

CHAPTER 12

Perspectives

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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

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from public oversight. Fortunately, few exemptions have been enacted.

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....”

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 essen-



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.

tially 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 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.

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.

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*

the project would cause a significant impact on the environment.

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 For-*

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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.



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.

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