On a typically sunny October day in the parched, brown hills of the Los Angeles suburb called the City of Industry, scores of elected officials, labor union representatives, construction workers, and real estate developers gathered on the 500-acre site of a proposed 75,000-seat football stadium. Right in front stood Gov. Arnold Schwarzenegger, who was there to sign legislation that would help to return pro football to LA. The region has been without a National Football League team since 1995, largely because it lacks a state-of-the-art stadium.

The law being signed that day would not subsidize an NFL team or the developer of the proposed stadium. Nor would it guarantee infrastructure for the project. Instead, the law—which Schwarzenegger called “very important to the Los Angeles economy”—eliminated a court suit filed by area residents over the proposed stadium’s environmental impact report, a suit based on the California Environmental Quality Act.

Schwarzenegger said the stadium would be the greenest ever built. “It will be built into the hillside. That means less steel will be used, and less concrete will be used, so, therefore, less greenhouse gases will be emitted. And recycled water will be used in order to do the landscaping. And solar panels will be used to power this stadium. This is all really great,” he said. Then his tone changed.

“I don’t know if it is ironic or absurd that this project is being held up by environmental lawsuits,” the governor said. “Because opponents are using the California Environmental Quality Act . . . to halt this construction, and as you know, CEQA requires all projects to go through a comprehensive environmental study. And let me be clear, I’m a big fan of CEQA. The only problem is that good laws can be abused . . . and that is what happened here.”
Some projects could get a pass from the state's 40-year-old environmental law.

The suit, which was pending in Los Angeles Superior Court, had been brought by a group of residents in the neighboring city of Walnut. They were seeking relief from what they argued would be unacceptable noise, glare, air pollution, and traffic congestion caused by the project.

The group's attorney, R. Bruce Tepper, says the upshot of the squelched lawsuit may be long-term opposition to stadium operations. "If you're going to declare war on your neighbors, that's not healthy," Tepper says.

People power

Such is the power of the statute known throughout the Golden State as CEQA (pronounced SEE-kwuh). The law requires public agencies to disclose and, when possible, to mitigate the potential impacts of a development project or plan. Ordinary citizens can use the law to stymie even the most powerful developers and elected officials.

But citizens' ability to slow or halt projects is based entirely on their access to court, because no government agency enforces CEQA. The state attorney general's office may file civil actions to enforce the law, but in fact it almost never does so because it lacks the resources—and some say the political will—to litigate for years over alleged CEQA violations. That could change if this November's ballot includes an initiative excluding all citizen lawsuits and allowing only the attorney general's office to file limited CEQA suits. It is too early to tell whether the advocates will gather enough signatures to get the initiative on the ballot.

State lawmakers have exempted projects before. Examples include the facilities for the 1984 Olympics in Los Angeles and redevelopment after the 1994 Northridge earthquake. But the law signed by Gov. Schwarzenegger in October 2009 was different from earlier efforts, which did not terminate active lawsuits.

Since then, at Schwarzenegger's behest, state lawmakers have introduced legislation that would allow the administration to prevent project opponents from bringing court challenges. The governor's office could use this measure to stop lawsuits against as many as 100 projects over four years beginning in 2011. In this context, the law signed by the governor last fall set a precedent for the bill now in the works.

Proponents say the proposed legislation is modest and that it would boost economic activity. With one in eight Californians out of work and potentially pivotal elections coming in November, no lawmaker wants to be on the wrong side of a jobs bill. Environmentalists and longtime CEQA warriors say cutting off access to court is drastic, not modest. They fear that the pending legislation could erode a law that has dominated California's planning practice since the 1970s.

In the beginning

This is how much the world has changed in 40 years: The California Environmental Quality Act was part of a multipronged Republican environmental strategy that was intended to help the party maintain control of the state assembly. The law was signed in 1970 by Gov. Ronald Reagan at the request of his chief of staff, Edwin Meese. Loosely based on the year-old National Environmental Policy Act, CEQA was intended to apply to public works projects, explains Tom Willoughby, an aide to the assembly's Local Government Committee at the time.

If a government agency wanted to build a road or a school or a convention center, it would have to disclose the potential environmental impacts and explain how it would offset or avoid those impacts.

“You had pretty general language that didn't bother anybody at the time, and it passed with almost no dissent,” Willoughby recalls. “The bill was not controversial at all until the Mammoth decision.”

CEQA's reach expanded exponentially with the California Supreme Court's 1972
decision in *Friends of Mammoth v. Board of Supervisors*. Written by legendary California justice Stanley Mosk, *Friends of Mammoth* said that CEQA applied not only to public works projects, but to any project permitted by a government agency, including private developments.

Although CEQA was only two years old when the case was decided, the decision was a major turning point. “CEQA was a big nothing for the first two years,” says attorney E. Clement Shute, Jr., who in representing the state attorney general’s office in the case argued for a broad interpretation of the law. “Public relations specialists were writing EIRs.”

Within a few months, lawmakers responded by passing legislation that established many implementation elements. Most importantly, the legislation created a process that would be uniform throughout the state, Willoughby says.

The 1972 statutory amendments explained what a project and an environmental baseline are, defined what material should be in an environmental impact report, made it clear that not every project needed a full EIR, introduced the notion of categorical exemptions, established a statute of limitations for bringing suit, and clarified the scope of judicial review. The revised law, combined with *Friends of Mammoth*, helped to launch hundreds of environmental consulting firms and more than a few law partnerships.

### The CEQA era

It is impossible to overemphasize CEQA’s influence on planning in California. Everything from a minor parcel split to a gigantic subdivision, from a community park plan to a regional transportation strategy, now had to be viewed through the prism of this law.

“It’s the tail that wags the dog of planning in California,” says H. Pike Oliver, a real estate lecturer at Cornell University who has helped developers plan major projects in California and elsewhere. “All of this money gets spent on impact analysis and not on community planning and policy development.”

Naphtali Knox, FAICP, a California planner who until his recent retirement worked both as a public planner and as a consultant, says he never considered preparation of EIRs to be “real” planning. During the 1960s, before CEQA, he says, “we planners were pioneers building the modern state. And we had no qualms about designing grand plans that never got built, such as a master plan for the state capitol and a University of California campus for the Almaden Valley of San Jose.”

In large part because of CEQA, many grand planning efforts ended. A project or plan (most planning documents qualify as a “project” under CEQA) that cannot survive CEQA review is of no value.

Both growth and comprehensive planning continued, however, as the state’s population nearly doubled from 20 million in 1970 to about 38 million today, and every city and county was required by state law to maintain a comprehensive general plan. Today, detailed specific plans for individual projects, downtowns, and new growth areas are common, and many metropolitan planning organizations have adopted regional growth blueprints. With few exceptions, all of these plans and developments had to comply with CEQA. And CEQA compliance is no easy thing.

### How it works

The mechanics of the law are fairly straightforward. A government agency must identify the potential impacts of a project, specify mitigation measures, notify the public, allow the public to comment, and respond to the comments. At the heart of CEQA is the environmental impact report, which must be prepared for any project that could have significant effects. Typically, an independent consultant managed by the government agency prepares the EIR, which the project applicant funds. In some places, such as unincorporated Los Angeles County, the developer may choose the consultant and oversee EIR preparation, but a final decision on the EIR is up to the government agency.

All of this information is intended to guide the city councils, planning commissions, boards of supervisors, school boards, special districts, and state agencies that make land-use and infrastructure decisions in California.

In the 1970s, EIRs were relatively short, often less than 50 pages. That changed in the ensuing decades. Much of the subsequent complexity was imposed not by planners, scientists, engineers, or developers, but by judges. After *Friends of Mammoth*, environmentalists and others—including public agencies—took to the courts to enforce CEQA provisions. That was relatively easy to do. If someone can make a “fair argument” that a project might have a significant impact on nearly anything (flora, fauna, ambient noise levels, air quality, historic resources, and so on), the agency asked to approve the project is required to prepare an EIR and adopt mitigation measures.

In dealing with thousands of CEQA lawsuits, judges had to answer the endless questions that arose. When in the planning process must an agency complete an environmental review? What is an appropriate mitigation measure? What is a cumulative impact? What is a project?

Fundamental as it is, this final question still is commonly litigated. Thus, through hundreds of published appellate court decisions and dozens of state supreme court rulings, judges have played an enormous role in defining CEQA’s reach. Lawmakers have incorporated many court holdings into the statute, and state officials have added the court’s definitions to the official CEQA guidelines.

All that has created a paper monster. The current law takes up about 80 pages, and accompanying guidelines add another 150. One of the standard reference books for practitioners contains more than 1,100 pages. Environmental impact reports frequently run 500 to 1,000 pages, including detailed technical appendices, and cost hundreds of thousands of dollars—sometimes millions—to produce. Even “mitigated negative declarations,” for projects with minor impacts, can be dozens of pages long.

And there are a lot of these documents. Government agencies produce about 500 to 650 EIRs every year, plus another 2,200 to 3,000 negative declarations and mitigated negative declarations, according to Governor’s Office of Planning and Research.

### Over the top

Is CEQA out of control? Go to almost any
planning conference in California, and you are likely to find sessions about how CEQA prevents good planning. Viewed exclusively through an EIR, a high-density infill project often looks worse than a low-density greenfield subdivision.

Mark Winogrond, FAICP, who has served as the planning director of several Southern California cities, including Los Angeles, concedes that many planners do not even read the EIRs for projects in their jurisdiction. While pertinent information is still buried in all the paperwork, “it’s very difficult for a layperson or even an experienced professional to decipher it,” he says.

Maureen Gorsen, an attorney with Alston & Bird in Sacramento and a former Schwarzenegger administration appointee, says CEQA is a good idea, but “it’s only a tool, and it’s not necessarily the best tool in the toolbox.” She asks whether a CEQA document really helps a city council to make the most environmentally beneficial choice and concludes, “probably not.”

Gorsen, who helped to craft one round of the CEQA guidelines while working for former Gov. Pete Wilson, says the law remains based in the 1970s environmental movement, when virtually all human activity was considered bad for the environment. Therefore, CEQA emphasizes mitigating and reducing impacts instead of designing environmental benefits into projects from the outset.

In contrast, Susan Brandt-Hawley, an attorney who has represented environmentalists and historic preservation advocates for three decades, calls CEQA “a great, great tool” for improving project planning and development. She further contends that it is development projects and planning documents, not the law, that have grown more complicated over the years.

“If you have a really complex project, you want the elected decision makers to have all of the information they can handle to make the best decision,” Brandt-Hawley says. She questions CEQA reformers’ assumption that the law depresses the economy. If you sacrifice the environment and the quality of life, she adds, people won’t do business in California.

Unlike these advocates, many academics are torn. Cornell’s H. Pike Oliver says there is little evidence that the Sacramento region has developed in a more efficient manner than Phoenix, which has not benefited from a CEQA-type law and is often seen as a poster child for unrestrained sprawl. “It has essentially become a procedural obstacle that people find a way to work through,” Oliver says of CEQA. “[Developers] have found ways to mitigate impacts, but I’m not sure it’s always effective.”

Change in the air

Development and business interests have been chafing at CEQA almost since the minute *Friends of Mammoth* came down. Many times they have lobbied for reform and even outright repeal. But CEQA’s foes have never gotten far in Sacramento because environmentalism is good politics in California. Many people genuinely believe that CEQA has prevented environmentally harmful real estate developments.

But times are tough now. In January, when Gov. Schwarzenegger proposed exempting 100 projects from CEQA court challenges, he did so as part of an economic recovery strategy. Lawmakers from both parties followed up with the package of bills now making its way through the legislature.

Attorney Clem Shute, whose San Francisco firm, Shute, Mihaly & Weinberger, has represented environmental groups and government agencies in CEQA litigation for three decades, says of the latest reform proposals, “It’s a little bit more scary this time because this recession is so severe and the state is just about bankrupt.”

Shute does not believe that cutting off citizens’ access to court will aid the economy. “People do perceive that these kinds of environmental regulations . . . need to be reformed,” he says. “But it’s just too convenient to say it’s government bureaucracy that’s slowing the economy.” Attorney Brandt-Hawley notes that only one of every 300 projects is litigated.

Pete Parkinson, AICP, director of the Sonoma County Permit and Resource Management Department and the APA California Chapter vice president for policy and legislation, says he understands the impasse behind the proposed legislation. “CEQA litigation can be a real black hole for projects,” Parkinson says. “EIRs have become more and more costly, and sometimes there’s nothing you can do to avoid litigation. And sometimes the litigation has nothing to do with the environment. It has to do with money or it has to do with jobs or something else.”

However, Parkinson adds, the proposed legislation does nothing to separate legitimate legal challenges from those that are merely attempts to stall growth or to extract money from developers. Further, allowing the administration to choose which projects receive a get-out-of-court-free card sets the stage for political manipulation, he says. Instead, the state APA chapter favors more limited exemptions or streamlined review for things such as compact, mixed use development near transit.

Rex Hime, president and chief executive officer of the California Business Properties Association, a group of commercial and industrial property owners and developers, insists that the legislation would not weaken CEQA, because only projects with certified EIRs would be eligible for exemption from judicial review.

“Anything that tries to ensure that the process isn’t used in an abusive manner is an important thing,” says Hime, who has lobbied for CEQA reform for years. “This is an opportunity for us to make some reforms in this arena as we try to pull ourselves out of this recession.”

Hime says he would actually like to see the litigation exemptions expanded. And that is exactly what environmentalists fear. The Sacramento-based Planning and Conservation League says the bills introduced in the legislature “would fundamentally undermine the ability of communities to participate in decisions that determine how their neighborhoods grow, and leave well-connected developers unaccountable for air pollution, traffic congestion, and other impacts of poorly planned projects.” Shute says that if citizens are unable to enforce CEQA in court, “it would become a meaningless, empty statute.”

But Winogrond, who served as Culver City city manager as well as a planning director, contends that one of the ironies of “well-intentioned challenges” brought under CEQA is the creation of a system that actually discourages creativity, because it is so hard to defend any outside-the-box approach in court. In the end, he says, the analysis and review process that was supposed to be helpful has instead become a hindrance.

“The language of CEQA,” says Winogrond, “does not encourage understanding.”

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