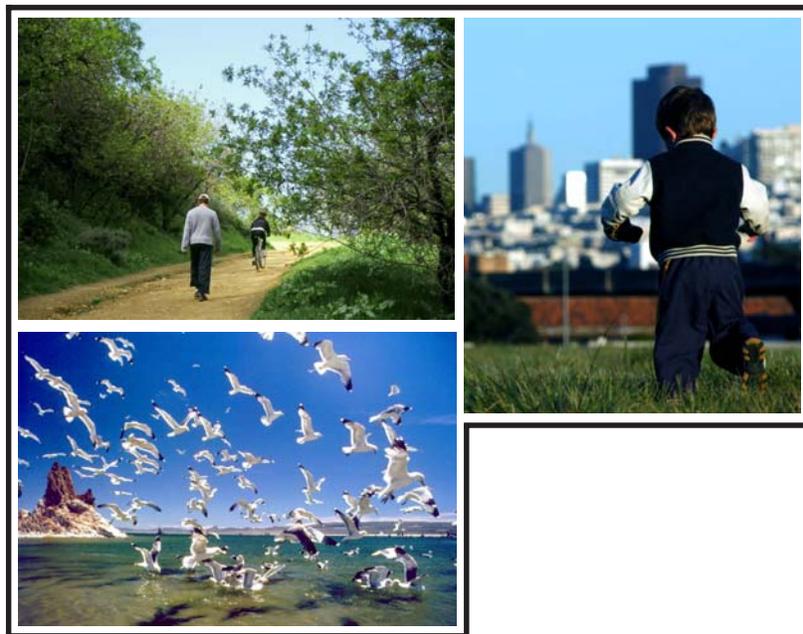


Everyday Heroes Protect the Air We Breathe, the Water We Drink, and the Natural Areas We Prize

THIRTY-FIVE YEARS OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CEQA



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.

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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

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**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**

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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.



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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.

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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.



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 the 19,000 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.



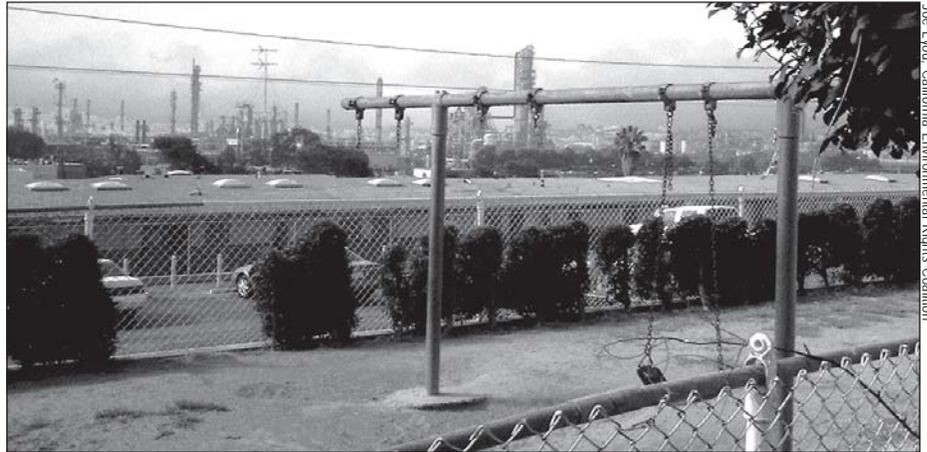
Because of CEQA, residents learned that a 2,700 acre sprawl development planned for this last greenbelt area between Antioch and Brentwood would have resulted in 140,000 more car trips per year on Highway 4 and exposed residents to nearby hazardous sand and coal mines. The public outcry that followed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

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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

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.

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.

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 in-

creases 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.

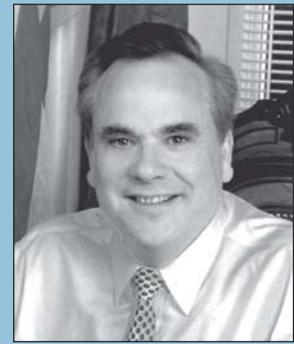
- My office has filed several CEQA "friend of the court" briefs in land use planning matters, most notably in: *United Water Conservation District, et al. v. County of Los Angeles*, where we successfully argued that the County had failed to adequately review the environmental impacts of the Newhall Ranch 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 "back-country" (pg. 63). In each of these cases, the court, in a ruling specifi-

cally 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,

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

it cited the key “fullest possible protection” interpretive principle. *Id.* at 390.

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 evenhanded 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," "discretion-

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.

ary," 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. 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.

