One of the recent complaints about CEQA has been that the statute has been abused by various parties who have no interest in protecting the environment, but instead are simply interested in either (a) raising costs for competitors or (b) using the threat of CEQA litigation to extract payments from project proponents. Various horror stories about these CEQA abuses have been a major driver for proposals for CEQA reform.

Now it's not always the case that it's a bad thing to have private parties sue to enforce environmental laws, even when they have no interest in protecting the environment. This kind of strategic motivation for environmental litigation can result in the enforcement of politically unpopular but environmentally important legal provisions, or the discovery and use of politically inconvenient but environmentally significant information. (This might in fact be in part what is going on with petition and litigation activity to list species for protection under the federal Endangered Species Act — I hope to develop more on that in another post.)

Nonetheless, there are costs to this kind of free-ranging litigation activity. Going to court is costly – both in terms of direct costs for lawyers and filing fees, but also in terms of lost time and increased uncertainty that upsets planning for important projects. So the question is whether there is a way to reduce this kind of abusive CEQA litigation without wholesale exemptions from the CEQA process (such as the exemption for one of the proposed LA football stadiums). In the spirit of Jonathan's call for "useful exemptions to CEQA," one thought might be to tighten up standing requirements for CEQA litigation.

For non-lawyer readers, standing is a legal doctrine that constrains who can file suit in court. Federal courts have developed a standing doctrine for lawsuits seeking to enforce the federal environmental review statute, the National Environmental Policy Act (NEPA). Among other requirements, plaintiffs seeking to sue a defendant for a violation of NEPA have to show that they have suffered or will suffer some sort of concrete harm that has been caused by the alleged NEPA violation, and which the court can "redress" or correct with a ruling for the plaintiffs. For instance, they might be members of a local hiking club that regularly enjoys a canyon on National Forest land that is slated for a major timber project. The plaintiffs here would have to show that their enjoyment of the canyon will be harmed by the timber project; that the alleged NEPA violations are connected to the timber project; and that the court could redress the harm by ordering compliance with NEPA procedures. (I am eliding over some important details here in the interest of space.)

In addition to those requirements, federal courts have imposed another standing requirement. The harm that the plaintiffs allege to have been caused by the claimed NEPA violation – here the damage to the environmental quality of the canyon from the proposed

timber project – has to fall within the "zone of interests" that NEPA seeks to protect. In other words, in the context of NEPA that means (in general) that plaintiffs can only assert "environmental" harms as the basis for standing to sue to enforce NEPA, because NEPA was intended to protect environmental values. They can't rely on "economic" harms as the basis for their injury for standing purposes. That means that (for instance) plaintiffs whose only alleged harm is competition from another company's project that is going through the NEPA process can't usually show standing.

California has many of the same standing requirements in terms of requiring a showing of some sort of harm caused by the alleged CEQA violation that a court can redress. However, California has specifically refused to follow the "zone of interest" test for CEQA litigation. (Save the Plastic Bag Coalition v. City of Manhattan Beach, 52 Cal.4th 155 (2011)) But perhaps that was a mistake – requiring that there be some real showing of environmental (as opposed to merely economic) harm from alleged CEQA violations might eliminate some of the most egregious examples of CEQA abuses. In fact, standing might be particularly useful in this regard because it allows a suit to be thrown out at the very beginning, which could be very helpful for reducing the direct and indirect costs of abusive CEQA litigation.