This is the tenth in a series of blog posts on the California Chamber of Commerce's proposed ballot initiative amending the California Environmental Quality Act (CEQA). The first blog post is here. The second blog post is here. The third blog post is here. The fourth blog post is here. The fifth blog post is here. The sixth blog post is here. The seventh blog post is here. The eighth blog post is here. The ninth blog post is here.

I've spent a lot of time emphasizing the uncertainty in the proposed initiative, and what I see are potential problems with the initiative. But I also want to recognize that the initiative is trying to address some real issues in how CEQA works, and those issues are worth taking seriously and addressing.

First, the initiative is trying to provide clarity and certainty with respect to what is a significant impact under CEQA – the key threshold that in turn determines the analytic and mitigation requirements under the statute. The definition of significance under the statute and Guidelines is vague and general. The initiative tries to address that issue by tying significance to existing written legal requirements. I've explained the potential pitfalls of that approach above. But the concern is real. Vague and general significance standards means that project proponents can be faced with endlessly shifting targets, disputes over what levels of harm are real, dueling expert presentations and analyses, and more. That in turn can enable opponents who want to stop a project to latch on to a claim that the significance threshold used in the analysis is inadequate – and litigate that question if needed. Agency development of quantified or more specific thresholds of significance addresses most of the issues here, but that only works for some resource issues. Others, such as aesthetic impacts, and impacts on ecological resources like species and ecosystems, may not lend themselves to relatively specific, objective, or quantitative standards – whether it is because of uncertainty, the value choices inherent in determining the impact on the resource, or because of our lack of knowledge of what matters for the resource.

Second, is the problem of mission creep in CEQA. What counts as an "environmental" impact that should be considered in CEQA review? Again, the definition in the statute and the guidelines is vague and general. That in turn means that project opponents can try to expand the scope of CEQA to identify new types of environmental impacts. That in turn has the advantage of making the project proponent develop new analytic methods (many of which may be novel and thus costly or difficult to develop, and that themselves can be contested by opponents), identify what the level of significance should be (also novel and thus

easily contested), and identify mitigation (same). An example of this approach includes the opponents of the UC Berkeley People's Park housing project challenging the project for not considering the noise impacts produced by the new residents of the project on the neighbors.

Third is the problem of government agencies using CEQA as a tool to endlessly delay projects they do not want to approve, but also do not want to risk litigation over disapproval. This is an approach particularly used by local governments seeking to stop housing projects. Here the agency plays the role of Lucy, holding the football for Charlie Brown to kick, and then pulling it away at the last moment – identifying new flaws in the CEQA review, requiring a continuance while the project proponent addresses those flaws, and then repeating that cycle at the next meeting. The state legislature has tried to address these issues in local land-use approvals for residential projects through amendments to the Housing Accountability Act and Permit Streamlining Act, though their application to CEQA is limited.

But resolving all three of these issues is in tension with the role that CEQA plays as a backstop to other legal protections – if there are new or emerging environmental harms or new or emerging technologies or development approaches that do not fit within our current system, CEQA will provide at least some protection through analytic and mitigation requirements. CEQA plays a similar role in addressing cumulative impacts of projects, since our environmental laws in general do a poor job of addressing cumulative impacts. And as I've noted above, there are a range of gaps in our existing laws that CEQA fills, and without CEQA it is unclear what might happen to the resources those laws protect.

To me that means that reforming CEQA to address its weaknesses requires a more thoughtful approach than this initiative takes. It also requires an approach that allows the legislature flexibility to respond to unintended consequences – both to address under- and overregulation through CEQA.