. Mr. Rossmann served as lead counsel for PCL in the PCL v. DWR *litigation.*

Land Use Decisions after *PCL v. DWR*:

SCOPE & NEWHALL RANCH

By Lynne Plambeck

Months after the appellate ruling in *PCL v. DWR*, the Santa Clarita Organization for Planning the Environment (SCOPE) challenged Los Angeles County's review and approval of the Newhall Land and Farming Company's West Creek project, an extensive residential and commercial development proposed for the Santa Clarita Valley. A 2003 appellate ruling agreed with SCOPE that the Environmental Impact Report's (EIR) water supply assessment failed to satisfy CEQA because it relied heavily upon paper "entitlements" in calculating the total available water supply, and disregarded the inability of State Water Project facilities to deliver that amount.

The decision closely followed the reasoning of *PCL v. DWR*, concluding that "[t]he dream of water entitlements from the incomplete State Water Project (SWP) is no substitute for the reality of actual water the SWP can deliver." The court decertified the project EIR and required a new report on water supply consistent with the *PCL* and *SCOPE* decisions. This confirmed that *PCL* will have an important "on the ground" effect, forcing local governments to face real-world constraints on deliveries in assessing water supplies for new development.

Lynne Plambeck is president of Santa Clarita Organization for Planning and the Environment, an elected Board Member of Newhall County Water District and a small business owner.

CEQA and the RESTORATION of MONO LAKE

By Richard Roos-Collins

In the Mono Lake Cases, the State of California Water Resources Control Board limited municipal water rights in order to preserve and restore Mono Lake and its tributary streams. Decision 1631 (1994) ended more than fifteen years of litigation in federal and state courts over the novel legal issue: may the Water Board reopen valid water rights under authority of the public trust doctrine, and if so, how should municipal water supply be protected along with environmental quality? The Water Board prepared an Environmental Impact Report (EIR) under CEQA, and that systematic factual analysis of alternatives helped drive the Water Board's eventual decision.

In 1940, Los Angeles Department of Water and Power (LADWP) applied to the Water Board and obtained permits to divert waters from four streams tributary to Mono Lake, a desert lake just east of Yosemite National Park. Since local streams and aquifers were inadequate for the rapidly growing population of the Los Angeles Basin, LADWP looked several hundred miles north to the Owens and Mono Basins, rural areas with abundant waters and sparse populations, for additional supply. Though the Water Board found that the requested diversions—which would exceed natural stream flows in most months—would damage environmental quality, it regretfully issued the permits. Since municipal water supply is the highest and best use of water recognized under the State Constitution and Water Code, it concluded that it did not have any authority to require mitigation (such as a minimum flow release) in the face of LADWP's legitimate needs. LADWP rapidly completed the storage and diversion system on these streams, as well as the Los Angeles Aqueduct to deliver these waters to the Los Angeles Basin. In 1974, these permits became licenses, which are vested water rights. As a result of these diversions, the streams lost their flows in most months, along with their fisheries and riparian vegetation; and the lake declined more than forty-five feet in elevation.

Mono Lake Committee

The water levels in Mono Lake declined more than forty-five feet after the LA Department of Water and Power began diversions. Streams lost their flows in most months, along with their fisheries and riparian vegetation.

In 1979, the Mono Lake Committee sued against LADWP to compel water releases into Mono Lake. It cited the public trust doctrine. This common law had originated in Imperial Rome, been adopted in England during its Roman occupation, then migrated to our Colonies along with the English settlers before the Declaration of Independence. The common law, which now applies in all fifty states, generally provides that a State must protect fishing, navigation, and commerce on navigable waters as a public trust. In 1983 the California Supreme Court held for the first time that the Water Board must consider the public trust before issuing water rights—and indeed may reopen rights issued without such consideration—and must protect the trust uses to the extent feasible consistent with municipal water supply and other beneficial uses. California Trout and the Mono Lake Committee then successfully brought other cases under the Fish and Game Code, seeking similar results for protection of the non-navigable tributary streams. In 1989, the Court of Appeal ordered the Water Board to amend LADWP's water rights to protect Mono Lake and its tributaries to comply with all applicable laws.

The hearing lasted forty days, one of the longest in the history of the Water Board. More than 125 experts testified, and the parties submitted more than 1,000 exhibits. The hearing record alone fills several filing cabinets. The EIR addressed a multitude of factual disputes framed but not necessarily

resolved by this partisan evidence. In sum, the EIR answered the question: what is the most feasible means to restore Mono Lake while protecting LADWP's reliable and economical water supply?

The State Water Board prepared the EIR in a collaborative manner. It convened technical advisory groups to frame issues and sort through the library of scientific and other studies compiled since the Mono Lake Cases began. All parties participated in some way in these groups. To prepare the actual EIR, the Water Board engaged and supervised a consulting firm, under a contract paid-for by LADWP. The consultant undertook new studies as necessary to supplement the existing information.

The resulting EIR is a systematic analysis of how LADWP's diversions had lowered the lake level and degraded environmental conditions that had existed in the Mono Basin in 1940. It predicted that the trend will continue, in the absence of amendment to water rights. The analysis differentiated impacts by resource, including migratory waterfowl, trout, brine shrimp, and air quality. More importantly, it evaluated a series of alternative scenarios for lake level: how much should the lake rise towards its pre-1940 condition, which was elevation 6,417 Mean Sea Level (MSL)? These scenarios assumed increasingly strict limitations on LADWP's diversions. The EIR evaluated the municipal impacts of these alternatives—what is the incremental risk of supply shortage, taking into account all of LADWP's sources?—and the feasibility of replacement supply, such as reclamation of municipal wastewater.

The final EIR recommended the alternative lake level of 6,392 MSL which, over the long term, will permit LADWP to divert roughly twenty-five percent of the waters controlled by the 1940 permits, using feasible alternative sources to make-up the supply deficit. Decision 1631 adopted that recommendation. No party appealed, ending the Mono Lake Cases. The EIR was critical to persuading LADWP and other parties and, more importantly, the affected public that the State had diligently studied the problem and found the best balance of protection both of municipal water supply and the public trust. Today, Mono Lake and its streams are returning to good condition.

Mono Lake Committee

Through the CEQA process, the State was able to find the best balance of protection both of the municipal water supply and the public trust.

Richard Roos-Collins is Senior Staff Attorney for the Natural Heritage Institute. Mr. Roos-Collins was trial counsel for California Trout in the Mono Lake cases.

Frances Spivy-Weber became Executive Director of the Mono Lake Committee in 1997, after the State Water Board's decision to require LADWP to restore Mono Lake. She and the Mono Lake Committee staff and Board knew that a decision, even one as dramatic as D1631, was a beginning, not an end. The Committee, she maintains, must focus on future challenges:

"LADWP will need decades to carry out the restoration plan developed after the Water Board decision. The Committee's on-the-ground presence at Mono Lake is critical for monitoring the decision and raising red flags, when necessary."

Fran is active in statewide water policy decisions promoting programs that will stretch California's water supplies to meet urban, agricultural, and environmental needs. "Already, LADWP replaces the water it is using to restore Mono Lake with water conservation and recycling. My highest priority is to enhance these programs statewide so there can be more 'Mono Lake / Los Angeles' success stories."

Sam Wasson is a long-time resident of the Owens Valley:

"I remember as a child visiting my Uncle in Keeler. This would have been the forties, just after World War II. Keeler was sort of a mining town then, of about 100 people, right next to the Owens Lake bed. The wind would whip dust in all directions as the storms moved in, creating huge, billowing clouds of white dust. 'The Keeler Fog,' that's what people called it. The dust would get in your hair and clothes, sinuses, everything. At times you couldn't see more than 100 feet.

"The dust was just something you accepted. Everyone knew water was being diverted, but what could they do about it? However, in the fifties and sixties, people started getting more environmentally conscious. And in the eighties there were real concerns about the health effects of PM10, arsenic, cadmium, and boron particles. As people became more aware, they wanted something done. We're talking about 60,000 people, in Inyo and Kern counties.

"Since the City of Los Angeles accepted responsibility for the problem, over 80 percent of the emissive lakebed areas have been mitigated using a combination of shallow flood irrigation and experimental farming. And the Keeler

Continued on the following page.

Los Angeles & the Owens Valley:
CEQA Rewrites Water History

By Antonio Rossmann and Theodore Schade

In the late 1800s, Owens Lake was one of the largest natural lakes in California. With a surface area of more than 110 square miles and an average depth of twenty to thirty feet, Owens Lake supported two steamships transporting silver ingots from the mines in the Inyo Mountains destined for the growing city and port of Los Angeles. With regard to wildlife, an early settler reports that the lake was once "alive with wild fowl, from the swift flying Teel to the honker goose…. Ducks were by the square mile, millions of them. When they rose in flight, the roar of their wings…could be heard on the mountain top at Cerro Gordo, ten miles away…."

But, the fate of Owens Lake was sealed in 1913 when the City of Los Angeles completed construction of the Los Angeles Aqueduct. This marvel of modern engineering intercepted the Eastern Sierra snowmelt that previously kept Owens Lake full and diverted the water south 223 miles to the growing City of Los Angeles. By the mid-1920s, Owens Lake had all but disappeared. The lake became a lifeless, hypersaline brine pool that, depending on rainfall, varies in size from zero to about forty square miles.

Owens Lake is the largest single source of air pollution in the U.S. in terms of total tons of air pollutants emitted per year and in terms of the levels of standard exceedances.

With the lake nearly gone, over sixty square miles of saline lake bed was suddenly exposed, resulting in dust storms of fine salt and soil particles that truly have to be seen to be believed. The largest dust storms in the U.S. occur at Owens Lake. Owens Lake is the largest single source of air pollution in the United States in terms of total tons of air pollutants emitted per year and in terms of the levels of standard exceedances.

Fortunately, a CEQA suit filed in 1972 has begun to change all that, though it took more than a quarter-century of litigation. The day after the *Friends of Mammoth* decision, Inyo County District Attorney Frank Fowles woke up to learn that there was a California Environmental Quality Act, and that it required an Environmental Impact Report (EIR) before carrying out an environmentally-threatening project.

Frank began to wonder if that law might apply to Los Angeles' groundwater pumping in the Owens Valley, which had been expanding since the Second Los Angeles Aqueduct was placed in use in June 1970, and whose impact on the valley was now being discerned. On November 15, 1972, nine days after Mammoth's finality, Frank walked next door from his office in the Inyo

County Courthouse and filed *County of Inyo v. Yorty* (later *County of Inyo v. City of Los Angeles*).

This suit would ultimately result in six published and a few unpublished opinions before its dismissal 25 years later. Los Angeles was required to prepare an EIR. The court declared its power to enjoin groundwater pumping—even though LA's water rights remained unchallenged—required for the first time that the EIR prepared actually be reviewed for adequacy, demanded that the city adopt mandatory water conservation for the first time in its history, and rejected LA's EIR's not once but twice because contrived project descriptions (while not concealing environmental impacts) evaded a choice between increased groundwater pumping in Inyo and constitutionally-preferred water conservation in Los Angeles. Finally, the court authorized the parties to experiment with joint decision-making and assessment, but not in derogation of the larger public's right to an adequate EIR that lays the foundation for meaningful mitigation.

In discharging its writ in 1997, the court of appeal signaled its satisfaction with these legal requirements of CEQA, and brought into force the permanent water management plan whereby Inyo and Los Angeles jointly decide the annual allocation of the Owens Valley's water resources, and whereby Los Angeles has committed to mitigation of past impacts that will include the rewatering of the Owens River for the first time since 1913.

In 1998, the City of Los Angeles and the Great Basin Air Pollution Control District entered into an historic agreement that provides for the dust problem to be solved by 2006. Los Angeles has finally acknowledged that the air pollution from Owens Lake is caused by their water diversions and the city has begun a costly and enormous undertaking to solve the problem.

In the first three quarters of the twentieth century, Owens Valley had come to symbolize deceit, colonialism, and exploitation. By the judicial enforcement of CEQA in *Inyo*, in the last quarter of the century the Owens Valley came to stand for integrity and honesty in public decisions, self-determination by the people of Inyo, water conservation in Los Angeles, and ultimately joint city-county governance of the valley's water resources to reclaim their environment. The promise of CEQA in this case is best summed up in an old battle cry redefined as a positive mandate: "Remember the Owens Valley!"

Antonio Rossmann has practiced CEQA law since the early 1970s, has taught at the University of California, Berkeley (Boalt Hall) and other California law schools since 1980, and has served on the PCL board for over twenty years. Mr. Rossmann served as special counsel for 21 years to Inyo County, addressing Owens Valley water issues.

Theodore Schade is a civil engineer and Air Pollution Control Officer at the Great Basin Air Pollution Control District in Bishop, California. Mr. Schade has worked on the dust problems at Owens and Mono Lakes since 1990.

Continued from the previous page.

Fog—the dust plumes that used to stretch over the lakebed and beyond—is gone.

"The great thing about CEQA is that the stakeholders are involved and informed from the beginning. It promotes the consideration of alternatives that often end up being both cost-effective and better for the environment. Having participated in the commenting process, I've seen how diverse interests can come together to shape a solution that is better for everyone.

"CEQA is about the big picture, about looking at a project from all perspectives. The Owens Lake dust mitigation measures were simply better because issues of land use, air and water quality, and the environment were considered together."

Sam Wasson, worked for the LA Dept. of Water and Power for 36 years, retiring as a Transmission and Distribution Superintendent. Since settling permanently in Keeler, CA, Mr. Wasson has been an active participant in several regional issues. He is also currently a member of the Inyo County Planning Commission.

Theodore Schade

A dust storm originating in the Owens Lake bed strikes the town of Inyokern, approximately fifty miles south.

FROM GRIDLOCK TO AGREEMENT:
The Sacramento Water Forum Story

By Curtis E. Alling

Contention, conflict, and court cases typified the Sacramento region's water supply decisions in the two decades prior to the 1990s. Recognizing that substantial growth was planned over the next thirty years and that water supply decision-making had reached gridlock, a diverse group of business and agricultural leaders, citizens groups, environmentalists, water managers, and local governments created the *Water Forum* to develop a long-term, regional, water supply plan that considered all these stakeholders' needs. This group devoted tens of thousands of hours researching the causes of the gridlock, agreeing on the principles to guide development of a regional solution, and negotiating the *Water Forum Agreement*, which was successfully adopted in 2000 and still guides regional water supply decisions today. The agreement was founded upon the co-equal objectives of "providing a reliable and safe water supply for the region's economic health and planned development to the year 2030 and preserving the fishery, wildlife, recreational, and aesthetic values of the Lower American River," a riverine jewel in the heart of Sacramento.

Recognizing that substantial growth was planned over the next thirty years and that water supply decision-making had reached gridlock, a diverse group of business and agricultural leaders, citizens groups, environmentalists, water managers, and local governments created the *Water Forum* to develop a long-term, regional, water supply plan.

Integration of CEQA into the Stakeholder Process

The stakeholders making up the *Water Forum* included citizen groups and environmentalists, who represented important public constituencies that watched over the region's natural resources, and water managers and local governments, who are CEQA lead agencies responsible for approving land use developments and the water supply projects supporting them. Representatives of business and developers, who must pay for the CEQA documents prepared by lead agencies for their projects, were also fully involved. While a legal argument could have been made that the *Water Forum Agreement* was not a "project" under CEQA, all supported the premise that it would be treated as a project, and an Environmental Impact Report (EIR) would be prepared along with the agreement. Integrating the CEQA process into the *Water Forum Agreement* negotiations proved to be invaluable in accomplishing the objective of reaching a regional water supply agreement.

Sacramento Water Forum

The Sacramento Water Forum's Stakeholders Group used the CEQA process to develop a long-term regional water supply plan that considered the needs of all involved parties.

A Program EIR was initiated in August 1995, while the stakeholder process was concluding its research phase and beginning to define its guiding principles, well before the agreement began to take shape. The EIR's impact assessment and public review process were fully interwoven with the agreement negotiation process, yet CEQA's independence

was purposefully maintained by prohibiting "negotiation" of environmental issues addressed and impact conclusions determined. The Notice of Preparation and EIR scoping helped advise the public about the *Water Forum* process and sought input on key environmental issues. Preliminary environmental impact findings helped guide development of elements to preserve the American River's resources. The Draft EIR was released for public review in early 1999 along with a draft of the *Water Forum Agreement*, providing the primary vehicle for public review of the draft solution. The Final EIR was certified later that year by the County of Sacramento and City of Sacramento, serving as co-lead agencies with staff support by the City-County Office of Metropolitan Water Planning.

Values CEQA Brought to the *Water Forum Agreement*

CEQA played several distinctly different, but consistently valuable, roles in the development of the agreement, as viewed by the various stakeholders.

Environmentalists sought preparation of an EIR, as a condition of their participation in the stakeholder process, to help provide assurances that measures protecting the Lower American River and other sensitive resources would indeed be implemented. The EIR enabled the consequences of the water supply plan to be fully scrutinized by the public. It also determined mitigation commitments to protect resources that were incorporated as conditions of approval of the agreement and included in a CEQA-required, Mitigation Monitoring and Reporting Program, formally adopted by the co-lead agencies.

Business interests and water managers needed certainty that projects consistent with the agreement would not be subject to the repetitive environmental documents, so that the safe and reliable water supply objective could be more economically achieved. The Program EIR developed a fully comprehensive cumulative impact analysis of the entire Central Valley Project and State Water Project and a detailed alternatives analysis. While individual projects necessarily have their own CEQA reviews, this approach was intended to streamline the later environmental reviews of water projects by providing the opportunity to rely on the EIR's cumulative impact and alternatives analyses, an incentive for projects to be developed consistently with the *Water Forum Agreement.*

Integrating the CEQA process into the *Water Forum Agreement* negotiations proved to be invaluable in accomplishing the objective of reaching a regional water supply agreement.

For the City and County co-lead agencies, as well as State responsible and trustee agencies that must approve later permits for water supply projects, the EIR's technical analysis, conducted iteratively with formulation of agreement elements, provided critical environmental information and mitigation options as input to stakeholder discussions and feedback about effects of potential agreement features. Temperature and fishery impact models helped define in-stream flow requirements and dam release schedules. Biological impact assessment led to formulation of the agreement's Habitat Management Element in which habitat mitigation commitments were defined. Water recreation impact assessment helped determine how to reduce and compensate for Folsom Reservoir boating impacts from changing reservoir levels. Without the iterative understanding of impacts and mitigation provided by the fully integrated EIR evaluations, the agreement could have been turned on its head late in the process by unanticipated environmental impacts.

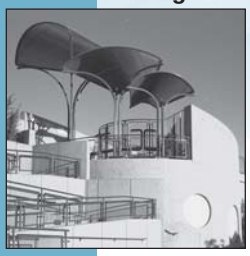
As a result of these multi-faceted values of the EIR process, CEQA became an essential component of success in reaching the landmark *Water Forum Agreement.*

Curtis E. Alling, AICP, is an environmental planner with expertise in the California Environmental Quality Act, National Environmental Policy Act, Endangered Species Act, and Tahoe Regional Planning Agency ordinances. Mr. Alling also teaches courses for the Association of Environmental Professionals, American Planning Association, UC Davis Extension, and UCLA Extension on CEQA and NEPA practice.

CHAPTER 9
Water Quality

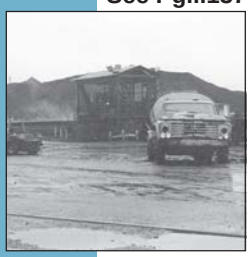
See Pg...133

See Pg...134



See Pg...135

See Pg...137



Point & Non-Point Source Pollution

There are two main sources of water pollution regulated by the federal Clean Water Act: point sources and non-point sources.

Initial efforts to protect water quality on a national level focused on point sources, which are facilities such as factories and sewage treatment plants that discharge polluted water out of pipes or other discernable points into the environment.

Under the Clean Water Act, National Pollution Discharge Elimination System (NPDES) permits must be obtained for point sources. These permits reduce water pollution by setting acceptable levels for point source discharges. Through this permitting system, we have made great strides in reducing point source pollution nationwide.

Non-point sources of water pollution, including forestry, construction, and runoff from streets and highways, are more difficult to control, and are not subject to NPDES permit requirements. A very high percentage of our water pollution comes from non-point sources.

CEQA has become increasingly important in protecting and improving water quality as more of the focus of efforts to protect California's water quality has shifted to non-point sources.

Written by PCLF Staff.

CEQA and the State's Evolving Efforts to Protect California's *Water Quality*

By Andrew H. Sawyer

California's core water quality law, Porter-Cologne Water Quality Control Act, administered by the State Water Resources Control Board (SWRCB) and the nine regional water quality control boards (RWQCB), was enacted in 1969. In part because of federal requirements, the initial focus of the program was to apply stricter controls to sewage treatment plants and industrial dischargers.

Most regulatory activities were exempt from CEQA, either because there were no adverse impacts or the statutory exemption for point source regulation (NPDES permits) applied. CEQA review focused on the non-water quality impacts of local assistance.

As the focus of water quality regulation shifted from point sources to stormwater runoff and non-point sources, CEQA has become increasingly important in protecting water quality.

The SWRCB administered a program of state and federal grants for sewage treatment plant construction, a program that at that time included funding for expanding treatment capacity, not just upgrading treatment. The Brown administration, seeking to get a handle on air quality impacts of urban growth, used CEQA to impose treatment capacity limitations. This practice ended after the Legislature amended CEQA in 1976 to restrict the authority of a responsible agency.

Since that time the SWRCB, as a responsible agency, has limited its review to water resources impacts when it awards grants and loans to public agencies.

Making use of a functionally equivalent process authorized in a 1975 amendment to CEQA, the SWRCB and the RWQCBs integrate environmental documentation into Porter-Cologne Act planning, allowing the same document to meet the requirements of both statutes.

CEQA also requires other agencies to consider the water quality impacts of the activities they approve. The effectiveness of CEQA in this context was undermined for a time, based on the argument that proposed projects would have no significant impact on water quality because the RWQCB would take care of any problems that arose. The courts rejected that approach in *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296.

As the focus of water quality regulation shifted to stormwater runoff and non-point sources, CEQA has become increasingly important in protecting water quality. Environmental groups and, in some cases, water supply agencies and the Attorney General have used

Since non-point source pollution from stormdrains is exempt from Federal oversight, CEQA's cumulative impacts analysis has become an increasingly important tool to ensure cleaner discharge. Read more on page 135.

CEQA to require consideration of water quality impacts in connection with a variety of activities, including logging, landfill expansion, stream channelization, construction activities, and new dairies. There has also been a trend towards use of CEQA by dischargers seeking to avoid or delay the applicability of more stringent requirements, but their efforts have generally been unsuccessful.

Overall, CEQA has complemented the State's water quality control program, helping to provide for informed decision-making and encouraging public participation.

Andrew H. Sawyer is the Assistant Chief Counsel of the California State Water Resources Control Board. The views expressed in this section are those of the author, and do not necessarily reflect the views of the State Water Resources Control Board, its individual members, or the State of California.

Learning by Example:

Implementing Innovative Water Solutions through CEQA Compliance

By Frances Spivy-Weber

California is known across the world for its creativity and innovation. Our water protection programs are no exception. From top-notch universities faculty to creative community members, California has a brain trust of individuals generating cutting-edge solutions to safe-guard our water resources. New ideas are being disseminated faster and farther than ever before, but more is needed to make sure that new research is effectively implemented and successful water projects get the public attention they deserve.

Projects subject to CEQA analysis are increasingly able to use the lessons learned from innovative projects, especially those designed to comply with environmental laws like the Federal Clean Water Act and California's own SB 221 which requires large home-building projects to demonstrate the availability of water before approval.

For example, Los Angeles County is partnering with TreePeople in the eastern San Fernando Valley to build and install multiple projects that capture and store stormwater and non-storm runoff on-site or divert water to nearby gravel pits where water can safely seep through the soil to groundwater basins. In Santa Monica, a park-like plant treats dry-weather run off to meet Clean Water standards for the Bay. In the Inland Empire and Orange County, builders landscape new homes with native plants and install smart sprinklers that will not water when it rains. These projects result in improved water quality and useable, local water supplies.

Responding effectively to the growing threats to California's water requires an ongoing learning process. CEQA is uniquely positioned to be an engine of innovation and research, a method for showcasing California's best new ideas. For example, because the public is allowed to comment on proposed mitigations during EIR review, they can suggest new mitigations that may not be known by local planning staff.

Through enlightened environmental review, and informed public comments, CEQA can help us maintain California's reputation as a land of intelligence and a pioneering spirit, guiding us away from business as usual to a creative, sustainable future.

Frances Spivy-Weber is the Executive Director of the Mono Lake Committee.

City of Santa Monica

The Santa Monica Urban Runoff Facility (SMURRF). This innovative park-like facility helps the city meet Clean Water standards for the Bay and could serve as a model for future CEQA water quality mitigation measures.

Stormwater Pollution

Every time it rains or snows in California, the state's drinking water supplies, coastal waters, and recreational beaches are contaminated by runoff from urban and suburban areas. As stormwater washes through city streets, parking lots, suburban lawns, and gutters, it picks up a wide array of pollutants, including: oils, grease, road salts, pesticides from lawns and parks, sewage, litter, and toxic metals. While a fraction of this water is collected and treated, the vast majority is directly discharged at discrete points called outfalls into streams, rivers, coastal waters, and the ocean.

This problem, known as stormwater pollution, has become a critical concern in California's coastal regions. Indeed, recent studies have demonstrated that urban stormwater rivals and in certain cases exceeds sewage treatment plants and large factories as a source of damaging pollutants. As the state's coastal cities continue their rapid growth, the environmental and economic effects of stormwater pollution will become increasingly severe.

The four major categories of stormwater pollutants and their effects are:

Continued on the following page.

The Mission Bay Project:

New Stormwater Mitigations Reduce Sewage Overflows in San Francisco Bay by 30 Million Gallons Each Year

By Mike Lozeau

A striking example of how CEQA fosters negotiation and innovation on development projects was the agreement between San Francisco's environmental community and Catellus Development Corporation over the 300 acre Mission Bay project in San Francisco.

The proposed development of over 6,000 housing units, a forty-three acre University of California campus, and millions of square feet of office space was designed originally to plug its sewage lines into the City's combined sewer system. The plan also called for the installation of concrete riprap along the Islais Creek shoreline and other features potentially damaging to San Francisco Bay. San Francisco is one of the few west coast towns with a combined sewer system. When the same pipes handle both sewage and storm water, storms can cause massive overflows of sewage.

The original Mission Bay proposal would have increased sewage overflows by 2 million gallons per rainy season.

At the time it was considering the Mission Bay project, San Francisco discharged about 110 million gallons of combined sewage overflows into San Francisco Bay from the eastern edge of the City. In addition to sewage, much of the shoreline of the City on the Bay side was rip-rapped, limiting the habitat for birdlife and other animals. Instead of taking the opportunity to help cure some of these chronic problems, the original version of the Mission Bay proposal would have increased the sewage overflows by 2 million gallons per rainy season and maintained unsightly riprap along Islais Creek.

San Francisco BayKeeper spear-headed a coalition of San Francisco-based environmental groups who were interested in the Mission Bay Project and other developments slated for San Francisco's waterfront areas. The upcoming CEQA process molded the behavior of both the advocacy community and the developer.

The availability of the CEQA process gave advocacy groups a framework to organize around and the confidence to approach Catellus even prior to release of any draft documents. The CEQA process, including both the City's review and potential court challenges, gave Catellus a strong incentive to negotiate with the coalition. Lastly, once the groups and Catellus realized their various ideas could be mutually beneficial, their discussions led to environmentally-beneficial innovations in the project that created additional certainty for the company.

Aerial view of San Francisco, showing the Mission Bay project. CEQA mitigations resulted in a reduction of sewage overflows by an estimated 30 million gallons per year. The agreement also included the installation of state of the art stormwater filtration systems and the creation of wetlands habitat.

In the end, Catellus agreed to changes in the project that separated the new development's storm water from the City's combined sewer system, reducing sewage overflows by an estimated 30 million gallons per year. The development also includes state-of-the-art storm water filtration systems at five storm water outfalls to the Bay. The company also is creating wetland habitat along the public park slated for Islais Creek. The developer also assembled a team of consultants to evaluate the feasibility of further reducing storm water pollutants through playing- field sand filters and other possible innovations.

The discussions and process fostered by CEQA made it possible to achieve substantial environmental improvements on seemingly intractable pollution and shoreline issues.

Although the environmental groups did not get everything they wished for, the discussions and process fostered by CEQA made it possible to achieve substantial environmental improvements on seemingly intractable pollution and shoreline issues among parties who, prior to the discussions, could only have assumed the worst of each other. And this was done without a threat of litigation, in a way that fostered ongoing trust amongst all of the parties and, it turns out, with increased certainty and less expense for the developer.

At the time of the Mission Bay Project approval, Mike Lozeau was the Executive Director of San Francisco BayKeeper and a lead negotiator for the environmental community over the terms of the project. From 1999 to 2004, Mr. Lozeau was a staff attorney with the Earthjustice Environmental Law Clinic and a Lecturer on Law at Stanford Law School. In January 2005, he returned to private environmental law practice in San Francisco.

Continued from the previous page.

Bacteria, Protozoa, and Viruses: These pathogens, generally from raw or partially treated sewage, pose serious health risks to humans who swim in beach waters or eat contaminated shellfish. Victims have reported a variety of symptoms after swimming in polluted water, including fever, vomiting, chills, and gastrointestinal illness.

Oils, Trash, and Other Pollutants: These pollutants can clog fish gills, decrease the survival and reproductive rates of fish, and decrease the amount of free oxygen in the water.

Toxic Metals: Contaminants like copper, lead, and mercury can cause miscarriages, reproductive toxicity, brain atrophy, and birth defects in humans.

Excess Sediments and Nutrients: High concentrations of sediments or nutrients (like nitrogen and phosphorous) can disrupt coastal ecosystems by destroying entire populations of algae or by causing massive algal blooms. These algal blooms are often toxic and harmful to humans or other marine creatures.

Written by PCLF Staff.

For more information, see: *Stormwater Pollution: Causes, Impacts and Solutions*, by Marianne Lowenthal, Planning and Conservation League Foundation, 2003.

Changing Course:

CEQA Review Confirms *Massive Water Contamination* at the Port of LA; Port Joins in Suit against Polluters and *Clean Up Begins*

By Daniel Cooper

For over thirty years, the Port of Los Angeles co-operated a bulk materials shipping facility on the main channel of inner San Pedro Harbor, first with National Iron and Metal and American Bulk Loading, and later with Kaiser International. The facility handled copper concentrates, scrap metals, and petroleum coke and coal, among other things.

Santa Monica Baykeeper began investigating the site in 1997, when it was leased by Kaiser International. The operation consisted of an eighty-foot high pile of black, powdery petroleum coke extending at least 500 feet along a pier immediately adjacent to the water. Petroleum coke is the remnant material from oil refining (the "bottom of the barrel") and contains heavy metals, polyaromatic hydrocarbons, and other toxic pollutants.

Coke was shipped to the site via railcars, dumped on the pile, and carried via a conveyor to ships at the pier. The waste pile, the transfer conveyor, and in fact, all operations were completely uncontained. Afternoon winds skimmed oily black powder off the pile into the water on a daily basis. Both the Coast Guard and nearby boat owners had repeatedly complained to the Port, the City, and the Air Quality Management District about the black sticky powder raining down on their vessels. Conveyor transfer spilled the material directly into the Bay, while vehicle tracking, rain water during storm events, and virtually every other step in Kaiser's operations spread coke throughout the area and into Harbor waters. Green staining and small piles of copper concentrate, a material highly toxic to marine organisms, could be seen at various locations near the Bay.

This pile of petroleum coke and coal was immediately adjacent to the inner harbor. Virtually every step in Kaiser's operations spread coke throughout the area and into harbor waters.

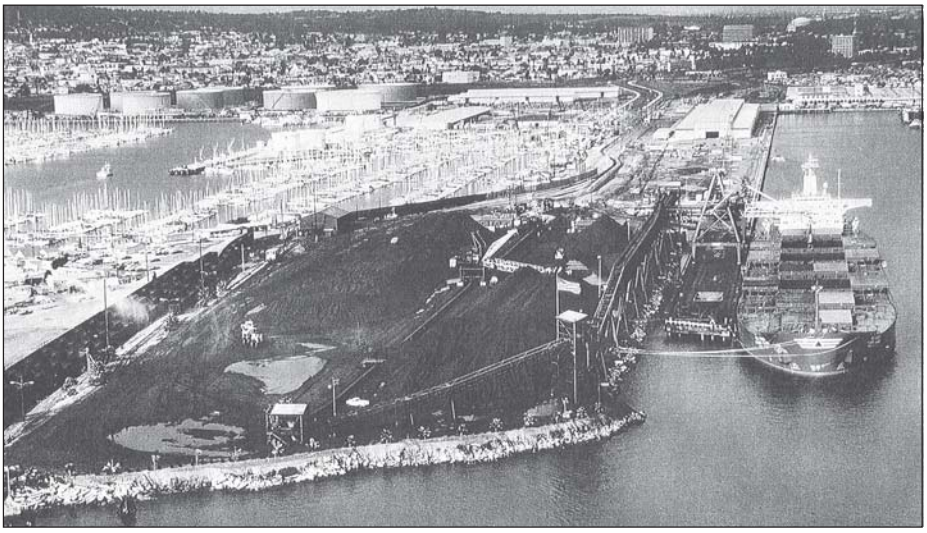
Both the Coast Guard and nearby boat owners had repeatedly complained to the Port about the black sticky powder raining down on their vessels.

Baykeeper began its enforcement action against Kaiser for violations of the Federal Clean Water Act and the Resource Conservation and Recovery Act in 1998. Within hours of the filing of Baykeeper's complaint, Kaiser "ceased" operations in an effort to avoid its liability for the contamination. While Baykeeper actively sought the cooperation of the Port in forcing Kaiser to pay for clean up, instead the Port defended Kaiser, compelling Baykeeper to add the Port to the enforcement action. For three years Baykeeper, Kaiser and the Port litigated the issue of the Federal Court's Jurisdiction over the action. During this period the Port removed most of the site's equipment, as well as the pile, but coke and copper contamination remained uncontained on the site and on the harbor bottom. By 2001, Baykeeper was prepared to seek summary judgment on the Port and Kaiser's liability for thousands of violations of Federal Law.

In 2001, the Port elected to prepare the site for rental for other operations. The Port determined that, after remaining completely unaddressed for three years, site clean up operations were an "emergency," warranting the circumvention of environmental review pursuant to CEQA. On site contamination, storm water runoff,

and other impacts from past operations, as well as traffic and light impacts from the proposed new development, warranted a few sentences each in the environmental assessment.

Joining with San Pedro citizens, Baykeeper sued in State Court seeking environmental review consistent with CEQA. At the same time, the Natural Resources Defense Council (NRDC) began its challenge to the Port's environmental review of the China Shipping project (see pg. 25).



After extensive contamination was discovered at the Kaiser International Pier in 2002, the Port finally changed course and joined with NRDC and Santa Monica Baykeepers to demand that Kaiser International clean up the site.

Further, in 2002 the Port began investigating contamination in Bay sediments off the Kaiser site in anticipation of dredging to allow cruise ship operations in the area. Coke and copper concentrates were found covering the bottom at depths of up to eleven feet. Combined with the mounting pressure from Baykeeper and NRDC's lawsuits, and statements from the Mayor's office relating to the Port's responsibility to area residents, the discovery of this extensive contamination led to an about-face by the Port. In 2002, the Port added cross claims against Kaiser, American Bulk Loading, and National Metals in Baykeeper's Federal Lawsuit, seeking to recover clean up costs for both the harbor bottom and the upland site. In addition, the Port settled both the Federal and CEQA lawsuits with Baykeeper.

Petroleum coke and copper concentrates were found covering the bottom of the pier at depths of up to eleven feet.

Service vehicles tracked petroleum coke, coal, oil and grease across the Kaiser International pier. In 2001, the Port determined that, after remaining completely unaddressed for three years, site clean up operations were an "emergency," warranting circumvention of environmental review pursuant to CEQA.

The Port committed to non-industrial uses for the Kaiser site, and paid for environmental restoration projects in the affected area.

In addition, the Port agreed to substantial improvements in its environmental review process, including improved consideration of air and water impacts, and substantially improved public notice and public participation.

Finally, the Port dredged and disposed of much of the bottom contamination as hazardous waste, at a cost of over eleven million dollars. Litigation against the site operators continues in an effort to recover some of the clean-up costs.

Baykeeper's CEQA challenge and the resulting settlement led to a significant clean-up. Just as importantly, they improved the Port's environmental review process in such a way that might prevent the environmental destruction and costs to the public caused by similar operations in the future.

Daniel Cooper is a partner with Lawyers for Clean Water, a law firm representing grass roots environmental organizations throughout California to protect water quality.

CEQA and the San Joaquin Reservoir Conversion:

Keeping Sewage out of Newport Bay

By Kevin K. Johnson and Jared P. Hanson

One of the primary purposes of CEQA is to ensure that all projects are subjected to scrutiny to determine what environmental impacts may result. This is particularly important for projects which may seem, at first blush, to have environmental benefits. For such projects, the scrutiny required by CEQA forces agencies to address and mitigate adverse environmental impacts that might otherwise be overlooked or ignored.

One such project was the Irvine Ranch Water District's (IRWD) decision to convert the San Joaquin Reservoir, located upstream of Newport Bay, from potable water storage to reclaimed water storage. At the time, the reservoir had sat empty and unused for several years due to water quality problems.

The goal of the project, according to the IRWD, was to increase the use of reclaimed water and, therefore, increase water conservation. However, the conversion and the operation of the facility had several environmentally adverse and potentially dangerous consequences.

Defend the Bay, a non-profit public benefit corporation dedicated to protecting Newport Bay and other public areas from environmental harm, challenged the IRWD's decision to approve the project without preparing an Environmental Impact Report. Defend the Bay and others (including the City of Newport Beach), presented extensive evidence that the project would have adverse environmental impacts on many fronts, including water quality, biological resources, and public health.

Seepage from the bottom of the reservoir would have released over 4.5 million gallons per week of sewage effluent into the Newport Bay watershed.

For instance, the project would store up to 3,000 acre feet of reclaimed water, or, as the IRWD's own consultant referred to it, "sewage effluent." Reclaimed water contains substantially higher levels of nutrients than potable water. As such, reclaimed water creates a serious threat to impairing water quality when it is released into surface or groundwater.

IRWD conceded that the seepage from the bottom and sides of the reservoir would be approximately one cubic foot per second (cfs). Although one cfs per second does not sound like much, it amounts to the release of over 645,000 gallons per day, or 4.5 million gallons per week of sewage effluent. Moreover, IRWD indicated that periodic cleanings of the reservoir may necessitate discharging the contents of the reservoir downstream.

The seepage of so much nutrient-rich reclaimed water into the groundwater and the watershed had potentially adverse impacts to public health, the water quality of Newport Bay, and the surrounding habitat. For example, the increased nutrients and moisture in the soil could result in non-native species invading the surrounding California coastal sagescrub, negatively impacting the threatened California gnatcatcher, whose presence in the area was confirmed.

In addition to the water quality impacts, IRWD planned to store at the site twelve one-ton containers of chlorine, a hazardous material. The potential danger of a hazardous chlorine gas release was underscored by the fact that the reservoir was located between and upwind from two residential neighborhoods.

In addition to storage of the containers at the site, IRWD planned to transport six new one-ton containers of chlorine through the residential streets to the facility every week. IRWD, however, had not assessed the risks nor analyzed any

alternative to the use of chlorine and/or the storage of such large amounts on site. Rather, it only indicated intent to develop a risk management plan after it approved the project.

Defend the Bay filed suit in Orange County Superior Court. (*Defend the Bay v. Irvine Ranch Water District, Orange County Superior Court Case No. 01CC01034.*) It argued that an Environmental Impact Report was necessary to assess the potential impacts of the project and analyze what means were available to mitigate and/or avoid them. The Court agreed and, in September 2001, issued a writ of mandate directing IRWD to rescind its approval of the project and to approve it only after the preparation and consideration of an Environmental Impact Report.

Following the Court's order, IRWD prepared an Environmental Impact Report which considered all the issues discussed above as well as others addressed in the litigation. The EIR process resulted in IRWD fully assessing the potential environmental and public health impacts brought about by the project and, just as importantly, developing the mitigation measures necessary to address those potential impacts prior to its approval of the project.

Through the EIR process, the Water District committed itself to installing a system to capture the seepage and remove excessive nutrients from downstream waters.

IRWD's response to all these environmental concerns was to either ignore them or to state that it would figure out how to deal with them after the project was approved. It therefore approved the project by a mitigated negative declaration rather than an Environmental Impact Report.

For example, with respect to seepage, IRWD committed itself to installing a system to capture the seepage and re-pump it back into the reservoir, and to incorporate a nutrient exchange well downstream to remove excess nutrients. In addition, IRWD abandoned its plan to use chlorine, and committed instead to using a sodium hypochlorite disinfection system, which is considered a safer method. It also altered the delivery route for safety considerations.

As a result of the analysis required by the EIR process, IRWD ended up with a project which still met its needs, but which also mitigated the potential environmental and public health impacts that otherwise would have been ignored.

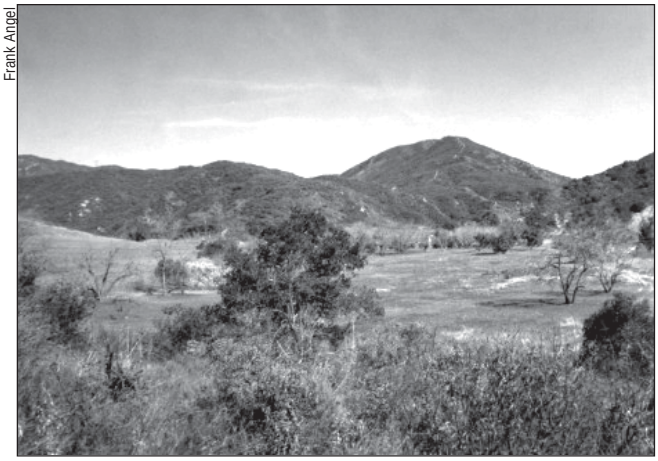
The San Joaquin Reservoir just east of Newport Beach's city limits. In 2000, The Irvine Ranch Water District proposed converting the reservoir from potable to reclaimed water, with a stated goal of increasing local water conservation. The use of CEQA helped ensure that the environmentally adverse and potentially dangerous elements of the reservoir conversion were not ignored.

Kevin K. Johnson and Jared P. Hanson are attorneys at Johnson & Hanson, LLP. The firm represented Defend the Bay in this case.

Equestrian Estates in Silverado Canyon:
Protecting Orange County's Water Quality

By Frank P. Angel and Ed Grutzmacher

Water quality is of great interest to the citizens of Orange County and other coastal jurisdictions, which are struggling to reduce pollution from urban runoff. Concern is growing not only for affected fish and wildlife species but humans as well. Popular surfing spots along most of Orange County's coast have long been plagued by recurring bacterial contamination and pollution from cancer-causing chemicals and metals, carried in increasing volumes of stormwater runoff and dry weather urban runoff associated with increasing urbanization. Frequent beach closures from high bacterial counts in coastal waters interfere with the public's historic right of access to the ocean and reduce tourism-oriented revenue. Fortunately, an important 2004 CEQA suit brought by an Orange County environmental advocacy group, Rural Canyons Conservation Fund (RCCF), has opened the door to cleaner runoff and improved water quality in Orange County and across the state.



Frank Angel

Developers planned to build an equestrian estate subdivision on this section of the Holtz Ranch in Orange County. Because of CEQA, the Rural Canyons Conservation Fund was able to ensure that the impacts of horse waste on local water supplies would be identified and mitigated.

In 2003, Las Vegas-based CCRC Farms, LLC submitted an Environmental Impact Report (EIR) for an equestrian estate subdivision on 70 acres of open space in Orange County's Silverado Canyon. The site of the subdivision is part of a larger property known as Holtz Ranch, located along a major gateway to and within the boundaries of Cleveland National Forest, the southern-most national forest in California, separating Orange and Riverside counties. Stormwater runs off the hills of Silverado Canyon into Silverado Creek, then into Santiago Creek, a recovery area for the endangered Arroyo Toad. It joins with the Santa Ana River and finally empties into the Pacific Ocean near Newport Beach.

The subdivider proposed to build twelve single-family estates on lots averaging 5.3 acres, as well as roads and other infrastructure facilities. The project design placed the building pads mainly on gradually sloping land surrounded by a "bowl" of hills, with the pads extending into and forcing grading in the hills.

Local residents were initially concerned about the proposal because the equestrian estates would accommodate horse barns and facilities. Equestrian uses are known to generate wastes containing contaminants such as nitrates, arsenic, copper, selenium and the gastrointestinal disease-causing pathogens Cryptosporidium, Giardia Lambia and Salmonella. According to the EPA, the average horse produces about forty-five pounds of fecal waste each day, raising the prominence of adverse project impacts on water quality.

In this case, the project EIR claimed, without supporting evidence, that existing baseline water quality conditions were worse than future conditions with the project. The EIR simply based this claim on the fact that portions of Holtz Ranch had been used for agricultural purposes decades ago, stating that pollutants such as sediments, nutrients, and pesticides are "generally considered" to be pollutants associated with agricultural uses. Because of the EIR's inadequate analysis of water quality impacts, RCCF challenged the County's approval of the EIR.

The Orange County Superior Court found unacceptable the lack of any study to determine what pollutants, if any, currently flow into nearby Silverado Creek from Holtz Ranch. Judge C. Robert Jameson wrote that "[w]ithout a baseline study identifying the types and amounts of pollutants currently existing in storm water runoff, the actual effects of the project on surface water quality cannot be compared and determined, nor can the adequacy of any mitigation measures be assessed."

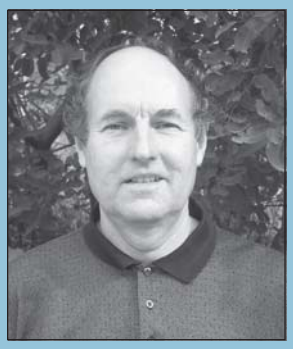
The court repudiated a practice which appears to have been common in Orange County, allowing developers to wait until after a project is approved to determine how they will protect water quality.

The court in this case repudiated a practice which appears to have been common in Orange County, of allowing developers to wait until after a project is approved to determine how they will protect water quality. RCCF hopes the court's ruling will encourage the county to change its old ways and ensure that future project EIRs disclose to the public and county decision makers all information relevant to protecting stream and coastal water quality, including detailed and comparative data about available measures to reduce or capture pollutants before they percolate into the site's groundwater, escape into its drainage channels, or reach off-site streams.

Already, the county has chosen not to appeal the court's judgment. In an upcoming supplemental EIR review process ordered by the court, concerned citizens, public interest stakeholder organizations, their experts, and the county's own officials now will have the opportunity to learn about the relevant site-specific water quality baseline, and to assess actual water quality impacts associated with storm water runoff, urban runoff and construction-related activities. In addition, they will have the opportunity to play an active role in the evaluation and selection of impact mitigations that will help improve water quality in Orange County.

We should note that while tough mitigations in this case alone will not clean up Orange County's polluted coastal waters, the runoff polluting these waters stems from "a thousand points of non-point pollution," and if each new project is to incorporate the strictest water quality impact mitigations, the incremental and cumulative benefit for water quality will be significant.

Frank P. Angel and Ed Grutzmacher of the Santa Monica-based Law Offices of Frank P. Angel (LOFPA) served as legal counsel for the CEQA plaintiff, RCCF. LOFPA specializes in representing environmental organizations and citizen groups in environmental, Coastal Act, and land use disputes before administrative decision makers and the courts.



Ray Chandos is a teacher of electronic technology at Irvine Valley College. He founded the Rural Canyons Conservation Fund in 1983 when the Orange County Board of Supervisors approved plans for a four-lane highway through rural Trabuco Canyon where he had hiked since he was a young boy.

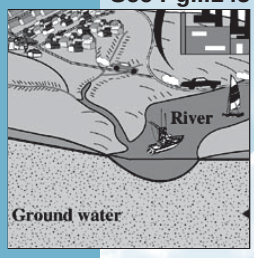
Since that eye-opening experience, Ray has become his own teacher, learning how the judicial system works, discovering how land use decisions are made, and reading up on the latest CEQA decisions in the local law library.

CEQA continues to be an essential tool for the Fund. "Unless people know what's going on and put up a fight, local government will be pressured by development interests to ignore the laws and policies that protect the environment. CEQA provides the alarm bell. Then, it's up to us."

Ray admits that it's an uphill battle. "When people join the Rural Canyons Conservation Fund I joke that they'll spend more time in law libraries and at public hearings than in the great outdoors. But it's worth it. It's the least I can do for my son and his generation."

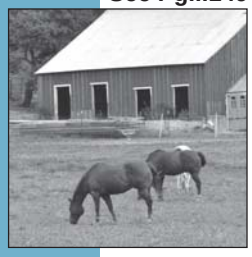
CHAPTER 10
Groundwater

See Pg...145



See Pg...147

See Pg...149



See Pg...151

Threats to California's GROUNDWATER

Groundwater, one of the planet's most abundant natural resources, is also one of its most vulnerable. The two major threats to groundwater in California and throughout the world are overdraft and contamination.

Groundwater is not an infinitely renewable resource. When the rate of groundwater removal exceeds the rate at which it is being naturally replenished, the aquifer becomes less saturated, the water table drops, and eventually the groundwater supply becomes depleted. This condition is known as groundwater overdraft.

Because the recharge rate of most aquifers is exceedingly slow, groundwater overdraft has become a common practice in many parts of the world, including: China, India, Mexico, Thailand, North Africa, the Middle East, and the western United States. Indeed, the largest aquifer in the world—the Ogallala, which lies underneath most of Nebraska and parts of Kansas, Colorado, Oklahoma, New Mexico, Wyoming, South Dakota, and Texas—is being consumed so rapidly that its water table is dropping an average of two meters per year. At this rate the Ogallala Aquifer, which supplies about 30 percent of the water used in the United States for irrigation, will be entirely depleted in less than fifty years.

Continued on the following page.

CEQA & GROUNDWATER:

California's "Invisible" Natural Resource

By David Beckman

Beneath the surface of the earth lies a vast body of water. It does not exist in a large underground lake or a flowing underground stream but rather as tiny droplets of water, interspersed among the grains of soil and rock that we commonly picture when imagining the world underground.

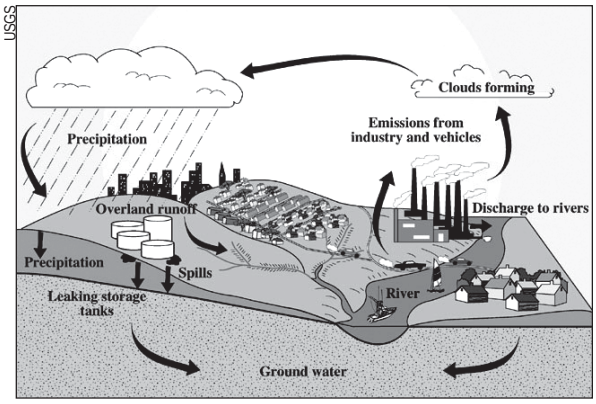
Nevertheless, the aggregate volume of those tiny water droplets is greater than the volume of all the lakes and rivers of the world combined. In fact, the volume of groundwater is estimated to be more than 30 times the combined volume of all fresh-water lakes in the world and more than 3,000 times the combined volume of all the world's streams. In California alone, current supplies of usable groundwater are estimated at about 250 million acre-feet—six times the volume of all of the state's surface water reservoirs combined.

For more than 100 years, groundwater has provided a substantial and essential resource for California's agriculture, its industries, and its cities. It was not long after statehood in 1850 that California's residents began building pumps to extract this plentiful resource from the subsurface. The scarcity and seasonal availability of surface water, especially in the southern half of the state, have caused Californians to turn time and time again to the state's groundwater supply.

Indisputably, the availability—and, more importantly, the deficiency—of all forms of freshwater have substantially influenced California's history and development. In fact, water is widely considered the single most significant natural resource affecting the growth of the state. Given the arid climate that pervades most of the southern half of the state and the limited supply of running water, legendary political and economic battles occurred over access to the waters of the Mono Basin, the San Joaquin River, the Owens Valley, the Colorado River, and the Sacramento-San Joaquin Bay Delta.

The contamination and overdraft of California's groundwater resources is a serious, long-term threat to the viability of the resource in California.

Yet despite their importance, these surface water bodies are only part of the water picture in California. Between 25 and 40 percent of California's water supply in an average year comes not from surface streams or reservoirs but rather from beneath the ground. That figure can be as high as two-thirds in critically dry years. In fact, California uses more groundwater



Groundwater is one of the world's most abundant and vulnerable natural resources. Sources of contamination include: industrial and vehicular emissions, industrial waste, stormwater runoff from urban and suburban developments, leaking storage tanks, and commercial as well as recreational boating.

than does any other state. Californians extract an average of 14.5 billion gallons of groundwater every day—nearly twice as much as Texas, the second-ranked state.

Fifty percent of California's population—some 16 million people—depends on groundwater for its drinking water supplies. But of course, groundwater is used for much more than just drinking water. California also leads the nation in the number of agricultural irrigation wells, with more than 71,000. In the Lower Sacramento River Valley alone, approximately 750,000 acres of prime agricultural land are irrigated, at least in part, by groundwater. Indeed, many areas of the state rely *exclusively* on groundwater for their water supplies. In the lower Sacramento Valley, for example, approximately 1 million people rely on groundwater to supply all of their water needs.

As a result, the contamination and overdraft of our groundwater resources is a serious, long-term threat to the viability of the resource in California, a state that relies on its groundwater for many purposes. Understanding the full extent of the problem, and generating reliable information on trends that can inform policy and resource allocation decisions, are the best, and indeed, most basic, approaches to safeguarding this natural resource. While many statutes and agencies have an important role to play in meeting this critical mandate, CEQA's role cannot be overstated. No other statutory tool enables decision-makers and the public to understand the impact of new development on groundwater quantity and quality. The information generated by faithful compliance with CEQA is and will continue to be instrumental in protecting California's most important "invisible" natural resource.

CEQA's role cannot be overstated. No other statutory tool enables decision-makers and the public to understand the impact of new development on groundwater quantity and quality.

David Beckman is a senior attorney and heads the coastal water quality program in NRDC's Los Angeles office. Mr. Beckman focuses on enforcing the Clean Water Act and related coastal laws, and on issues involving environmental justice.

Continued from the previous page.

California is no stranger to the problem of overdraft. Parts of the Central Valley have dropped more than a dozen feet because of groundwater overdraft.

Contamination is the second major threat to the world's groundwater. Gasoline and other harmful liquids wind up in the groundwater supply because of storage leaks or improper disposal methods. Pollutants seep into groundwater from poorly constructed landfills or septic systems. And, finally, groundwater is contaminated by runoff from fertilized fields, livestock areas, abandoned mines, salted roads, and industrial areas.

California's groundwater is badly contaminated, especially in urban areas. It is estimated that more than one-third of California's groundwater is badly contaminated. Yet this polluted groundwater has been officially designated as the future drinking water supply for our cities.

Groundwater contaminated with bacteria, chemicals, pesticides, gasoline or oil is a serious human health risk. Those who drink it or come in contact with it can suffer bacterial diseases, nervous system disorders, liver or kidney failure, or cancer. And while restoring contaminated groundwater is possible, it is time consuming, expensive, and rarely 100 percent effective.

Written by PCLF Staff.

Groundwater Overdraft in Rohnert Park

By John E. King

My ranch in Penngrove, California, has been in the family for almost 100 years. It was originally purchased by my great-grandfather, David McClure. Over the 1920s, '30s, and '40s, most of the property-about 130 acres-was put under irrigation for crops and pasture.

As the decades passed, my father and uncle noted that the 100 foot deep well, with a 30-foot static water level, could not be pumped dry, even with a large horsepower turbine pump. By the 1950s the turbine pump was replaced with a modern and more efficient submersible pump.

The 1960s marked the beginning of exponential growth in neighboring Rohnert Park to the North and Petaluma to the South. By the end of the decade, the water table began to decline, and for the first time we had to add lengths of pipe to lower the submersible pump deeper. The decline continued throughout the 1970s, '80s, and early '90s.

By 1996 the old 100-foot well went dry. We installed a new 383-foot replacement well which produces considerably less water.

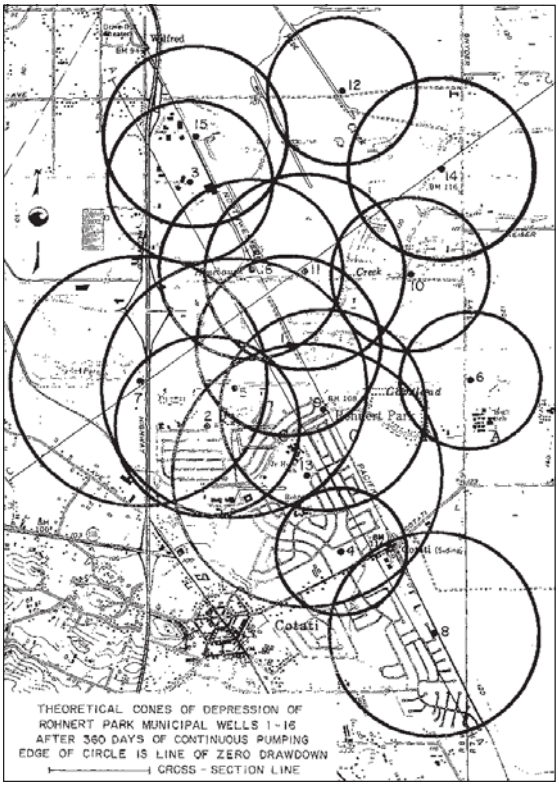
In 1999, I discovered that Rohnert Park's new General Plan proposal called for an additional 4,500 homes, and 5,000,000 square feet of commercial and industrial space.

John King displays an original, hand-dug well from approximately 1888. As the surrounding communities grew, wells on the family property began to go dry.

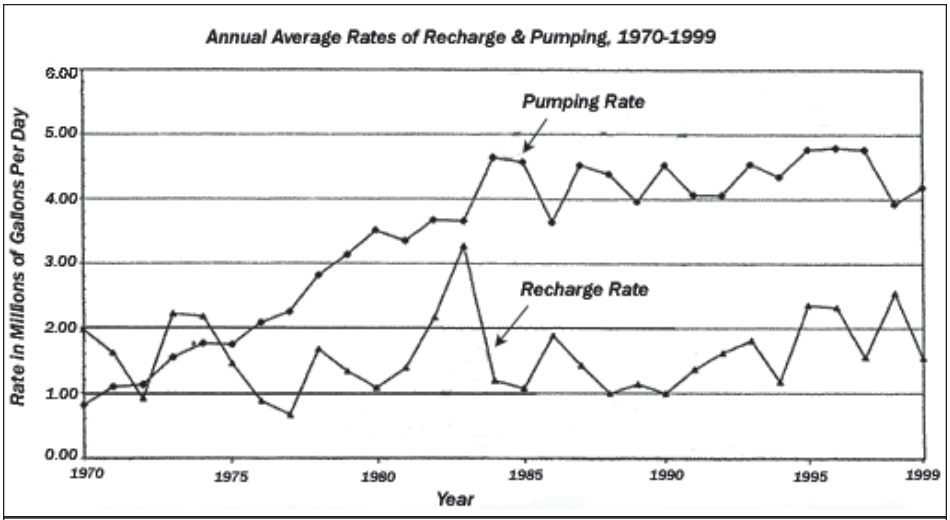
I contacted hundreds of regional property owners and learned that other wells had also gone dry or had lowered pumps to stay in water. That's when I heard about the massive cone of depression, for which Rohnert Park has since become famous.

Imagine a straw in the bottom of a martini glass. As liquid is pulled up the straw from the bottom of the glass, the height of the liquid drops. That's exactly what has been happening underneath Rohnert Park. Over the past two decades, as public and private wells pulled water from underneath the city, some areas of the water table sank precipitously. When all municipal wells are pumping at once, levels can drop 400 feet.

The Environmental Impact Report (EIR) for Rohnert Park's May 2000 General Plan acknowledged that their static water table had dropped as much as 150 feet over the past thirty years. Indeed, the City alone has been pumping 4.2 million gallons per day (mgd) in a region that recharges at a rate of 1.6 mgd, a clear case of overdrafting. Despite this, and despite the fact that newly proposed developments would cover up precious groundwater recharge areas, increase groundwater demand, and increase storm-water runoff, the EIR failed to assess impacts on groundwater supplies beyond the City limits.



A 1979 Department of Water Resources map predicts the worsening cones of depression from competing wells in Cotati and Rohnert Park (see sidebar).



This graph from Rohnert Park's 2000 General Plan EIR clearly shows the overdraft problem.

When the City moved forward with the General Plan, I organized a group of regional supporters and filed a CEQA lawsuit under the name of the South County Resource Preservation Committee and John E. King. The CEQA lawsuit charged that the General Plan failed to adequately analyze or mitigate groundwater related impacts.

The administrative record so clearly spelled out Rohnert Park's violations that the judge did not even hear opening arguments. He told the City of Rohnert Park that they "had serious water problems" and urged both parties to consider a "settlement agreement" or take his decision. Judge Antolini did not disclose what the terms of his decision would include.

We decided to "negotiate" a formal Settlement Agreement which can best be described as a tug of war. The settlement agreement requires the City to reduce groundwater pumping to 2.3 mgd, return identified lands to the Penngrove (County) jurisdiction, monitor the effects of groundwater pumping, not import groundwater supplies from the Penngrove area, and more.

Our case galvanized Sonoma County around what may be a groundwater crisis. It proved instrumental in the 2004 Grand Jury report, *Got Water?*, that urged the County and each of its cities to implement groundwater management plans pursuant to AB 3030.

As a result of the lawsuit and the attention it brought to local groundwater issues, the O.W.L. Foundation (Open space, Water resource protection, and Land use), was formed. A 501(c) 3 non-profit organization, O.W.L. continues to guard against threats to groundwater and destruction of open spaces that serve as groundwater recharge lands.

John E. King is a farmer and rancher in Penngrove, California. He filed the 2000 CEQA suit against the City of Rohnert Park and continues to work for sound groundwater management in Sonoma County.

Rohnert Park's Cones of Depression

The problems of Rohnert Park's water supply extend deep into the ground and deep into the past. For over twenty-five years, the City has resisted the advice of State Agencies and water experts who warned of too much groundwater pumping. One particularly striking wake-up call came in the form of a report entitled, *Meeting Water Demands in Rohnert Park,* prepared for the city by the Department of Water Resources (DWR) in 1979.

The report includes a diagram (see previous page) showing the effects of continuous pumping after 360 days in the city's wellfields. Each ring depicts the area of drawdown for an individual pumping location.

Overlapping rings indicate areas where wells are competing with one another, pulling water from the same source. Commercial wells within the city tap the water supplies of private wells outside city limits. As too many wells pump water, the water level drops, creating overlapping cones of depression.

Because the city failed to adopt sound water management principles, by the 1980s DWR's predictions came true. Rohnert Park now has twice as many wells and the cones of depression have grown substanially.

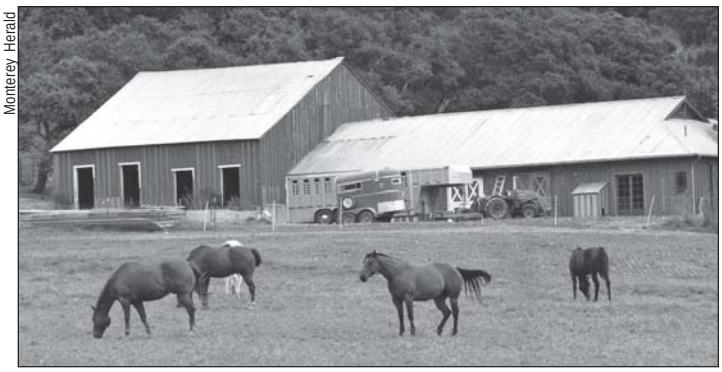
A 2004 Sonoma County Grand Jury Report cited John King's 2000 suit when it recommended the adoption of a groundwater management plan to address the worsening water situation. So far the county has resisted creating such a plan.

Written by PCLF Staff.

CEQA, the Carmel River, & September Ranch

By Fran Farina

September Ranch is located in Carmel Valley just east of the Monterey Peninsula. The property has almost 900 acres, only a small portion of which is visible from Carmel Valley Road. An equestrian center operated there for years. Locals boarded their horses in the quaint red barn. Drivers enjoyed seeing the horses graze in the lower terrace pasture.



Monterey Herald

In 1995, September Ranch Partners proposed to develop over 100 houses on this site. Attempting to obscure the current water usage, the property owner began drenching the ranch with water cannons.

In 1995, September Ranch Partners proposed to develop over 100 houses on September Ranch. Several local organizations, including the Sierra Club and Save Our Carmel River, were concerned that this new development would increase the demand for water, further impairing the Carmel River.

Home to steelhead trout and red-legged frogs, both of which are listed as threatened species under the federal Endangered Species Act, the Carmel River has suffered tremendously in recent years due to overdrafting of its groundwater sources. Because there was no history of irrigation on September Ranch, determining if additional water would be required above the baseline of current water use was critical to protect the river.

Hoping to quickly increase the level of water use on September Ranch to influence the outcome of the Environmental Impact Report (EIR), the property owner began drenching the property with water cannons. The owner also persuaded Monterey County planning staff and the EIR consultant that they should credit September Ranch with the quantity of water that could be used for irrigation, instead of that which was actually used for irrigation. When even this was not enough to meet the project demand, the owner bought additional land three miles up Carmel Valley Road, which was currently irrigated, and offered to reduce some of that pumping as mitigation to offset increased pumping for his project. No environmental review of the offset parcel was conducted. The water baseline was a moving target up to the day the EIR was certified.

Home to steelhead trout and red-legged frogs, both threatened species, the Carmel River has suffered tremendously in recent years due to overdrafting of its groundwater sources.

Public comment from local residents confirmed there was no historical irrigation on September Ranch, and that the water cannons were a new activity which coincided with the development application. Nevertheless, in December 1998 the Board of Supervisors approved the project, using the most recent water use statistics—including the water cannons—as the baseline, rather than historical water use numbers.

Ultimately, the County's approval of the project was overturned by the courts, which held that CEQA requires an accurate description of the existing environment (baseline) in order to assess the environmental impacts of a project and determine appropriate mitigation measures.

The September Ranch property owner is currently preparing a new EIR to comply with CEQA. Hopefully, the new EIR adequately analyzes and mitigates for impacts of the proposed project on the Carmel River.

Fran Farina is a member of the California and Florida Bars specializing in water law. Ms. Farina formulated the water issues on behalf of Sierra Club, Save Our Carmel River and Patricia Bernardi in the September Ranch litigation. Ms. Farina recently served as General Manager of the Monterey Peninsula Water Management District.

Lakeside: All-American River Town

By Suzanne M. Michel

The San Diego River flows directly through the center of Lakeside, a primarily low-income community of 50,000, seventeen miles east of San Diego. Beneath this river is the largest alluvial aquifer in the south-central part of San Diego County. Two water districts pump water from this alluvial aquifer to supply low-cost drinking water to Lakeside residents.

During the late 1970s and early 1980s, local politicians promised Lakeside residents a river park, primarily to address flooding concerns, but also to protect water quality. However, in 1998 the Environmental Impact Report (EIR) for Lakeside's "Upper San Diego River Improvement Project (USDRIP) Specific Plan" proposed to zone most of the San Diego River region for heavy industrial development—a complete reversal of the river park plan designed in 1983.

Over 100 Lakeside residents showed up to the CEQA hearing, advocating for a river park and protection of their drinking water supply—the groundwater beneath the San Diego River. Lakesiders felt dumped upon with toxins and poor planning. To make matters worse, in 1999, groundwater samples near wells in the San Diego River Region revealed unsafe amounts of methyl tertiary butyl ether (MTBE), a gasoline additive.

Despite local protests, the land was zoned for heavy industrial development. In addition, Lakeside residents were informed by the San Diego County land use planning authority that heavy industrial development would continue to intensify in the river region, despite resident opposition, and despite the fact that groundwater wells were already contaminated by local sandmining and commercial activities in the riverbed.

One group of mothers who attended the CEQA public hearings decided to research and document Lakeside's poor water quality. Due to their efforts, the State of California listed Lakeside's San Diego River as an impaired water body under the Clean Water Act in 2000.

The CEQA process mobilized Lakeside residents to reject the proposal to create yet another polluted, industrial zone along the San Diego River. Instead the community will benefit from a new San Diego riverpark.

Things turned around when advocates for the San Diego River watershed, together with a large coalition of Lakeside residents, formed the San Diego River Park-Lakeside Conservancy to acquire land for the river park. The Lakeside Conservancy got its first break when the California Coastal Conservancy provided $800,000 dollars to acquire river habitat.

However, it was protection of local groundwater that finally crystallized Lakeside's river park movement.

In 2002, the Riverview Water District (RWD), a local water district that produces 32 percent of its water supply from groundwater wells located in the San Diego River floodplain, partnered with the Lakeside Conservancy in a grant application to create wetlands for groundwater recharge and purification. In addition, RWD donated office space and equipment to the Lakeside Conservancy.

Within three years the Lakeside Conservancy and the RWD partnership has resulted in over $15 million dollars raised for a San Diego riverpark in Lakeside.

The CEQA process mobilized Lakeside residents to reject the proposal to create yet another polluted, industrial zone along the San Diego River. For the first time in decades, Lakesiders feel positive about the future of a riverpark and clean water resources in the San Diego River, as indicated by the popular bumper sticker: "Lakeside: All-American River Town USA."

Susan M. Michel holds a Ph.D. in water resources geography. Currently, Ms. Michel is an adjunct faculty of the Department of Marine Science and Environmental Studies at the University of San Diego, where she teaches environmental law and policy.

The Keller Canyon Landfill:

How CEQA mitigations prevent groundwater contamination through improved design

By John Thelen Steere

Garbage. It's a topic that few like to talk about, but we all are responsible for. And becoming more responsible about *how* we dispose of our garbage, coupled with increasing awareness about environmental and public health concerns, have been drivers for the design of modern "sanitary landfills," which are far cry from the "garbage dumps" of yore.

Contra Costa is and has been one of the San Francisco Bay Area's fastest growing counties for at least twenty years. More people have meant more refuse–and a burgeoning need for more places to put it. By the mid 1980s Contra Costa County woke up to the realization that it was running out of room in its existing landfill to put its residents' solid waste and began to look for new landfill. Time was of the essence, as a new one had to be fully ready in several years.

More stringent regulations and new technologies made landfills far cleaner and more fully contained than in the past, but the public largely still regarded them as *garbage dumps* that they didn't want anywhere near their communities. So a new landfill site was about as controversial a project as one could possibly conjure up, evoking the epitome of the "not in my back yard" mentality.

County Community Development Department staff identified five alternative solid waste sites, and evaluated them through a programmatic Environmental Impact Report (EIR) on the County Solid Waste Management Plan (CoSWMP). While none of them were terribly popular, the County selected the site that was among the most central, based on evaluation factors that included the lowest haul times, transportation and air quality impacts. That site was Keller Canyon, a 1,590-acre site tucked away in the hills behind Pittsburg near the Sacramento River Delta. The project's facilities would process countywide solid waste and provide a thirty year disposal capacity.

Using a programmatic EIR, the County evaluated five possible landfill sites in Contra Costa County. Keller Canyon was chosen in part for its central location and its proximity to existing roadways.

CEQA analysis for the Keller Canyon Landfill was tiered off of the programmatic EIR for the CoSWMP. The CEQA preparation and review process was extensive, spanning almost two years from1988 to 1990. The EIR that resulted was rigorous and thoroughly scrutinized by regulatory agencies, the City of Pittsburg, and the public alike.

Among the primary environmental issues were "leachate" (the fluids leaking or leaching out of the solid wastes) and their potential impacts to surface and ground water quality. Given that the City of Pittsburg and the San Francisco Bay-Delta were downstream, preventing leachate from contaminating either surface or groundwater was a key public and environmental health concern. Project mitigations in the EIR were designed to prevent just such pollution and well contamination. The mitigation approaches to stop leachate contamination of ground water were translated into design

A new landfill was about as controversial a project as one could possibly conjure up. Among the primary environmental issues were fluids leaching out of the solid wastes and their potential impacts to ground water quality.

modifications to the landfill. They consisted of: 1) surface drainage system modifications and daily cover provisions that would limit the creation of leachate; 2) a leachate containment system under the entire landfill composed of clay liner overlain by a sixty millimeter thick polyethelene (plastic) membrane; and 3) a leachate collection system made up of drainage below the base of the refuse piping system and collection sumps to channel the leachate to a treatment facility.

Keller Canyon Landfill

CEQA review led to important environmental mitigations such as this sedimentation basin which collects stormwater run-off and prevents sediment from leaving the site.

The CEQA process helped modify the engineering and design, creating a state-of-the-art facility that remains today a model of an environmentally sound landfill.

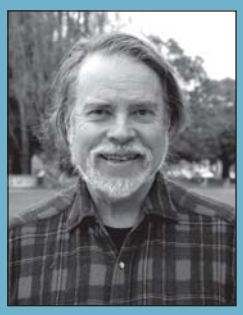
This composite leachate control system thoroughly protected the groundwater from contamination. However, for added assurance, a monitoring well system on the downhill side of the landfill was proposed as part of the mitigation program, in order to detect any off-site leaking. These monitoring wells could be converted to extraction wells in the event of leachate migration.

Keller Canyon Landfill

Litter abatement was enhanced through the Keller Canyon EIR. Now transfer trucks utilize an automated tarping system to prevent litter from leaving the trailer prior to disposal at the landfill.

As result of a thoroughgoing planning process, culminating in an EIR that identified and mitigated all of the landfill's issues – from leachate control, to litter abatement, to almost complete avoidance of visual quality impacts, the Keller Canyon Landfill was approved and constructed in the early 1990s. The CEQA process helped modify its engineering and design, creating a state-of the-art facility that remains today a model of an environmentally sound landfill.

John Thelen Steere is an environmental planner whose eighteen year career spans public, private, and non-profit sectors of conservation and land planning. Mr. Steere was Project Manager of the Keller Canyon Landfill EIR. Currently an ecological consultant, Mr. Steere is the author of the award-winning Restoring the Estuary *and numerous articles on habitat partnerships.*



David Tam has served as the Solid Waste and Recycling chair and a member of the Executive Committee of the Sierra Club's San Francisco Bay Chapter for many years. When Contra Costa County had to phase out a landfill in wetlands and choose among five uplands sites, the Club endorsed Keller Canyon.

"Of the two final sites, Keller Canyon was environmentally superior, although politically vulnerable. It was 18 miles nearer major waste sources and served by State Road 4. It also had unique geologic features that greatly reduced risks to water quality," he explains. "That's why the Sierra Club supported Keller Canyon in the face of a referendum, funded by $3 million from the competitor.

The competing Marsh Canyon landfill site was visible from two regional parks and served only by a two-lane blacktop road, meaning new highways and more sprawl. Keller Canyon's EIR was upheld in court, the rival site's EIR was not.

"CEQA helped discredit the backroom deals and the negative ad campaigns. In the end, 55 percent of the voters and most local decision makers agreed that Keller Canyon was the right choice."

CHAPTER 11
Historical & Cultural Resources

See Pg...156

See Pg...156

See Pg...157

See Pg...159

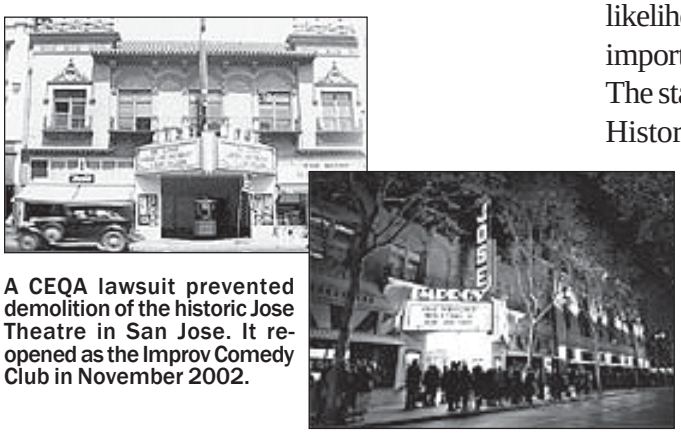
CEQA Preserves CALIFORNIA'S HISTORY

By Susan Brandt-Hawley and Anthea Hardig

From Native Californian sacred sites to drive-in theaters, California boasts a remarkable array of historic and cultural resources—those sites, buildings, and objects that remain from the rich and varied pasts of this place. Yet California's Craftsman bungalows, folk-art gardens, military bases, agricultural landscapes, 1920's-era schools, roadside architecture, and bridges, to name a few resource types, are at risk in every corner of the state as they have come of age and need rehabilitation to survive.

Californians do not want cookie-cutter communities that lack any reflection of their colorful history.

Communities that preserve their historic resources for adaptive reuse reap great economic benefits and revitalization, as the inherent integrity of historic resources builds a unique and evocative sense of place to which people are naturally drawn to live and work and play. The creative reuse of existing resources also has the advantage of built-in community acceptance, avoiding the opposition-related delays often faced by new construction. However, due to the lack of widespread understanding of the value and at times great profitability of preservation and re-use, many of California's historic resources suffer from neglect. Many thousands have been lost.



A CEQA lawsuit prevented demolition of the historic Jose Theatre in San Jose. It reopened as the Improv Comedy Club in November 2002.

California's framework for addressing the future of its valuable historic resources begins with local ordinances, zoning regulations, and general plan elements that address demolition and provide incentives for preservation and adaptive reuse projects. The statewide Mills Act allows local jurisdictions to provide tax incentives for rehabilitation. All such local measures vary widely throughout the state. Some cities and counties have extensive historic resource ordinances and plans, and some have none. Many have appointed Cultural Heritage Commissions or Landmarks Boards. Some have surveyed their resources and have created an historic register, and some have not. Some of the resource surveys that have been done are out of date; most are incomplete.

California has a State Historical Building Code that applies to historic resource rehabilitation. There is a system of California Historical Landmarks and California Points of Historical Interest. The California Register of Historical Resources includes sites that meet codified criteria (Pub. Resources Code § 5024.1). The California Register objectively defines historic importance based on a site's association with important events and cultural history, its association with the lives of persons important in our past, its distinctive architecture or high artistic values, or its likelihood to yield information important in prehistory or history. The staff of the California Office of Historic Preservation assesses a property's eligibility for the California Register, and the State Historical Resources Commission makes determinations following public hearing. The California State Historic Preservation Officer (SHPO) also reviews eligibility for the National Register of Historic Places. The consent of a private property owner is required for listing on the California or National Registers; without such consent, the properties may still be determined to be eligible for listing.

CEQA has applied to historic resources from its adoption in 1970, when it was declared to be the policy of the state to "take all action necessary to provide the people of this state with . . . enjoyment of historic environmental qualities" (Pub. Resources Code § 21001 subd.(b)). In 1992, CEQA was amended to make clear that a project that may cause a substantial adverse change in the significance of an historical resource is considered to have a significant effect on the environment (Pub. Resources Code § 21084.1). CEQA Guideline section 15064.5 was adopted in 1998 to implement protections of historic and cultural resources.

CEQA's application to discretionary projects that may result in the loss of an historic resource is extremely practical. When a project requiring a discretionary permit is proposed by a local or state agency under its own particular regulatory framework, CEQA review determines whether it may impact an historic resource and, if so, whether the impacts may be avoided. No other law requires this. The whole idea behind CEQA—to assess environmental impacts and to identify and adopt feasible alternatives and mitigations that allow achievement of most project objectives while avoiding significant impacts—works particularly well in the field of historic resources protection.

Since many in the building profession are trained to prefer new over old, most are not aware of the potential of viable and profitable adaptive reuse projects. CEQA environmental review provides an objective look at such potential within a public process, using professional expertise and the State Historic Building Code to fairly consider the feasibility of accomplishing a desired project without losing the historic resource. Use of the federal *Secretary of the Interior's Standards for Rehabilitation* to adaptively reuse historic buildings can exempt a project from CEQA and also expedite development. Logically, if an historic building has adequate structural integrity, most of the time there is a way to accomplish adaptive reuse that is profitable to the developer and valuable to the people of the community. The examples throughout the state are varied and powerful.

Californians do not want generic, bland, cookie-cutter style communities that lack any reflection of their colorful history. Respecting our built environment that reflects many decades of rich heritage builds strong neighborhoods, increases the quality of life, and improves understanding of our vast ethnic diversity, while maintaining economic vitality. CEQA promotes the adaptive reuse of such properties in a manner that avoids destruction of our historic and cultural heritage when it is feasible to do so.

Anthea Hartig, Ph.D., lectures in California history and preservation planning in university and professional forums and is the current appointed Chairperson of the California Historical Resources Commission.

Attorney Susan Brandt-Hawley has represented public interest groups in CEQA matters throughout California for over twenty years. Ms. Brandt-Hawley's current practice focuses on historic resource issues.

Protected by CEQA:

A standard in modern architecture, IBM Building 25 in San Jose was threatened by a proposed box-store development. It was spared after the EIR process demonstrated that the project could be completed without demolition.

CEQA saved the Guerneville Bridge from demolition by Caltrans. Replaced by a larger bridge upriver, it now carries pedestrian rather than vehicular traffic. Built in 1922, the bridge was declared a Federally Protected Historic Structure in 1990.

Cesar Chavez was incarcerated in the Old Monterey Jail for organizing a lettuce boycott that generated worldwide interest in the farmworker movement. The jail's demolition was averted in 2004.

SAVING Saint Vibiana's Cathedral:

CEQA & the Preservation of LA's Historic Downtown

By Jack H. Rubens

Early Saturday morning on June 1, 1996, the Roman Catholic Archdiocese of Los Angeles attempted to demolish the Cathedral of St. Vibiana, which was constructed in 1876 and is the oldest and perhaps most significant structure in the historic core of downtown Los Angeles. The Los Angeles Conservancy, a local historic preservation group, came to the rescue. With a wrecking ball poised a few feet from the cathedral, the demolition was stopped after the Conservancy determined that the Archdiocese didn't have a demolition permit. But the City stated its intent to issue that permit on Sunday morning with no prior environmental review under CEQA. Later that afternoon, however, the Conservancy's attorneys persuaded a superior court judge to issue a telephonic restraining order.

Luis Sinco, LA Times

St. Vibiana's Cathedral (above) was narrowly saved from demolition by CEQA. The former cathedral will be adaptively reused as a performing arts venue.

Two days later, the Conservancy filed its lawsuit and obtained a temporary restraining order. The Archdiocese and the City of Los Angeles contended that CEQA review was not required based on the statutory "emergency" exemption. The court rejected this argument because the damage to the cathedral had been caused by the Northridge earthquake in January 1994, almost two and a half years before the attempted demolition, so that the damage was not based on a "sudden, unexpected occurrence" that would justify application of the emergency exemption. Two weeks later, the Conservancy obtained a preliminary injunction after its structural engineer determined that the landmark had not suffered any material structural damage.

With a wrecking ball poised a few feet from the cathedral, the demolition was stopped after the Conservancy determined that the Archdiocese didn't have a permit. But the City stated its intent to issue that permit the following morning with no prior environmental review under CEQA.

The City then attempted to circumvent CEQA by revoking the cathedral's designation as a local historic landmark, hoping this would convert the issuance of the demolition permit from a discretionary action, which triggers CEQA review, to a ministerial action, which is exempt from CEQA review. The Conservancy filed a second lawsuit and obtained another preliminary injunction based on the City's failure to prepare an Environmental Impact Report to address the stated purpose of the de-listing—the demolition of the cathedral.

Subsequently, the Archdiocese elected to develop a new cathedral complex at another downtown location and sold the property to Tom Gilmore, a preservation developer. A new branch library for Little Tokyo has already been constructed on the site, and the seismic retrofit of the cathedral structures are underway. It is anticipated that the former cathedral will be adaptively reused as a performing arts venue, while a boutique hotel is planned for the adjacent rectory. The preservation and rehabilitation of this historic landmark will serve as a catalyst for the redevelopment of the downtown historic core.

Jack H. Rubens is a Partner at Sheppard Mullin Richter & Hampton.

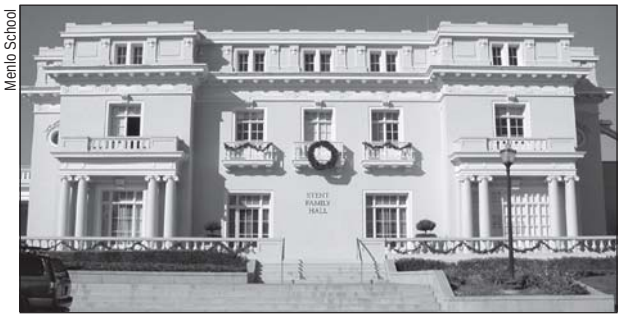
Fit for Retrofit: Inventor's Historic Mansion Protected

By Susan Brandt-Hawley

In the heart of the campus at Menlo School in Atherton is a lovely mansion built in 1913 in nineteenth century Italian design. In 1921, the house was sold to Leon F. Douglass, a creative genius who invented many electronic and phonographic items, including the coin-operated phonograph, motion picture cameras and devices, the first process for producing color movies, and the first flint cigarette lighter. Convalescing soldiers occupied Douglass Hall during World War II. In 1945, the estate was sold to the Menlo School and became the centerpiece of the campus. The building is formally recognized for its historic architectural significance and its association with Leon Douglass.

Douglass Hall sustained some damage in the 1989 Loma Prieta earthquake, but continued to be used by Menlo School for two years. In 1991, the School vacated the building and asked the Town of Atherton to allow its demolition "due to seismic damage and obsolescence." The School proposed two replacement buildings to be used for campus administration and classrooms. The demolition was opposed by many, including state officials, local preservation groups, a number of public commissions, and also the heirs of Leon Douglass. A group of concerned local residents formed to advocate against the demolition, calling itself Friends of Douglass Hall.

The Town of Atherton prepared an Environmental Impact Report (EIR) to address the impacts of the demolition project and the feasibility of alternatives. The EIR recognized that the building reflects "the work of a master" and possesses "high artistic values." However, while recommending rehabilitation of Douglass Hall rather than its demolition, the EIR consultants did not prepare a cost analysis of any restoration options, but relied on an estimate for seismic upgrade and renovation costs that had been prepared by a contracting firm without expertise in historic resources, and which was partly owned by a Trustee of the School who was an advocate of the demolition.

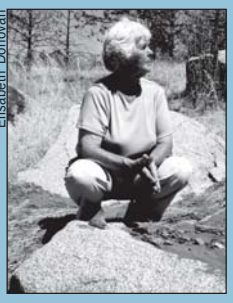


Because of CEQA, Douglass Hall is once again a well-used and well-loved centerpiece of the Menlo School campus.

The Town Planning Commission recommended denial of the demolition, but the Town Council approved it. The Friends of Douglass Hall then filed an action in the San Mateo County Superior Court to require the Town to comply with CEQA because the EIR had not fairly considered feasible alternatives to demolition when it relied on the rehabilitation alternative prepared by the Trustee's contracting firm. The Court issued an injunction to stop the demolition and ultimately issued a ruling in favor of the Friends. The Court held that the EIR must consider "restoration alternatives...short of destruction," using cost-saving provisions of the State Historic Building Code since there was no evidence that Douglass Hall would not feasibly support the School's educational mission.

The School Trustees, who had been very committed to demolition and to their proposed new building project, initially declared that despite the Court's ruling and the mandates of CEQA they would never rehabilitate Douglass Hall and would just let it sit. However, after a bit of time passed they reconsidered and proceeded to do a magnificent restoration of the building. They have renamed it Stent Family Hall and it is once again a well-used and well-loved centerpiece of the Menlo School campus. Without the use of CEQA, this remarkable resource would have unquestionably been lost forever.

Attorney Susan Brandt-Hawley has represented public interest groups in CEQA matters throughout California for over twenty years. Ms. Brandt-Hawley's current practice focuses on historic resource issues.


Elisabeth Donovan

Saving the Little Valley

By Carmen Lucas

My whole life I have driven by the Lucky 5 Ranch to get to and from our mountain homeland. As a kid, I wondered about that land, the former reservation of my ancestors, the Kwaaymii Laguna Band of Mission Indians.

In 2001, State Parks acquired the Lucky 5 Ranch. I was contacted by the Park's archaeologist to visit the southern parcel. I was excited to finally walk on this land.

I was amazed by the amount and density of traditional plant resources there, including chokecherry (which was eaten), oaks (acorns were a food source), penstemon (which was smoked), and sumac (important for basket making). With all these resources concentrated in this area, it must have been an important resource gathering place for my ancestors.

I also saw visible cultural resources: rock rings, milling sites near a natural spring, midden soil areas (indicating former living places), pottery shards and manos, and

Continued on the following page.

CEQA PROTECTS TRIBAL HERITAGE RESOURCES

By Courtney Ann Coyle

In 2001, State Parks Colorado Desert District acquired portions of the extensive Lucky 5 Ranch in San Diego County as a link between Cuyamaca Rancho and Anza Borrego State Parks. One of the old Ranch's parcels contains a little scenic valley studded with stands of oaks, boulder outcroppings, meadows and a natural spring.


C. A. Coyle

The CEQA process ensured that the beautiful Little Valley would be preserved for its tribal heritage.

State Parks intended to turn this little valley into a permanent horse camp with twelve to fourteen equestrian campsites, including: a group campsite, parking areas, vault toilets, a new well and water conveyance system, trails and a manure collection area.

In 2002, State Parks prepared a Mitigated Negative Declaration (MND) for the project. They contacted the state Native American Heritage Commission, but the Sacred Lands file did not show listed properties. A letter went out to potentially interested tribal entities. A response was received by Parks, informing them that this was an area of tribal interest and that there were concerns regarding the proposed use. The survey done by their archaeologist agreed that there was potential for significant impacts to cultural resources.

Consultation with knowledgeable local Indians revealed that the valley was an important cultural site. In addition to holding visible cultural material, it had considerable intangible values: it possessed an integrity of setting, was a gathering area for traditional plant materials, and was linked to other nearby previously unrecorded cultural sites that made the valley important to living tribal peoples. Alternative locations existed for the proposed horse camp. State Parks' resources staff recommended that the valley be considered a traditional cultural property.

Based on public comment, State Parks issued a recirculated MND in September 2003 which made some project changes. The revised document, however, still recommended the proposed site but with added mitigation measures.

In October 2003, the worst firestorm in recent memory to hit California burned through the valley, revealing cultural material that was not observed during the prior surveys. It became increasingly clear that building a recreational horse camp was not compatible with preserving the cultural and tribal values of the site.

The District Superintendent walked the site with the Indian informant and his resource staff to get a firsthand understanding of the cultural resources at issue. In December 2004, the Indian informant was officially notified that the property was no longer being proposed for the campground. CEQA's purpose had been achieved. The tribal consultation process had worked. The Little Valley and its history were saved.

The foundation of CEQA rests upon informed decision making. But to be informed, decision makers must demand that facts and opinions be sought out. Where there is any indication in the physical records or oral histories of cultural resources, meaningful consultation with local or tribal entities must be conducted in a timely manner.

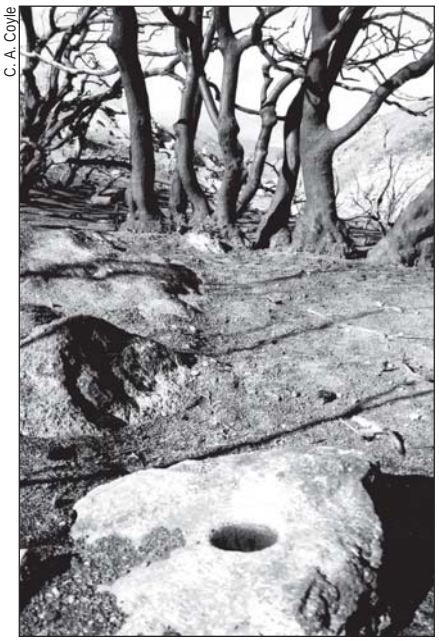
Posting a notice in the newspaper, sending a letter or checking the sacred or historic lands files for recorded properties is not enough.

Though the CEQA process was not always familiar or comfortable, the tribal consultant's involvement ensured that the voices of the land and of the old ones were heard, and that the valley would be preserved, so their story would be told.

Direct contact is essential to fulfilling the objective of CEQA: to ensure we do not adversely impact environmental or cultural resources where avoidable.

After rains and the passage of some time, many oaks have sprouted their leaves. Green has returned to the once burned valley, blanketing the temporarily visible cultural resources so that they may again rest in peace. The tribal informant could also rest at ease. She knew that she had honored her ancestors by taking action. Though the CEQA process was not always familiar or comfortable to her, her involvement ensured that the voices of the land and of the old ones were heard, and that the valley would be preserved, so their story would be told—again and again and again.

C. A. Coyle



A grinding stone located within the boundaries of the Lucky 5 Ranch acquisition. This is just one example of the region's many cultural resources.

Courtney Ann Coyle is an attorney in private practice in San Diego, focusing on protecting and preserving tribal, cultural, biological, and park resource landscapes. Ms. Coyle was named by California Lawyer Magazine as Environmental Lawyer of 2003 for her successful legislative and regulatory efforts to protect the Quechan Indian Nation's sacred places from the impacts of hardrock mining.

Continued from the previous page.

metates (rock tools for preparing food). Developing the site would endanger the plants and cultural resources.

Through the CEQA process, we read documents, wrote letters, and had many phone calls. But the most important activities were the walks of the site. Both before and after the fire, these site visits helped the decision-makers and their staffs see through my eyes why the little valley was worth preserving as it is. The cultural materials are ancient and nonrenewable. Once these places are harmed, most lose their essence forever—the intangible feeling of the old ones.

I was told that it would be a waste of time to get involved. But that wasn't true. If people have connections to a place, they should participate mentally, emotionally, and financially. My other advice is to find a good attorney—one who'll crawl around in the brush with you!

That is why the success story of the preservation of the Little Valley is so important to tell. Through our efforts, our history can be preserved.

Carmen Lucas, Kwaaymii, resides on the homeland of her people on Laguna Mountain, east of San Diego. Ms. Lucas works as an archeology technician, Indian monitor, and consultant. Ms. Lucas also serves on the county's Historic Resources board and the Kumeyaay Culture Repatriation Committee.

CHAPTER 12
Perspectives

CEQA: A Legislative Perspective

By Byron Sher

The California Environmental Quality Act is the state's single most comprehensive environmental statute, one that is often counted on to fill in the gaps of other environmental laws. More than any other state law, it contains essential processes that allow each individual to fight for a clean and healthy environment.

CEQA requires lead agencies to analyze and, where feasible, to mitigate the environmental impacts proposed projects, including cumulative effects and growth inducing effects. In this way, CEQA has prevented much unnecessary harm to the environment. Countless projects have been improved through the CEQA process. Others were halted because the CEQA process revealed their true environmental costs or unearthed feasible and less damaging alternatives to achieve the goals of the project.

Perhaps more importantly, CEQA gives individual Californians a voice in their environmental future. Public agencies are required to disclose the details on the environmental consequences of proposed projects. The public has a right to comment. The comments of the public must be responded to in writing. An individual can enforce this process in court. CEQA thus protects not just the environment, but informed self-government.

CEQA has been in effect for three decades. It has been amended; but the legislature has always protected the fundamental principles of environmental review, mitigation, and public participation.

Exemptions from CEQA have been proposed, sometimes for projects from an individual legislator's district. Exemptions, if granted, would shield a project not just from an environmental analysis, but also from public oversight. Fortunately, few exemptions have been enacted.

Like many provisions in the Bill of Rights, CEQA does not guarantee a specific outcome; instead it guarantees processes and procedures, and empowers the individual person to enforce them. CEQA is the bill of rights for an environmental democracy.

One of the most persistent CEQA issues has been the "fair argument" standard. Under the fair argument standard, an Environmental Impact Report (EIR) must be prepared if there is a fair argument based upon some substantial evidence that a project *may* have a significant effect on the environment. This standard has been frequently attacked for requiring too many EIRs.

Yet the standard is fundamentally sound. It is applied early, before much information about the project is public. To require that the public produce evidence about a project when the public has little access to information is manifestly unfair. Such a rule would actually create an incentive to avoid disclosure, undermining one of the core values of CEQA.

California has a dynamic, diverse and prosperous economy. As we enjoy that prosperity and look forward to additional economic growth, there is tremendous pressure to focus on the short term. But we ignore long-term consequences at our peril. CEQA is the one statute that compels us to examine the long-term consequences of our decisions while there is still time to address them.

Looking back at my twenty-four years in the Legislature, why did I spend so much time on CEQA? Like many provisions in the Bill of Rights in the Federal Constitution, CEQA does not guarantee a specific outcome; instead it guarantees processes and procedures, and it empowers the individual person to enforce them. CEQA is the bill of rights for an environmental democracy.

Byron Sher served in the State Assembly for over fifteen years. He served for eight years in the State Senate. Sher is the author of landmark laws to protect California's environment, including the Clean Air Act, the Integrated Waste Management Act, the Safe Drinking Water Act and the nation's first law to prevent toxic contamination from leaking underground storage tanks. He also authored laws to strengthen the state's timber regulations and the Surface Mining and Reclamation Act, and to add new rivers to California's Wild and Scenic River System.

CEQA: A Judicial Perspective

By Cruz Reynoso

The first major CEQA case, *Friends of Mammoth v. Board of Supervisors*, reached the Supreme Court in 1972. The issue in that case—whether or not CEQA applies only to public works projects or also to private projects that required a discretionary governmental approval—was obviously important. However, of enduring importance to the statute has been the tour de force represented by Justice Mosk's opinion. In it, he recognizes the constant threats to the environment from a single-minded focus on the economy and the unique importance of protecting the environment. Consequently, *Friends of Mammoth* declares that CEQA must be interpreted "to afford the fullest possible protection to the environment…."

Mammoth Mountain overlooking the town of Mammoth Lake in Mono County. In 1971, when the Mono County Planning Commission approved plans to build six buildings up to eight stories tall in the small resort town, a group of residents filed the first CEQA suit for a private development. The resulting *Friends of Mammoth v. Board of Supervisors* decision recognized that private development projects must undergo environmental review pursuant to CEQA.

It is sometimes the case that, when the Supreme Court rules, it takes a certain amount of repetition before the lower courts realize that the Court meant what it said. This was true when, shortly after *Friends of Mammoth*, the Court accepted review of *No Oil Inc. v. City of Los Angeles*. In *No Oil*, the Court was confronted by a shabby evasion of CEQA, where the city council—without having the analysis of an Environmental Impact Report (EIR) before it—made the essentially political decision that an oil drilling project would not have a significant impact on the environment. The Supreme Court, however, restated the principles that it had declared in *Friends of Mammoth* and established the now well understood "fair argument" rule, namely, that an EIR must be prepared if there is a fair argument that the project would cause a significant impact on the environment.

Though the court has not always ruled on the side of those who filed the CEQA case, the principles articulated in these early cases have compelled parties and courts to take the environment seriously and to take their obligations under CEQA seriously. The environment and the State of California have greatly benefited from the Court's early, insightful wisdom.

Three years later, in 1975, the court was again compelled to stand by its ruling in *Friends of Mammoth*,that CEQA should be broadly applied. In *Bozung v. Local Agency Formation*, the Court recognized that the annexation of property was not a mere paper exercise but the first step in a process intended to lead to development. The court gave meaning to one of the core principles of CEQA, that the analysis of environmental issues should occur as early as possible, while there is still time to consider alternatives or mitigation measures. It ruled that an annexation was a "project" subject to the requirements of CEQA.

It took some emphasis and some repetition by the Court; but these three early cases successfully managed to set the tone for thirty-five years of interpretation and application of CEQA. Though the court has not always ruled on the side of those who filed the CEQA case, the principles articulated in these early cases have compelled parties and courts to take the environment seriously and to take their obligations under CEQA seriously. The environment and the State of California have greatly benefited from the Court's early and insightful wisdom.

Cruz Reynoso is a former Justice of the California Supreme Court. Mr. Reynoso currently holds the Boochever and Bird Chair for the Study and Teaching of Freedom and Equality at the UC Davis School of Law.

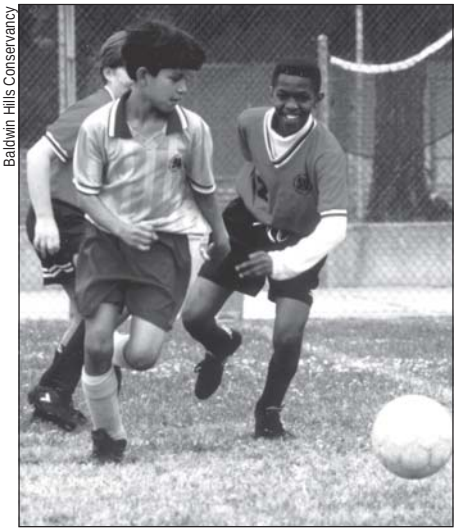
Conclusion: **Securing the Future** of THE GOLDEN STATE

By Herb J. Wesson, Jr.

California's reputation as a national leader in environmental protection is well-deserved. From zero-emission vehicle requirements to air quality standards for children, California has pioneered environmental protection laws that set the standard for other states and the world. As recently as 2002, during my tenure as Speaker of the State Assembly, we added another cutting-edge environmental legislation to the books, one that limits greenhouse gas emissions from vehicles.

We are in the forefront of environmental protection because we as Californians value the rich and diverse natural resources with which the state has been blessed and appreciate the importance of a clean environment for the public's health. That is why we are committed to preserving our natural resources and promoting a clean environment. The California Environmental Quality Act is a prime example of that commitment and as this report illustrates, CEQA has protected the California environment in various ways over its thirty-five year history.

CEQA's contributions in protecting California's coastline, forests, wildlife habitat, and open spaces have been extraordinary. CEQA has helped preserve wildlands in the Santa Monica Mountains, the beauty of Lake Tahoe, and the Sierra Nevadas; protected popular beaches in Northern and Southern California; and helped make the vision of public parks at Baldwin Hills, Chinatown Cornfield, and Taylor Yard a reality.



Baldwin Hills Conservancy

Children from the Baldwin Hills community enjoy a game of soccer. Thanks to CEQA, a proposed sixty-five acre development in Baldwin Hills will instead become part of a two square mile park in the historic African-American heart of LA, the largest new urban park built in the U.S. in over a century.

However, CEQA is more than a tool for protecting habitat, parks, and open space. It has also protected our urban communities from hazardous exposure to toxic chemicals and from dangerous diesel emissions in the air, and has even helped preserve affordable housing.

A healthy environment is as much a symbol of California as the Golden Gate Bridge or the Hollywood sign.

CEQA has been a critical tool in blocking the construction of incinerators in some of our most heavily populated neighborhoods. CEQA protects groundwater, which is likely to form an increasingly large portion of our water supply. CEQA has required power plants to improve their air emissions, and it has protected the water quality in our bays, rivers, and oceans.

The examples of CEQA successes, as told in this report, clearly illustrate how effective this statute has been for California. It is no wonder CEQA enjoys very strong support among the general public. Unfortunately, its provisions are constantly being challenged by those who favor economic growth policies irrespective of their environmental and public health implications.

Regardless of what critics may say, environmental protection does not come at the expense of a healthy economy. Rather, a strong economy is compatible with, and complimentary to, strong environmental protections. Residents and businesses are attracted to California because of our quality of life. A healthy environment is as much a symbol of California as the Golden Gate Bridge or the Hollywood sign. CEQA helps make California the great state that it is and, for that reason, we need to preserve it. After all, we are only stewards of this earth. Our job is to safeguard it for the generations to come.

Herb J. Wesson, Jr. is the Speaker Emeritus of the California State Assembly.

Printed by Alonzo Printing on recyled paper with soy-based ink.

The Planning and Conservation League Foundation
& The Planning and Conservation League
921 11th St., Suite 300
Sacramento, CA 95814
(916) 444-8726
www.pcl.org

The California League of Conservation Voters
& The CLCV Education Fund
1212 Broadway, Suite 630
Oakland, CA 94612
(510) 271-0900
www.ecovote.org