

# **CEQA Reform: Issues and Options**

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# Contents

Summary	iii
Introduction	1
WHAT IS CEQA?	3
Early History and National Context	3
Intent	4
Key Characteristics	4
Procedural Requirements	5
EVOLUTION OF CEQA, 1975 TO 1995: BROAD DEBATE AND INCREMENTAL REFORMS	7
IMPACTS, ISSUES, AND REACTIONS	11
Impact on Development Approvals: Conflict Among Parties	11
Impact on Development Approvals: Uncertain Requirements	15
Impact on Planning	18
Impact on the Economy and Environment	24
THE CURRENT CONTEXT FOR REFORM	27
Housing Problems Prompt Reconsideration of CEQA	27
CEQA's Unintended Consequences: Planning Incrementalism and Local Resistance to Development	27
Emerging Models: Bioregionalism	29
The NCCP: A Model for CEQA Reform	30
Emerging Models: Regional Smart Growth Programs	32
Reconsidering Fundamental Questions	34
PROPOSALS AND IDEAS	37
Enhancing Certainty <i>Without</i> Mandating Standardization	37
Standardizing Threshold and Mitigation Requirements	38
Strengthening Tiering and Cumulative Impacts Analysis	39
Promoting Policy Objectives: Expediting Housing Development	40
Enacting CEQA Reforms Within a Larger Growth Management Framework	40
AREAS FOR FURTHER RESEARCH	43
Research on CEQA Practice	43
Research on CEQA Impacts	44
Conclusion: The Baby and the Bathwater	47
References	51



## Summary

Policymakers are currently discussing reform of the California Environmental Quality Act (CEQA) to help address concerns about expediting housing production in California. But the current discussion is only the latest round in a long-standing debate. Similar discussions in the past led stakeholders to agree that certain weaknesses of CEQA should be addressed, in particular those related to the law's uncertain requirements and project-level focus. However, only modest changes were ultimately enacted. Thoroughgoing reform has been a tough nut to crack because the issues are complex and concerns are intensely felt. Will the current round of debate produce any more substantial results?

CEQA has attracted controversy throughout its 35 years because there is no other state law that relates as intimately to so many aspects of development planning and public concerns about growth. CEQA establishes a process to incorporate scientific information and public input into the approval of development projects, both public and private. For each proposed project, potential adverse environmental impacts must be evaluated and, "where feasible," mitigated by project applicants. Implementation falls largely on local governments because they process most regulatory permits.

Considered by some as a bulwark of good government and environmental protection, CEQA is viewed by others as impeding the economy and good planning. For years, the most common complaints about CEQA were related to negative economic impacts – in particular costs to developers of legal conflict and delay caused by uncertain and inconsistent requirements. CEQA is a self-enforcing statute, meaning that enforcement is left to citizen court challenge. But although studies indicate that the threat of litigation does exert a strong influence on CEQA implementation, the actual number of lawsuits is low – perhaps about one lawsuit for every 350 or so project reviews (Binger and McBride, 1991; Landis et al., 1995).

Increasingly, a more common complaint regarding development approvals has been about costs related to uncertain and inconsistent requirements. Project applicants face inconsistent requirements not just across jurisdictions but also for different projects within the same jurisdiction. The risks associated with uncertainty may be more costly to developers than actual time and money spent on reviews. Furthermore, uncertain requirements exacerbate fears about litigation, prompting lead agencies to "bullet-proof" environmental impact reports (EIRs) with extensive, sometimes redundant documentation.

The main cause of uncertainty is the law's flexible and vague language on substantive objectives. For example, the State Bar referred to the legal standard for determining "significance" of environmental impacts (namely, whether a "fair argument" can be made that a "substantial change in physical conditions" will occur) as a judgment call, because it varies with setting (State Bar, 1995). Another cause of uncertainty is CEQA's deference to local control and discretion. For example, localities may approve projects in spite of adverse effects, and because localities weigh costs and benefits of environmental mitigation differently, project applicants may face inconsistent requirements across jurisdictions. A third cause, less directly attributable to the law itself, is the lack of coordinated state and regional growth and environmental policies. Although they do not carry presumptive legal weight, such policies and regulations

are commonly used for determining impacts “normally” considered significant. Inconsistent standards can be a problem, for example, when state agencies weigh in on local reviews for natural resources over which they have regulatory purview.

More uniform standards – such as for determining when and how impacts should be mitigated – could offer greater predictability to project applicants and the public about the objectives of CEQA review. They also might help better connect project reviews with community-wide and regional plans and mitigation strategies. However, efforts to promote this objective run into complex trade-offs between state and local control and between certainty and flexibility. Some argue that unless the state defines clearer policy objectives, it makes little sense to expect localities to do so. On a voluntary basis, only about 11 percent of local agencies have developed uniform policies on thresholds for determining significant impacts (Seiver and Hatfield, 2001). Many planners value flexibility for different project types and locations, and uniform standards might only make overall requirements more arduous, since currently most reviews don’t require extensive, complete environmental impact reports.

However, identifying and reconciling workable state standards across resource policy topics, to be applied in varying circumstances, and then amending CEQA to incorporate such standards, would be a highly complex and likely controversial process. Not only do local governments and planners value the control and discretion they currently enjoy under the law, but environmentalists worry that watered-down standards could diminish CEQA’s effectiveness for the bigger, more controversial projects that do require EIRs. For this reason, environmentalists resist trading away current project-level requirements unless strong policy-level standards are enacted in their place.

As growth pressures mounted in California in recent decades, complaints about the development approvals process were increasingly matched by complaints from planners and environmentalists that CEQA does not support effective regional planning for land use and the environment. CEQA has long been accused of meshing poorly with long-range, comprehensive planning processes. At the local level, General Plans should set a framework for CEQA review. But many are out-of-date and few communities integrate the processes fully.

CEQA is meant to connect to regional planning through requirements for evaluating cumulative impacts, alternatives, and growth-inducing impacts of proposed projects. But compliance with these requirements is widely considered difficult and weak. Some argue that CEQA gets things fundamentally backwards by expecting local projects to address regional impacts. Currently CEQA does not effectively accommodate regional strategies that trade off increases in negative effects in one geographic area or for one environmental impact in exchange for corresponding reductions in another. Although such approaches might be legally defensible – at least for single impacts viewed within a regional context – few localities have the technical capacity to demonstrate such effects. As it is, some project mitigations may even be counterproductive. For example, lowering a residential project’s density might help mitigate traffic congestion or open space problems at the local scale, but when viewed regionally might only compound the problems if development is pushed to outlying areas. If, instead of being displaced, the development fails to occur, then the so-called mitigation may compound housing shortages.

During the past decade, regional planning and policy innovations emerged that seemed to demonstrate how CEQA's goals might be achieved more effectively. Environmental programs promoted a bioregional approach to regulation integrated with local land use planning, such as through watershed-level management of pollution and multispecies habitat preservation. Decisionmaking authority in a number of infrastructure policy areas – transportation and water supply, for example – was devolved to regions and more closely integrated with land use and environmental planning.

Bioregional environmental programs provide especially useful models for CEQA reform. The programs rely for success on clear health-based policy standards to focus planning, combined with collaborative approaches to implementation. By shifting the burden for identifying how local mitigations should address regional policy goals from the project level to the regional plan level, they overcome piecemeal conflicts and achieve greater certainty for *both* developers *and* the environment – the very problems that have plagued CEQA.

Similarly, “smart growth” plans being devised in metropolitan areas to coordinate infrastructure, land use, and environmental objectives may help provide a new framework for local mitigations. These are especially interesting models because they consider trade-offs *among* environmental impacts – for example, the potential gains in regional open space preservation and air quality that might derive from increased development density (and thus more traffic congestion and other local impacts) in inner, urban areas. The integrative aspect of regional smart growth modeling makes it the closest approximation available to CEQA's balancing function, only reoriented to the regional scale.

With regional policy innovations forming a new backdrop, the debate about CEQA broadened to encompass its role within the state's growth management and planning processes more generally. Many complaints today address unintended consequences of CEQA's operation in a context of local government fiscal constraint, negative public reaction to growth, and weak comprehensive planning mechanisms. Although CEQA was intended to help ensure that local projects address regional, state, and local planning objectives, those objectives have not been well clarified. Because CEQA contains a funding mechanism, it may even have come to substitute for comprehensive planning in some cash-strapped localities. And although CEQA may offer a valuable forum for local public debate, it also can channel public frustration about growth issues unrelated to environmental protection into resistance to new development, especially if forums for resolving such concerns at a wider scale are not available.

By the early 2000s, there was fairly widespread agreement that in certain respects, CEQA was failing to live up to its promise. Many stakeholders agreed on the need for clearer policy objectives to establish more certainty in requirements, and on the need to reorient CEQA to support plan-level rather than project-level review. Many environmentalists acknowledged the benefit of easing restrictions on infill development in urban areas, but considered this appropriate only as part of a larger package of reforms that would also identify and protect natural resource areas.

However, it is much easier to find agreement among stakeholders on what is wrong with CEQA than on how it should be improved. Essentially, although many stakeholders agree that stronger policy standards or objectives need to be advanced to help overcome CEQA's local

orientation, they are less likely to agree on what those should be – and this impasse has persisted for more than a decade.

Talk of substantive reform tends to open a Pandora's box of other related issues and concerns. But it is CEQA's strength as much as its weakness that it relates to multiple aspects of planning and environmental policy. And in spite of acknowledged weaknesses, CEQA's strengths also remain vital. In particular, its balancing function – the imperative that environmental, social, and economic values be balanced and scrutinized in relation to concrete development choices – embodies a central principle of the smart growth movement, although not at a regional scale. If CEQA could be reoriented to promote regional objectives, it might even become a strong mechanism for smart growth planning. To make this possible, reforms to strengthen local and regional comprehensive planning may be even more important than actually amending CEQA itself. CEQA reform could also help, however – for example if cumulative impacts analysis and mitigation were redirected to support plan-level, rather than project-level strategies.

Currently housing affordability problems are center stage in discussions on CEQA reform. There is enough agreement on the value of expediting infill development that some reforms in that area may be possible even if other topics are not addressed. Or, the constellation of political forces may be sufficient to push through more substantial reforms to streamline development approvals, even if CEQA's environmental safeguards are weakened in the process. But in either case, the full potential for CEQA reform will have been missed. CEQA reform should be part of a wider discussion and a more comprehensive set of solutions to growth concerns. The broader issues and challenges are indeed difficult to resolve. But putting off the task only leaves the state less prepared to meet its future needs for public and private investment and quality of life effectively.



# Introduction

Over the 35 years since its original passage, the California Environmental Quality Act (CEQA) has always attracted controversy. Considered by some to be the state's bulwark of good government and environmental protection, it is viewed by others as impeding the economy and good planning. Longstanding complaints from developers helped ensure that periods of major controversy generally coincided with economic downturns, during which business leaders increased pressure for regulatory relief. However, in recent years, such complaints also have been increasingly matched by emerging concerns from some planners and environmentalists that CEQA does not support good planning for urban development and the environment. And yet in spite of concerted discussions about reform, only modest changes have been enacted so far.

Remarkably, in spite of the controversy, CEQA has received little attention from policy researchers. Although reams of legal analysis have been written about the law, beyond the work of Landis et al. (1995) and Olshansky (1996 a and b), it is difficult to identify extensive, rigorous empirical analysis of CEQA practice and implementation, let alone its broader effects on either the environment or on urban development.

Now, as we experience intense pressure on housing markets and on the environment as California's population continues inexorably to grow, CEQA reform is again on the agenda in Sacramento. The Schwarzenegger administration intends to develop legislation to reorient CEQA to better meet growth management needs, in particular related to housing production.

This paper aims to provide a broad but succinct overview of CEQA as a complement to that effort. It attempts to map out the terrain of the reform debate and consider implications of proposed strategies for change. Section 2 provides a brief introduction to the law itself. Section 3 describes CEQA's evolution over the two decades from 1975 to 1995, tracing major periods of controversy and reforms enacted. Section 4 explores central issues in the debate related to CEQA's impacts on development approvals, planning, and the environment and broader economy. We consider what is known about the impacts of the law and what has been done in response.

Turning to the present, Section 5 addresses the current context for reform, asking whether anything has changed since the last round of state-level debate took place a decade ago. Section 6 summarizes current reform proposals, and Section 7 discusses some areas for further research. The conclusion considers the trajectory of the CEQA debate and some implications of major pending proposals for change.



# What Is CEQA?

“One of California's most cherished institutions ...(and) one of its most controversial ...”

– John Landis (et al.), 1995, p.1

“The most important law governing land use ...the key to understanding planning in California ...”

– Robert Olshansky, 1996a, p. 313

“The most important environmental protection law in this state ...(and also) the basic good government law ...”

– Gary Patton, in Planning and Conservation League, 1997, p.7

“Cumbersome, costly, and often abused...”

– Council on California Competitiveness, 1992, p.37

As the preceding quotes indicate, opinions vary on what CEQA accomplishes and whether its influence is positive or negative. It affects myriad areas of public policy and is both cherished and reviled, depending on the perspective of observers.

## Early History and National Context

Enacted in 1970, CEQA is the California equivalent of the National Environmental Policy Act (NEPA), passed the previous year, which requires environmental analysis for “federal actions significantly affecting the quality of the human environment.” California was the first of more than twenty states to adopt a “mini-NEPA” to evaluate and mitigate environmental impacts of state-sponsored development projects (Landis et al., 1995; Karkkainen, 2002).

Through court rulings broadly interpreting the law’s intent, CEQA was expanded during the early 1970s to apply to all development proposals in California – public or private – regulated by public agencies.<sup>1</sup> Its implementation falls largely on local governments because they process most regulatory permits. Since 1976, the law has required mitigation by project applicants of identified significant adverse environmental impacts “where feasible.”

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<sup>1</sup> For a historical perspective on CEQA’s early evolution, see Shute (1993) and Willoughby (1993).

CEQA's broad applicability and its "action-forcing" nature – because of its mitigation requirements – distinguish CEQA from other mini-NEPAs. However, in its procedural requirements, CEQA is not more stringent than other equivalent state laws. Some states go further, for example, by requiring cost-benefit and fiscal analysis of mitigation (Landis et al., 1995).

## Intent

According to statute, CEQA has four major purposes (*italics added*):

1. To "*inform* governmental decisionmakers and the public about the potential significant environmental effects of proposed activities."
2. To "*identify* ways that environmental damage can be avoided or significantly reduced."
3. To "*prevent* significant, avoidable damage to the environment by requiring changes" when the governmental agency finds the changes to be feasible."
4. To ensure that a governmental agency "*discloses* to the public the reasons why [it] approved [a] project . . . if significant environmental effects are involved."

Thus, CEQA aims to open development decisions to scrutiny and to enable action to be taken to offset negative environmental effects. By incorporating scientific information and public input into a systematic decision process, it is hoped that better-informed decisions and greater public accountability will result. This makes CEQA an example of what planners call the "rational planning model" (Olshansky, 1996a; Karkkainen, 2002).

## Key Characteristics

Key characteristics of CEQA include its procedural nature, its requirement for balancing environmental and economic goals in a manner that respects local control and discretion, and its project-level focus.

Similar to most California planning laws, CEQA establishes mainly procedural requirements, allowing local governments to retain broad authority and discretion to determine substantive policy goals and objectives. Thus, for example, although CEQA requires that localities evaluate and discuss adverse impacts and possible alternatives and mitigation measures, in the end localities may issue "Statements of Overriding Consideration" that allow a project to be approved in spite of its adverse effects.

Review is directed at the level of individual projects. This has made CEQA the most visible state planning law since it applies both to very large projects and to projects at the neighborhood level where public concerns about development are most apt to be voiced. CEQA requires evaluation of impacts and mitigation of the *site-specific* circumstances of individual projects in a *flexible* manner. Rather than clarifying substantive environmental standards to be applied in determining specific effects, CEQA's language instead is vague and flexible. So, for example, a basic purpose of CEQA is to mitigate "significant adverse effects." The legal standard for determining "significance" is whether a "fair argument" can be made

that a “substantial change in physical conditions” will occur. According to the State Bar Association, this amounts to a judgment call, because significance may vary with setting (State Bar, 1995).

Thus CEQA retains substantive flexibility not just in how localities may choose to balance environmental, economic, and social goals, but also in how environmental standards should be applied in any given case.

## **Procedural Requirements**

There are three basic procedural steps or “screens” in the CEQA review process. The first step is for a government agency that must approve a private or public development project – termed the “lead agency” – to determine whether the project is subject to CEQA review. According to the law, “any governmental activity that may have as its ultimate consequence a physical change in the environment” is subject to CEQA. It applies broadly to discretionary government actions that range from approving a local General Plan to issuing permits for large development projects. Ministerial actions, such as issuance of building permits, are exempt, however. Various other types of projects also have been exempted, ranging from demolition permits to building projects under 10,000 square feet to “minor alterations on the land” to plans and programs adopted by local governments pursuant to the California Coastal Act, which has functionally equivalent procedures (Fulton, 1999).

The second step is determining whether the project may cause significant adverse impacts on the environment. To do this, the lead agency conducts an Initial Study, in which case it must consult with all other agencies responsible for resources affected by the project. The lead agency then decides to pursue one of two basic outcomes – to issue a negative declaration or conduct an Environmental Impact Report (EIR). If there is no substantial evidence that the project may have significant adverse effects, then the agency may issue a negative declaration and the project may be approved. As noted, the legal standard for determining significance of impacts is whether a “fair argument” can be made on the basis of “substantial evidence” that a potential environmental effect could be significant.

If evidence of potential adverse effects exists, but the project applicant agrees to revise the application to include adequate mitigation measures to avoid or substantially lessen the effect, then the agency may issue a “mitigated” negative declaration (MND), and the project may be approved. The provision allowing for MNDs was formally codified in 1993.

The public review period is normally 20 days for a negative declaration, or 30 days if submitted to the State CEQA Clearinghouse, which coordinates document submittal for reviews involving other responsible agencies.

If the lead agency determines that it must proceed with an EIR, various analyses of the project and its adverse impacts must be undertaken, including potential project alternatives, cumulative impacts, growth-inducing impacts, and feasible mitigation measures.<sup>2</sup> The EIR

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<sup>2</sup> Cumulative impacts are “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” Analysis must encompass “all reasonably foreseeable future projects.” Growth-inducing impacts are “the ways in which the

must include, for each adverse impact, either a description of mitigation measures that will be imposed, or a Statement of Overriding Consideration, which allows the agency to approve the project so long as it demonstrates positive economic or social benefits that outweigh the negative effects on the environment.

Draft EIRs are released to the public and responsible agencies for review and comment for a period that lasts from 30 to 90 days. Upon completion of the final EIR, project opponents have 30 days within which to initiate litigation, but only on challenges raised during the draft EIR comment period.<sup>3</sup>

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proposed project could foster economic or population growth, or the construction of affordable housing, either directly or indirectly, in the surrounding environment.”

<sup>3</sup> For an overview of CEQA procedures presented for the layperson, see Planning and Conservation League (2002).

## Evolution of CEQA, 1975 to 1995: Broad Debate and Incremental Reforms

This section provides a sketch of CEQA reform efforts from the mid-1970s to the mid-1990s. Throughout these two decades, CEQA remained controversial. At certain points, CEQA became the focus of intense legislative attention and debate, reflecting two factors. During economic downturns, business leaders called for regulatory relief, including from CEQA. And as growth pressures mounted during the entire period, a broader discussion about growth management reform emerged in which CEQA was a central element. However, in spite of concerted efforts, stakeholders were unable to agree on more than limited changes to the law. And with relatively little empirical research conducted on CEQA's impacts, reforms often addressed court rulings or anecdotal complaints (Landis et al., 1995).

During the early 1970s, both the courts and the state legislature had expanded CEQA's scope, but by 1976 the state legislature began to reverse that trend. That year, the legislature resolved that the selection of any alternative or mitigation measure would be allowed in order to avoid adverse environmental impacts if proper findings were made, rather than requiring that the environmental "best" alternative be selected (Shute, 1993). In this decision, pro-CEQA forces lost their attempt to make the statute substantive rather than procedural in its requirements, an outcome that would have major consequences and prove to be less of a boon for CEQA critics than perhaps they may have hoped. In 1979, the act's policy sections were amended to add the proviso that major consideration be given to preventing environmental damage "while providing a decent home and satisfying living environment for every Californian." Empirical research was commissioned in the mid-1970s, but this was before the law was fully developed, let alone before localities gained much implementation experience.<sup>4</sup>

In 1983, with the state economy in a recession, Governor Deukmejian appointed a task force to recommend ways to reduce CEQA's regulatory burden on development. Modest reforms were ultimately enacted, including measures in 1984 establishing new time limits on procedures and limits on judicial challenges, and provisions to encourage "tiering," or in other words "front-loading" environmental review as much as possible at the scale of long-range community plans, which could then serve as a framework for subsequent review of individual projects outlined in the plans (Shute, 1993; Zischke and Kostka, 1993; Landis et al., 1995). (Tiering provisions are described more fully in the section on "Impacts on Planning").

Growth pressures intensified in California during the 1980s, as the state's population increased rapidly - by one-quarter over the decade - and investment in infrastructure remained low compared to the postwar years (Hanak and Baldassare, 2005). Public backlash against negative consequences of growth helped prompt citizen measures limiting lawmakers' discretion and spending. The most well known, of course, is Proposition 13, a landmark ballot initiative that dramatically reduced local government property tax revenue and transferred

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<sup>4</sup> Early studies are described in Landis et al. (1995), Olshansky (1996a and b), and Jones (2002).

authority over its allocation to the state government.<sup>5</sup> Other citizen measures soon followed, such as to mandate certain levels of education spending and to subject local tax increases to a supermajority vote.

At the local level, public frustration about problems such as traffic congestion ignited a growth-control “revolution” by the late 1980s in the form of hundreds of local ballot-box measures passed across the state.<sup>6</sup> By 1989, there were more than 850 local growth-control or growth-management measures in place (Landis and Kroll, 1989; Landis, 1992; Fulton, 1993a; Pincetl, 1999).

Public concerns about growth also helped produce CEQA reforms to enhance enforcement and public review. In 1988, the legislature required that lead agencies enforce compliance by project applicants with mandated mitigation measures, and in 1989, it established notification requirements and minimum periods for public review and comment (Landis et al., 1995). However, even as localities gained more experience with CEQA during the 1980s, little academic research was conducted on its impacts or implementation during the decade.

By the early 1990s, public reaction to growth problems prompted the legislature to act. A wide-ranging discussion of growth management reform occurred at the state level, and CEQA reform became a central issue. Scores of bills were introduced in 1991 and 1992 calling for more comprehensive and coordinated state growth policies, development of comprehensive regional plans, and methods to encourage or mandate local consistency.

When the state entered a recession in 1992, CEQA reform became a major topic. Developers – frustrated by what they viewed as a lengthy and cumbersome permit review process – called for streamlining measures, while planners sought to better integrate CEQA with more comprehensive planning processes. More than 60 bills to revise CEQA were introduced in the legislature in 1993 (Olshansky, 1996a).

Broad consensus-building efforts were organized, and the recognized areas of agreement and disagreement still delimit the contours of the CEQA debate today.<sup>7</sup> Furthermore, the empirical research conducted during this window of debate during the early 1990s remains the most extensive available in assessing CEQA implementation practices.

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<sup>5</sup> Proposition 13 reduced property tax rates to 1 percent of the full value of property and limited assessed value increases to no more than 2 percent annually, except in the case of a change in ownership or new construction.

<sup>6</sup> Not all measures were placed on ballots by citizen groups; many were initiated by local governments.

<sup>7</sup> An eight-month-long process, known as the Growth Management Consensus Project, was organized behind the scenes in 1991 by the Center for California Studies at California State University, Sacramento, and the Senate and Assembly Offices of Research. It brought together representatives from large businesses, environmental and social equity groups, local government associations, and the development and real estate lobbies. Participants reached agreement on the following points: The state should coordinate its policies, any growth-management system had to provide certainty for all interests, compact growth would be important and would require some land designation system, and both environmental protection and economic development were equally important (Innes et al., 1994; Bradshaw, 1992).



According to observers, areas of agreement in major proposals included the need to address development matters at the level of general plans rather than specific projects (*California Planning and Development Report*, 1992; Fulton, 1993b). Environmentalists appeared willing to support regulatory streamlining for urban development in exchange for strong commitments from the state to preserve natural resource areas. Although environmentalists sought the designation of urban growth boundaries – firm borders delineating growth and no-growth zones – they appeared receptive to a compromise short of that goal if the state designated significant lands and funding to acquire them.

Governor Pete Wilson’s administration weighed in on the issue in 1993, when his appointed commission on growth management released *Strategic Growth: Taking Charge of the Future*. The report called for statewide standards on growth and conservation, a new mechanism to coordinate and finance state infrastructure investment, and preferential access to state loans and grants for localities that addressed state growth and planning goals. Every city and county would be required to develop a comprehensive plan to facilitate a “master environmental impact report.” Projects determined to be consistent with the plan would be exempt from detailed environmental review. Councils of Governments – reorganized to incorporate existing regional agencies – would perform a review role (Fulton, 1993b; Pincetl, 1999).

Although many believed major reform was imminent, the political winds had started to change by 1993. With the state experiencing the worst economic downturn since the Depression, attention was diverted away from growth concerns and proposals that relied on spending increases appeared to be unworkable.<sup>8</sup> CEQA reforms passed in 1993 and 1994 – more modest versions of earlier proposals – included codification of mitigated negative declarations, tightened-up time limits, limits on judicial remedies (for severable actions deemed noncompliant), and the designation of CEQA-knowledgeable judges (Herson, 1993; Landis et al., 1995). In addition, a new tiering provision was established – the Master Environmental Impact Report (MEIR) – which applied somewhat more stringent up-front requirements than earlier provisions and stipulated more clearly the streamlining benefits at the back end. (MEIR provisions are described in more detail in the “Impacts on Planning” section). However, by the end of 1994, momentum for more far-reaching growth management reform had fizzled out.

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<sup>8</sup> An additional factor in unraveling consensus on growth management reform was a souring of state-local relations that occurred beginning in 1992–93, when the state government began transferring some \$3.6 billion annually in property taxes from cities and counties to school districts, or about one-fifth of city and county revenues from this source (Silva and Barbour, 1999). Although this shift enabled the state to meet its obligations to schools, it outraged local government officials. The impasse was only resolved in 2004 with passage of Proposition 1A, preventing additional future state government “raids” on local coffers to ease state budget shortfalls.



## Impacts, Issues, and Reactions

Although CEQA applies to both public and private development projects, most of the enduring controversy has been about its impact on private development – and more specifically, housing development. Three major themes dominate discussion of CEQA’s impacts. Concerns about effects on development approvals focus on conflict among parties and uncertainty about requirements, both of which are viewed as raising costs for developers. A second topic has been the way in which CEQA interacts with the planning process in California, especially local land use planning. Finally, the broader impacts of the law on the environment and the economy have raised concerns.

### Impact on Development Approvals: Conflict Among Parties

A major complaint about CEQA’s impact on development approvals stems from the threat of litigation. “NIMBYs” (“Not in My Backyard”) and other so-called “phony environmentalists” are accused of using legal challenge to stall projects, sometimes for reasons having less to do with environmental protection than with protecting property values or excluding new residents (Collin, 1993).

There is evidence that the threat of litigation does have a pervasive effect. For example, in a 1990 survey of San Francisco Bay Area practitioners, a majority (54%) cited legal defensibility as the main driver in preparing EIRs rather than the disclosure of environmental information, most of the time or fairly often.<sup>9</sup> In a 1991 survey of city and county planners statewide, a plurality agreed that CEQA gives too much power to NIMBYs (49% agreed, 23% disagreed) (Olshansky, 1996b).

However, although the threat of litigation may be pervasive, evidence also indicates that most projects do not result in EIRs, and a smaller share end up in court. Unfortunately, the evidence is not up-to-date. The most recent survey of all major components of the CEQA review process was conducted in 1991 (Landis et al., 1995; Olshansky, 1996a,b). It is only possible to update certain components of the information based on more recent data.<sup>10</sup>

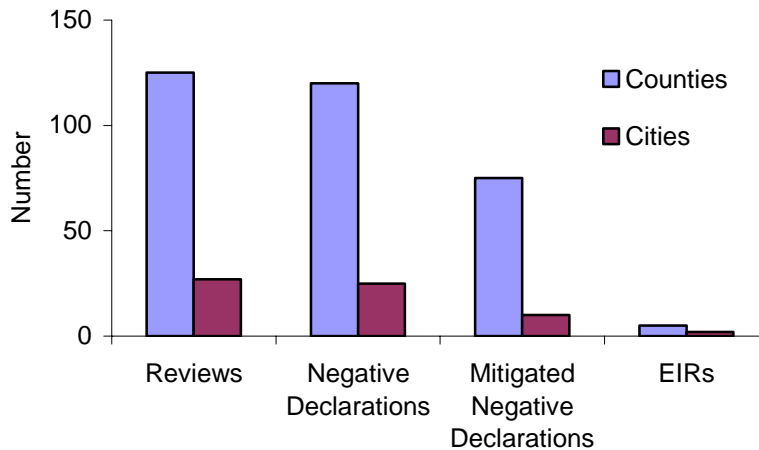
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<sup>9</sup> The Association of Bay Area Governments mailed surveys to planning directors and city and county attorneys for all 98 Bay Area cities and nine counties and to approximately 275 private planning practitioners, mainly consultants. The response rate for planning directors was 50%, for attorneys 24% and for consultants 17%.

<sup>10</sup> The Governor’s Office of Planning and Research (OPR) compiles data on an annual basis on CEQA activity. However, it does not provide a full picture of local reviews. OPR tracks annual activity for a number of components of reviews submitted to its State CEQA Clearinghouse (EIRs; Negative Declarations; Notices of Preparation, Determination, and Exemption; and federal Environmental Assessments and Environmental Impact Statements). However, this does not provide a full picture of CEQA activity because only reviews “for projects that involve a Responsible or Trustee state agency or are of statewide, regional, or areawide significance” must be submitted to OPR (State Clearinghouse Handbook, <http://ceres.ca.gov/planning/sch/>). In particular, local reviews requiring no state agency comments and that result only in negative declarations need not be submitted. Comparing results from the 1990 Olshansky survey with OPR numbers for the same year provides some indication of how much activity is reflected in the state data, although the comparison is not exact because the OPR numbers are

The study estimated that between 30,000 to 34,000 negative declarations were produced by city and county lead agencies statewide in 1990, and about 1,600 to 1,800 EIRs. The average ratio was 20 to 1.<sup>11</sup> As Figure 1 indicates, the typical (median) county conducted 125 reviews, 96 percent of which resulted in negative declarations. Of these, 63 percent were processed as mitigated negative declarations (MNDs). Five EIRs were initiated. The typical city that year processed 27 reviews, with 93 percent resulting in negative declarations. Of these, 40 percent were MNDs. Two EIRs were initiated.<sup>12</sup>

**Figure 1**  
**CEQA Activity in the Typical (Median) California City and County in 1990**



Source: Landis et al., 1995.

The median cost for an EIR in 1990 was \$47,333, and the mean was \$38,124 (in 2004 dollars, the median would amount to about \$68,400). However, the variation was quite wide, with 10 percent of EIRs costing more than \$125,000.

The study found that EIRs were most frequently required for large projects, projects that generated significant traffic problems or threatened open space, projects in communities where growth was contentious, and projects that seriously threatened air or water quality or endangered species habitat - in other words, for projects that needed EIRs the most (Landis et al., 1995)

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not limited to local CEQA activity, as is the survey. According to Olshansky (1996b), OPR reported 902 EIRs and 1,997 negative declarations in 1990. The same year, survey responses from 71 percent of cities and 69 percent of counties statewide reported 1,278 EIRs initiated and 23,740 negative declarations - in particular revealing a much higher number and ratio of negative declarations compared to EIRs than in the OPR numbers.

<sup>11</sup> The statewide estimate assumed that survey results from 71 percent of cities and 69 percent of counties reflected 70 to 80 percent of total activity, because respondents were predominately larger jurisdictions.

<sup>12</sup> Averages were as follows: The average number of reviews for counties was 241.6, and for cities 52.1. The average share that resulted in negative declarations was 96.5 percent for counties, and 94.3 percent for cities. The average share of these processed as MNDs was two-thirds for counties, and about half for cities. The average number of EIRs initiated was 8.6 for counties, and 2.9 for cities.

Two components of this activity – negative declarations and EIRs – can be updated based on data from a 1999 survey conducted by the Governor’s Office of Planning and Research (Office of Planning and Research, 2000). The results revealed substantially lower levels of activity than in 1990, as indicated in Table 1.<sup>13</sup>

**Table 1**  
**Average Number of Negative Declarations and EIRs Produced by**  
**Cities and Counties in California, 1990 and 1998**

	1990 <sup>a</sup>			1998 <sup>b</sup>		
	Neg Decs	EIRs	Ratio	Neg Decs	EIRs	Ratio
Counties	233	8.6	27	58.1	3.4	17
Cities	49.2	2.9	17	21.6	1.4	15

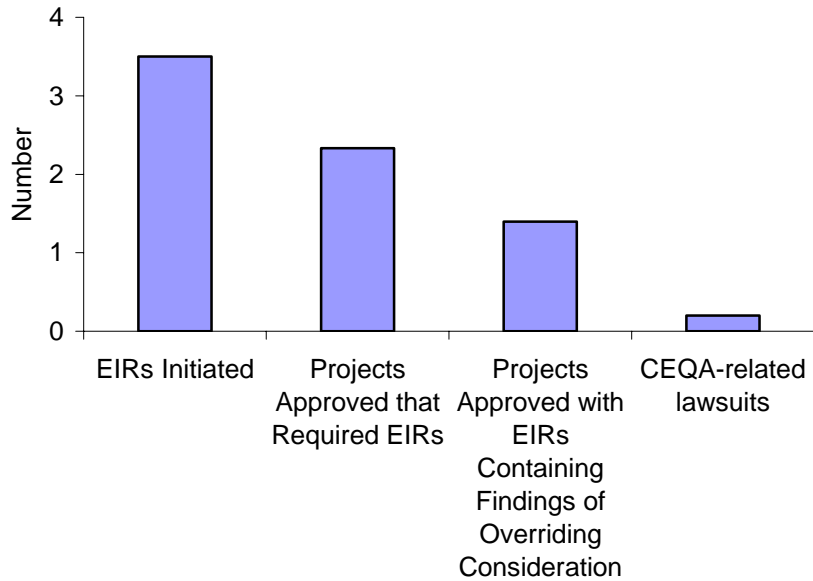
Sources: a) Landis et al. (1995); b) Authors’ calculations from data from Office of Planning and Research, 2000.

Figure 2 shows what happened in the following stage of activity – after EIRs were launched. The average number of EIRs per jurisdiction in 1990 was 3.5 (for both cities and counties). Two-thirds of projects with EIRs were ultimately approved. That does not imply that the others were denied; instead they were more likely dropped or postponed because of financing problems or changes in market conditions (Olshansky, 1996b).

Three-fifths of approved projects with EIRs were issued with Findings of Overriding Consideration – in other words, with at least one adverse impact that remained unmitigated. The average number of lawsuits in each jurisdiction was less than one (0.2). In fact, during the five-year period from 1986 to 1990, 58 percent of responding communities faced no litigation. Overall, only one of every 354 CEQA reviews was taken to court. A Bay Area survey conducted at about the same time found that when CEQA reviews were taken to court, disposition usually favored the lead agency (Binger and McBride, 1991).

<sup>13</sup> The OPR results reflect responses from 383 cities and 48 counties. The Olshansky results (also in Landis et al., 1995) reflect a slightly lower response rate: responses from 322 cities and 40 counties. The different response rates could help account for lower average levels of activity in the OPR numbers, because respondents to the Olshansky survey were predominantly larger cities with presumably more CEQA activity. However, the total number of reviews in the Olshansky data was over twice as high as in the OPR data, even though for a smaller number of jurisdictions.

**Figure 2**  
**Average Number of EIRs, Approved Projects with EIRs**  
**and CEQA-Related Lawsuits for Cities and Counties, 1990**



Source: Olshansky, 1996b

On an aggregate basis, CEQA was litigated more often than most mini-NEPAs during the same period. Only New York State’s mini-NEPA and NEPA itself were subject to comparable numbers of lawsuits (Landis et al., 1995). However, when compared to the amount of review activity, CEQA was not litigated more often.<sup>14</sup> This undoubtedly reflects, at least partially, CEQA’s broader applicability than most mini-NEPAs, however.

In considering the question of abusive litigation, there are factors to be weighed in the balance. CEQA’s only enforcement mechanism is through citizen legal challenge. A possible alternative would be stronger state oversight – an approach used in Massachusetts, for example (Landis et al., 1995). This might result in less contentious enforcement, but it could also undermine CEQA’s intent of providing a forum for public debate and information. Some observers have argued that CEQA may actually facilitate development by channeling citizen opposition into a predictable process (Thomas, 1993).

Legislative reforms have addressed concerns about litigation. Measures included timetables and requirements for mandatory settlement conferences and exhaustion of administrative remedies by litigants, all passed in 1984 (Shute, 1993; Zischke and Kostka, 1993). In 1993 the exhaustion of remedies requirements was strengthened, judicial remedies were limited to severable actions in noncompliance, and a requirement for designating CEQA-knowledgeable judges was established (Herson, 1993).

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<sup>14</sup> Authors’ calculations from data in Table 3.1, Landis et al. (1995).

Some argue that these safeguards, along with CEQA's strict and unusually short statutes of limitations, mean that problems related to unpredictability of litigation should not be addressed by erecting new barriers to the courts. Rather, a more serious concern may be the ambiguity of CEQA's substantive standards, because this provides would-be petitioners with footholds to challenge projects (Thomas, 1993). We now turn to that subject.

## **Impact on Development Approvals: Uncertain Requirements**

Perhaps the principal complaint about CEQA is that it is a "paper tiger," with extensive and unclear requirements (Zischke and Kostka, 1993; Fulton, 1999). Project applicants face inconsistent requirements not just across jurisdictions but also for different projects within the same jurisdiction. Unclear requirements contribute to fears about litigation, so project applicants and lead agencies "bullet-proof" EIRs against lawsuits, generating extensive, often redundant documentation.

Many CEQA professionals admit to being uncertain about key requirements, according to surveys. For example, a survey of Bay Area practitioners found that two-thirds or more were uncertain and wanted greater clarity on requirements for alternatives analysis, cumulative impacts, recirculation of documents, significance thresholds, and substantial evidence standards (Binger and McBride, 1991).<sup>15</sup> In response to a recent survey commissioned by OPR on local practice regarding thresholds for determining significance of impacts, a majority of respondents indicated that they do not feel confident that the thresholds they employ on a project-by-project basis are clear, concise, easily defensible, or even reasonable (Seiver and Hatfield, 2001).<sup>16</sup>

A major cause of uncertainty is the law itself – in particular its flexible and vague standards regarding substantive objectives. As noted, the language for such key standards as determining the "significance" of effects to be mitigated, and for determining what constitutes an appropriate mitigation, was left purposely vague in the law. Similarly, the legal requirements for cumulative impacts and alternatives analysis are considered confusing, even among experts (Shigley, 1999, 2002, 2003). Following a recent court ruling throwing out a new state guideline on the subject, a former State Resources Agency counsel noted, "Absolutely nobody knows what 'cumulatively considerable' means" (Shigley, 2003). Partly as a result of legal ambiguity, the courts have had trouble resolving whether the state's administrative guidelines for CEQA compliance – issued by the Governor's Office of Planning and Research – constitute a regulatory mandate or an interpretive aid. The guidelines have not provided a legally defensible safe harbor.

Another cause for uncertainty – from the perspective of project applicants and the public – that flows directly from the law itself is the deference to local control and discretion. For example, one locality might require mitigation for an impact that another chose to overlook by

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<sup>15</sup> The survey was mailed to planning directors and city and county attorneys for all Bay Area cities and counties, and to approximately 275 private planning practitioners, mainly consultants. The response rate for planning directors was 50 percent, for attorneys 24 percent and for consultants 17 percent.

<sup>16</sup> The survey was mailed to 500 lead agencies from a clustered, random sample that included 250 cities and special districts, agencies from all 58 counties, and 192 state agencies. The response rate was 37 percent.

issuing a Statement of Overriding Considerations. As a result, project applicants face inconsistent requirements across jurisdictions.

A third cause is less directly attributable to the law itself – the lack of coordinated state and regional growth and environmental policies. Although such policies and regulations do not carry presumptive legal weight for CEQA compliance because of the law’s flexible standards, they are still commonly used as a basis for determining impacts “normally” considered significant. Inconsistent standards can be a problem, for example, when state agencies weigh in on local reviews, which is required when they have regulatory purview over natural resources pertaining to local reviews. According to one study, local planners interviewed in fourteen case study communities complained that state agency input could sometimes be inconsistent and/or tardy (Landis et al., 1995; Legislative Analyst’s Office, 1997).

Past reforms to streamline CEQA’s burden on development approvals have primarily been aimed at streamlining procedural requirements, rather than directly addressing uncertainty caused by the lack of clear standards. Time limits were established in 1977 through the Permit Streamlining Act and modified in 1984 and 1993 (Herson, 1993; Landis et al., 1995). In 1993, concurrent permit processing was required of responsible agencies (agencies other than the lead agency with regulatory purview).

Also in 1993, the use of mitigated negative declarations was codified. MNDs are increasingly popular as a kind of streamlined review. Although some argue that they reduce public accountability (Landis et al., 1995), others counter that they provide a positive incentive for mitigation, because project applicants may agree to adopt mitigations in order to be able to avoid an EIR (Watts, 1995). This is an ironic trade-off, however, because the intent of CEQA (like NEPA itself) was to encourage deliberation of appropriate mitigation during, not in lieu of, the EIR process (Karkkainen, 2002).

To address the problem of uncertain requirements, many have advocated the use of more uniform standards for determining when and how impacts should be mitigated. Such standards could offer greater predictability to project applicants and the public about the objectives of CEQA review. They also have the potential to help connect project-level CEQA review to community-wide and regional plans and mitigation strategies, by focusing reviews on priorities identified in such plans. Where CEQA review duplicates comprehensive planning efforts, thresholds could help streamline project compliance. Additionally, thresholds could help promote coordinated approaches to mitigation if they are linked to community-wide or regional mitigation strategies (Watts, 1995).

However, efforts to promote uniform standards – especially for determining thresholds of significance – run into legal obstacles and complex trade-offs between certainty and flexibility and between state and local control. Many planners oppose uniform standards because they value flexibility for different project types and locations (Landis et al., 1995; Watts, 1995). Because the vast majority of projects don’t require EIRs, planners worry that imposing uniform threshold standards would only be likely to increase requirements overall. Limited



factual evidence suggests this may be true based on case studies comparing communities with uniform threshold policies to others that don't have such policies.<sup>17</sup>

On the other side of the coin, if weak uniform standards were adopted, CEQA's value for the small share of projects that do end up requiring EIRs might be undermined. As noted earlier, these tend to be large, controversial projects in communities experiencing rapid growth – arguably the types of projects and situations that warrant the extensive, stringent requirements of a full-blown EIR. This concern makes environmentalists wary of trading away current project-level requirements unless strong policy-level standards or objectives are established.

Some planners argue that CEQA already is too much of a blunt instrument, imposing one-size-fits-all procedural requirements on very different types of projects and locations (Sargent, et al., 2004). From this perspective, uniform standards might make CEQA less effective as a growth management tool. However, introducing clearer standards does not necessarily imply they need be uniformly applied in all situations. For example, some regional programs, such as multispecies habitat management plans, currently trade off increases in impacts in certain locations for corresponding decreases elsewhere. However, such gradations may be complicated to define and administer.

Standardized thresholds for determining significance make more sense for some impacts than others. Quantitative thresholds can be useful, for example, when a single quantifiable factor – such as air pollution emissions for a regionally significant pollutant – can measure impacts of projects regardless of location (Watts, 1995). Several regional air pollution control districts in the state have established such thresholds to expedite local review of air quality impacts, for example. The air districts make available a computer model to help localities determine potential emissions from proposed projects, and to test the effect of a menu of proposed mitigation measures. However, for some other types of impacts – such as aesthetics and species preservation – site-specific effects may vary so widely that quantified thresholds are infeasible (Watts, 1995).

But even for impacts that are essentially regional in nature and unlikely to vary by site, CEQA's legal requirements protect flexibility. In 2002, the Third District Appellate Court let stand a 1998 state guideline allowing a lead agency to determine a project's incremental contribution to a cumulative effect as not significant if the project complies with an approved plan or mitigation program. However, the court also ruled that CEQA's fair argument standard still applies, meaning an EIR could still be required (Shigley, 2002 and 2003). Thus, conformity with an approved regional environmental plan or program does not guarantee compliance with CEQA nor provide safety from legal challenge. In effect, this means that regional programs

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<sup>17</sup> The Landis et al. (1995) study included in-depth case analysis of fourteen systematically selected communities. The community with the most uniform standardized threshold and mitigation policies – Santa Barbara County – was also found to initiate EIRs at a much higher rate than others. On the positive side, the standards were attributed with speeding the initial study process and providing review consistency over time and across different types of projects. On the downside, they lessened the importance of local discretion and fostered a project-by-project rather than plan-based view of development regulation.

may be able to operate effectively in relation to CEQA *if* they define local standards for evaluation and mitigation that assist local agencies and that don't elicit community resistance.

Some argue that unless the state defines clearer policy objectives and standards, and amends CEQA to include them, it makes little sense to expect localities to do so (State Bar, 1995). Given the law's current flexibility in relation to determining site-specific effects, localities may have little incentive to define uniform policies that could even prove to be legally indefensible. According to the Seiver and Hatfield study (2001), only about 11 percent of local jurisdictions have voluntarily adopted uniform policies for defining impact significance thresholds.<sup>18</sup> However, a state process to identify and reconcile workable quantitative and/or qualitative standards across numerous resource areas to be applied in varying circumstances, and then to amend CEQA to legally incorporate such standards, would be highly complex and likely controversial (State Bar, 1995).

Some argue that as a more moderate step to promote greater certainty, the state government should encourage – or even mandate – that localities adopt uniform policies. Permitting local governments to retain control over the content of such policies – even if they were mandated to develop them – is politically realistic in a state that values “home rule,” or in other words, local control over land use. In the Seiver and Hatfield survey (2001), a majority of respondents affirmed that local agencies should continue to have the right to develop their own thresholds and threshold policies. This is somewhat ironic, however, given that a majority also indicated lack of confidence in their own thresholds.

However, this moderate approach ran into trouble in court. In 1998, the Wilson administration issued a new state guideline encouraging cities and counties to adopt uniform policies on thresholds for determining significance of impacts based on regulatory standards. The Third District Appellate Court struck down the state guideline for violating CEQA's fair argument standard, ruling that even existing regulatory standards do not form an adequate basis on their own for determining significance under CEQA (Shigley, 2002 and 2003). Thus it appears that for the state to actively promote more uniform standards, more substantial modification of the law may be necessary.

## **Impact on Planning**

In addition to CEQA's impact on development approvals, a second major area of concern has been its relationship to planning processes. Evidence suggests that although CEQA offers planning benefits at the project level, it does not mesh effectively with wider, more comprehensive planning, and in fact may be counterproductive.

In general, planners indicate strong support for CEQA. Most planners in the 1991 statewide survey agreed that EIRs are useful, contain relevant and specific mitigation measures, contain thorough analyses that help the decision process, help in negotiating conditions of project approval, and are effective communication tools. They agreed that the CEQA process is

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<sup>18</sup> In 1991, 12.5 percent of cities and nearly 80 percent of counties reported using standardized threshold policies (Landis et al., 1995). Although the Seiver and Hatfield study did not break down respondent jurisdictions by type, comparing results from the two studies suggests that use of standardized threshold policies did not increase during the 1990s.

an effective means of gathering information, and that CEQA's procedural requirements have improved planning practice (Olshansky, 1996a).

On a more negative note, however, a plurality agreed that CEQA encourages incremental, project-by-project analysis (Olshansky, 1996a). This coincides with a complaint raised about CEQA from early on – namely that it meshes poorly with long-range, comprehensive planning processes at the local, regional, and state levels. At the local level, General Plans ideally set a framework for CEQA review. A plurality of planners in the 1991 survey indicated that they believe local General Plans help guide local decisionmaking and that CEQA helps support the General Plan process (Olshansky, 1996a). However, many General Plans are out-of-date and few communities integrate the two processes fully (Landis et al., 1995; Olshansky, 1996a). A majority of planners in the 1991 survey that worked in jurisdictions with General Plans more than ten years old reported that they were ineffective as a guide for decisionmaking. Without a plan to guide CEQA review, it is more likely to be ad hoc and redundant across projects (Binger and McBride, 1991).

In 2004, the land use and circulation elements of city General Plans in California were, on average, eleven years old, and housing elements – which are required to be updated more frequently – were on average eight years old (calculations from data from Office of Planning and Research, 2004). Forty-six percent of land use elements were more than ten years old, 45 percent of circulation elements, and 34 percent of housing elements (state law requires that housing elements be updated every five years, but this was not enforced during much of the 1990s). The fact that these elements of General Plans are not always updated simultaneously (and thus some may be older than others) also indicates the lack of a comprehensive approach to general planning in many jurisdictions (Olshansky, 1996a).

CEQA is meant to connect to regional planning through its requirements for cumulative impacts, alternatives, and growth-inducing impacts analysis. But these aspects of compliance are widely considered difficult and weakly administered (Zischke and Kostka, 1993; Olshansky, 1996a; Shigley, 2002; Sargent et al., 2004). Observers complain that CEQA gets things fundamentally backwards by expecting local projects to address regional impacts. In this view, problems such as traffic congestion, air pollution, and habitat deterioration benefit from coordinated, long-term, regional strategies that identify how local mitigation measures fit in to a larger framework for addressing regional goals and objectives (Landis, et al., 1995; Sargent et al., 2004).

Currently, however, CEQA does not effectively accommodate strategies that rely, for example, on trading off increases in effects in one area for corresponding reductions in another (State Bar, 1995). Such trade-offs are implemented for certain regional programs including some county congestion management programs and regional habitat preservation programs (Landis et al., 1995). Although perhaps legally defensible under CEQA, such an approach is not practically feasible for a locality on its own because local agencies lack the technical capacity to demonstrate such effects.

As it is, certain mitigations adopted at the project level may sometimes even be counterproductive (Landis et al., 1995). For example, a common measure considered for mitigation is to reduce a project's density (Binger and McBride, 1991). Viewed locally, this might serve to mitigate certain environmental impacts such as traffic congestion or loss of open

space. But viewed regionally this might only worsen the problems if development is pushed to outlying areas. If, rather than displacing the lost residential units to another location, the units are simply never built, then the mitigation could serve to exacerbate housing shortages. Considering such effects, some critics charged that CEQA's project-level focus is "the antithesis of sustainability on the scale of the metropolitan region and the State" (Sargent et al., 2004, p. 3)

CEQA review is connected to state planning through the requirement that state agencies weigh in on local reviews of projects over which they have purview. Some practitioners consider this aspect of CEQA quite valuable, because input is solicited and integrated from multiple agencies with expertise on different aspects of projects (Thomas, 1993). However, as noted earlier, local agencies also have complained about tardy and inconsistent review by state agencies. Another state role is information collection and dissemination. However, the State CEQA Clearinghouse does not fully inventory CEQA activity, because localities are not required to submit all documents to the state.

To address concerns about ad hoc, uncoordinated CEQA review, the most important reforms have been those to encourage tiering, that is, "front-loading" environmental review as much as possible at the scale of long-range community plans. These can then serve as a framework for subsequent review of individual projects that were outlined in the larger-scale plans. In particular, many have advocated that "big picture" impacts - cumulative and growth-inducing impacts and alternatives analysis - should be evaluated at the plan, not project level (Zischke and Kostka, 1993; Landis et al., 1995).

Tiering was promoted through reforms passed from 1979 to 1985 that introduced general provisions as well as specific mechanisms.<sup>19</sup> In 1985, the legislature urged that EIRs "be tiered whenever feasible" (State Bar, 1995). Specific mechanisms include provisions for using EIRs in conjunction with Specific Plans for major development projects, with subsequent review exempted for specific housing projects outlined in the plans. Another option is a Program EIR, which allows lead agencies to review environmental consequences of broad policies or programs at the planning stage, leaving more detailed examination of specific environmental impacts of subsequent projects to project-level review.<sup>20</sup>

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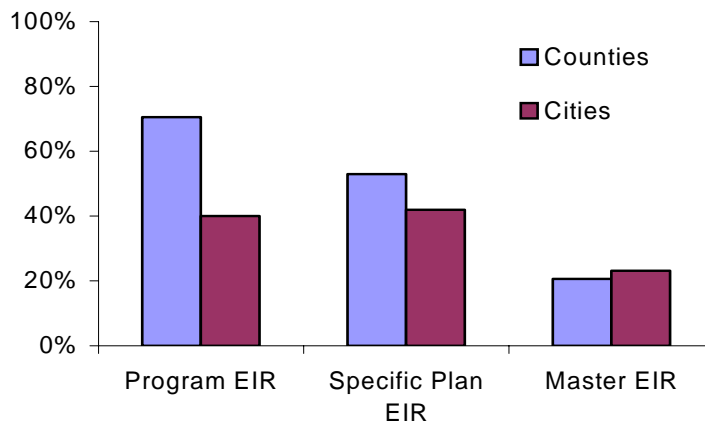
<sup>19</sup> Tiering is defined as the coverage of general matters and environmental effects in an EIR prepared for a policy, plan, program, or ordinance, followed by narrower or site-specific EIRs that incorporate by reference the discussion in any prior EIRs and that concentrate on the environmental effects which are capable of being mitigated or were not analyzed as significant effects in the prior EIR. Tiering may be used for a later project when the lead agency determines that it is consistent with the program, plan, or ordinance for which the prior EIR was planned or certified, is consistent with applicable local land use plans and zoning, and is not subject to conditions requiring a subsequent EIR. An Initial Study must be conducted to determine whether the later project may cause significant effects not examined in the prior EIR. The later project EIR need not examine those effects that were previously mitigated or avoided or examined sufficiently so as to be capable of being avoided by site-specific revisions or conditions for approval.

<sup>20</sup> Program EIRs may be conducted for series of actions that can be characterized as one large project and are related geographically, in a chain of actions, in connection with regulations or criteria governing a continuing program, or actions carried out by the same authority and having similar effects which can be mitigated in similar ways. However, specific standards for adequacy of Program EIRs have not been clarified (State Bar, 1995).

In 1993, the Legislature again attempted to strengthen tiering through codifying use of a Master Environmental Impact Report (MEIR). Essentially a more specific program EIR, an MEIR is intended to address environmental consequences both at the policy level and for subsequent projects outlined in broader policy-level reviews (Planning and Conservation League, 2002).<sup>21</sup> The MEIR provisions apply somewhat more stringent requirements than the Program EIR provisions, but also more clearly stipulate streamlining benefits at the back end. Under this statute, a lead agency prepares an MEIR to evaluate the cumulative impacts, growth inducing impacts, and irreversible significant effects of subsequent projects to the greatest extent possible. An EIR is then not required for subsequent projects outlined in the MEIR if it is no more than five years old (or certified adequate), includes a capital outlay program for the subsequent project, and there are no additional site-specific significant effects, based on an Initial Study. For those with some effects, a streamlined, “focused EIR” is allowed if the lead agency finds that the MEIR of cumulative, growth-inducing, and irreversible significant effects is adequate. CEQA review can be limited to impacts “peculiar to the parcel or project” not addressed in a previous master plan document, unless there is “substantial new information.” In 2004, AB 2922 was passed allowing agencies to adopt mitigated negative declarations that tier off of master EIRs.

However, in spite of the introduction of tiering provisions, the bridging of project and plan level review has been easier in theory than practice. Figure 3 shows the use of major tiering mechanisms – Program EIRs, Specific Plan EIRs, and Master EIRs – by cities and counties in 2002.

**Figure 3**  
**Tiering Mechanism Used by Local Agencies, 2002**



Source: Calculated from data from Office of Planning and Research, 2003a.

<sup>21</sup> MEIRs may be prepared for a General or Specific Plan, a project that consists of smaller individual projects that will be carried out in phases, a rule or regulation, projects pursuant to a development agreement or redevelopment plan, transportation projects in regional transportation or congestion management plans, or a plan for reuse of former military base (State Bar, 1995).

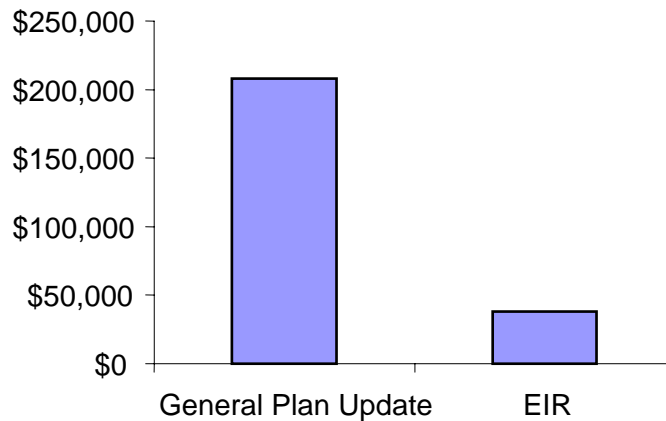
Although a majority of counties have used Program EIRs and Specific Plan EIRs for tiering, less than half of cities have used these mechanisms. Less than one quarter of cities and counties have taken advantage of the new MEIR option. However, when all three options are considered, 65 percent of cities have used at least one, and 85 percent of counties.<sup>22</sup>

Various obstacles to more widespread use of tiering have been noted by practitioners, including legal, procedural, planning, and fiscal concerns. One problem is legal exposure. For example, MEIR requirements apply the fair argument legal standard for review of subsequent projects, and some observers argue that this reduces any real streamlining benefits at the back end (Collin, 1993). Others note that lack of clarity about requirements for subsequent review has a similar chilling effect (Legislative Analyst’s Office, 1997).

A planning-related concern is the difficulty of conducting EIRS for long-range plans. In other words, although complaints are leveled about limitations of project-level review, the challenges associated with plan-level review may be equally problematic. Practitioners in the 1990 Bay Area survey noted such concerns (Binger and McBride, 1991). Only about one-third favored allowing projects consistent with a local General Plan to be exempt from further CEQA compliance. The main reasons they cited were that General Plans are *too* general and too quickly out-of-date, and therefore a poor basis for project-level review.

Yet another explanation for slow take-up rates of tiering options is fiscal constraint. Figure 4 shows that the average cost of updating a General Plan was \$208,000 in 1991 – a big bill for a cash-strapped locality. By contrast, the average cost of an EIR was \$38,124.

**Figure 4**  
**Average Costs for EIRs and General Plan Updates, 1991**

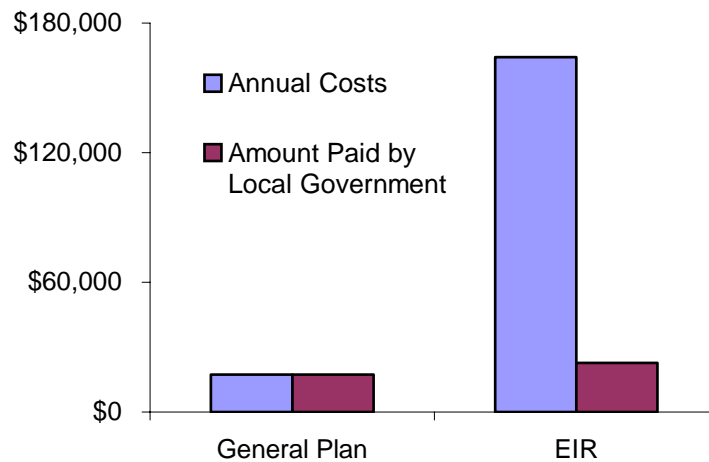


Source: Olshansky, 1996a.

<sup>22</sup> The 1991 Olshansky survey results (1996a) suggest that use of these tiering mechanisms did not increase much during the 1990s. In 1991, 47 percent of survey respondents indicated that they had used a Program EIR, 30 percent a “Master Environmental Assessment” (a precursor to MEIRs) and 43 percent an EIR in conjunction with a Specific Plan during the past five years. The 2002 survey responses (represented in Figure 3) indicated that 44 percent of jurisdictions had used Program EIRs, 23 percent MEIRs, and 43 percent Specific Plan EIRs. This data was for 34 counties and 250 cities.

However as Figure 5 indicates, on an annualized basis nearly ten times more money was spent on EIRs in the average jurisdiction than on the General Plan. General Plans were, on average, twelve years old in 1991 according to the survey respondents. Thus, much more day-to-day planning activity was geared toward CEQA review than General Plan updates.

**Figure 5**  
**Annualized Costs and Payments for EIRs and General Plan Updates, 1990**



Source: Olshansky, 1996a.

The question of who pays may help explain why. As the figure indicates, costs for CEQA review were recouped from project applicants, but costs for General Plan updates were paid from local government general funds. These fiscal realities could render CEQA a more attractive planning vehicle as a result (Olshansky, 1996a).

By 2002, the cost of updating local General Plans had only increased. Based on calculations from survey data from the Office of Planning and Research (2003b and c), the average cost of the most recent update of city General Plans in California as of that year was about \$380,000.<sup>23</sup> This finding suggests that the cost of updating General Plans increased since 1991, because the inflation-updated value of the figure cited by Olshansky in 2002 dollars would be about \$286,000.<sup>24</sup> Based on the 2002 survey data, costs for CEQA review comprised

<sup>23</sup> This value was calculated for 103 respondent cities that had updated six mandatory elements of General Plans (land use, circulation, open space, conservation, safety, and noise) at the same time or within a year or so of each other. Housing elements for 56 of these cities were not updated on the same schedule – but this is not surprising because as noted earlier, state requirements for updating housing elements differ from the other elements. The value is presented in 2002 dollars, on the assumption that all respondent cities provided cost information corresponding to the year during which their General Plan was updated.

<sup>24</sup> The conclusion that General Plan costs have increased is further confirmed by comparing the population size of respondent jurisdictions in the two surveys. The Olshansky data was calculated for cities and counties, with an average population size for respondent cities of 61,000 – higher than the average for all cities in the state. By contrast, the value calculated from the 2002 data was only for cities,

30 percent of total costs for General Plan updates, and costs for public participation arrangements comprised 11 percent.<sup>25</sup>

There is some evidence to suggest that in a context of local fiscal constraint, incremental decisionmaking may increasingly have come to substitute for long-range comprehensive planning in some California localities. For example, studies show that zoning and subdivision regulation take precedence in many jurisdictions (see Olshansky, 1996a). General Plans are amended regularly but in a piecemeal way, with one-third of amendments in 1990 addressing changes to a single parcel (Olshansky, 1996a). Some jurisdictions appear to substitute CEQA review for general planning. For example, in the 1991 statewide survey, a majority of planners in jurisdictions with General Plans more than ten years old reported not only that they were ineffective as a guide for decisionmaking, but that CEQA was more important (Olshansky, 1996a).

These critiques suggest that more widespread adoption of tiering may not occur without further incentives to support it. To front-load plans, localities also need to be able to front-load costs, procedural requirements, and legal vulnerability. In the process, requirements for environmental review and mitigation are needed that effectively link plan-level review to site-specific effects. Although coordinating CEQA with comprehensive planning processes may be a worthy goal, on its own, tiering is no guarantee of environmental quality without effective standards and policies guiding plan development (Binger and McBride, 1991).

## **Impact on the Economy and Environment**

CEQA's impacts on the broader economy and environment form the big picture behind narrower concerns related to development approvals and planning. Some complain that CEQA is a drag on the economy, while environmental benefits are unclear.

The 1991 statewide survey results suggested total costs statewide of preparing EIRS in 1990 were approximately \$61 to \$69 million (Olshansky, 1996a and b). In 2004 dollars this would amount to something more like \$88 to \$100 million. A full assessment of costs of CEQA would need to include not only reviews that don't result in EIRs, but other indirect costs as well. For example, because of the associated risks, the cost of uncertainty for a developer is often more of a concern than explicit time and money costs of complying with a review (Landis et al., 1995).

Do corresponding environmental and social benefits outweigh CEQA's costs? The answers indeed remain largely unknown. For a law with the breadth of application that CEQA has, remarkably little is known about its impacts.

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because too few respondent counties (only twelve) had data appropriate for the measure. The average population size of the 103 respondent cities in the 2002 data was 47,555 – smaller than the average population size of all cities in the state, excluding Los Angeles, that same year, which was 50,333 (Office of Planning and Research, 2003b).

<sup>25</sup> These findings are based on data from 81 of the 103 cities with usable information regarding costs for CEQA review.



In measuring environmental impacts, there are a number of components that must be considered, and none has been very effectively measured. A first step is to gauge what local mitigation measures have been imposed (Landis et al., 1995). Unfortunately, the state government is not required to fully inventory local mitigation measures, which might provide some indication of environmental benefits.

Another step is to determine whether mitigation measures imposed in CEQA reviews were actually carried out. A 1986 study revealed weak enforcement of mitigation measures by local agencies (Johnston and McCartney, 1991). Slightly more than half (54 percent) of responding counties reported consistently carrying out site visits to inspect mitigations, but only 27 percent of responding cities. Rates of written communication as a form of follow-up were even worse.

The Johnston and McCartney study helped prompt passage of a measure in 1988 requiring enforcement of mitigation by lead agencies. When asked in 1991, most city and county planners (73.1%) reported having a mitigation monitoring program, and most (79.9%) required mitigation monitoring plans to be prepared as part of EIRs (Olshansky, 1996a and b). However, nearly one-fourth reported violations of imposed mitigation measures (Olshansky, 1996b).

A third question is whether implemented mitigation measures have been effective in enhancing environmental quality (Landis et al., 1995). The 1991 survey revealed that more than 60 percent of planner respondents felt that CEQA had been effective in protecting the environment, but also that only 43.6 percent believed that the law had significantly affected environmental quality in their community (Olshansky, 1996b).

However, extensive, careful research to objectively evaluate costs and benefits of mitigations has not been undertaken. Because CEQA does not clarify substantive objectives or measures of performance, most information is based on counts of procedural activity rather than estimates of the quality of reviews or outcomes (Landis et al., 1995). Even if more careful research were attempted, some academics contend that lack of consensus on methods for quantifying social and environmental impacts would render such an exercise too contentious to be useful (Landis, et al., 1995; Heinzerling and Ackerman, 2002). Some other mini-NEPAS do require cost-benefit analysis, but many local California planners oppose such a requirement, believing it would only add to procedural burdens (Landis, et al., 1995).

The lack of agreed-upon academic methods for quantifying environmental benefits is compounded by CEQA's own deference to local discretion. Localities in effect devise their own cost-benefit ratios in determining how to balance economic, environmental, and social goals under CEQA (Landis, et al., 1995). Thus, because the law itself lacks clear standards for performance, it becomes doubly difficult to evaluate its impact.

Not surprisingly, the social benefits of CEQA are as difficult to quantify as its other impacts. Social goals of CEQA include expanding public knowledge of and participation in development decisions. The California Supreme Court recognized that CEQA "protects not

only the environment but also informed self-government.”<sup>26</sup> By complying, an agency ensures that the “the public will know the basis on which its responsible officials either approve or reject environmentally significant action.”<sup>27</sup>

From this vantage point, even a contentious review might indicate CEQA’s effectiveness rather than failure. CEQA aims to force the internalization of project costs by lead agencies – and these include costs of public debate as well as environmental impacts. “Deny the public this opportunity and its distrust of government would undoubtedly increase; such alienation could manifest itself in a variety of ways that would be even more unpredictable and unpalatable to the development community than the CEQA process” (Thomas, 1993, p. 104).

What is particularly hard to gauge, however, is whether CEQA provides the most *effective* vehicle for public debate on consequences of development. CEQA operates close to home – at the neighborhood or community level. This has the advantage that it provides for public input at the scale most likely to matter to many people. But it has the disadvantage that it may focus discussion on self-interest defined locally rather than more widely (such as within a metropolitan area).

A full picture would weigh economic, social, and environmental costs and benefits – and how they interact. In practice, this is what policymakers are doing when they consider whether and how to reform CEQA. But with a law like CEQA that leaves its own concrete objectives open to interpretation, it is no wonder the undertaking is murky and contentious.

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<sup>26</sup> *Goleta II*, 52 C3d at 564, 276 CR at 416, quoting *Laurel Heights Improvement Ass’n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 392, 253 CR 426, 431.

<sup>27</sup> *Laurel Heights Improvement Ass’n v Regents of Univ. of Cal.* (1988) 47 C3d 376, 392, 253 CR 426, 430.

## **The Current Context for Reform**

Many of these concerns about CEQA have been discussed for decades. Has anything changed to alter the terms of the debate since the last round of state-level reform discussions took place during the early 1990s?

Growth issues during the late 1990s served to draw more attention to CEQA's weaknesses. By the end of the decade, housing affordability concerns in particular put CEQA under a spotlight as a potential culprit fueling local resistance to development. Meanwhile, regional planning and policy innovations emerged during the 1990s that seemed to demonstrate how CEQA's goals might be achieved more effectively. By the mid-2000s, CEQA reform was once again a hot topic.

### **Housing Problems Prompt Reconsideration of CEQA**

By the end of the 1990s, housing affordability problems gained widespread attention in the state, with 15 of the 25 most unaffordable metropolitan housing markets in the nation located in California (Fulton, 2000). State policymakers turned their attention to land use policy, long the domain of local governments. Given the potential for local resistance to new housing in some communities, state policymakers had to contend with the possibility of conflict between state and local prerogatives and thus the need to assert a more concerted state role in defining land use policy. Legislative efforts were organized to consider strengthening the state's housing element law and its enforcement, and the Regional Housing Needs Assessment process, which allocates to each locality its "fair share" of long-range housing supply obligations. Also, programs and measures to improve "jobs-housing balance" and fiscal reforms to address "fiscalization of land use" were advocated.

CEQA reform was also considered to help expedite housing production. In 1998 an exemption from review was established in the guidelines for infill development projects on less than five acres in urban areas, which do not impact traffic, noise, air quality or water quality and that comply with the local General Plan. A similar statutory exemption was adopted in 2002 (Sargent et al., 2004). However, some argue that the exemptions are too narrow to effect much change in practice (Shigley, 2002; Sargent et al., 2004).

From early on, the Schwarzenegger administration indicated that promoting housing production might be a priority concern. In February 2005, it released a proposal for CEQA reforms explicitly geared to accomplish that goal. In addition, the state Resources Agency convened a stakeholder advisory group to discuss CEQA reform in a broader context (and incidentally, commissioned this report as a background resource).

### **CEQA's Unintended Consequences: Planning Incrementalism and Local Resistance to Development**

By the early 2000s, even some environmentalists agreed that CEQA no longer was functioning as it was intended (Metro Investment Report, 2004). There was widespread agreement that CEQA's project-level focus created uncertainty for both developers *and* the

environment and that CEQA sometimes served to foster local resistance to growth (Little Hoover Commission, 1995; Bay Area Council, 1996; Urban Land Institute, 2002). Thus, environmentalists, regional planning advocates, affordable housing advocates, and others were on the same side of the bargaining table with developers in calling for reforms to ease CEQA's burden on infill development.

As the Executive Director of the Planning and Conservation League noted in 2004,

Conceptually, the environmental community wants the same thing that the development community wants – certainty. Evidence indicates that a lack of certainty associated with some California Environmental Quality Act processes impedes capital investment in urban and older suburban communities (Metro Investment Report, 2004).

Among CEQA stakeholders, whose interests would potentially be threatened if CEQA were reformed to facilitate infill development? Local governments and neighborhood residents were perceived as sometimes using CEQA as a vehicle for resisting development. This was viewed by many as an unintended consequence of CEQA's operation in a wider context of fiscal constraint, negative reaction to growth, and lack of mechanisms supporting comprehensive planning in the state. In the absence of policy mandates and mechanisms to the contrary, local residents and local governments might sometimes use CEQA to preserve local "quality of life" more than environmental quality per se.

Like many aspects of post-Proposition 13 planning in California, CEQA gained importance partly because it includes a funding mechanism. As a result, fiscally strapped local governments may have increasingly substituted CEQA's piecemeal, incremental approach for long-range comprehensive planning. Furthermore, without substantive regional policy objectives and planning mechanisms to help focus CEQA review, the law's intent – to help ensure that local projects address regional as well as local planning objectives – could be subverted.

As the public grew more wary of growth and development, CEQA was an available vehicle for expressing local resistance to growth. Perhaps because of a lack of effective alternatives for channeling frustration and debate, local residents sometimes use CEQA as a forum for addressing concerns that have little to do with environmental protection per se. For example, studies show that the most common mitigation measures are for traffic, noise, and service shortages – concerns related more to infrastructure and service deficiencies than environmental protection (Johnston and McCartney, 1991). Although such issues have been incorporated in the CEQA review process, they might better be addressed in other forums such as through the local General Plan process.

Along with local residents, local governments also may have reasons to disfavor new housing development. Housing – particularly multiunit, infill housing – can be an unattractive land use option for a local government because of related infrastructure and service costs and because the state's fiscal system limits local property tax receipts. This may be especially true for infill housing because it can be harder to implement mechanisms to recoup service and infrastructure costs such as Mello-Roos districts. A 1999 survey of city planning directors revealed that multifamily housing was considered among the least favored land use options (Lewis and Barbour, 1999). Thus, policies with potential regional benefits – such as permitting

more infill housing – may entail local costs in the form of higher service demands as well as community opposition.

## **Emerging Models: Bioregionalism**

Although many environmentalists acknowledged the need for easing restrictions on infill development, many also considered this appropriate only as part of a larger package of “smart growth” reforms. By the 1990s, smart growth strategies were flourishing in California, and they pointed a way toward reforming CEQA.

Smart growth aims to maximize economic, social, and environmental gains simultaneously through integrating planning objectives at a regional scale. For example, a smart growth strategy might promote more compact development near transit stations; this may simultaneously increase affordable housing options (multiunit development) while also lessening pressure on the environment (air quality and open space) and public service needs (transportation, water, power). Promoting infill had come to be viewed as a key element in an integrated approach to environmental protection that would help prevent sprawl development, preserve natural resource areas and open space, and lessen air pollution.

Thus, environmentalists could support relaxing requirements for infill as part of a strategy to reorient CEQA’s balancing function – its imperative for balancing environmental considerations in decisions about growth and development – from the project-level scale to a community-wide and regional scale. Concessions on easing regulations for infill housing would need to be matched with assurances that open space and natural resource areas would also be protected – the same bargain that environmentalists had hoped to strike in state-level negotiations a decade earlier.

This view was expressed by the Executive Director of the Planning and Conservation League in 2004, when he stated,

If we want to fundamentally change how we are going to accommodate California’s tremendous growth rate of 500,000 people a year and build livable communities, then it is essential that the environmental community go to the table willing to negotiate a principled compromise on the issue of how the California Environmental Quality Act works procedurally in urban and older suburban communities. However, that must happen simultaneously with local governments and the building community coming to the table willing to accept some kind of urban growth boundaries or other procedural mechanisms to protect prime agricultural lands, greenfields, and natural habitat areas from the endless march of sprawl (Metro Investment Report, 2004).

In fact, much of the impetus for the shift to smart growth policymaking can be traced to new thinking about environmental regulation by the 1990s. The traditional approach to environmental regulation had relied on centralized, bureaucratic regulation of specific, separate “point” sources of major pollutants or other hazards. But by the 1990s, this approach was under attack (Mazmanian and Kraft, 1999). Remaining threats to environmental quality were increasingly traced to diffuse “non-point” sources – in particular urban dwellers, farms, and automobiles – and it appeared that further gains would depend on changes in local land use

and transportation policies (Mazmanian and Kraft, 1999). Furthermore, growing conflicts between environmental and economic uses for land and water made coordination desirable to avoid piecemeal battles.<sup>28</sup>

Transportation was targeted by this integrated approach through amendments to the Clean Air Act in 1990 that threatened the withholding of federal transportation funds for areas out of attainment. Other state programs promoted a more integrated, bioregional approach to regulation as well, such as through watershed-level management of pollution and bioregional natural habitat preservation. These programs include the Natural Communities Conservation Planning (NCCP) program, established in 1991 to create regional, multispecies habitat conservation plans, the Integrated Watershed Management Program, established in 2002 to facilitate and coordinate the groundswell of local watershed planning initiatives that emerged during the 1990s, and the Integrated Regional Water Management Planning Act of 2002, which authorized regional multipurpose water management planning and directed the Department of Water Resources to target grants and loans to help promote it (Hanak and Barbour; 2005; Barbour and Lewis, 2005).

These programs rely on certain key elements. One is the development of bioregionally based environmental standards, such as for air quality, multispecies natural habitat requirements, and water quality standards applied to bodies of water. The programs also rely on collaborative approaches for implementation among different levels of government, different functional agencies, and across local jurisdictions. Collaborative governance is critical because the programs depend on local governments and private landowners to accept and implement land use changes.

## **The NCCP: A Model for CEQA Reform**

The NCCP is a useful model to consider in relation to CEQA reform. It was developed in response to frustration with the piecemeal approach to reconciling land development and environmental regulation that CEQA exemplifies, and it provides an object lesson about how CEQA might be reframed to be more effective.

By the late 1980s, Southern California had become a hot spot for conflict over the Endangered Species Act. Rapid land development had resulted in conversion of much habitat and precipitous drops in the populations of many species. Landowners were frustrated by the cost and inconvenience of permitting. Environmentalists were frustrated that the Endangered Species Act, among the stiffest of environmental mandates, was failing to prevent extinctions because of the inadequacy of the regulatory approach of preserving small, unconnected parcels of land for one species at a time – and only after species were in trouble. To be biologically effective, habitat must be protected at an ecosystem scale for interrelated species and for the long term (Thompson, 1994; Murphy, 1999; Pincetl, 1999).

The NCCP's goal was to take a preventive, long-term approach to reconciling species preservation with increased demand for urban development. In exchange for agreeing to set aside land as wildlife habitat, developers would receive assurances that they would avoid

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<sup>28</sup> The following sections draw heavily on Hanak and Barbour, 2005, and Barbour and Lewis, 2005.

economic consequences from future listings. The NCCP directly addressed the sort of problem that beleaguers CEQA's cumulative impacts procedures – it shifted the planning onus for mitigation from the project level to the plan level. The key to making this work was *not* to introduce any new regulatory requirements, but rather to promote a process to coordinate existing requirements so that individual parcel-by-parcel mitigations might fit into a larger planning framework. Through planning coordination, the NCCP has been able to provide the certainty to *both* landowners *and* the environment that has been sorely lacking under CEQA.

Since 1982, federal and state wildlife agencies had been authorized to issue incidental permits for the “taking” – or in other words the destruction – of endangered habitat or wildlife if a “Habitat Conservation Plan” (HCP) had been prepared to mitigate the effects. However, HCPs were usually applied at the parcel level, and the process for obtaining a take permit could be arduous. Under the NCCP, the California Department of Fish and Game was authorized to issue take permits based on approved Habitat Conservation Plans, which could cover any species, including unlisted ones. This could form the basis for valuable assurances to landowners that they would avoid economic consequences from future listings, something that federal agencies had sanctioned through a policy called “no surprises” (Murphy, 1999; Pollak, 2001a).

The NCCP was designed as a voluntary program to create regional, multispecies conservation plans “through a collaborative consensual planning process” among local governments, landowners, developers, and others. The NCCP can rely on voluntary participation because of the mutual gains available through cooperation. The program cannot actually compel local land use changes. State and federal incidental take permits were issued to local jurisdictions, which were then responsible for overseeing local compliance. Conservation was integrated into local planning to an unprecedented degree by requiring that local ordinances and General Plans include its provisions. However, compliance could be assured only through the potential revocation of the take permits.

The initial focus of the program was Southern California's coastal sage scrub habitat, encompassing portions of five counties. Five NCCP subregional plans and six subarea plans have been approved so far in Southern California (NCCP website, <http://www.dfg.ca.gov/nccp/>). Although each plan has been unique, projected costs have generally been allocated among state and federal wildlife agencies, local governments, and mitigation from new development (Rempel et al., 1999; Pollak, 2001a and b). Numerous other plans are still in development – six of them in northern California.

The NCCP provides a model for how CEQA might be reoriented to better support coordinated regional strategies for balancing environmental and economic goals and objectives. It indicates that by providing the right regulatory and funding incentives, the state can support coordinated planning that can overcome the inadequacies of piecemeal regulatory approaches, and serve to link local mitigation with more comprehensive planning. The NCCP shows this is even possible by reframing existing regulatory authority without the need for establishing new mandates or administrative bodies – or for that matter, amending CEQA. This was possible in the case of the NCCP because tough substantive standards provided a focus and because the state aligned incentives to facilitate voluntary planning coordination – all in spite of CEQA's fair argument standards imposed at the local project level.

Just as the benefits of the NCCP form a mirror image to CEQA's approach, so do some of its weaknesses. CEQA review generally considers and mitigates environmental impacts at only one location at one point in time; although cumulative impacts analysis incorporates "reasonably foreseeable" projects, there is no feedback mechanism for evaluating the effectiveness of mitigation. By contrast, the NCCP aims to coordinate multiple interests over time and across large geographic areas. Experience shows this is not easy to negotiate in practice, because it requires an assumption of future risk. The "no surprises" policy, essential for landowner participation, transfers the assumption of risk of future uncertainty in species preservation costs from developers and landowners to the federal and state governments or, possibly, even to the species themselves. For this reason, the NCCP program has divided the environmental community.

Just as CEQA has been sometimes critiqued for politicizing environmental protection, similar concerns have been raised about the NCCP. The length of time required to complete NCCP plans has been years longer than originally projected, and some have been very contentious. Obtaining funds for implementation from participating governments, even for adopted plans, has been difficult. And although most major environmental organizations supported the NCCP's principles, some grew to distrust its process and results, complaining that scientific processes were sacrificed in favor of political ones (Pollak, 2001a and b). Although originally envisioned as a program to be organized at a bioregional scale, in practice it was devolved to politically defined subregions - in particular to the county level. Scientists were also concerned that although conservation guidelines were adopted, no process was defined for review by independent scientists of NCCP plans (Thompson, 1994; Pollak, 2001a and b).<sup>29</sup>

## **Emerging Models: Regional Smart Growth Programs**

Regional planning innovations of the 1990s were not limited to environmental programs. Caught in a tightening vise of fiscal and environmental constraint, the state, local governments, and regional agencies sought means to use resources more efficiently and to reduce conflicts among economic and environmental goals. Infrastructure planning in a number of areas - transportation and water supply, for example - was devolved to the regional level to better integrate it with local land use and environmental planning. Like the environmental programs described in the previous section, the new programs rely on collaborative decisionmaking to integrate planning among different levels of government, jurisdictions, and policy areas. In relation to CEQA reform, the programs reflect some progress toward developing comprehensive regional plans that could help set a new framework for local mitigations.

A series of programs - the state's Congestion Management Program, endorsed and funded by voters in 1990, the federal Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991, and SB 45, state legislation passed in 1997 - vested authority for transportation capital outlay planning in county and regional agencies, which must now conform to regional air quality plans in addition to a range of other policy goals. County-level authority also was

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<sup>29</sup> State legislation passed in 2002 sought to resolve such complaints by requiring strict scientific standards as the basis for plans and rough proportionality between mitigation and effect on species.



enhanced by optional “self-help” county sales tax measures, which, in recent years, have accounted for one-third of local funding for transportation in the state (Legislative Analyst’s Office, 2000).

The new transportation governance system promotes more strategic management and policy integration at a regional scale. With more flexible funding across program categories, regional agencies have devised innovative techniques blending transit with highway spending, for example. The agencies also have been developing performance measures to systematically examine alternatives in relation to cost-benefit, mobility, environmental, equity, and other objectives (Hanak and Barbour, 2005). In all the state’s major metropolitan areas, smart growth performance modeling is used to test not just alternative transportation program scenarios, but also integrated land use scenarios. In the San Diego, San Francisco Bay, and Los Angeles areas, smart growth land use plans were adopted as the basis of recent long-range transportation plans, in effect committing the local governments that ratify the plans to denser development. Some transportation funds also were provided to encourage implementation.<sup>30</sup>

A similar process has been at work in relation to water supply planning. CALFED, established in 1995 to help resolve water conflicts in the San Joaquin-Bay Delta region, is a collaborative decision process to integrate investment in new supplies, increase water use efficiency, and provide eco-system restoration in support of endangered wildlife. It integrates and evaluates trade-offs among various strategies including new facilities construction, conservation and other “demand management” approaches to using water efficiently, and also emerging market approaches for buying and selling water across the state. The evolving “4.4 Plan” to coordinate use of Colorado River water in Southern California forms a parallel (Hanak and Barbour, 2005; Barbour and Lewis, 2005).

Smart growth modeling and strategies have great potential in relation to CEQA reform. A salient critique has been that currently under CEQA, cumulative impacts evaluation and mitigation is not only a weak but even counterproductive aspect of compliance, because regional impacts are approached in a fragmented manner. Localities have little ability on their own to determine how impact thresholds or mitigation measures actually translate into larger regional consequences.

Just as for the NCCP, smart growth modeling could transfer the planning burden to the regional scale, so that local measures and mitigations could fit into a larger framework – one that might, for example, trade off increases in project density (and consequent impacts) in some locations for corresponding decreases in another. But smart growth modeling goes a step further than the NCCP in considering trade-offs *among* different environmental impacts – for example, the potential gains in regional open space preservation and air quality that might

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<sup>30</sup> In the San Diego area, the recently adopted Regional Comprehensive Plan commits \$25 million in transportation funds over five years for localities that adopt supportive land-use policies. The half-cent sales tax for transportation passed in November 2004 includes \$250 million over 40 years for local infrastructure improvements integrating land use and transportation objectives, and \$850 million for environmental mitigation including acquiring and maintaining regional natural habitat preserves. The Sacramento area regional transportation plan commits \$500 million over 23 years for smart growth community grants, while in the San Francisco Bay Area, \$27 million annually is targeted for projects integrating transportation and land use or encouraging high-density housing near transit.

derive from increased development density (and thus more traffic congestion and other local impacts) in inner, urban areas. This integrative aspect of smart growth performance modeling makes it the closest approximation available to CEQA's balancing function, only reoriented to the regional scale. Within such a regional policy framework, CEQA's requirements for project-level review might actually be able to facilitate – rather than potentially hinder – the achievement of regional objectives for balancing environmental, economic, and social values.

However, progress to-date in comprehensive regional planning should not be overestimated. The new emphasis on collaboration has been grafted onto a system whose fundamental lines of authority and responsibility have not much changed, and thus the extent to which policymaking has been altered should not be exaggerated. Many governance and finance incentives currently discourage regional focus and accountability (Barbour and Lewis, 2005).

Although federal and state laws may mandate regional plans, the governmental agencies that compile and adopt them are not accountable at a regional scale to voters or to many specific performance mandates.<sup>31</sup> The state's system of transportation funding tends to emphasize jurisdictional equity,<sup>32</sup> and facing fiscal constraint, the local governments that ratify regional plans may find it difficult to set aside parochial self-interest in favor of the "regional good." So-called regional plans sometimes resemble stapled-together lists of priorities of multiple jurisdictions more than clearly articulated regional strategies (California Transportation Commission, 2002).

Local self-interest may be especially prevalent in relation to land use. Smart growth programs must overcome conflicting signals sent to local governments from the state. CEQA's project-level review requirements (in their current form and context) constitute one such state mandate that may conflict with smart growth approaches, but it is not the only one. Perhaps even more influential is the current fiscal system that can render it difficult for local governments to provide infrastructure to support infill. State-led reforms may be required to overcome such institutional and fiscal barriers to regional policymaking (Barbour and Lewis, 2005).

## Reconsidering Fundamental Questions

By early 2005, there was fairly widespread agreement that, in certain respects, CEQA was failing to live up to its promise and was even counterproductive. Developers, environmentalists, and smart growth advocates could agree on the need for greater certainty, the weaknesses of a project-by-project approach, and the need to ease regulations on infill development. In practice, this implied there was agreement that stronger policy standards or

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<sup>31</sup> County and regional transportation agencies are essentially confederations of local governments, local transit providers, and the state department of transportation. In most of the state's major metropolitan areas, designated agencies are Councils of Government (COGs) – voluntary organizations of local governments that tend to operate on a one-government, one-vote basis.

<sup>32</sup> For example, transit funds are distributed to counties based on track or vehicle mileage or population, rather than ridership. As a result, suburban systems receive deeper subsidies per transit rider than more heavily patronized central city systems, which are often strapped for funds (Taylor, 1991; Wachs, 1997; Garrett and Taylor, 1999).

objectives might need to be advanced to help overcome CEQA's local orientation, and that environmental review should be reoriented to the plan rather than project level.

However, these very areas of agreement open a can of worms. It has been both CEQA's strength and its weakness that it relates to so many aspects of planning and environmental policy in California. Discussing substantial reform inevitably leads to a series of complex related issues and concerns. It is easier to find agreement about CEQA's weaknesses - in particular that in its current form and context, CEQA's project-level focus does not support the most effective planning for the environment or for urban development - than it will be to reach agreement on how the law should be reformed.



## Proposals and Ideas

We reviewed eight reports published in the last decade from government, environmental, business, and planning organizations containing recommendations for CEQA reform. In this section we discuss some of their main ideas and proposals, starting with minor suggested modifications to the existing system and proceeding to more dramatic proposals for change. The reports we reviewed and the acronyms we use to refer to them are:

California Performance Review Commission, *Government for the People for a Change*, Sacramento, California, August 3, 2004. (CPR)

The Better California Campaign, *Smarter Development – A Proposal for Vision and Action*, Sacramento, California, March, 2004. (BCC)

Urban Land Institute, Statewide Coordinating Committee, California Smart Growth Initiative, *Putting the Pieces Together: State Actions to Encourage Smart Growth Practices in California*, Washington, D.C., September 2002. (ULI)

California Legislative Analyst's Office, *CEQA: Making It Work Better*, Sacramento, California, March 20, 1997. (LAO)

Bay Area Council, Task Force on the Relationship of Government Operations and Regulations to Economic Competitiveness, *Report of the CEQA Work Group*, San Francisco, California, February 1996. (BAC)

John D. Landis, Rolf Pendall, Robert Olshansky, and William Huang, *Fixing CEQA: Options and Opportunities for Reforming the California Environmental Quality Act*, California Policy Seminar, University of California, Berkeley, 1995. (Landis)

Little Hoover Commission, *Making Land Use Work: Rules to Reach Our Goals*, Sacramento, California, November, 1995. (LHC)

CEQA Review Committee, Environmental Law Section, *The California Environmental Quality Act: Assessment and Recommendations, Final Report*, State Bar of California, Sacramento, California, January 21, 1995. (State Bar)

## Enhancing Certainty *Without* Mandating Standardization

A continuing imperative among some reformers is to clarify terms and requirements for CEQA compliance. The LAO and State Bar stress the need for this, for example. Also recommended is strengthening requirements for disclosure in reviews, such as about the basis used by lead agencies in determining significance of thresholds and the rationale for choosing alternatives to be considered (State Bar).

Other proposals would streamline requirements for review and litigation. The CPR and BAC, in particular, advocate such measures, including facilitating use of mitigated negative declarations and emphasizing that courts should rely on remedies other than blocking projects and should defer to lead agencies on what constitutes substantial evidence.<sup>33</sup>

Another emphasis in recent reform proposals has been to expand and automate the state's role in oversight, guidance, and information collection. Such recommendations include developing non-project-related funding sources for state agency CEQA review and mitigation monitoring, and automating CEQA document submittal at the state level (Landis, LAO, CPR).<sup>34</sup> Another proposal would create a central registry of mitigation properties suitable to be acquired for mitigation purposes (CPR). This could help systematize mitigation on a regional scale through "the back door" – in other words, through better information collection and dissemination rather than new mandates.

## **Standardizing Threshold and Mitigation Requirements**

Standardizing significance thresholds and mitigation measures is a hot topic, but also the cause of confusion and debate. Important distinctions in proposals include whether standardization should be mandated or only encouraged, and – if mandated – whether on a statewide or regional basis or by leaving room for state, regional, and/or local agency discretion in determining the substance of the standards. Nearly every possible permutation of these alternatives has been recommended in various proposals.

Some argue that the state should mandate greater clarity and standardization of its own agency regulations and policies before requiring local consistency (Landis). Others argue that localities should be encouraged or even mandated to establish more consistent and uniform standards, but they should retain discretion in determining what the standards should be (LHC, BAC). Suggested incentives to encourage voluntary local standardization include presumption of legal adequacy (BAC).

Some argue that local standardization is appropriate for certain types of requirements but not others, particularly not for cumulative impacts requirements related to regional impacts (Landis). Finally, some argue that because of the confusion and debate surrounding this issue, careful research should be undertaken first in order to evaluate such issues as whether thresholds need to be quantified to be meaningful, whether determining quantitative and/or qualitative thresholds for each resource topic is feasible, what would constitute an appropriate process for deciding these matters, and whether formally adopted thresholds should be presumed valid in environmental documents (State Bar).

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<sup>33</sup> A new state guideline adopted in 2004 modified requirements for mandatory findings of significance, such that an EIR is now required when "there is substantial evidence, in light of the whole record" that various events might occur. This is expected to increase use of mitigated negative declarations.

<sup>34</sup> In 2004, a state guideline was adopted for OPR to establish and maintain a database, available through the internet, of CEQA documents provided to it.

## Strengthening Tiering and Cumulative Impacts Analysis

A range of methods has been promoted to strengthen tiering. While many reformers would strengthen MEIRs (LAO, CPR, BCC), some advocate other options such as enhancing use of EIRs with Specific Plans (Landis). The State Bar asserts that because current provisions overlap and are hard to reconcile, all the various options and provisions that have been established should be consolidated and clarified.

Numerous proposals would frontload requirements, especially for cumulative impacts, growth-inducing impacts, and alternatives analysis (Landis, BAC, BCC, ULI, State Bar). Key questions here relate to how legal standards should be relaxed at the back end of the process. Without such streamlining, tiering may never really catch on. But if standards are relaxed at the back end, what assurances should be provided at the front end that environmental reviews encompass project-level effects?

The State Bar offers a proposal that would rely on more careful delineation in plan-level review of the ways that the plan EIR will be used for subsequent approvals, which could serve to limit legal compliance standards and judicial scope for subsequent reviews. Mechanisms for implementing this in practice could include encouraging agencies to adopt specific criteria for qualifying for tiered analysis including consistency with zoning and pro rata share of mitigation, and allowing agencies to include in application fees for individual projects a cost component for the initial preparation, periodic updating, and ongoing implementation of CEQA analysis requirements.

Other incentives proposed to promote local tiering include higher thresholds for EIR determination if an adopted plan is in place (Landis – for Specific Plans). Funding and fiscal incentives could include express authorization of local building permit surcharges or other fees, and/or state matching funds provided for preparation of MEIRs, General Plans, and/or Specific Plans (Landis, LAO).

Other proposals focus on promoting consistency in projects, plans, and policies *among* levels of government – local, regional, and state. For example, to promote consistency between local project EIRs and state or regional plans and policies, a presumption of legal adequacy could be introduced for local EIRs that rely on state or regional regulatory agency reports, if those agencies apply approved methodologies and standardized impact thresholds and mitigation measures (BAC).

The State Bar proposes a method for altering cumulative impacts requirements to allow use of “cumulative impact certification” for projects that incrementally impact a stressed resource but do their fair share in mitigating regional impacts by complying with a previously approved plan or program for restoring the resource (State Bar, idea also in Landis). The plan or program for restoring the stressed resource would have to be prepared and adopted in conformance with CEQA, and include mitigation measures or other enforceable mechanisms for reducing impacts to insignificant levels that take into account impacts of future growth and development and include findings that all feasible mitigation measures and alternatives were

adopted to reduce impacts to insignificant levels. The certification could be used to reduce legal and procedural requirements at the project level.

Other proposals seek to promote consistency between local plan-level (as opposed to project-level) EIRs and state or regional plans and policies. For example, the concept of functional equivalency under CEQA could be expanded to include compliance of General Plans, Specific Plans, Master Plans, or comparable plans that meet certain standards, such as that they were updated within the last five years, they include environmental analyses and resource protection meeting state standards, and they specify standardized thresholds and mitigation measures (BAC). Qualifying governments would be exempted from further CEQA requirements.

Finally, some proposals aim to reform planning law specifically to strengthen CEQA, rather than the reverse. For example, some have called for limiting the number of annual General Plan amendments to help ensure they are kept up-to-date, because this would help facilitate MEIRs (State Bar).

## **Promoting Policy Objectives: Expediting Housing Development**

A primary consideration in recent reform proposals is how exemptions for housing development should be expanded. Key questions are: Should exemptions be provided only for certain types of housing development, such as infill, mixed-use, transit-oriented, multifamily housing, or should exemptions be more broadly applied to all new housing development? Also, in order to qualify for exemptions, what standards should have to be met?

Some proposals recommend expanding exemptions for infill and mixed-use development under certain conditions, for example, when linked to an MEIR (CPR), or for projects that meet established standards including density minimums, consistency with the local General Plan, transit-orientation, adequate provision of utilities, and a certified local Housing Element (ULI). In the ULI proposal, the exemption would be for alternatives, growth-inducing, and cumulative impact requirements.

A broader exemption for all housing development has also been recommended when certain conditions are met, such as when linked to a comprehensive plan that identifies growth and no-growth areas (BCC, ULI), or for projects that help achieve compliance with Regional Housing Needs Assessment “Fair Share” allocations for affordable housing (BAC).

## **Enacting CEQA Reforms Within a Larger Growth Management Framework**

Some reformers argue that effective CEQA reform can only take place within a broader framework of coordinated state policies and programs. They call for the state to identify growth goals, objectives, and performance standards for coordinating state agency roles (ULI, BCC, LAO, LHC, CPR). CEQA and a whole host of other tools can then be used to direct development to meet the state objectives (ULI, BCC).



A key component in some of these proposals is the development of long-range comprehensive community plans that identify growth and non-growth areas (ULI, BCC). CEQA tools to direct growth into designated areas could include exemption from litigation (ULI) or streamlined permitting (BCC). Other tools besides CEQA include state grants and loans for smart growth planning (BCC, ULI), priority status for state and regional infrastructure funds (BCC, ULI), fiscal incentives for housing and transit-oriented development (such as tax increment financing or return of a portion of property tax increment to local governments) (ULI), and local funding authority for local infrastructure and service improvements consistent with long-range regional comprehensive plans (BCC).



## Areas for Further Research

Much remains unknown about how CEQA works and what effects it has. Two broad categories of further research suggest themselves: first, research specifically directed towards CEQA practice, and second, research directed towards the impacts of the law.

### Research on CEQA Practice

In relation to standardizing impact thresholds and mitigation, research questions might include:

- In practice, which impacts currently tend to be evaluated using federal, state or regional regulatory measures or standards? Which impacts are most quantifiable and why?
- Why do some communities create uniform impact threshold policies and mitigation requirements, and not others? How do approaches vary and why? For which impacts are uniform policies considered most useful?
- How do standardized local threshold policies influence:
  - Number of reviews (planners worry the number will increase).
  - Plan versus project-level focus in the local review process (anecdotal evidence suggests either outcome is possible) (Watts, 1995).
  - Incentives for mitigation, for example in MNDs. (On the one hand, inflexible standards could discourage mitigation for projects that fall below the standards, or even above, if an EIR is automatically triggered and there is less bargaining room with developers. However, evidence also suggests that if linked to coordinated mitigation options, standardized thresholds can facilitate MNDs; see Watts, 1995).
- What are legal, scientific, and practical implications of presuming legal validity for formally adopted thresholds and mitigation requirements? (State Bar, 1995)
- How feasible are quantitative and/or qualitative state and regional significance thresholds and mitigation requirements for different resource topics, and how could policies be reconciled? (State Bar, 1995)
- Which state or regional programs define local thresholds and mitigation requirements for use with CEQA review, and how do these influence local reviews and mitigations? Consider experience from the NCCP, state air pollution control districts, congestion management programs, the state's adaptation of the federal Land Evaluation and Site Assessment system (LESA), among others (see Watts, 1995, for discussion of these).
- Which existing state or regional programs impose thresholds that obstruct regional smart growth planning efforts? Some complain, for example, that congestion management "level of service" requirements impose thresholds that can deter more compact development.

In relation to local tiering, research questions might include:

- Why do some localities use tiering and others do not? Which mechanisms are used most often and why?
- How quickly do plan-level EIRs become so out-of-date that they are not useful?
- Which impacts are easiest and most useful to tier and why?
- Based on local experience, what sort of funding, legal, procedural, and regulatory mechanisms could facilitate tiering?

In regard to connecting CEQA to regional planning processes, research questions might include:

- What specific lessons can we learn from regional programs that integrate environmental and land use planning such as the NCCP, Riverside County Integrated Plan, county congestion management programs, watershed initiatives, the Clean Air Act/ISTEA link, and regional smart growth plans and strategies, about how to connect plan-level and project-level analysis and mitigation?
- How are local mitigations defined, applied, and monitored in these programs? How is performance measured and updated (adaptive management)?
- How do these programs reconcile (or fail to reconcile) scientific and political processes, in particular in relation to allocating future risk? How do they incorporate public input?
- Should CEQA be modified to promote regional planning approaches, and if so, how?
- How could the state foster collaborative approaches? What are key levers for promoting collaboration? What are key roles and responsibilities of different levels of government?

## **Research on CEQA Impacts**

Regarding impact on development approvals, research questions might include:

- How variable are requirements, time, and costs for reviews for similar types of projects in different communities, and what explains the variation?
- How do CEQA impacts vary for different types of applicants (for example, small versus large developers)?
- How do impacts vary for different types of development (for example, infill versus greenfields)?

- How have MNDs changed CEQA reviews in practice? For what sort of projects and in which communities are MNDs most likely?<sup>35</sup>
- How do developers weigh cost variables? In particular, how valuable is predictability if it comes at the price of new regulation or more extensive requirements when viewed in the aggregate?

Regarding CEQA's impact on infill development, research questions might include:

- What are the barriers to infill development? What role does CEQA play?
- What are costs and benefits of, and trade-offs among, different strategies and incentives for promoting infill? For example, some advocate full CEQA exemptions, but others only partial (such as for cumulative impacts, alternatives, and growth-inducing impacts analysis). Some advocate stand-alone exemptions that apply to any project meeting certain criteria, while others advocate such exemptions when tied to compliance with larger local or regional plans. How do these CEQA incentives compare and relate in terms of costs and benefits to other proposed incentives for infill, including fiscal tools such as tax increment financing, or priority for state and regional funds?

Regarding mitigation, research questions might include:

- How do localities determine which mitigation measures to implement? What is known locally about their effectiveness?
- How do MNDs influence incentives to mitigate?
- Which impacts are most likely to remain unmitigated through issuance of Statements of Overriding Consideration?
- What assistance would localities like to receive from the state? Would coordinated mitigation programs – such as the proposed mitigation registry – be useful?
- What methods for cost-benefit analysis are most commonly used in academia and in implementing other mini-NEPAs? How do they differ, and how do different methods affect conclusions?
- How do communities vary in their cost-benefit assessments of how and whether to mitigate similar effects?
- Based on in-depth case studies, how cost-effective are local mitigation measures?
- How does the interaction of state, regional, and local impact standards and mitigation objectives influence cost-effectiveness?
- What information should the state collect and analyze?

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<sup>35</sup> Thanks to Ellen Hanak for suggesting these questions.

In relation to public participation, research questions might include:

- What sort of proposed projects tend to elicit the most public reaction and involvement? How do organized advocacy groups (such as environmental organizations or neighborhood associations) affect public input and involvement?
- Which impacts tend to provoke most concern from local residents? Which are most likely to provoke legal challenges? How does this vary by type of community (location, age, socioeconomic status) and why? What is the role of public agencies in mediating against legal challenge?
- Are there “best practices” for organizing and encouraging public involvement?

In relation to broader impacts, key questions to consider include:

- What are the aggregate costs and benefits of CEQA, both direct and indirect, to California?
- How are those costs and benefits distributed across populations, regions, and stakeholders?
- How has the presence of CEQA changed the strategies and behaviors of important economic sectors, notably housing?
- What would be the likely impacts of significant pending CEQA reform proposals on the state’s economy and environment?

Answering the final set of questions explicitly will not be easy, for reasons noted earlier in the paper. However, these questions are being answered implicitly in the choices that legislators make about reform. Thus, they should be held up for consideration.

## Conclusion: The Baby and the Bathwater

CEQA has evolved in a remarkable fashion because of its unusual role in California planning. California has not developed a centralized approach to growth management, preferring instead to leave much policy substance for local governments to decide. In a state that lacks a strong framework for comprehensive planning, CEQA review stands out by establishing a systematic process for integrating planning across policy areas and objectives in relation to concrete development decisions.

However, CEQA combines its intent to consider development in a comprehensive (or integrated) fashion with a narrow, piecemeal approach (Olshansky, 1996a). For this reason – and because it includes a funding mechanism – CEQA has increasingly filled the breach for tasks it was never intended to accomplish. In a wider context of fiscal constraint and public skepticism about growth, CEQA has sometimes become a substitute for local planning and a public forum for resisting negative effects of growth and development.

All sides in the perennial CEQA debate now express frustration about the law's ad hoc and inconsistent implementation and the failure to orient CEQA to address state and regional growth and development goals. But talk of substantive reform inevitably opens a Pandora's box of other related issues and concerns. This has made it hard sometimes to focus on achievable reforms.

But it is CEQA's strength as much as its weakness that it relates to multiple aspects and issues in development policy. Many complaints about CEQA are really primarily about its inability to function effectively in a context of fiscal constraint and weak comprehensive planning. CEQA was meant to be a mechanism to assist planning, to help ensure that development decisions conform to planning objectives. But if those objectives are not well clarified, CEQA cannot operate effectively (Olshansky, 1996a).

In spite of its widely recognized weaknesses, CEQA's strengths also remain vital. In fact, CEQA's balancing function – the imperative that environmental values be considered when making concrete development decisions – embodies a central principle of smart growth, although not at a regional scale. If this balancing function could be redirected to address regional and state growth policy objectives, CEQA might become a strong mechanism for smart growth planning.

This potential is evident in the NCCP program, for example. In that case, the planning onus for defining how local mitigations should fit into a larger framework for balancing environmental and economic objectives was shifted from the local project level to a wider, collaborative process. Although such planning may be arduous, smart growth programs show the potential promise for CEQA reform. The key is that the baby was not thrown out with the bathwater. The NCCP and similar programs retained the strength embodied in CEQA – its balancing function – while also addressing its weaknesses related to piecemeal regulation.

A key question is whether – or to what degree – CEQA should be altered to facilitate such regional strategies. The NCCP experience suggests that more coordinated regional programs may be developed without requiring any modifications to CEQA, if the state provides

adequate support for such planning by aligning incentives properly. From this perspective, CEQA currently may divert attention from more effective regional approaches, but it doesn't necessarily directly impede their success.

The NCCP provides strong evidence that CEQA review can be reoriented through planning reform alone. However, the NCCP also cannot serve as a model for all environmental impacts and issues. For one thing, the NCCP deals only with a single environmental impact – endangered species preservation. It does not provide an adequate solution to the problem of how to trade off and balance multiple impacts and concerns within a regional context. Second, the NCCP works on a voluntary basis because all parties – developers, environmentalists, and governmental agencies – have incentives for cooperation. In other words, there are mutual benefits that can be achieved only through cooperation, and this keeps parties at the table through the arduous planning process.

But other planning issues don't offer the same potential for such clear-cut mutual benefits. For example, increased development density in targeted inner urban areas has been demonstrated to offer regional benefits in air quality and open space preservation, according to regional smart growth modeling by the state's MPOs/COGs (Hanak and Barbour, 2005). But that does not by any means indicate that the communities targeted to receive the higher densities will actually prefer such a policy. As long as communities are asked to adopt policies that produce dispersed regional benefits, but entail uncompensated local costs, they will balk.

In such cases, CEQA reform could be geared to help support local communities that promote regional smart growth objectives – for example through streamlining requirements for infill development. However, to the degree that local resistance to growth reflects factors that CEQA cannot address – such as a lack of adequate infrastructure to support the new growth – CEQA reform will not halt such resistance. Even if CEQA challenges were precluded, local residents and governments would likely find other means for resisting the development.

In addition to reforming CEQA to incentivize local actions to support regional goals, certain modifications to CEQA also may be needed to facilitate regional strategies that require trading off impacts that exceed established thresholds in one geographic area or for one environmental impact, in exchange for corresponding decreases in another. This may be especially important for strategies that balance and trade off different objectives and outcomes – for example, the sort of multifactor impact evaluation exemplified in regional smart growth modeling.

But in this case also, planning reforms may be as essential as CEQA reform per se. For example, the state government could facilitate integrated regional planning by helping foster the development of performance objectives to guide such plans. The state could also use funding and fiscal tools to reward integrated planning, for example by targeting state-controlled funds (such as transportation funds) toward regional smart growth objectives, or by providing increased funding authority for infrastructure improvements designated in collaboratively designed plans that integrate regional and local land use, environmental, and infrastructure objectives.

Currently housing affordability problems are center stage in state-level discussions on CEQA reform. Two possible outcomes seem likely for proposals aimed only at expediting



housing production. There is enough widespread agreement on the value of expediting infill development that some narrow reforms in that area may be possible even if other topics are not addressed. Or, the constellation of political forces related to housing concerns may be sufficient to push through more substantial reforms to streamline development approvals, and to effectively weaken CEQA's environmental safeguards in the process.

But in either of these two cases, the full potential for CEQA reform will have been squandered. The issues and challenges raised by a broader growth management reform discussion are indeed difficult to resolve. But ultimately, that task must be faced if the state is to meet its future needs for public and private investment and quality of life effectively. During the past decade, California gained experience with collaborative decision processes that integrate economic and environmental objectives. Such programs are not quick fixes, but they can provide real solutions. For example, as the Vice President of the Metropolitan Water District of Southern California recently noted, "Though they are messy and difficult, participatory collaborative processes such as CalFed are the only way we are getting anything done in the state" (Quinn, 2004).

Trying to fix CEQA from a narrow or limited perspective is like trying to pull a long stick from the base of a rickety construction in a game of pick-up-sticks. CEQA reform should be part of a wider discussion and a more comprehensive set of solutions to growth concerns. The clout of the governor is required to shepherd and support such a discussion at the state level. Without an effective state framework, even concerted regional and local smart growth efforts may be prone to failure.



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