

# CHAPTER 7

## Infrastructure

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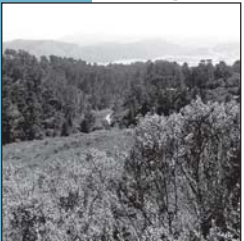
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# CEQA AND LARGE-SCALE INFRASTRUCTURE PROJECTS

By Felicia Marcus

Of all of the projects to which CEQA applies, perhaps none have as much potential to completely change the environment and future patterns of development as large scale infrastructure projects. For example, the proposed high speed rail system linking the Bay Area with Southern California could have dramatic and irreversible effects on communities and the environment in the Central Valley, and statewide. Such projects call for particularly robust environmental review.

In addition, most large infrastructure projects receive massive investments of public dollars. Construction companies, lobbyists, and professional engineers tend to be the primary stakeholders paying attention at all stages of project development and populating the decision-makers' offices, counters, and hearing rooms. Public policy decisions affecting such vast expenditures of public dollars are rarely purely engineering decisions. This is another reason why CEQA, with its requirements of alternatives analysis, public hearings, and materials written in such a manner that it is useful and understandable to decision-makers and the public, is an essential tool that has resulted in far better expenditures of public dollars than could possibly have happened otherwise.

While various land use and environmental requirements apply to large scale infrastructure projects, they are largely met through scattered

**When public agencies take full advantage of the benefits of CEQA rather than going through the motions, the result is better projects for the public's dollar and, in many cases, avoidance of significant avoidable harms.**

processes in front of different agencies, or even in front of different agencies within a given jurisdiction. Some of these processes may require public hearing in front of a local board, and others are simply



applications at a counter. The CEQA process provides an organizing framework for stakeholders and members of the public to participate in decision-making despite the complexity of these many different processes. Even just the requirement of corralling all of

the issues into one readable document makes an enormous difference in accessibility to the public.

Some project proponents consider CEQA to be a tortuous device designed to slow all good things down. Others view CEQA as a beautiful thing that can lead to a more perfect world, or at least more perfect projects. Naturally, neither view holds true all the time, but in my view, the latter argument is stronger. CEQA has provided project proponents, government agencies, and the public with a vehicle for better decision-making on public projects. When public agencies take full advantage of the benefits of CEQA rather than merely going through the motions, the result is better projects for the public's dollar and, in many cases, avoidance of significant avoidable harms.

The actual cause of the "CEQA is a burden" view has to do as much with attitude as anything. If project proponents and/or public agencies view CEQA as a hurdle to be gotten over, and if they pad thick documents with boilerplate and spend little time constructing the document as a useful tool for decision-makers and the public, then they both fail to gain the advantages of CEQA, and they become more vulnerable to challenge and delays.

In contrast, when one approaches CEQA with the intent of developing the best possible project through the interactive and iterative process required by the law, it provides a fabulous tool for improving projects and gaining public support—all of which is the correct thing to do when spending scarce public dollars. For example, the Public Works Department of the City of Los Angeles took this approach in the early 1990s, doing shorter and clearer environmental documents with the clear intention of engaging the public, listening to their concerns, and changing projects accordingly. As a result, they were able to do better projects with more community buy-in and less litigation than had happened previously.

Examples of CEQA improving projects from my experience as President of the Board of Public Works for the City of Los Angeles include the expansion of the Tillman Water Reclamation Plant in the San Fernando Valley, the massive upgrade of the Hyperion Treatment Plant adjacent to El Segundo, and the limited expansion of the City's

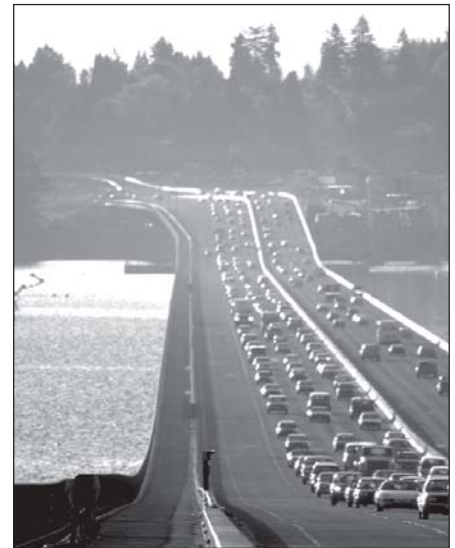
more than one occasion, we went from encountering a roomful of angry opponents at the Draft EIR stage, to a final approval meeting with residents showing up to say thank you.

Some of the many benefits of the CEQA process include:

- **Getting good information and ideas from public comments:**

“We came up with alternatives I'd never considered before. . . .” In a complex project it is difficult to think of everything. Members of the public frequently have expertise or experience that weren't necessarily part of the project team itself (e.g., knowing about a species, the habitual use of an alignment that wasn't necessarily available on GIS maps, the importance of a given landscape to a community).

- **Getting input from the public about what is important to a particular community:** for example, parks and open space, a particular vista, a route that school-children are fond of, historic and cultural uses of property, air quality



- **Getting community buy-in for the chosen project.** Listening to the public, responding respectfully to comments, and giving them due consideration has a value all its own and is good public policy, as is having readable and useful environmental documents. With a “bad” document, one can easily end up with an angry community that is convinced that the project proponent has something to hide and has hidden it intentionally.

The examples that follow illustrate some of the ways in which CEQA has led to better large-scale infrastructure projects. The results speak for themselves, clearly illustrating the importance of commitment to environmental review and the public process.

**By crafting projects and project alternatives that were fair and responsive to community concerns, we developed better projects that were accepted by the community.**

Lopez Canyon Landfill, the sole landfill owned and controlled by the City of LA. In each case, we found that by listening to the public and crafting projects and project alternatives to be fair and responsive to community concerns, we developed better projects that were accepted by the community. On

or noise impacts, and cumulative impacts. As noted earlier, good public policy is not a purely engineering decision when dealing with scarce public dollars. Identifying these community concerns allows for the integration of elements into a project that achieves multiple community benefits.

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# NEW DIRECTIONS: CEQA & the Century Freeway

By Carlyle W. Hall, Jr.

As originally planned, the ten-lane Century Freeway—envisioned as the most expensive freeway, mile-for-mile, ever to be built—would run seventeen miles south from the Los Angeles International Airport. Routed through South Central Los Angeles and other areas comprising the most impoverished, heavily minority areas of the Los Angeles Metropolitan Region, the behemoth freeway would destroy fully 8,250 low and moderate income housing units and would uproot more than 21,000 people.

Seeking an end to Caltrans’ “freeway mentality” of the fifties and sixties and thinking there must be a better way, lawyers from the Center for Law in the Public Interest (CLIP) launched their CEQA/NEPA litigation (*Kieth v. Volpe*) against the Century Freeway in early 1971. CLIP’s lawyers alleged that Caltrans officials had moved ahead in planning the freeway without fully evaluating the overall transportation needs of the region and without analyzing the effects of their plan on air pollution. No consideration had been given to alternative means of moving people through and between these communities. Although thousands of affordable housing units would be removed and tens of thousands of individuals displaced,

no comprehensive plan had been prepared for relocating these people.

To underscore the “environmental justice” roots of the litigation, CLIP’s lawyers organized a unique plaintiff’s coalition, which included both environmental (the Sierra Club

injunction prohibiting further site acquisition or any freeway construction until adequate Environmental Impact Reports were prepared under CEQA and NEPA. Some five years later in 1977, the draft environmental studies were released. The studies revealed the depth of the housing and transportation planning problems associated with construction of the freeway, and helped convince state and federal freeway planners that fundamental changes in the freeway’s purpose and design were appropriate.

At that point, CLIP’s lawyers proposed that a cooperative, rather than confrontational, approach be taken. In 1979, a far-reaching settlement was announced. The US Secretary of Transportation called it “a precedent for the rest of the United States.” An LA Times editorial proclaimed that the Settlement’s “real meaning” is that “the good old ways are gone.”



Century Housing

The freeway was reduced from ten to eight lanes, with two dedicated to HOVs, and included plans for the “Green Line” light rail route. It also provided for the replenishment of lost affordable housing, displacement assistance, and set hiring goals for minority and female workers.

and Environmental Defense Fund) and civil rights (the NAACP) groups. Allying discrimination in the choice of the freeway’s path, they even threw in a claim for relief under the Fourteenth Amendment of the United States Constitution.

Within months, then Federal District Judge Harry Pregerson issued an

- The landmark settlement reduced the freeway’s size from ten to eight lanes, with two of the eight lanes dedicated to high occupancy vehicles. Within the freeway median, the “Green Line” light rail route was designed to become the start of Los Angeles’ still-growing Metro system, for the first time

providing lower income residents within the project impact area with public transit access to jobs in more affluent areas.

- The settlement also established employment-hiring goals for minority and women workers in order to provide them with access to the freeway's more than 20,000 jobs. By the time construction ended with the freeway's opening in 1993, a pre-apprenticeship job-training

- Approximately three-quarters of the 21,000 people displaced as a result of freeway acquisitions were assisted by the Office of the Corridor Advocate, a service organization established to assist Century Freeway displaces in obtaining their full acquisition and relocation benefits under state and federal law.

When he was elevated to the Ninth Circuit, Judge Pregerson took the Century Freeway case with him,

**According to the US Secretary of Transportation, the Century Freeway CEQA settlement set "a precedent for the rest of the United States."**

program had trained thousands of entry-level minorities and women. Caltrans' hiring of minorities had more than doubled what it was for any other freeway in Caltrans history, and its hiring of women was many times what it was anywhere else. The settlement's minority and women business enterprise goals also ensured that hundreds of millions of dollars in freeway contracts went to MBE/WBE enterprises.

- The settlement provided hundreds of millions of dollars to replenish the affordable housing supply lost to freeway construction. Approximately halfway through the expenditure of these funds, the housing program was privatized in order to increase its efficiency. The funding will subsidize 8,500 units, effectively replacing the affordable units initially destroyed to make way for the freeway.

and it is now believed to be the oldest case on the federal docket west of the Mississippi River. Although the Century Freeway opened in 1993, the consent decree is still on-going as new affordable housing units continue to be built by the privatized program, now called the Century Housing Corporation.

The Century Freeway case has brought enormous social and monetary benefits to the Los Angeles community. It also enabled the Caltrans freeway-planning establishment to rethink the basic purpose and design of the Los Angeles freeway system, and, for the first time, it prompted them to view freeway planning within the greater framework of mass transit options.

*Carlyle W. Hall Jr. is a Partner at Akin Gump Strauss Hauer & Feld. Mr. Hall represented the plaintiffs in this case.*



The Century Freeway Project cut directly through whole neighborhoods, forcing over 21,000 people to relocate. CEQA ensured that these people had substantial relocation assistance.



The CEQA settlement required that developments like Hawthorne Terrace (above) be built to replace affordable housing lost to freeway construction.



The CEQA settlement set hiring goals for female and minority workers, ensuring that they had fair access to the project's more than 20,000 new jobs.



The Century Freeway Pre-Apprenticeship Training Program was established to help train thousands of minority and female workers.

Photos from *In Our Path*, © Jeff Gates 1982-2005.  
For more visit: <http://outtacontext.com/iop>

# Improving Public Transit: The San Francisco Ferry Expansion Plan

By Stuart Flashman

Ferries are unquestionably a pleasant and romantic means of travel especially compared with driving in rush-hour traffic. Further, ferries are a major transportation mode in the Puget Sound/Seattle area, and there was some hope that expanded ferry service in the Bay Area could reduce congestion on Bay Area bridges. The question was whether this could be done without causing undue environmental harm in the San Francisco Bay Area.

In 1999, the Legislature created the San Francisco Bay Area Water Transit Authority (WTA) to plan the expansion of ferry service for San Francisco Bay. The WTA released an ambitious plan to extend ferry service as far south as Moffett Field, as far north as Port Sonoma, and as far east as Antioch. The

Draft Environmental Impact Report (DEIR) appeared to gloss over many of the project's potential impacts.

The first issue that arose was air quality. Ferries, like most large

the ferries' output of pollutants. The new standard would prevent degradation of the region's air quality by requiring the new engines ten times cleaner than today's, and 85 percent more stringent than new federal standards for ferry engines

**The San Francisco Ferry Expansion Project is a prime example of how, with a cooperative public agency, the CEQA process can result in a better and environmentally superior project.**

ships, use diesel engines, and conventional diesel engines create a lot of pollution. Bluewater Network quickly raised this issue with the WTA and after numerous consultations, public hearings, and support from air quality officials convinced the new agency to set an air emissions standard for the new fleet that would dramatically reduce

that will go into effect in 2007. This groundbreaking new standard was set and the major air quality problem addressed by the time the Final EIR was released. Other environmental problems needed similar attention.

The Sierra Club and Golden Gate Audubon Society raised concerns about the wildlife impacts of some of the extensions, particularly from dredging in the shallower and narrower regions of the Bay where waterfowl tend to nest and to congregate during migration. Both organizations were also concerned about impacts from a proposed ferry terminal within the newly-created Eastshore State Park. Finally, the Sierra Club wanted to ensure that the ferry expansion would not be at the expense of other public transit initiatives, such as expanding rail and express bus service. The two environmental groups submitted extensive



Through the CEQA process, the Bluewater Network won assurance that advanced pollution control technologies will be used to make new ferry engines ten times cleaner. The project was also altered to address concerns about potential wildlife impacts.

comments on the DEIR, documenting the evidence of major impacts. Behind the letter was the threat of litigation.

The WTA took the EIR comments seriously. It initiated a series of meetings with Sierra Club and Audubon to address their concerns. As a result of these meetings, the WTA agreed to revise the scope of its preferred alternative to eliminate the most problematic routes. It also expanded its discussion of project impacts and identified additional mitigation measures.

A revised DEIR was reissued and recirculated for a second round of comments. This time, the environmental analysis was more thorough in the DEIR, and the responses to the second round of comments confirmed that the Project would address and mitigate its potentially significant impacts and was not intended to displace other transit improvement projects. The final EIR was certified, and significantly, no litigation was filed to challenge the project or its EIR.

The Ferry Expansion Project is a prime example of how, with a cooperative public agency, the CEQA process can result in a better and environmentally superior project even without litigation.

*Stuart Flashman is an environmental and land use attorney with a solo practice in Oakland, California. Mr. Flashman represented the Sierra Club and Golden Gate Audubon Society in their involvement with the ferry expansion project.*

## Protecting California's Small Towns: The Somis INTERSECTION Widening

Much of California has been designed around the freeway. Like the towns along the famous Route 66, California cities have bloomed along the wide ribbons of asphalt that have been carved across the state. Along with new freeways, road widenings and new intersections often presage a boom in development. In Ventura County, one small town used CEQA to make sure that Caltrans examined these impacts if it decided to widen an intersection in their town as part of a highway expansion project.

Caltrans had long considered a plan to widen a fourteen mile section of Highway 118, stretching from Highway 232 in Saticoy to Tierra Rejada Road in the City of Moorpark. The plan included widening the approaches of the Route 118/Route 34/Donlon Road intersection in the town of Somis from two to six lanes.

In 2000, Caltrans decided to move forward with the 118/34/Donlon Road intersection project. However, when the environmental review team examined the intersection project, they considered the intersection in isolation from the larger route 118 widening proposal. After a cursory review, they declared that there would be no significant impact and approved the intersection project.

In response, a community group called "Save our Somis" challenged the Caltrans approval in court. With help from a traffic expert, they

pointed out that intersection must be examined in the context of the larger highway expansion and how the expanded intersection would attract more traffic to the area and induce more growth. They demonstrated that additional traffic would increase noise levels and air pollution for nearby residents. They also showed that the intersection project would result in the loss of Monarch butterfly habitat and agricultural land. These impacts together spelled disaster for the rural character of Somis, a town with just under 3,000 residents.

The Court ruled in favor of Save Our Somis and directed Caltrans to set aside its approval of the project. The Court confirmed that CEQA establishes a very low threshold for initial preparation of an Environmental Impact Report (EIR) whenever a "fair argument" can be made that there may be a significant impact on the environment. They directed Caltrans to conduct an EIR that would address the concerns that Save our Somis had raised, examining the environmental effects of the intersection *together with* the Route 118 widening project instead of segmenting the full road widening plan into smaller sections.

Caltrans is no longer proposing this intersection project, but, if it resurfaces, it is likely that Caltrans will recognize the need to address significant impacts on the town of Somis and other towns along Highway 118.

*Written by PCLF staff.*

# Hatton Canyon SAVED from UNNECESSARY Freeway

By Rachel Hooper

Just east of Scenic Highway 1, near the seaside town of Carmel-by-the-Sea, lies Hatton Canyon, an undeveloped canyon prized by the local community for its breathtaking views, remarkable ecological diversity, and the recreation opportunities it offers. Home to a perennial stream and one of the last remaining genetically pure Monterey Pine forests in California, the 160 acre canyon and right-of-way area was acquired by the state's Department of Parks and Recreation in 2001 with the intention of creating Hatton Canyon State Park. This brought to a close the decades-long struggle over the future of this natural treasure, ensuring that the wetland, forest, unique wildlife habitat and watershed corridor would be preserved for future generations as permanently protected open space.

Were it not for the open environmental review required by CEQA and NEPA (the National Environmental Policy Act), and the Sisyphean efforts of the Hatton Canyon Coalition and its partners, Hatton Canyon would today be home to an entirely different creature—the unnecessary Hatton County Freeway. Initially proposed in 1956, during the heyday of big budget freeway projects, and long before the enactment of CEQA, the Hatton Canyon Freeway was revived in the early 1980's by the

California Department of Transportation (Caltrans) as a way to alleviate congestion on the two-plus mile section of Highway 1 adjacent the canyon. When Caltrans, in conjunction with the Federal Highway Administration (FHWA), approved the three mile long, \$48

The Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) did not explain, for example, how a wetlands mitigation plan that relied upon polluted freeway runoff for irrigation of replacement wetlands could "fully" mitigate the destruction of pristine wetlands. Agencies and members of the public likewise questioned Caltrans' conclusion that the planting of seedlings could fully compensate for the planned removal of over 7,000 mature Monterey Pines, a unique species. The EIS/EIR failed not only to identify effective mitigation measures for its myriad impacts, but also to include a proper range of project alternatives. To make the latter argument, the Hatton Canyon Coalition hired an independent engineering firm, which demonstrated that widening the existing highway to four lanes could provide nearly the same level of service at a fraction of the financial cost and none of the environmental cost.

The Consortium also worked hard to ensure that the state and federal agencies responsible for the protection of natural resources were fully informed of the Hatton Canyon Freeway's threat to the environment. Ultimately, the Army Corps of Engineers, the U.S. Fish & Wildlife Service, and the California Department of Fish and Game all agreed that the EIS/EIR both



A view from the north end of Hatton Canyon, soon to become a state park. The dark trees in the midground are one of the last remaining genetically pure Monterey Pine forests in California.

million dollar freeway project in 1986, it sparked a legal battle that only recently ended in victory for the Coalition, its partners, local environmentalists, and the greater community at-large.

The Hatton Canyon Coalition and its partners, the Monterey Peninsula Regional Park District, the City of Carmel-by-the-Sea, and the Sierra Club (Ventana Chapter), collectively known as the Hatton Canyon Consortium, alerted Caltrans and the FHWA that the environmental review for the project did not comply with the requirements of CEQA or NEPA.



understated the severity of project impacts and failed to document its conclusions.

Rather than reconsider the adequacy of their environmental

review, the state and federal transportation agencies rushed through their decisions to approve the freeway. In

January of 1992, the Hatton Canyon Consortium filed suit, alleging that the agencies had violated both CEQA and NEPA.

The ensuing litigation followed a course of dramatic twists and turns. In 1996, the Court of Appeal for the Ninth Circuit ruled that the EIS/EIR failed to properly analyze impacts to wetlands and Monterey Pines, failed to assess cumulative impacts on biological resources, and failed to analyze all reasonable alternatives. But the court inexplicably vacated this decision a year later, after the transportation agencies filed a petition for a rehearing, and issued a new ruling that reversed its earlier decision in most respects. The new ruling, however, did maintain that the EIS/EIR's analysis of cumulative biological impacts appeared to violate CEQA and NEPA requirements and remanded the matter to the district court. Finally, in July of 1998, the district court invalidated the EIS/EIR, vacated Caltrans' and the FHWA's respective decisions to approve the Hatton Canyon Freeway, and enjoined construction of

the freeway until CEQA and NEPA requirements were satisfied. Meanwhile, the political winds of fate were changing for the Hatton Canyon Freeway. A newly elected

These improvements were subsequently challenged on CEQA grounds in court by the parties supporting the freeway, but the challenges were dismissed. Caltrans has now implemented most

of the improvements, which have successfully alleviated the congestion problem. As the Hatton Canyon Coalition had argued from the beginning, it simply was not necessary to build an environmentally destructive freeway in order to solve the traffic woes in the Carmel area.

In Sacramento, Jeff Morales, Governor Davis' Director for Caltrans, took a softer position on the freeway and worked with Fred Keeley, then speaker pro tem of the State Assembly, to sell the freeway right-of-way. Mr. Keeley subsequently acquired \$2.75 million to purchase the property and facilitated the transfer of ownership to the Department of Parks and Recreation. Thanks to CEQA and its practitioners, Hatton Canyon and its intrinsic natural environmental values are now protected as permanent open space and an unnecessary and environmentally damaging freeway project was stopped.

to consider improvements along the existing Highway 1 alignment. Caltrans' staff was soon directed to begin implementing the improvements, which included adding a new "climbing lane" to the highway.

**Thanks to CEQA and its practitioners, Hatton Canyon and its intrinsic natural environmental values are now protected as permanent open space, and an unnecessary and environmentally damaging freeway project was averted.**

Salinas City Councilperson sympathetic to Hatton Canyon was appointed to the Transportation Agency for Monterey County (TAMC) Board of Directors in 2001. Her weighted "no" vote for local TAMC funding for the freeway effectively killed the project by redirecting local HCF funding to a different highway project. The TAMC Board then directed its staff



Carmel Valley residents have valued the canyon for its ecological diversity and recreational activities. When the freeway proposal was resurrected in 1986, they united to defend their local treasure.

*Rachel Hooper is a partner at Shute Mihaly & Weinberger. Ms. Hooper represented the Consortium at all stages of the Hatton Canyon litigation.*

