This is the fourth in a series of blog posts on reforming the California Environmental Quality Act (CEQA). The first post, discussing different paradigms for CEQA, is here. The second post, discussing the conceptual framework for reform, is here. The third post, discussing designating a state agency to set binding, clear standards for CEQA implementation, and setting stricter limits on alternatives analysis, is here. In this post, I will discuss creating an exclusive list of the type of impacts to be considered under CEQA.

What effects are environmental

Environmental review only requires analysis and mitigation for environmental impacts. But what kinds of impacts are environmental? The current best guidance on this is Appendix G in the CEQA Guidelines, which has a long list of different environmental impact categories. Some of these might seem clearly environmental, such as air quality or wildlife. Others may seem more tangential, such as aesthetics or public services.

Reducing the scope of environmental effects review can reduce the burdensome nature of environmental review, and also reduce the potential for disputes. In addition, some effects (such as aesthetics) may be difficult to analyze and subject to sharp methodological disputes. While that can be true of other effects (such as effects on wildlife), excluding effects that are difficult to analyze and less directly focused on environmental impacts can have a real benefit in reducing delays and uncertainty while still advancing environmental goals.

Legislative reform should specify the categories of environmental effects to be considered under CEQA. As an initial cut on that list, I would use the following categories from Appendix G of the Guidelines, making them an exclusive list of effects to be considered:

- Agriculture and Forestry Resources
- Air quality
- Biological Resources
- Cultural Resources
- Tribal Cultural Resources
- Geology/Soils
- Hazards and Hazardous Materials
- Hydrology/Water quality
- Noise

- Climate change (including vehicle miles travelled)
- Wildlife/endangered species
- Environmental justice (defined as distributional effects for any of the above resources)

This reform would exclude a number of categories in Appendix G: aesthetics, land use/planning, population/housing, mineral resources, public services, recreation, and utilities/service systems. These topics are either tangential in their relevance to environmental effects (e.g., mineral resources), are covered by other significant state regulatory systems (e.g., housing covered by state housing element law, and energy covered by state and federal energy efficiency rules), would be covered under indirect effects, if relevant (e.g., public services), and/or can produce complicated methodological disputes (e.g., aesthetics). The specific listing of these topics as the sole relevant topics for CEQA would also exclude other topics that, at times, have been the subject of litigation over whether they are covered by CEQA, including claims that projects will cause urban decay, or claims about parking impacts.

In addition, the Guidelines contain three mandatory findings of significance. These standards automatically trigger the requirement to prepare an EIR, though they do not necessarily determine whether the impacts would be significant for purposes of the EIR's analysis.

> Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?
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> Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?
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> Does the project have environmental effects which will cause substantial

adverse effects on human beings, either directly or indirectly?

The first mandatory finding has components that are relatively specific with respect to wildlife: whether a project will "substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal." These components would be made thresholds of significance for wildlife resources (and thus would require consideration as significant impacts in the EIR). For "eliminate important examples of the major periods of California history or prehistory," these can likewise be considered under cultural resources. However, the other mandatory findings are vague and/or conclusory, and are inconsistent with a more standards-based conception for thresholds of significance. They would be dropped.

As I noted in an earlier blog post, addressing new harms is a key role for environmental review as a backstop. How is an exclusive list of topics to be covered in environmental review consistent with addressing new harms? What if those new harms fall outside the identified topics?

I have two responses to those reasonable concerns. First, the designated agency could identify new categories of effects to be considered under environmental review. This allows for identification of new categories of harms, such as climate change. However, the designated agency could not drop the pre-existing ones (designated above), unless the legislature acted.

Second, in many cases the problem is not new types of harms, but new impacts within existing categories, and these new impacts can be accounted for under existing categories and thresholds of significance. For instance, within the area of hazardous materials, there may be hazardous chemicals (such as PFAS) that we identify as new harms. But those updates can and will occur within a framework of existing categories of effects (PFAS is just a new kind of hazardous material) and existing thresholds of significance (if the threshold requires a finding there are not listed hazardous materials that exceed known thresholds of safety, and PFAS is updated to the list of hazardous materials, then the new harm will be accounted for even with fixed categories and thresholds of significance). Finally, ambient thresholds (such as maximum levels of air pollution levels) can address new ways of producing pollution, since they apply to all types of emissions, regardless of whether or how they are regulated at the emissions point.