

## **2014 CEQA Press Highlights**

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### **Editorials**

#### **Los Angeles Daily News, Editorial, September 5, 2015**

<http://www.dailynews.com/opinion/20140905/loss-of-tesla-factory-should-put-a-charge-in-ceqa-reform-editorial>

#### **Loss of Tesla factory should put a charge in CEQA reform: Editorial**

Another legislative session ended last week without meaningful changes in the California Environmental Quality Act. Modernization of the four-decades-old environmental regulations always seems to be the reform Sacramento forgets. Or tries to forget.

Every time the need to tweak CEQA is about to fade from public consciousness, something happens to remind us.

Sometimes it’s a case of the often-abused law getting in the way of a beneficial development. Sometimes it’s an unseemly display by state officials trying to work out exemptions from CEQA for selected projects.

And sometimes it’s both — as in the example provided just in the past few days when [Tesla Motors decided](#) to build a battery-manufacturing plant in Nevada instead of near its headquarters and main factory in the San Francisco Bay Area.

The plant will cost \$5 billion to build. Tesla says it will employ 6,500 people. That made it an economic jackpot for whichever state landed the project, a major step toward production of electric vehicles with price tags low enough and driving ranges long enough to be practical for average consumers.

California and Nevada — and Texas, Arizona and New Mexico — fought for Tesla's favor. Much of the bidding process remained mysterious, but Tesla CEO Elon Musk was known to be demanding that the winning state contribute 10 percent of the cost, or \$500 million.

For its part, California reportedly would have granted the company tens of millions of dollars in tax and hiring credits under legislation passed this year to help battery manufacturers, plus a sales-tax break on equipment purchases. And, naturally, state officials discussed CEQA exemptions.

Among the reported proposals were limiting the environmental reviews to be conducted before the start of construction, and letting Tesla wait until the battery plant was up and running before taking steps to mitigate environmental damage. Only this, it seemed, would prevent CEQA reviews, and the lawsuits that often come with them, from getting in the way of Tesla's plan to open the plant by 2017.

Whatever California was offering, it couldn't compete with Nevada's package of tax breaks. Musk and Nevada Gov. Brian Sandoval announced Thursday that the so-called "gigafactory" will be built in an industrial center near Sparks, Nev.

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That night, California Gov. Jerry Brown got an ear full about it in a debate against election opponent Neel Kashkari, who called the loss of the Tesla plant an example of the need to improve the state's business climate.

Indeed, nothing about this is new. Not the role CEQA plays in discouraging development projects that could help the state. Not the whiff of favoritism in state officials' offer of CEQA exemptions to specific companies.

CEQA's purpose is noble. Signed into law by Gov. Ronald Reagan in 1970, it requires the promoters of land-development and construction projects to document the expected effects on the air, water, wildlife and quality of life, and to lay out plans to limit potential damage. Too often, though, it is exploited by local governments, landowners, business rivals and labor unions to block projects they dislike or to add to their negotiating leverage.

Done right, CEQA reform would not eliminate environmental protections but would simplify and remove duplications, restrict last-minute challenges and clarify its requirements. This would limit — preferably eliminate — the need for exemptions like the ones state officials have handed to projects like the bullet train and sports stadiums and arenas from Los Angeles to Sacramento.

In 2013, CEQA exemptions for a Sacramento basketball arena supplanted a broader CEQA reform bill. This year, Legislators did even less, the notable CEQA-related bill being one that expanded Native American tribes' power to protect sacred places. Discouraged by union opposition to significant changes, Brown hinted he has lost interest in the effort he once called "the Lord's work."

Lawmakers did some good things in 2014, such as passage of improved film and TV production incentives, a state plastic-bags ban, groundwater regulations and a bill meant to keep guns out of the hands of dangerous people. It fell short in some areas, passing only meager political ethics reforms.

And it failed completely on CEQA reform — again. Let's make sure our lawmakers don't forget the lessons of the Tesla mess when they set their agenda for 2015.

**San Jose Mercury News, Editorial, September 5, 2014**

[http://www.mercurynews.com/opinion/ci\\_26468256/mercury-news-editorial-tesla-decision-is-call-action](http://www.mercurynews.com/opinion/ci_26468256/mercury-news-editorial-tesla-decision-is-call-action)

**Mercury News editorial: Tesla decision is a call to action for California**

*Mercury News Editorial*

Elon Musk is not just another CEO looking to turn a buck for the next quarter's shareholder report. He thinks big thoughts and, usually, backs them up with bold action. By all accounts, Musk is a visionary, which is exactly what should worry California's political leaders. This visionary's vision, and the 6,500 middle-class jobs it promised, apparently doesn't include the Golden State.

The founder and driving force behind Tesla Motors' rise as a leader in the luxury electric car market has chosen to leave California to build his new \$5 billion factory for making electric car batteries. The formal announcement came Thursday that Tesla's new plant will be located near Reno.

It should come as no real surprise despite the last-minute, all-out effort from Gov. Jerry Brown and others to convince Tesla it would be better off here. But that push only came after news that the Golden State hadn't even made the final four states.

To be fair, the Legislature did consider a bipartisan package of regulatory and financial incentives for the battery factory offered by Senate Pro Tem Darrell Steinberg, a Democrat, and Sen. Ted Gaines, a Republican. Unfortunately, lawmakers adjourned over Labor Day weekend without acting on the bills.

Although he wasn't specific, Gaines indicated the adjournment probably didn't matter. He told the Sacramento Bee that while legislators were considering revamping the California Environmental Quality Act, as well as assorted investment-tax and job-training tax credits, Tesla had made additional demands "that I think were beyond what California could do."

That should embarrass the state since Tesla was spawned in the Bay Area and in a few short years it has become one of the major players in Silicon Valley.

But in the end it appears that even for a big thinker such as Musk, business is business and the truth is the business climate in California leaves much to be desired.

Reputable surveys of business leaders rank California in the bottom two or three states for business climate. Toyota, for example, has decided to relocate its California operations to Texas.

The state shouldn't stop all regulation of business, far from it. California is a great place to be. We know businesses want to be here. But it is time -- well past time, in fact -- for California to help make it easier.

The governor should use this moment to inform and motivate a bipartisan selection of lawmakers and business leaders in an ongoing working group to critically examine everything from business tax structure to regulation in order to make California's climate more competitive.

**San Francisco Chronicle, Editorial, June 6, 2014**

<http://www.sfgate.com/default/article/Tesla-and-other-firms-should-benefit-from-5535011.php>

**Tesla - and other firms - should benefit from reforms**

A Tesla battery plant may be the ultimate jobs-and-technology prize. The electric-car maker symbolizes California's favorite self-image embodying innovation, sleek design and clean energy, served with a touch of personality.

But this state is up against a handful of others for a "gigafactory," the automaker's giant plant estimated to cost \$5 billion and employ 6,500 workers to turn out low-cost lithium-ion batteries for the high-end sports car and a next wave of cheaper electric vehicles. Tesla impresario Elon Musk plans to decide by the end of the year where the plant or possibly several smaller ones will go.

To win the deal, Sacramento is trying a favorite tool: hurry-up legislation that will give the company tax and job credits and allow an end run around environmental reviews that can delay construction. The two state senators behind the Tesla push - Republican Ted Gaines and Democrat Darrell Steinberg - did much the same last year in winning expedited approval for an arena for the Sacramento Kings basketball team, popular in their Sacramento-area districts. Tesla Vice President Simon Sproule said the move is "definitely in the right direction and is closing the competitive gap with the other states," which include Arizona, Nevada, Texas and New Mexico.

There's nothing wrong with quick attention to a business issue, especially when it could prevent a trophy business from going elsewhere. Gov. Jerry Brown's team of business scouts is also playing a role to woo Tesla.

But all the attention is misplaced when it comes to smoothing a way past the California Environmental Quality Act, the central law cited by critics as a barrier to building, and plainly an issue in the Tesla beauty contest.

Once a tool to identify impacts and mitigate them, CEQA is now used to drag out approvals and win concessions that have little to do with water quality or clean air.

Business rivals and worried neighbors use the law to chase away change. A plan for 34 miles of bike lanes in San Francisco took four years under CEQA rules, thanks to a tiny band of opponents. A labor union in San Jose stalled a high-rise to pressure developers to use preferred contractors.

There's a perverse answer to this misuse of the law. Major projects with political juice can win an exemption from state lawmakers, just as Steinberg and Gaines are seeking for Tesla. It's a fast lane reserved for favored cases.

Last year, Steinberg blocked a last-minute set of changes to CEQA, concerned that the fixes were presented in expedited fashion without broad consideration. He should follow through on suggestions to update the environmental review process - and resist carving out exemptions when it suits him and his district, where he hopes the Tesla plant might land.

The battery factory is worth pursuing. But it's also time to stop the special treatment. Far better would be CEQA reforms that will level the rules for all building plans, not just the lucky few with political patrons or a showy project such as a sports palace or a green-tech battery plant.

#### **Orange County Register, June 6, 2014**

<http://www.ocregister.com/articles/state-617329-business-california.html>

#### **Editorial: Prosperity for all, not political favors for some**

How are California's politicians going to lure jobs back to the Golden State? Based on recent pronouncements, one firm at a time.

News broke late last week that the Brown administration is working with Senate President Pro Tem Darrell Steinberg and Republican state Sen. Ted Gaines on legislation intended to induce electric car maker Tesla Motors to build a \$5 billion factory in the Golden State. Included in the proposed legislation would be both financial incentives and relief from certain "regulatory and environmental processes."

We're grateful that the involved lawmakers are sensitive to the fact that doing business in California is far too difficult. We're flummoxed, however, by the idea that the solution is to create one set of laws for politically favored companies and another for everybody else.

This is far from the first time we've seen this instinct at work. Then-Gov. Arnold Schwarzenegger signed a bill in 2009 allowing exemptions from certain environmental requirements for the developers of a proposed NFL stadium in the city of Industry. In 2011, Gov. Brown signed a similar law expediting challenges to another proposed stadium in downtown Los Angeles. There are also industrywide versions of this approach, such as the tax credits provided for movies and television shows that choose to film in California.

The trend is clear: Dangle a sexy industry in front of California lawmakers – clean tech, professional football or show business – and they'll find a way to grease the skids for you. But what of those doing more prosaic but equally (if not more) vital work? Where can the proprietors of laundromats, body shops and hardware stores queue up for their government dispensations? In a healthy economy, the viability of a business should rest more heavily on its performance in the marketplace than on its access to political power. Special deals like the one being proposed for Tesla send precisely the wrong signal: That a good lobbyist is more important than a good business plan.

Moreover, they essentially put the government on the hook in perpetuity. Any future attempt to unwind state benefits will surely be met with threats of job losses or out-of-state relocations. Msrs. Brown, Steinberg and Gaines have identified a real problem: California's tax and regulatory regimes make it unnecessarily difficult to do business in the state. The solution, however, is not legislative carve-outs for favored companies. Rather, the response should be to lower those barriers to prosperity for all Californians. Certainly the state's progressive leaders don't think that billionaire titans of industry should be treated better than California's small-business owners. Do they?

Sacramento Bee, Editorial, June 9, 2014

<http://www.sacbee.com/2014/06/09/6467588/editorial-californias-troublesome.html>

Editorial: California's troublesome environmental review process needs to be fixed

First, we must make clear – emphatically so – that we want Elon Musk to build his \$5 billion electric car battery “gigafactory” in California. We want the 6,500 jobs that come with a new plant for the Golden State – not Arizona or Nevada or, God forbid, Texas.

The state has invested a lot in Musk's ventures, from Tesla Motors and SolarCity to SpaceX, in terms of government subsidies and individual appreciation. A third of Tesla's sleek and sexy electric cars are sold here even though they cost more than the state's annual median household income.

We even listened, in somewhat seriousness, when Musk suggested the Hyperloop – a whimsical alternative to high-speed rail.

So understand that when we complain about Senate Bill 1309, it's because we don't think that only VIPs – Very Important Projects – should be given relief from the state's important but often misused California Environmental Quality Act.

SB 1309 by Senate President Pro Tem Darrell Steinberg, D-Sacramento, and Sen. Ted Gaines, R-Rocklin, appears to do just that, along with promising financial incentives, for Musk should he decide to build his plant here. In this, we approve, as well as commend state lawmakers for their impressive urgency in reaching out to Musk before he committed to building the plant elsewhere.

But this is starting to become a bad legislative habit: handing out a pass on the troublesome CEQA, which most legislators agree needs reforming, to only a few politically connected people. Last year, Steinberg got a bill passed that bent the CEQA rules to expedite the proposed new arena in downtown Sacramento. Two years before, the billionaire owner of Staples Center in

downtown Los Angeles also got legislative relief for his proposed and still-unbuilt football stadium.

If Steinberg wants to leave an economic legacy larger than Musk's battery factory (which, again, we support), he would use this opportunity to get CEQA fixed – not just for billionaires and sports teams – but for everyone.

## **OP-EDS**

**Fox & Hounds, December 5, 2014**

<http://news.usc.edu/71914/how-can-california-make-better-use-of-urban-areas/>

**CEQA Abuse Kills Construction Jobs Again**

**by Gary Toebben**

Jon Healey with the Los Angeles Times Editorial Board hit the nail on the head last week in his column about how IBEW, the electrical workers union, used a threatened environmental challenge under the California Environmental Quality Act (CEQA) to secure a card-check provision from Kinkisharyo in Palmdale. Then, once the IBEW had that assurance, CEQA was no longer an issue.

Mr. Healey provided a thorough history of this project so I will not go into the same degree of depth. The short version for this Business Perspective is that Kinkisharyo was the successful bidder for a \$900 million rail car contract with the Metropolitan Transportation Agency and the company announced that it would build a new \$60 million manufacturing plant in Palmdale to produce the rail cars. Because of the delays caused by IBEW's CEQA lawsuit, Kinkisharyo had to shoe horn its operations into its existing rental space and will no longer be building a new manufacturing plant in Palmdale.

While the company will still be providing 250 jobs in L.A. County at the manufacturing plant, it will not be building the new \$60 million facility that would have added to Palmdale's tax base and provided employment for many construction workers. The IBEW was successful in securing a card check provision for its members, but hundreds of construction workers lost the opportunity to build the new 400,000-square-foot building.

Construction workers were thrown under the bus by IBEW and their allies in their efforts to organize the Kinkisharyo plant. These construction workers could have been employed at the Kinkisharyo work site this holiday season and be using their wages to buy presents for their children.

CEQA is one of the most well intended laws ever passed by the California Legislature 42 years ago. Unfortunately, over the years, special interest groups like labor and many others realized that they could gain an advantage for themselves, not the environment, by filing a CEQA lawsuit. The losers have been the taxpayers and consumers who paid more than necessary on construction projects and thousands of middle class workers like those who should be constructing the Kinkisharyo plant this holiday season.

The Legislature can help California's taxpayers, consumers and middle class workers by

eliminating the opportunity to use a CEQA lawsuit for non-environmental reasons. It should be a high priority next year for Gov. Brown and members of the legislature.

**Los Angeles Daily News, Op-Ed, Wiliam Allen & Hasan Ikhata, October 28, 2014**

<http://www.dailynews.com/opinion/20141028/jobs-are-lost-as-ceqa-goes-off-the-rails-guest-commentary>

**Jobs are lost as CEQA goes off the rails: Guest commentary**

*By William Allen and Hasan Ikhata*

The California Environmental Quality Act was established to protect the environment and ensure that development does the same. So how is it that a project to build hundreds of “green” public transit rail cars in Palmdale was killed by a CEQA lawsuit that has nothing to do with the environment?

The time is long past due to reform CEQA to preserve the law’s original intent, while stamping out these types of abuses that eliminate jobs our region desperately needs.

Kinkisharyo International LLC is set to build hundreds of environmentally friendly rail cars for the Los Angeles County Metropolitan Transportation Authority, but it recently pulled the plug on the \$50 million, 400,000-square-foot permanent manufacturing facility planned for the city of Palmdale that would have employed more than 250 manufacturing workers in this economically depressed area.

According to news reports, groups trying to force the rail car manufacturer to unionize its workforce filed a CEQA lawsuit in an attempt to coerce the company to give in to its demands. Fearing the uncertainty and delays from the CEQA litigation, Kinkisharyo decided to look to another state for its manufacturing facility.

Unions serve an important purpose and provide great value to workers, but we think everyone can agree that this is a wholly inappropriate use of CEQA, a law adopted to protect environmental resources and public health.

This flagrant abuse of CEQA couldn’t come at a worse time. According to the United States Bureau of Labor Statistics, the city of Palmdale has an unemployment rate of 9.7 percent (as of September). In neighboring cities such as Lancaster, unemployment is 11.1 percent — far greater than the statewide average of 7.3 percent.

The region, too, is suffering worse than it has in years. According to a recent Southern California Association of Governments study, the share of residents in the six-county SCAG region living below the federal poverty level increased from 13 percent in 1990 to 18 percent in 2012. Today, the region has 3.2 million residents in poverty, including one in four children. We must do something to address this crisis.

Instead, abuses of CEQA are taking us backward.

The rail car project would have brought hundreds of middle-class jobs to the region, all while promoting environmentally friendly public transit that will help get people get out of their cars and meet California’s emission-reduction goals. SCAG’s most recent Regional Transportation Plan/Sustainable Communities Strategy places heavy emphasis on public transit, including rail, and as we begin work on our updated RTP/SCS, we’re keenly aware of the value of projects that support that goal.

Sadly, what we’ve seen in Palmdale is all too common — CEQA used as a blunt tool to strong-arm economic concessions out of a developer or to stop projects for non-environmental

reasons. Throughout the state, CEQA lawsuits have gridlocked affordable housing, schools, renewable energy projects, hospitals and many other local environmentally desirable projects we need.

Lawmakers must take a serious look at CEQA to preserve the law's original intent while stopping clear abuses of the law.

Achieving these goals will not be easy, but with participation from diverse stakeholders and commitment from Gov. Brown and legislators on both sides of the aisle, meaningful CEQA reform can and should be accomplished this year.

We urge legislators to make this a top priority for 2015.

*William Allen is president and CEO of the Los Angeles County Economic Development Corporation. Hasan Ikhata is executive director of the Southern California Association of Governments.*

### **Orange County Register, Opinion, August 27, 2014**

<http://www.ocregister.com/articles/state-633010-tesla-california.html>

### **James Lacy: Tesla's \$500 million taxpayer temptation**

**By JAMES V. LACY / Contributing Writer**

California's proposed \$500 million taxpayer giveaway to Tesla, to lure the electric car manufacturer to place its planned \$5 billion battery "gigafactory" in the state, is little more than an exercise in pet-project, command-economy socialism, it ought to be recognized as such and rejected.

Tesla has been surveying four southwestern states for incentives and handouts to locate its new manufacturing plant, which will create 6,500 new jobs, and help the company lower production costs for its coming, more affordable line-up of "green" automobiles. California was never really on the radar screen for the factory, even though Tesla's own headquarters is located in Silicon Valley in Palo Alto.

But now, with massive, taxpayer-funded financial incentives and a promise of an unusual exemption of the company from the state's complex environmental laws, Tesla might be rethinking California.

In fact, one of the biggest reasons Tesla had planned to take a pass on California is the state's onerous environmental regulations, which have played a role over the last decades in the exodus of every other major car manufacturer in the nation.

General Motors, Ford, Chrysler and Toyota all at one time had auto assembly plants in California.

But they are all gone now, as the state's high taxes and regulations have forced a huge manufacturing exodus from the state. Since 1990, coinciding with the enforcement of the Draconian and outdated California Environmental Quality Act, over 40 percent of the state's manufacturing jobs have been lost, including International Harvester and Caterpillar. Even iconic Campbell's Soup, which maintained a factory near Sacramento for over 100 years, no longer makes its tomato soup in the state out of California tomatoes, opting for a new plant out-of-state, sourcing New York and Alabama vegetables.

California's environment rules, enacted over 40 years ago, are in desperate need of reform.

The rules, which for example define the smell of baking bread as a pollutant, were enacted when Los Angeles suffered terrible "stage 3" smog alerts, the most severe. But L.A. hasn't had a "stage 3" smog alert in 40 years, since 1974, when Ronald Reagan was governor.

The last recorded "stage 1" smog alert, the least-severe, occurred over a decade ago, in 2003. While Los Angeles residents, like those in every major city, can surely benefit from further particulate reduction, the reality is that air pollution is roughly 99 percent improved since CEQA was enacted.

Federal rules on automobile emissions have made a tremendous contribution to cleaning up California's environment, and they will continue to improve the environment in the future.

Yet the added CEQA rules are contributing not so much to a cleaner environment but to long delays over minor environmental impacts in new development projects, spite lawsuits among competing developers and continuation of an anti-business environment that California cannot afford, especially given that, in the past two years under liberal Democratic rule in the statehouse and Legislature, the state has achieved the highest poverty rate in the nation. California needs new jobs, and it needs reform of its regulations across the board to do so.

Tesla really can't be faulted for trying to get the best deal for its new investment. But the state's approach has been to "pick winners and losers" when it comes to making helpful changes to CEQA. Gov. Jerry Brown has done so for pet projects, such as the proposed Farmers Insurance Stadium in Los Angeles and a new basketball arena in Sacramento. Now Tesla is being proposed for these significant environmental exemptions because it is different from the rest of the struggling businesses in the state, it is a "green" company.

If Gov. Brown and the liberal Democrats that control the Legislature think easing the rules to get Tesla's 6,500 new jobs is a good idea, do they have any remorse for the 650,000 jobs they have lost the state by enforcing those same rules against every other business?

The state would be far better off using the \$500 million it plans to give to Tesla to reduce its taxes, the highest in the nation, and if it is willing to exempt Tesla from CEQA's most burdensome rules to create jobs, it ought to do the same for the rest of the businesses in California to create even more jobs. It should not be "picking winners and losers."

*James V. Lacy's first book, "Taxifornia," is available at Amazon.com.*

## **CEQA ARTICLES**

**Voice of San Diego, December 17, 2014**

<http://voiceofsandiego.org/2014/12/17/ceqa-can-be-a-convenient-weapon/>

**CEQA Can Be a Convenient Weapon**

**By Lisa Halverstadt**

More than a decade ago, El Cajon residents packed City Hall. A developer wanted to convert a dilapidated, crime-ridden motel into a transitional center for homeless people. Residents feared it would draw more drugs and crime to their neighborhood and they told city leaders so.

After the City Council approved the necessary permits anyway, a group that dubbed itself Citizens Concerned for El Cajon tried a last resort: the California Environmental Quality Act. The law, known as CEQA, requires governments and builders to reveal the potential environmental impacts associated with their projects and allows groups who aren't satisfied with those analyses to sue, a dynamic that means outsiders can play a major role in shaping or delaying a project.

Neighborhood groups, businesses and unions across the state have learned to wield the CEQA weapon. Sometimes their concerns are genuine. Sometimes they're not motivated solely by threats to an endangered species or air quality. It's almost never possible to gauge their true motives.

Frustrated by city leaders' actions in 2003, the El Cajon group cobbled together cash for a CEQA lawsuit. They accused the city of pushing through a project without a proper vetting of environmental impacts.

A judge threw out the case six months later.

"There is no evidence from which a fair argument could or might reasonably be made that any aspect of the proposed project will have any significant environmental impact," Superior Court Judge William J. Howatt Jr. wrote.

But even with the judge on its side, the homeless center was pushed to the brink by the delay. Its financial backers sunk about \$4 million into a rundown motel with peeling paint and uninhabitable rooms. They held on for months, sometimes questioning whether they'd be able to open after all.

"The wheels started to come off," said John Gibson, who served as project manager for Hamann Companies, the main investor in the property. "Could you keep the thing together long enough to still make it happen?"

By the time the litigation ended, the nonprofit that had been set to operate the center was out (the group said other factors beyond the CEQA suit also factored into its decision). It would be months before the center served the homeless.

More than 11 years later, that old motel is freshly painted and filled with families and single adults participating in five programs. It's now known as the East County Transitional Living Center and police say the drugs and prostitution that once ran rampant there are now history. A sun-bleached blue and gold Fabulous 7 Motel sign is one of the only reminders of the crumbling motel it once was.

Pat Riley, who once managed the RV repair shop across the street and served as a spokesman for the group opposed to the homeless center, doesn't regret his decision to pursue an environmental lawsuit.

But he acknowledges their primary worries weren't traditional environmental concerns. Riley said he and others feared for the safety of children and seniors who might encounter dangerous homeless residents.

At the time, Riley said, the group became convinced CEQA was the most effective way to address fears that city leaders were being swayed by a powerful developer.

"We needed to do something because we weren't getting through to the mayor or the City Council or anyone else even though we were delivering petitions," Riley said.

Rick Preston, who allowed the El Cajon group to meet at the RV shop he owns, put it more bluntly.

“If you’re short on power and influence and the good old boy weapons, you need to have your weapon,” Preston said.

Riley believes the approach worked despite the judge’s ruling. It forced city leaders to listen to residents’ concerns.

Harold Brown, CEO of the homeless center, doesn’t disagree.

The group had originally envisioned a drug diversion program but ultimately decided against it. They opted to focus on serving women, children and single adults. And they reduced the number of available beds to 280, rather than the roughly 360 originally proposed.

“I think we wound up with a program that did suit the community better,” Brown said.

A CEQA suit made that happen, though the law itself doesn’t force project proponents to consider social or economic impacts unless there are also physical changes associated with a project. It’s a gray area of the law that a judge is often left to sort out.

Yet Alpha Project CEO Bob McElroy, whose 28-year-old homeless services nonprofit was once involved with the El Cajon project, said nearly every local proposal involving the homeless faces CEQA threats from neighbors. He’s experienced it firsthand.

“That’s the only card they have,” McElroy said. “It’s always an environmental issue.”

Neighbors and environmental groups aren’t the only ones who turn to CEQA.

Westfield, the owner of a Carlsbad mall at State Route 78 and El Camino Real, sued the city of Oceanside in 2008 over its approval of another shopping center four miles north.

The company claimed city officials performed a “rushed and cursory” environmental analysis of the project. A judge later ruled the case was without merit.

And Unite Here Local 30, a hotel workers union, has gotten involved in a handful of CEQA lawsuits in the last several years.

In many cases, plaintiffs in CEQA cases have genuine environmental concerns. Other times, a case presents an opportunity to gain some leverage.

Plaintiffs’ attorneys argue that reporting potential issues under CEQA is a positive exercise, even if the groups may seem to have ulterior motives. It forces the government and developers to address environmental concerns.

Most lawyers acknowledge that controversial projects are more likely to get hit with lawsuits or threats, and say that more disclosure of potential environmental impacts is always a good thing. In fact, they say, stronger enforcement would be ideal. But since the state opted against creating an agency to police CEQA, those who bring lawsuits or seek environmental mitigation are doing the public a favor.

Former San Diego Planning Director Bill Fulton, who literally wrote the book on California planning, is convinced many groups – from businesses to unions – have decided CEQA can be a useful tool to further their interests.

“The reason it doesn’t get reformed is because it is to so many people’s advantage to use it as blackmail, to hold somebody else up over something,” he said.

*This is part of our quest digging into the difficulties – real or perceived – of doing business in San Diego. Check out the previous story in our series, [The Great Uncertainty Facing California Businesses](#).*

**Voice of San Diego, December 15, 2014**

<http://voiceofsandiego.org/2014/12/16/the-great-uncertainty-facing-california-businesses/>

## **The Great Uncertainty Facing California Businesses**

**by Lisa Halverstadt**

(was the nightmare a Poway body shop owner never saw coming.

After years managing shops elsewhere in the county, Gary Leger emptied his retirement account and put years of savings toward his own company at a Poway business park.

As Leger sought permits in 2011, John Baratta, who owns another body shop nearby, claimed Leger's company, Chrome Collision, would hurt his business.

"There's not enough business in Poway," Baratta said, according to a U-T San Diego story. "I have employees who live in Poway. I'll have to lay some of them off."

Baratta later turned to the state's premier environmental law, claiming the city didn't perform a required environmental review before it approved Chrome Collision's permit.

Baratta's lawsuit instantly disrupted Leger's business plan. What followed were sleepless nights, a delayed opening and roughly \$170,000 in unexpected bills. At one point, Leger said, an employee took money out of her personal bank account to cover Chrome Collision's payroll.

"There was always that cloud looming," Leger said. "Are we going to stay in business or not?"

Leger's experience speaks to one of the California regulations that San Diego businesses fear most: the 45-year-old environmental law known as CEQA.

The California Environmental Quality Act, signed by then-Gov. Ronald Reagan in 1970, cuts at the two elements most crucial to business owners' plans: when a project will be ready to go and how much it'll cost.

Those uncertainties trickle down to other businesses in the form of higher rents and capital expenses, and according to some experts, are a major contributor to the lack of affordable housing in the state.

The law is meant to force governments and builders to reveal potential environmental impacts associated with new buildings or renovations.

Local officials weigh in on whether area project will significantly impact its surroundings and what could be done to address those impacts.

But deciding whether a developer has complied with CEQA is highly subjective. Californians, not state officials, enforce the law. Anyone can sue over a project they don't think is following it – which means anyone could potentially use the law to gain leverage over an opponent.

In cases like Chrome Collision's – where the allegation is that the city or developer didn't conduct proper environmental reviews – plaintiffs are simply required to make a fair argument, a far lower standard than the burden of proof required in other civil cases.

That means outside groups can shape, delay or even kill a development.

These are also the very rules that environmental advocates say are most crucial. They're meant to ensure people have a voice in the process and that an individual project's impact on the area gets a thorough vetting.

But such lawsuits or even the possibility of them can add costs to an already pricey and extensive environmental review process.

"The mere threat of a lawsuit is enough to make a project unfinanceable," said Jim Whalen, a Mission Valley-based consultant who assists developers with the environmental review process. What that all means for the economy is far from settled.

A 2013 University of Utah study funded by a group affiliated with a top state construction labor group found no evidence that the environmental law has slowed the state's economy or even

construction. It also noted that planning and construction of electrical plants is canceled or delayed less often in California than in other states. The report didn't address other types of projects.

California has embraced sustainable energy projects faster than other states, a sign that CEQA is having positive impacts on a large scale, the study suggests.

Others, like economist Christopher Thornberg, argue the act has exacerbated the state's housing crisis and stifled business growth.

What is certain is that there aren't as many environmental lawsuits filed as the long-running push for CEQA reform implies.

A 2012 state attorney general's office review of projects that faced CEQA review in the city and county of San Francisco from July 2010 through December 2011 found 99.7 percent avoided litigation.

Just 18 projects were hit with lawsuits. The San Diego city attorney's office reported it's been involved in about 15 CEQA cases in the past year.

Attorneys, business leaders and environmental experts maintain even the threat of a lawsuit can be chilling and have significant impacts on the economy. Whalen's consulting firm has studied local CEQA lawsuits and concluded the average one in San Diego County lasts nearly 15 months.

Developers can spend tens of thousands of dollars trying to avoid that prospect, sometimes producing multiple reports backing a single finding about environmental impact.

Not every project is subject to CEQA – but the ones that tend to draw the most attention from neighbors are.

City or county officials must decide whether a project will affect the environment. They can decide a project won't have any environmental impacts and that no further review is necessary, or that there are some impacts but the developer can make some changes to address them. For example, developers might agree to help pay for an additional traffic lane near their project or incorporate an open space into their plans.

Developers cover the cost for these reviews. Those that find there are impacts that the developers can address tend to cost at least \$20,000.

If officials decide there is a significant impact or that the development is controversial, they'll order an environmental impact report, an extensive document that can number thousands of pages and take a year to complete. Consultants say they generally cost \$250,000 to \$500,000 in San Diego, though the bills can be much higher for massive projects.

Here's an example of one particularly large report. These are filled with expert reviews of how a project might affect an area's air quality or increase traffic.

All these reviews – and the costs associated with them – come after businesses and developers have already sunk significant time and money into project plans.

And despite how much business owners shell out for them, the reviews themselves don't insulate them in lawsuits.

Thomas Law Group, a Sacramento-based firm, studied dozens of environmental law cases from 1997 through early 2012 and found courts overturned environmental impact reviews in 49 to 58 percent of cases where they were challenged.

That terrifies developers.

“Even when you do a (full environmental review), even when you have the best consultant doing their most in-depth work, it’s impossible to know if you’ve got an adequate (review) because it’s such a gray area,” said San Diego-based attorney Donna Jones, a longtime CEQA specialist who serves on the board of the downtown permitting and land-use authority.

Attorneys who file environmental lawsuits say only cities and developers who try to keep information from the public get hit with lawsuits and lose in court.

“If somebody goes through CEQA and writes an environmental impact report and doesn’t cheat, it’s going to stand up in court,” said David Pettit, a Santa Monica-based attorney with the Natural Resources Defense Council. “We win when a developer cheats and we can get a judge to see that.”

Cases where cities or agencies have decided there aren’t any significant environmental impacts to study are even easier for attorneys like Pettit to argue.

Lawyers frequently allege in such suits that the conclusion a project wouldn’t impact the environment – or that its impacts could be mitigated – were incorrect and that more extensive environmental studies were needed.

Those lawyers don’t have to prove a specific harm, say, that an animal species will be impacted by the project or that there will be pollution associated with it. They just have to make a good argument that more vetting is needed.

When judges side with plaintiff’s attorneys in those situations, cities and developers can spend months working on a costly and more complex environmental document.

And that makes the law a weapon for those who simply may not like a project.

Opponents can sue – or even just threaten to.

Many suits never make it to court. Attorneys seeking environmental improvements may privately approach developers and reach confidential settlements worth tens of thousands of dollars in exchange for the promise not to sue.

Other times, they’ll face off in court.

Back in Poway, Baratta now says another local shop had been forced to conduct an environmental review, and he wanted Chrome Collision to follow the same rules.

“We didn’t just do it to shut him down or stop (Chrome Collision),” Baratta said. “If you’re gonna come to Poway, why shouldn’t you have to do the same thing everybody had to do?”

Nearly a year after Baratta sued, a judge ruled Poway needed to do an environmental study on Leger’s shop. The judge didn’t conclude one way or the other whether Chrome Collision had a significant impact on the environment. The judge also said the shop could keep operating while the review was under way.

Four months later, the City Council unanimously approved a report indicating there were no major environmental impacts associated with the project.

Chrome Collision survived the lawsuit, though Leger said he had to cut his business expenses in half and rely on loans from friends as it dragged on. He paid off his last legal bill on Dec. 1, more than three years after Baratta filed suit.

“We were the little train that could,” Leger said.

Chrome Collision’s experience is hardly the only time the environmental law was used by someone who had motivations beyond environmental protection. Next, we’ll explore the ways in which CEQA is used as a weapon.

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<http://voiceofsandiego.org/2014/06/02/weaponizing-the-states-environmental-law/>

## **Weaponizing the State's Environmental Law**

BY: LIAM DILLON

Sure, lawsuits over California's main environmental quality law can force developers to put solar panels on their big-box stores or plant hundreds of trees to offset the greenhouse gasses their projects produce.

But that's not where the real outrage over the California Environmental Quality Act, or CEQA, comes from. The real trigger: the use of the state's landmark environmental law as leverage on issues that seem to have nothing to do with the environment.

Here's what those cases look like: It's the CEQA lawsuit in San Jose filed by Andy's BP gas station to keep the Moe's Stop station across the street from adding three new pumps. It's the threat of a CEQA lawsuit against a proposed Convention Center expansion from San Diego's largest labor group, which is later dropped once the contractor agrees to a labor-friendly local hire deal. It's the CEQA lawsuits over developments in Kensington and Mission Bay spurred by arguments that the projects did lots of bad things, but direct harm to the environment wasn't one of them.

It's within this context that some critics of San Diego attorney Cory Briggs direct their venom. Briggs files more CEQA lawsuits than anyone else in the state. The settlements from his cases appear to pay him handsomely. Briggs defends his work by saying those settlements also include crucial provisions that protect the environment.

Sometimes, though, it can be hard to tell how much CEQA lawsuits can actually benefit. It's also difficult to know how many fights over the law go beyond the perpetual agitation between business and development interests and environmental, labor and neighborhood groups. Projects in California have become more earth-friendly since the law passed in 1970. But it's also slowed development. The law requires cities and developers to produce thousands of pages documenting a big project's effects on air quality, traffic, aesthetics and other things. Some of Briggs' opponents have accused him of dumping a mountain of objections on a project's environmental analysis right before it's set to be approved, leaving little time to deal with any of the issues he's raised.

Jennifer Hernandez, an attorney with the San Francisco office of Holland & Knight, said most anyone can poke holes in an environmental analysis. She argues the use of the law has strayed from its original purpose. First, she said, it was environmental groups that sued under CEQA. Then came neighborhood groups that saw the law as a tool to stall development. Then came business competitors and labor unions that used the law for their own ends. The latest frequent CEQA user is a group of attorneys who see it as a big payday, Hernandez said. "It's very much a formula," Hernandez said.

Her firm tracked CEQA lawsuits for three years, ending in 2012. Briggs was the No. 1 filer. His firm and the four other top ones sued 125 times over that period, which was roughly 20 percent of the total. Ray Johnson, an attorney in Riverside who is second on the list, is just as contentious as Briggs for using similar tactics.

Politicians of all stripes have argued in recent years for CEQA reforms. Remember those controversial special exemptions that some recent sports stadium projects received through the state Legislature? They gave the stadium developer breaks on complying with CEQA.

Gov. Jerry Brown has called reforming CEQA “the Lord’s work.” State Senate leader Darrell Steinberg, D-Sacramento, tried a few years ago to push an overhaul. He was only able to get minor changes, after becoming frustrated with business, labor and environmental groups’ seeming unwillingness to reach a middle ground.

As it stands, CEQA allows attorneys like Briggs to exist. Whether you think Briggs is a force for good or an enemy of progress probably depends on what you think of CEQA as a whole.

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