

## **A dangerous bill (ctd.)**

OCTOBER 23, 2011

by Eric Biber

Recently the California state legislature passed a series of measures that provided for accelerated judicial review for challenges to the CEQA review process for certain projects. (CEQA is the California Environmental Quality Act. It requires review of the environmental impacts of many kinds of development projects in California.) The projects to be exempted were those over \$100 million in size, not yet initiated, that met minimum environmental requirements (such as being carbon neutral, urban infill, etc.). I expressed concern over the bills; Rick and Ethan were more sanguine.

My main concern was that the legislature was opening the door to creating CEQA exemptions, and that a dangerous precedent would be set for the future. Unfortunately, that looks like it might be occurring. Now a Democratic state legislative leader is calling for a possible expansion of the accelerated judicial review provision to include projects smaller than \$100 million, and ongoing projects. Again, perhaps considered in isolation these exemptions are good and worthy: We encourage more environmentally friendly development instead of less environmentally beneficial development. But the risk is that going forward, there will be more and more calls for an exemption from CEQA for various kinds of projects. The supporters of the exemptions will make the case that their projects are truly environmentally friendly. And given the difficulties of making judgments about the overall environmental impacts of any particular project (because of the conflicts in values, or because of the difficulties of measuring those impacts), it will be often quite easy for those supporters to make at least a plausible case. (This doesn't mean that the purpose of CEQA – analyzing and publicly disclosing the environmental impacts of a proposed project – isn't useful. Adding together all of those impacts to come up with an overall conclusion about how environmentally friendly a project is can be quite difficult. But a review of the potential scope of the different impacts can be quite useful so a reader can make their own calculus, if they wish. That's why CEQA results in a full report laying out all the different impacts, rather than just a summary score of the total of the impacts.)

And I wouldn't be surprised if these advocates of exemptions also start arguing for more sweeping exemptions: say from CEQA's requirements for an assessment of a wide range of alternatives to the proposed project, or of mitigation of significant adverse environmental impacts. I'm still very worried that we're going down a very dangerous road for CEQA in the long run.