

■ Executive Summary

For more than half a century, the California Environmental Quality Act has been a bedrock of environmental protection, and has played a role in countless environmental victories, including the protection of old-growth Redwoods, lands near Lake Tahoe, and the San Francisco Bay. Often, CEQA's protections have been most profound in the most disadvantaged and vulnerable communities, where negative environmental impacts have often been greatest in the past.

But it is also true that CEQA, like any law, can have damaging, often unintended, consequences. It is an expensive and lengthy process that can add years to project timeframes. It can be used for purposes that have little relationship to environmental protection. Its strong bias toward the status quo means that it can be used to block projects that would help improve the environment.

Additionally, policymakers must weigh the value of goals that can sometimes be in tension or competition, such as the importance of environmental protection versus the merit of building more housing.

CEQA Litigation

Most CEQA projects do not result in litigation. On average, about 200 CEQA lawsuits are filed each year in California, or about two percent of all projects subject to CEQA review. At the same time, research suggests that when CEQA litigation does occur, it often targets residential projects, which are needed as California seeks to lessen its high housing costs. According to research by both the law's defenders and detractors, housing projects are the most common single type of project challenged by CEQA litigation.

CEQA as Proxy

CEQA debates often serve as proxy battles for a variety of related but distinct policy contests. In particular, CEQA tends to be the battlefield for debates over land-use and local control. This adds an additional challenge to analyzing CEQA, in that it can be difficult to disentangle CEQA from other policy debates.

Legislative Action on CEQA

Recent legislative efforts to reform CEQA have been extensive, including changes signed into law by Governor Newsom just this past summer. Among other things, these recent reforms seek to extend and expand judicial streamlining in hopes of compressing litigation timelines. The recency of these reforms suggests some degree of caution in assessing the law at this moment, and thus our Commission refrains from making specific recommendations regarding compressed timelines for CEQA litigation. We believe the state should wait to measure the success of recent reforms before embarking on major additional changes. At the same time, the introduction just in the past few years of roughly 200 bills that would have changed CEQA—measures that are listed in this report—suggests that many policymakers believe some reform to CEQA is needed.

Recommendations

We believe that CEQA should be retained as a strong form of environmental protection. Its value is especially apparent in disadvantaged communities that often have a history of environmental degradation. However, we also recommend targeted and limited reforms.

Strengthen standing requirements.

The state should establish the same standing requirement to file a suit under CEQA as exists under the National Environmental Policy Act, the federal law after which CEQA was in many respects modeled.

“Data Dumps” and “Late Hits.”

The submission of public input should be limited to the public comment periods, and lead agencies should not be required to consider information submitted after the end of the public comment period, although there should also be an exception for information that could not have been known during the public comment period.

Create a broad, simplified exemption for infill housing.

The state should exempt all infill housing from CEQA review.

Provide for additional judicial training.

The Legislature should provide funding sufficient to extend CEQA judicial training from two days to a full week.

Deference to statute and CEQA guidelines.

The Legislature should strongly reaffirm existing statutory language that courts should defer to the procedural and substantive requirements of statute and the CEQA Guidelines.

Significance thresholds and mitigations.

The state should establish clear parameters for significance thresholds and for analysis and mitigation of impacts.

Study Items

The Legislature should commission in-depth studies of several areas of potential CEQA reform: the creation of CEQA courts, the translation of CEQA documents, the potential for a bonding requirement for CEQA litigation, the use of vehicle miles traveled (VMT) analysis, and whether there should be a period of time during which analytical models are “locked in,” and in which newly developed alternative models need not be used.