Policy Brief

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CEQA: Making It Work Better

SUMMARY

The Goals of CEQA

The California Environmental Quality Act (CEQA) was enacted in 1970 in order to ensure that state and local agencies consider the environmental impact of their decisions when approving a public or private project. Twenty-seven years later, CEQA's basic goals are sound. This view is generally consistent with that of the broad group of CEQA stakeholders that we interviewed for this report. However, CEQA is not without its problems.

Concerns With CEQA

California's business community has expressed concerns that CEQA has had a detrimental effect on economic development in the state. In particular, the business community is concerned about the complexity and unpredictability of the CEQA process, the costs of compliance, and the ease for legal challenges to be made to impede development. We find that these problems do exist, although their extent is unclear.

In addition, we find that little information exists about the cost-effectiveness of measures chosen by public agencies to mitigate adverse environmental impacts of individual projects. Furthermore, CEQA has become a substitute for general long-term planning in some jurisdictions even though it is not well suited to do the job.

Improving CEQA

In this report, we make recommendations for improving CEQA, potentially at a lower cost to both the public and private sectors. These recommendations fall into three broad categories:

- *How to make the CEQA process more efficient, thereby making it less costly and less time consuming to project developers and public agencies.*
- *How to make mitigation of environmental impacts under CEQA more cost-effective.*
- *How to improve the resolution of CEQA disputes.*

These recommendations, if adopted, would in large measure address the concerns identified by the business community, and would make CEQA work better at achieving its goals.

METHODOLOGY

In this report, we present a number of findings and make corresponding recommendations designed to achieve CEQA's purposes at a lower cost to both the public and private sectors. These findings and recommendations are based on over a dozen interviews with various CEQA stakeholders—including business organizations, state agencies, local governments, and environmental groups. For example, we interviewed staff at the California Chamber of Commerce, the Trade and Commerce Agency, the American Planning Association (California Chapter), the League of Cities, the City of Los Angeles environmental affairs and economic development departments, and the Planning and Conservation League.

In addition, we reviewed research conducted by others on CEQA decision-making at the local level. In particular, we reviewed research of the University of Illinois-Champaign, and a related report by the California Policy Seminar at the University of California-Berkeley, which surveyed over 500 California cities and counties regarding the number, type, and cost of their CEQA reviews. We also examined reports on the various factors impacting California's business climate, and reports by a number of organizations—including the Bay Area Economic Forum, the Association of Bay Area Governments, the Milton Marks Commission on California State Government Organization and Economy (Little Hoover Commission), and the State Bar of California—which evaluate and make recommendations on how to improve CEQA.

PURPOSES OF CEQA

Based on our review of state law, and the CEQA Guidelines adopted by the Resources Agency, we have identified three main purposes of CEQA:

- To inform public decision-makers of potential adverse environmental impacts of public or private projects carried out or approved by them.
- To provide for public participation in the environmental review process.
- To identify, and require the implementation of, feasible alternatives or measures that would mitigate (reduce or avoid) a proposed project's adverse environmental impacts.

While state law does not rank these purposes in terms of importance, individual stakeholders have their own rankings depending on their own particular interest in the CEQA process.

THE CEQA PROCESS

Figure 1 summarizes the CEQA process by which environmental

Figure 1

The CEQA Process

Step 1 Does CEQA Apply?

Is there a "project" that . . .

- may physically change the environment?
- will be carried out / "approved" by a public agency?
- is not exempt from CEQA?

Step 2 Initial Study: Determine Extent of Required Environmental Review

If CEQA applies, "lead agency" determines whether the project may have significant environmental impacts

Step 3 Environmental Review/Public Comment

Based on findings from the initial study, the lead agency:

Either issues one of the following declarations for public comment:

Negative Declaration
Where the project has no possible significant environmental impacts

Mitigated Negative Declaration
Where the project has possible significant environmental impacts that are eliminated by project modifications

Or prepares (or causes to be prepared), and issues for public comment and review by responsible agencies:

Environmental Impact Report
Where the project has possible significant environmental impacts

Step 4 Lead Agency Approval of Negative Declaration, Mitigated Negative Declaration, or EIR and Final Decision on Project

". . . evidence of [CEQA] problems is often anecdotal, typically pointing to relatively egregious cases, . . . no quantitative data available . . . "

information relating to a project is provided to and then considered by public decision-makers. Currently, any activity that *may* cause a physical change in the environment is a *project* subject to CEQA review. Projects include those carried out by public agencies themselves, such as public works construction, and private projects where there is some link with public decision-making, such as permit approval or granting of public funds. Certain activities are fully or partially exempt from CEQA requirements either by state law or regulations adopted by the Secretary for Resources. While some exemptions apply to broad categories of projects, such as projects necessary to prevent or mitigate an emergency, many apply to specific projects (for example, carrying out the Olympic Games).

As shown in Figure 1, a "lead" public agency must first conduct a preliminary analysis to determine whether a project, if not exempted, *may* have *significant* adverse environmental impacts. The lead agency is a public agency that is carrying out its own project, or, in the case of a private project, is the public agency that has responsibility for overseeing or approving the project. Typically, the lead agency will be a city or county.

Findings from the initial study determine the nature and extent of the environmental review that follows. For example, if the lead agency finds that a project will create possibly significant impacts, then it is required to prepare, or have prepared by someone else, an *environmental impact report (EIR)*. An EIR—which courts have called the "heart of the CEQA process"—must provide detailed information about a project's likely effect on the environment, consider ways to mitigate significant adverse environmental effects, and examine alternatives to the project. In addition, the EIR must consider a project's significant "cumulative impacts"—that is, impacts over time and in conjunction with related impacts of other past, present, and future projects. The lead agency also solicits and receives comments from other public agencies that have a role in permitting or approving the project—called "responsible agencies"—and the general public.

Where an EIR finds that a project *will* have significant adverse environmental impacts, a lead agency is prohibited from approving the project unless one of the following two conditions is met:

- The project developer makes modifications that substantially lessen the adverse environmental effects.

- The lead agency finds that economic or other project benefits override the adverse environmental effects.

CONCERNS WITH CEQA

In our interviews with the various stakeholders in the process, no one argued that CEQA should be eliminated. However, we found general agreement that the following are areas of concern with the operation of CEQA:

- The process is cumbersome and unpredictable, mainly for larger projects that require an EIR.
- Mitigation measures required as a condition of project approval are not always effective or reasonable in light of a project's environmental impacts.
- Processes to challenge decisions made under CEQA and to resolve disputes are costly and time-consuming and are sometimes used to create unnecessary project delays.

While there is general agreement that these problems exist, the degree to which they are problems is not clear. This is because evidence of the problems is often anecdotal, typically pointing to relatively egregious cases, while there is no quantitative data available to enable an assessment of the magnitude of these problems or measure their overall impact. As a result, we found that there is disagreement among stakeholders as to the extent of the problems and acceptable solutions.

Recent Reforms. In response to the above concerns, the Legislature has made various changes to CEQA. Figure 2 (see next page) highlights the major changes made since 1993. For example, the Legislature authorized greater use of previously generated information in the EIR process to make the process less cumbersome (Chapter 1130, Statutes of 1993 [AB 1888, Sher]). The Legislature also set time limits for legal challenges of public agency decisions under CEQA in order to reduce uncertainty and costs associated with litigation (Chapter 1131, Statutes of 1993 [SB 919, Dills]).

Generally, these reforms do not change the basic structure of the CEQA process or its broad policy objectives. While it is too early to tell how these reforms are working, we find that there are additional opportunities to make CEQA work better to achieve its purposes. In the following sections, we discuss:

- How to make the CEQA process more efficient.
- How to make CEQA's mitigation of environmental impacts more cost-effective.
- How to improve resolution of CEQA disputes.

Figure 2

Key CEQA Reform Legislation 1993-94 and 1995-96

Chapter/Year Bill (Author)	Area of Reform	Key Provisions
Ch 1068/93 SB 659 (Deddeh)	• Time limits	• Requires lead agency to approve or disapprove project within specified time periods.
Ch 1130/93 AB 1888 (Sher)	• Streamlining of review	• Authorizes use of Master EIRs and mitigated negative declarations. • Provides for streamlined review of certain pollution control projects mandated by environmental regulations.
Ch 1131/93 SB 919 (Dills)	• Streamlining of review • EIR requirement • Litigation	• Requires specified state environmental agencies, when adopting regulations, to provide compliance alternatives and mitigation measures. • Defines "substantial evidence" of potential environmental impacts needed to trigger EIR requirement. • Specifies time period during which public can object to project approval. • Authorizes courts, in cases of violations of CEQA provisions, to allow part of project to go forward.
Ch 1230/94 SB 749 (Thompson)	• Streamlining of review • EIR content	• Clarifies the definition of "projects" subject to CEQA. • States policy that EIRs should focus on a project's potentially significant environmental effects.
Ch 1294/94 AB 314 (Sher)	• Time limits • Litigation	• Requires public agency contract for preparation of CEQA documents to be executed within specified time periods after decision that document is required. • Requires filing of statement of issues by both parties in CEQA litigation. • Requires court, on request, to establish schedule for briefings and hearings to take place within specified time periods.
Ch 808/96 AB 1930 (Sweeney)	• Time limits	• Reduces time allotted for final decision on projects. • Sets time limits for adoption of negative declarations.

How to Make CEQA More Efficient

"... CEQA works relatively well ... to generate useful information about potential environmental impacts and involve the public."

We find that CEQA works relatively well in achieving two of its three purposes—namely, to generate useful information about potential environmental impacts and involve the public. In part, this is a reflection of the substantial amount of direction set out in statute on how these purposes are to be implemented. However, as discussed below, we find that these two purposes can be achieved more effectively, primarily by making the CEQA process more efficient, thereby reducing the cost and time to both project developers and public agencies to comply with CEQA's requirements.

Recent research surveys show that of the 35,000 to 40,000 projects that are subject to the CEQA process annually, up to 2,000 require an EIR. When an EIR is triggered, the cost of public and private sector compliance with CEQA can rise significantly. These costs include costs and time for various statutorily required analyses, public participation and mandatory consultation of *all* public agencies that have some approval role or jurisdiction over a project. A 1990 university research survey of local agencies found that on the *average*, EIR preparation costs are about $50,000. While the average cost of an EIR appears relatively modest, for large complex projects that potentially have significant environmental impacts, the cost and time to prepare an EIR can be substantial.

In addition to the costs of preparing the EIR, project developers often incur legal costs, costs for project modifications and other mitigation measures required by the lead agency, as well as costs associated with delays while awaiting project approval. It is these costs, rather than EIR preparation costs, that are of particular concern to project developers.

Our review finds that the CEQA process—the EIR process in particular—can be made less costly as well as less time-consuming by making improvements in the following five areas:

- Coordination between CEQA and other environmental regulatory processes.
- Clarity of terms and statutory requirements.
- Predictability of process within and among jurisdictions.
- Timeliness of state agencies' review and comments.
- Use of information technology.

Coordination Between CEQA And Other Environmental Regulatory Processes

Because most projects, particularly large complex ones, are subject to CEQA as well as other (often multi-

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ple) environmental regulatory processes, there exists the potential for duplication of environmental review and, sometimes, conflict of environmental requirements. For example, duplication can occur when relevant findings and decisions by environmental regulatory agencies regarding a project’s environmental impacts are not fully used by lead agencies in their CEQA review of the project.

Conflict occurs when requirements imposed by environmental regulatory agencies on project developers are inconsistent with those imposed by lead agencies under CEQA. For example, a developer of a landfill may find that permit requirements established by a solid waste management agency raise water pollution issues that, without a project redesign, render the project unacceptable under a lead agency's CEQA review. Some conflicts are probably inevitable given the broad focus of CEQA review relative to other environmental decision-making. However, we think that some of the conflicting directions to project developers may be resolved or reduced with better coordination among environmental agencies in looking at how to mitigate projects’ adverse environmental impacts.

Some Degree of Coordination Exists Now. Our review finds that CEQA is, to some degree, set up to work in coordination with the state’s environmental regulatory agencies. For example, current law allows certain state-level environmental protection programs to meet abbreviated CEQA requirements if designated by the Secretary of Resources as a “certified regulatory program.” Specifically, programs that produce a review similar to CEQA and involve the adoption of environmental standards, plans, or regulations, or the issuance of a permit or licence, can be certified by the Secretary of Resources. For example, programs regulating timber harvesting operations and the registration of pesticides have been certified. When a program is certified, certain of the program's environmental review documents are accepted in place of CEQA documents, such as EIRs, thereby reducing duplication of review.

Other examples of coordination include statutory exemptions from some or all of CEQA’s requirements when an agency implements particular environmental standards—such as the issuance of a waste discharge permit under the federal clean water law—or when a project consists *solely* of the installation of pollution control equipment or compliance with specific environmental performance standards or treatment requirements. Additionally, current law encourages and, in some cases requires, agencies in their CEQA review of projects to take into account other environmental reviews that have been conducted for the same geographic area. For instance, projects that are consistent with a local general plan and land use

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zoning provisions are exempted from certain CEQA requirements.

In addition to these current efforts at coordination, we think other opportunities for improved coordination exist.

Recommendation—Expand "Certified Regulatory Programs" to Local Programs. We recommend that the Legislature expand the concept of certified regulatory programs to include local programs that result in an environmental review similar to CEQA. Such an approach would build upon current state law that allows a state program to be certified by the Secretary of Resources. Local programs that would qualify for such certification could include those that thoroughly review environmental impacts during the local long-range planning process, with a reasonable level of public participation. We think that there are some existing local programs that could be candidates for such certification.

We do not believe that such a local certification process would lead to greater inconsistency in CEQA practices statewide. This is because the actual practices of a local program would be certified only if consistent with CEQA's requirements. Accordingly, the more local programs that are certified, greater statewide uniformity in CEQA practices can be expected.

Recommendation—Fully or Partially Exempt From CEQA Review Projects That Are Part of Larger Plans Subject to CEQA or Other Environmental Review. In addition to local general plans, public agencies in California—often in conjunction with private landowners and nonprofit organizations—are currently developing a variety of plans to guide land use decisions and resource conservation and management. These include plans to protect wildlife species and their habitat. Some of these plans are subject to environmental review, while others are not. If these plans are subject to CEQA or similar review, then the projects that are located within such plans should be partially or fully exempt from CEQA review.

Clarity of Terms and Requirements

Everyone we interviewed agreed that there are a number of provisions in CEQA where definitions and requirements are unclear or imprecise. In such cases, project developers may provide too little or the wrong information. Alternatively, they may provide excessive information and "throw the kitchen sink" into the review, with the belief that doing so will fend off a legal challenge to the adequacy of compliance. Our review finds ample evidence of CEQA documents that contain more information than decision-makers need (or can reasonably review) in order

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to make informed decisions that meet CEQA's requirements.

Our interviews identified the following requirements to be particularly unclear or imprecise:

- *Master Environmental Impact Reports (MEIR).* In 1993, the Legislature authorized the use of MEIRs. Under the MEIR process, when an EIR is prepared for a "master" project (a lead-off project), subsequent projects which are extensions of the "master" project are subject only to abbreviated CEQA requirements. The objective is to reduce time and costs associated with the review of project impacts that already have been addressed to some degree in a prior CEQA document. A MEIR may be prepared for projects such as a local general plan or a series of smaller individual projects that will be carried out in phases. Potentially, a large number of projects could qualify to use the MEIR process. However, we find that there is a reluctance by public decision-makers to use MEIRs because of uncertainty as to exactly how the MEIR must describe subsequent projects and how cumulative impact analyses ought to be conducted for the subsequent projects.

- *Cumulative Impact Analyses.* Current law requires EIRs to include a cumulative impact analysis—that is, an analysis of the impacts of the project in conjunction with all related past, present, and reasonably foreseeable future projects. However, the requirement is too "open-ended," creating uncertainty regarding the scope of the analysis, particularly for complex projects. For instance, no limits are placed on the geographic area over which cumulative impacts must be considered.

- *Alternatives Analyses.* An EIR must include an analysis of the environmental impact for a range of reasonable project alternatives. The CEQA statute, however, provides few guidelines as to the kinds of alternatives that must be considered and the level of detail required. This has led to analyses of alternatives that contribute little to the decision-making of public agencies. For instance, an alternative examined may not be feasible, such as in the case where the alternative considered is development on a site not owned (or that cannot practically be purchased) by the developer. Or, alternatives may focus mainly on differences in a project's scale, rather than on more substantial differences in a project's design.

- *Thresholds of Significance of Environmental Impacts.* An EIR

is required when a lead agency finds that a project may have “significant” adverse environmental impacts. While the CEQA Guidelines provide some guidance as to the circumstances under which a project would normally have a significant effect on the environment, we found general agreement that more detailed guidance is needed to provide greater certainty in the application of this concept.

Recommendation—Clarify Terms and Requirements. In order to promote the use of MEIRs, we recommend that the Legislature clarify (1) how specifically future projects must be described in the “master” document and (2) how cumulative impact analyses ought to be conducted when review of a future project described in the master document takes place. We also recommend that the Legislature clarify the scope of alternative analyses in EIRs, including the reasonable number of alternatives to be considered and the level of detail in the analysis.

We recommend that the Legislature establish task force(s) consisting of CEQA stakeholders from state and local agencies, private project developers, and the public to report to the appropriate legislative policy committees, by January 1, 1999, with recommendations on how the above requirements relating to MEIRs and EIRs should be amended to make them more understandable and workable. This task force approach has been used successfully in the past. For example, Chapter 638, Statutes of 1995 (SB 1222, Calderon) established a task force of stakeholders to make recommendations to the Legislature on reforming the fee structure of the Department of Toxic Substances Control.

Predictability Within and Among Jurisdictions

We reviewed university research studies which surveyed local governments throughout the state regarding their activities related to CEQA. These surveys gathered information about the number, type, and cost of CEQA documents and the CEQA policies and procedures of these local agencies. Our review of these research surveys finds that local agencies need to better document—for access by the public and project developers—their policies and procedures for reviewing projects under CEQA.

Without documented policies, local agencies are more likely to make CEQA decisions on an ad hoc, case-by-case, and potentially inconsistent basis. This makes the CEQA process unpredictable for project developers and results in time delays and added costs for project development. This is because project developers lack information which would allow them early on in the process to make necessary adjustments in their project design to address local issues and preferences.

Our review of research surveys also finds that there are important differences *among* local jurisdictions in determining what constitutes "significant" environmental impacts and the appropriate mitigation measures to address these impacts. We believe that local flexibility should be maintained in making these determinations in order to reflect local geographic circumstances and preferences. However, the policies behind these local differences need to be better documented to make the CEQA process more predictable at the outset for project developers.

Recommendation—Provide Incentives to Local Agencies to Document and Make Accessible CEQA Policies and Procedures. We recommend that the Legislature provide incentives for local governments to document their CEQA policies and procedures—on matters such as environmental impact "significance" and appropriate mitigation measures—and make them accessible to the public. By doing this, both project applicants and the local agencies reviewing projects can save time and money by reducing the need for project modifications (and related review) in the midst of the CEQA process.

The Legislature could provide different incentives to local agencies to document their CEQA policies, including the following:

- Establish a competitive grant program to provide state matching money to local agencies to implement measures that would improve the CEQA process. The program should also require the granting agency to evaluate how effectively local agencies use these funds to improve their CEQA processes.

- Make adequate documentation and dissemination of CEQA policies one of the criteria for the allocation of funds to local agencies for environmental mitigation from the California Infrastructure and Economic Development Bank, established by Chapter 94, Statutes of 1994 (AB 1495, Peace). We think that such an allocation criterion is consistent with the goals of the bank, since one of the bank's purposes is to facilitate the effective use of public resources to promote both economic development and conservation of natural resources.

It has frequently been suggested by others that the Legislature require local agencies to adopt *standardized* thresholds of significance (of environmental impacts) and *standardized* mitigation measures. We do not recommend such an approach for a couple of reasons. First, the use of standardized measures could reduce the level of flexibility in local decision-making. Second, standardized measures could create new

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avenues for legal challenges, thereby causing further delays in the process.

Timeliness of State Agencies' Review and Comments

The CEQA requires lead agencies to consult with "responsible" agencies which have a role in permitting or approving a project. The law also provides strict time limits for responsible agencies' review and comment. State agencies often act as responsible agencies in the CEQA review of projects. For instance, the California Coastal Commission and the California Department of Fish and Game frequently serve as responsible agencies.

There is widespread agreement that responsible state agencies often raise important concerns about proposed projects. However, these concerns are often raised later rather than earlier in the process. For example, even though state agencies sometimes indicate early on that a given project "may require" mitigation, they often do not specify the kind of mitigation until later in the process after much of the CEQA review has taken place. By raising concerns later in the process rather than earlier, state agencies can cause time delays and extra costs to project developers to revise projects accordingly.

One reason for late involvement by responsible state agencies may be the lack of adequate resources to keep pace with the increase in CEQA review workload. For example, the Department of Fish and Game estimates that the number of CEQA reviews it conducts increased by about 18 percent between 1986 and 1996. According to the department, its funding has been insufficient to handle this increased workload in a timely manner. In addition, statutory requirements have been added to CEQA over time. For example, Chapter 1232, Statutes of 1988 (AB 3180, Cortese) requires responsible state agencies such as the Department of Fish and Game to develop for lead agencies—at their request—programs to monitor and report on the implementation of mitigation measures required under CEQA. Such requirements increase responsible state agencies' workload.

However, because responsible state agencies typically do not track their CEQA-related workload, it is difficult to determine the appropriate level of funding for this workload and the extent to which state agencies could redirect resources to handle it.

Recommendation—Provide Funding to State Agencies Specifically for CEQA Review. We believe that it is important that the Legislature have better oversight over the level of funding provided for CEQA review, and be able to hold departments accountable for handling their CEQA review workload in a timely manner. Accordingly, we recommend that the Legislature provide funding to state agencies explicitly

for CEQA review through the annual budget act. This may involve providing additional funds or reprioritizing departmental activities and redirecting the savings from lower priority functions to the CEQA review function. Since it is unclear what funds are currently being spent by state agencies for CEQA review, we further recommend that the Governor's budget display separately personnel and expenditures for CEQA reviews for each state agency.

We think that these recommendations will enhance the Legislature's ability to evaluate both the CEQA-related workload of state agencies and the level of resources that state agencies need to accomplish that workload. In addition, the Legislature will be better able to determine the appropriate sources of this funding—including the General Fund, special funds, and fees charged to project developers or lead agencies—and establish any necessary statutory authority to provide this funding.

Use of Information Technology

Information technology is used increasingly in the implementation of the state's natural resources and environmental protection programs. Such technology includes the Internet as well as Geographic Information Systems (GIS). (A GIS is a collection of computer hardware and software designed to store and analyze geographically designated data and information.) Currently, the Resources Agency is implementing the California Environmental Resources Evaluation System (CERES)—a collection of databases of environmental and natural resource information—to help state and local governments to more effectively protect and manage natural resources.

However, information technology is not widely applied to the implementation of CEQA. This reduces the ability of parties involved in the process—project developers, public agencies, and the public—from making the most efficient use of information generated through the CEQA review process. For example, CEQA requires that information developed by lead agencies in individual EIRs be incorporated into databases in order to reduce delay and duplication in the preparation of subsequent EIRs. However, only a few EIRs are currently available electronically. Consequently, there is no easy way to refer to or draw upon the data and analytical models contained in other EIRs conducted for the same geographic area or for similar types of projects. When EIRs are not accessible on-line, this also increases the cost of distributing EIRs, and diminishes the ease with which interested parties including the public can review EIRs.

Recommendation—Require CEQA Documents to Be Made Electronically Accessible. As a first step to making more efficient use of previ-

ously generated information, we recommend that CEQA documents such as EIRs be made accessible electronically to project developers, interest groups, state and local government agencies, and the public. This could be done by putting documents on-line on the Internet. Additionally, the CEQA Guidelines should provide guidance on the availability and use of state, regional and local GIS and other information technology systems that will facilitate the implementation of CEQA.

We also recommend that the Legislature specify in law that one of the objectives of state-funded resources information technology projects—such as CERES, GIS, and other resources databases—is to improve statewide implementation of CEQA. This would provide priority direction to state departments and agencies in their development and funding for such information systems. To encourage local agencies in this regard, the Legislature could require state agencies to provide such technical assistance to local agencies. Additionally, the Legislature could authorize state and local agencies to charge user fees to cover the cost of providing the information electronically.

HOW TO MAKE MITIGATION MORE COST-EFFECTIVE

"... there is ... little information available on ... cost ... of implementing mitigation... or the effectiveness of those measures in protecting the environment."

One of CEQA's three main purposes is to mitigate the impacts of public and private projects on the environment where feasible. However, we are not able to determine how effectively CEQA meets this purpose. This is because there is relatively little information available on either (1) the *cost* to project developers of implementing mitigation measures required under CEQA or (2) the short and long-term *effectiveness* of those measures in protecting the environment. Our review finds that mitigation of environmental impacts under CEQA can be improved by:

- Generating information on the cost-effectiveness of required mitigation.
- Basing mitigation on statewide priorities and objectives.
- Addressing cumulative and regional impacts of development.

Evaluating Cost-Effectiveness Of Mitigation Measures

While CEQA requires public agencies to monitor the implementation of the mitigation measures, it does not require the agencies to evaluate the *effectiveness* of these mitigation measures. As a result, it is difficult to assess how well CEQA is working overall to protect the environment, how effective individual mitigation measures are relative to their cost, and how mitigation measures can be made more cost-effective in the future.

Recommendation—Require Periodic Assessment of the Effectiveness of Required Mitigation Measures. The Legislature should require the Secretary of Resources to periodically assess and report on the types of mitigation measures required under CEQA and the measures' relative costs and effectiveness in protecting the environment. This assessment should include not only mitigation measures required by state agencies, but a representative sample of locally required measures. This information will assist public decision-makers to identify effective mitigation measures, promote greater consistency in the development of mitigation measures, and enable project developers to incorporate effective mitigation measures up front in project design. In addition, the Legislature will have better information with which to evaluate CEQA's overall effectiveness in protecting the environment.

Mitigation Based On Statewide Priorities

Even though current law requires the Governor to prepare and update every four years a comprehensive state environmental goals and policy report, no report has been submitted since 1978. The report is intended to

lay out the state's environmental goals and objectives, the actions needed to attain those objectives, and serve as a guide for state expenditures for environmental purposes.

In the absence of such a plan, the ability of state agencies to develop mitigation measures that reflect statewide environmental goals is reduced. Individual state agencies—each with its own statutory mission—are more likely to work at cross-purposes. For example, the Office of Planning and Research found in a 1992 study entitled *Statewide Plan Coordination in California* that the long-term plans prepared by a variety of state agencies such as the Department of Housing and Community Development and the Department of Fish and Game were not coordinated with one another to ensure that issues of statewide importance—including land use and environmental issues—were addressed consistently. The lack of consistency in the approach of state agencies to land use and environmental issues creates problems in the CEQA process. For example, the Little Hoover Commission found in a 1995 report that the lack of coordination at the state level can result in costly conflicts at the project review level, and reduce the effectiveness of required mitigation in addressing adverse environmental impacts.

Recommendation—Require State Agencies to Base Mitigation Measures on Statewide Goals. While we think that state agencies should retain the flexibility under CEQA to develop mitigation requirements based on local conditions, we also think it is important that state agencies require mitigation measures that contribute to the accomplishment of statewide goals. Accordingly, we recommend that the Legislature require that (1) the Office of Planning and Research submit to the Legislature the state environmental goals and policy report required under current law, and (2) state agencies, where possible, base the mitigation measures they require under CEQA on the statewide goals identified in the report. We believe that this will provide guidance to state agencies in reconciling their different mitigation requirements and promote consistency in state agencies' implementation of CEQA.

Cumulative and Regional Impacts of Development

As we have observed elsewhere (please see our *The 1989-90 Budget: Perspectives & Issues*, page 101), local issues of growth in California have evolved over time into *regional* issues which are beyond the scope of any single city or county authority to resolve. In addition, many problems associated with growth are *cumulative* in nature, in that the relatively minor environmental impacts of individual projects can be collectively large, within a local jurisdiction or regionally. For example, air and wildlife habitat are two resources that are particularly suscepti-

"... CEQA ... is a poor substitute for the general plan process ..."

ble to cumulative and regional impacts of development.

Current law requires local governments to adopt and periodically update local general plans. General plans, covering multiple years, consider among other things, the long-term environmental impact of alternative land uses and development of the area. This focus facilitates the identification and mitigation by local governments of the cumulative and regional impacts of development. Within the framework of the general plan, projects are reviewed under CEQA.

Due in part to fiscal constraints, however, local governments often find themselves unable to develop and update general plans on a comprehensive and timely basis. Accordingly, local governments are less able to use general plans to take into account the cumulative and regional impacts of development. Instead, local governments increasingly rely on CEQA review of individual projects to address these impacts. This is because local governments are reimbursed for much of their CEQA review costs (but not general planning costs) by project developers.

However, because CEQA's focus is on *individual* projects, it is a poor substitute for the general plan process in assessing and mitigating the cumulative and regional impact of land use decisions on the environment. Specifically, without considering in advance the environmental impact of alternative land uses over time, a lead agency may require insufficient mitigation for a project. This could result in an increased mitigation burden on subsequent future projects to compensate for the insufficient mitigation. Furthermore, this shift in the use of the CEQA process could result in individual project reviews requiring more extensive documentation and analysis, thereby adding to the review time and costs of the process.

Recommendation—Reexamine Role of CEQA in Land Use Planning. Given the limitations of substituting CEQA for the general plan process, the Legislature should reexamine the appropriate role of CEQA in land use planning and development. In the long term, the Legislature should improve and reform CEQA based on the role it envisions CEQA should play in shaping land use decision-making relative to other decision-making mechanisms.

Two broad options are available to improve the state's capacity to identify and mitigate adverse cumulative and regional impacts of development. First, the Legislature could strengthen CEQA as a tool for addressing these impacts by further developing the use of MEIRs. The MEIR is a step in moving CEQA towards focusing not only on *individual* projects, but also considering the environmental impacts of *multiple* projects at one time.

Alternatively, the Legislature could keep CEQA focused primarily on *individual* projects but strengthen other mechanisms for addressing cumulative and regional impacts of development. For example, the Legislature could provide incentives to local governments to strengthen their local planning mechanisms and participate in the development of regional plans to protect wildlife habitat and air quality. Other options available to the Legislature include reforming regional planning organizations, encouraging better coordination among local governments, and adjusting state economic policies to provide appropriate signals to the market and local governments about the costs of regional environmental impacts.

Whichever option the Legislature selects, we think it is important that the Legislature take steps to ensure that adequate funding is available for local and regional efforts to address the adverse cumulative and regional impacts of development. Options available to the Legislature include providing state funds for this purpose and strengthening local funding mechanisms—such as by providing authority to local governments to levy fees to support general planning or master environmental reviews such as MEIRs.

IMPROVE RESOLUTION OF CEQA DISPUTES

". . . too many resources are spent either in litigation or in trying to avoid litigation . . ."

A common concern with CEQA is that too many resources are spent either in litigation or in trying to avoid litigation, and that there is no good mechanism short of litigation for resolving disputes. In particular, developers are concerned about lawsuits that are brought mainly to delay or prevent projects from proceeding, rather than to raise substantive environmental concerns. Project developers indicate that the ease with which opponents can challenge the adequacy of an EIR has often caused project proponents to produce voluminous, perhaps excessive, CEQA documentation designed to withstand legal challenge. Such "bullet-proofing" tends to increase the time and cost required to prepare CEQA documents.

It is difficult to assess fully whether concerns about CEQA litigation act as a *major* impediment to business development because there has not been any study of CEQA's economic impact on business statewide. While a research survey found that CEQA-related lawsuits are relatively few—with about one lawsuit being filed per 354 initial studies at the local level—our review finds anecdotal examples, at the *individual* project level, where litigation or the fear of litigation resulted in substantial added costs and time for project approval, with few, if any, added environmental benefits.

Two recent developments should help to address the problem of lawsuits motivated by non-environmental concerns. First, recent court decisions suggest that the courts are more likely today than in the past to dismiss such lawsuits. Second, recent statutory changes spell out more clearly the type of evidence needed to challenge CEQA decisions and require parties to CEQA litigation to substantiate their case earlier on in the process. For example, Chapter 1131, Statutes of 1993 (SB 919, Dills) clarified what constitutes "substantial evidence" to support a challenge that an EIR should have been prepared in light of a project's possible significant environmental impacts. Also, Chapter 1230, Statutes of 1994 (SB 749, Thompson) and Chapter 1294, Statutes of 1994 (AB 314, Sher) both clarify and expand information to be filed with a court in CEQA litigation. This should provide parties with a better understanding of their opponent's case. While it is too early to tell how effectively these reforms are working, they are intended to weed out frivolous lawsuits more quickly.

We believe that many of the recommendations discussed above would also reduce the time and costs associated with CEQA litigation, and would do so without stifling *legitimate* public participation, thereby ensuring compliance with CEQA's requirements. For example, by making the definition and applica-

tion of CEQA's terms and requirements more certain, opportunities to challenge CEQA decisions on the basis of procedural deficiencies should be reduced.

Recommendation—Explore the Use of Alternative Dispute Resolution Mechanisms. Even if the number of CEQA challenges is reduced, legitimate disputes will continue to occur. These disputes should be resolved efficiently. Currently, the only alternative under CEQA to costly litigation is a requirement for a mandatory settlement conference for parties prior to a CEQA lawsuit being scheduled.

The Legislature should explore other mechanisms for resolving CEQA disputes. Currently, CEQA does not *prohibit* parties from using dispute resolution mechanisms, such as mediation, as an alternative to litigation. We think that certain types of disputes may be particularly appropriate candidates for the use of alternative dispute resolution mechanisms. For example, disputes dealing with procedural issues—a common CEQA dispute—may be appropriate candidates provided they do not involve substantive questions of law that call for judicial resolution. However, it is not known how an expanded use of these mechanisms will impact the overall costs connected with CEQA challenges and the frequency of such challenges. (For example, it is not known if more challenges would occur if the process to challenge is made simpler and less costly.)

In order to assess the potential effectiveness of alternative dispute resolution mechanisms, we recommend that the Legislature evaluate the current use of these mechanisms in other states, including Florida and Georgia, that have a CEQA-like process. We also recommend that the Legislature establish a pilot program to test the use of these mechanisms in California.

CONCLUSION

Our review finds that CEQA can be made to work better to achieve its goals. In particular, the CEQA process can be made more efficient so as to reduce the time and expense of compliance for project developers and the public agencies reviewing private and public projects. This will also enhance CEQA's effectiveness in informing public decision-makers and the public about the environmental impacts of development. We also find that the mitigation of the adverse environmental impacts of development can be made more cost-effective, and the resolution of disputes under CEQA can be improved. Our recommendations for improving CEQA, including references to the problems addressed, are summarized in Figure 3 (see next page).

Figure 3

Legislative Analyst's Office Recommendations for Improving CEQA

Recommendation	Problem Area Addressed		
	Efficiency of CEQA Process	Effectiveness of Mitigation Efforts	Resolution of CEQA Disputes
Expand "certified regulatory programs" to local programs	✔		✔
Fully or partially exempt projects that are part of larger plans subject to CEQA or other environmental review	✔		✔
Clarify terms and requirements	✔	✔	✔
Provide incentives to locals to document and make accessible their CEQA policies and procedures	✔	✔	✔
Provide funding to state agencies specifically for CEQA review	✔	✔	✔
Require CEQA documents to be made electronically accessible	✔	✔	✔
Require periodic assessment of the effectiveness of mitigation measures	✔	✔	
Require state agencies to base mitigation measures on statewide goals	✔	✔	✔
Reexamine role of CEQA in land use planning		✔	
Explore the use of alternative dispute resolution mechanisms	✔		✔

As shown in Figure 3, many of our individual recommendations address multiple problem areas with CEQA.

For example, clarifying particular statutory requirements and encouraging local agencies to better disseminate their CEQA policies and procedures should make the process more efficient, improve mitigation, and help reduce disputes. Also, many of our recommendations seek to resolve conflict among environmental review agencies by enhancing the coordination of these agencies.

Our recommendations would make use of a range of mechanisms available to the Legislature in improving CEQA, including amending statute, exercising budgetary authority with regard to state agencies, and providing fiscal and policy incentives to local agencies. Finally, our recommendations would preserve local flexibility in CEQA decision-making and facilitate the meeting of statewide environmental goals.

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