

Too much democracy, or too little?

California's High Speed Rail and Environmental Review

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Should California HSR have greater protection from
community lawsuits under CEQA?

It depends.

Depends on What?

1. Is CEQA for protecting the environment, or communities, or both?
2. How much control over project outcomes should communities have relative to public agencies?

- **NEPA**

Congress enacted NEPA in December, 1969, and President Nixon signed it into law on January 1, 1970.

- **CEQA**

In response to NEPA, the California Assembly Select Committee on Environmental Quality issued a report entitled “*The Environmental Bill of Rights*,” and recommended a California counterpart to NEPA. In 1970, the legislature passed, and Governor Reagan signed, the CEQA statute.

- Difficult to execute projects
 - Too comprehensive and too restrictive
 - Too much public involvement
 - Too much capacity to hold up projects in court

- State, regional, and local public agencies grappling with costly legal challenges

Here's an example

AB 2245

Date	Action
09/28/12	Chaptered by Secretary of State - Chapter 680, Statutes of 2012.
09/28/12	Approved by the Governor.
08/31/12	Enrolled and presented to the Governor at 4:30 p.m.
08/24/12	Senate amendments concurred in. To Engrossing and Enrolling. (Ayes 73. Noes 0. Page 6245.).
08/22/12	In Assembly. Concurrence in Senate amendments pending. May be considered on or after August 24 pursuant to Assembly Rule 77.

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One of three curbs on environmental review goes to Gov. Jerry Brown

August 27, 2012 | 10:23 am



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Two proposals for sweeping changes to California's environmental-protection laws stalled in the Legislature last week, but a third measure, much more narrowly crafted, was approved and sent to Gov. Jerry Brown.

Lawmakers approved AB 2245, which would exempt hundreds of miles of proposed bikeways from the California Environmental Quality Act.

The bill was introduced to help the Los Angeles County Metropolitan Transportation Authority, which plans to add 832 miles of new bike lanes in the coming years and would benefit from streamlining the environmental-review process.

Sources:

<http://leginfo.ca.gov/faces/billNavClient.xhtml>;

<http://latimesblogs.latimes.com/california-politics/2012/08/california-jerry-brown-environmental-review-bikeways.html/>

Environmental Laws Bypassed for California Stadium Project

Thursday, October 22, 2009 - 2:00pm PDT by [NATE BERG](#)

[Environment](#), [Government / Politics](#), [Land Use](#), [Urban Development](#)

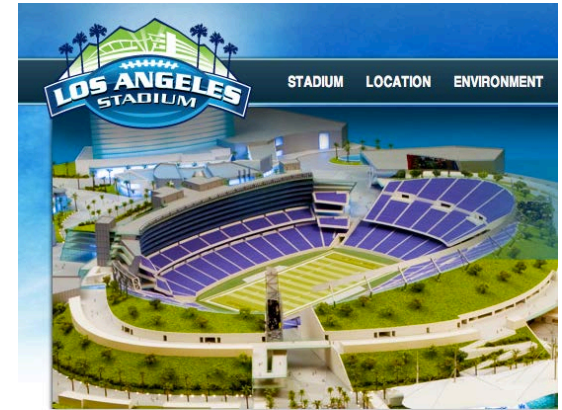
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California Governor Arnold Schwarzenegger has signed a bill that allows developers of a planned football stadium in Southern California to bypass environmental laws and speed up the planning process.

The stadium is being planned in the City of Industry, about 15 miles east of Los Angeles.

"Developer Ed Roski Jr. wants to build an \$800-million NFL stadium near the junction of the 57 and 60 freeways.

The legislation signed today would exempt the planned 75,000-seat stadium from state environmental laws. The bill is designed to speed up the planning process for the stadium."



THE ENVIRONMENT

Leaner, Greener, Stadium

Sources:

<http://www.planetizen.com/node/41364>

<http://www.losangelesfootballstadium.com/the-environment.html>

Governor Brown's Attitude

"We're gonna remove some regulations, we're gonna speed things up and we're gonna protect the environment. But we're also gonna do it in a practical way, because there are too damn many regulations. Let's be clear about that!"

Sources:

<http://www.planetizen.com/node/51619>

SB 292: Stadium Project

SB 226: Infill Projects

AB 900: Projects with large economic and environmental benefits

Sources:

<http://gov.ca.gov/news.php?id=1738>

9

http://www.opr.ca.gov/s_sb226.php

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CA High Speed Rail Opponents Ask For Preliminary Injunction In Central Valley

Monday, October 8, 2012 - 1:00pm PDT by [IRVIN DAWID](#)

[Environment, Government / Politics, Transportation](#)



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With federal and state environmental clearance and with funds allocated, the main obstacle to laying track in the Fresno-Merced route is an environmental lawsuit to be heard April, 2013. Two county farm bureaus ask that work cease until then.

Remember? In June 2012:

"Under Brown's proposal, train foes would have to prove in court that the project causes major environmental problems, such as wiping out an endangered species or damaging extremely valuable land."

But again, later in June 2012:

"Under intense political pressure to retain the full application of the CA Environmental Quality Act to CA High Speed Rail project, Gov. Brown withdrew his proposal to allow the project certain exceptions to lawsuits."

Sources:

<http://www.planetizen.com/node/57014>

<http://www.planetizen.com/node/57281>

High-speed rail and other large-scale, green projects enhance the state's environment and thus they should go forward even if community members object.

VS.

Communities should be entitled to stop projects in their neighborhoods that they don't approve of – it doesn't matter whether the project is green or not.

The CA HSR Project

High-Speed Rail Development

The U.S. lags behind in high-speed rail development

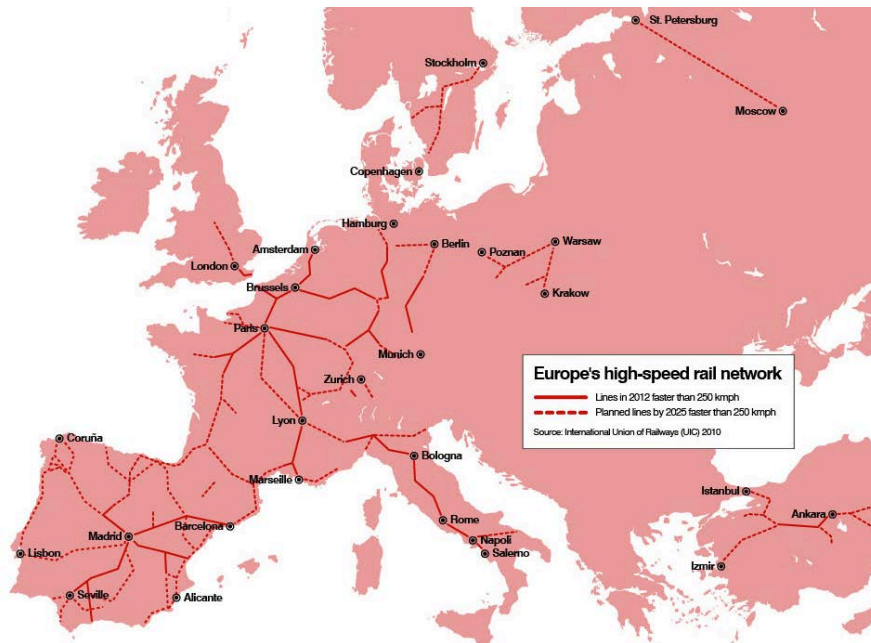
- The Japanese Tokaido Shinkansen (Tokyo-Osaka) opened in 1964
- TGV Sud-Est (Lyon-Paris) opened in 1981
- By June 2012, 6,637 miles of HSR were in operation in Europe
- Over 11,000 miles of HSR are being planned/under construction in Europe

Source:

<http://www.cnn.com/2012/06/22/travel/high-speed-rail-infographic/index.html>

High-Speed Rail Network

EU/US



EU: Operational + Planned HSR



US: 11 Authorized HSR Corridors

Source:

<http://www.cnn.com/2012/06/22/travel/high-speed-rail-infographic/index.html>

California and the US are already behind in HSR project development, and lengthy environmental lawsuits will worsen the problem.

- CA HSR project being discussed since 1981
- The High Speed Rail Development Act (1994) listed CA as a candidate location
- CHSRA formed in 1996 to plan and design CA HSR
- SB 1856 passed in 2002 (amended by SB 1169 in 2004) to authorize \$9.95 billion in bond financing CA HSR
- Prop 1A approved by voters in 2008, authorizing \$9.95 billion in GO bonds
- \$8 billion from the Feds under ARRA in 2009
- Planning and environmental work underway, and public review and comments procedures under NEPA/CEQA statutes ongoing

Ugly Politics

- Initial project cost: \$32 billion
(circulated among voters before Prop 1A polls)
- Revised project cost: \$42 billion
(revised after voters passed Prop 1A)
- California State Auditor critical of CHSRA's financial reports
- Updated business plan (2011) sets \$98 billion cost estimate
- Cost brought down to \$68 billion (new plan, new design in 2012)

Turning Friends into Enemies

- 56% of CA voters wanted the project to return to ballot (USC/LA Times poll in mid-2012)

“Never mind that the new, new, new plan bears so little resemblance to the one voters approved that going ahead with it now borders on ballot fraud.”

“How can anyone believe a word of what comes from the High Speed Rail Authority now?”

- San Jose Mercury News (mid-2012)

Reputational Damage

"Environmental review is not going to slow this project. What's going to slow this project is ineptitude by the high-speed rail authority, and that's what we have seen, at least in the last four years."

- Director, CA NRDC

In Sum

- A breakdown of consensus around the project
- Atmosphere of suspicion going into implementation
- Perceived anti-democratic behavior by the CHSRA

European HSR Development (First Phases)

- LGV Est (Vaires-sur-Marne to Baudrecourt)

Planning started in 1985; line opened in 2007 (22 years)

- TGV Lyon-Turin (through Susa Valley in Italy)

Planning started in 1991; line under construction (21 years +)

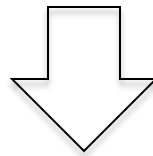
- LGV Méditerranée (Saint-Marcel-lès-Valence and Marseille)

Planning started in 1989; line opened in 2001 (12 years)

- Cologne-Rhine Main HSR (Germany)

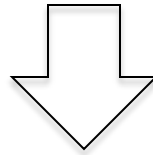
Planning started in 1985; line opened in 2002 (17 years)

- The experience led to major reforms in French planning practice
- Strategic planning began in 1989 – *violent anti-TGV protests* – line opened in 2001
- Environmental concerns + rejection of technocratic planning



- *Bianco Circular (1992)*
- *Collaborative design*
- *Decentralization of authority and project management*
- *College of Experts (1992)*
- *Constructive public debate platforms*
- *Barnier Law (1995), and National Commission of Public debate*

- “No-TAV” Movement in Susa Valley since early 1990s
- Concerns: Environmental degradation, adverse health impacts, and hazardous pollution
- Prime concern: Silvio Berlusconi’s central planning – Project exempted from EIA and PP under SIA (Italian Law No. 443/2001)



- *Withdrawal of project from SIA*
- *Restoration of democratic rights*
- *The “Lyon-Turin Environmental Observatory”*

However, protests continue...

European HSR Development (Second Generation)

- Environmental assessments for individual projects: Directive 2011/92/EU (“Environmental Impact Assessment” – EIA Directive)
- Environmental assessments for public plans and programs: Directive 2001/42/EC ('Strategic Environmental Assessment' – SEA Directive)
- Espoo Convention (1997; amended in 2001 and 2004): Obligations to assess environmental impact of certain activities at early stages of planning
- Aarhus Convention (2001): Access to environmental information, public participation in environmental decision-making, and access to justice

All projects and programs seeking EU funding must conform to the EIA and/or SEA directives.

Five EU environmental directives are applicable to the Ten-T HSR projects (+ individual laws of member states):

- Environmental Impact Assessment of projects (EIA Directive 85/337/EEC, and amended Directives 97/11/EC and 2003/35/EC)
- Strategic Environmental Assessment of plans and programs (SEA Directive 2001/42/EC)
- Conservation of natural habitats and of wild fauna and flora (Habitats Directive 92/43/EEC)
- Conservation of wild birds (Birds Directive 79/409/EEC)
- Water Framework Directive (no. 2000/60/EC)

Too Many Regulations?

"We're gonna remove some regulations, we're gonna speed things up and we're gonna protect the environment. But we're also gonna do it in a practical way, because there are too damn many regulations. Let's be clear about that!"

Still, Tons of Projects

- 268 projects amounting to EURO 6,486 million currently underway
- 30 projects earmarked as “Priority Projects” – 2020 deadline
- 28 out of 30 “Priority Projects” are railway projects

Extensive environmental reviews

and

An ambitious construction program

How?

- Heavily resourced public engagement
- Innovative public participation procedures to facilitate development – e.g. “Green Point” (storefront) offices in Hungary
- Quality control standards for EIRs/EISs
- Increased time frames for meaningful dialogues with the public – focus on capacity building

Concluding Thoughts on California, CEQA, and HSR

Concluding Thoughts

- No easy answers to California's conundrums
- We do not have policy prescriptions

Parameters of Debate

1. Balance of power between communities and larger democratic majorities
2. Institutional design of the CHSRA and democratic accountability
3. What type of reform?

High-speed rail and other large-scale, green projects enhance the state's environment and thus they should go forward even if community members object.

vs.

Communities should be entitled to stop projects in their neighborhoods that they don't approve of – it doesn't matter whether the project is green or not.

Institutional Design of CHSRA

- CHSRA is a Quasi Autonomous Non-governmental Organization – it is mission and outcome oriented
- State voting populace vs. affected communities
- Already insulates the CHSRA from community sentiment
- Democratic accountability and credibility have already been questioned

The Nature of Reform?

- Options for CEQA conduct of CA HSR:
 - Force the issue and power through the exemption
 - Consensus-based approach to exempt CA HSR from select CEQA provisions (short-term solution)
 - Careful revisiting of CEQA requirements, and legal reform through public reason (long-term solution)

The Nature of Reform?

- What should the rules for CEQA exemption (insulation from community power) be?
 - Economic and/or environmental gains
 - Small project size – bike lanes and infill project
 - Private sector projects – collective interests vs. individual property rights

International lessons

From international case studies, we learn that:

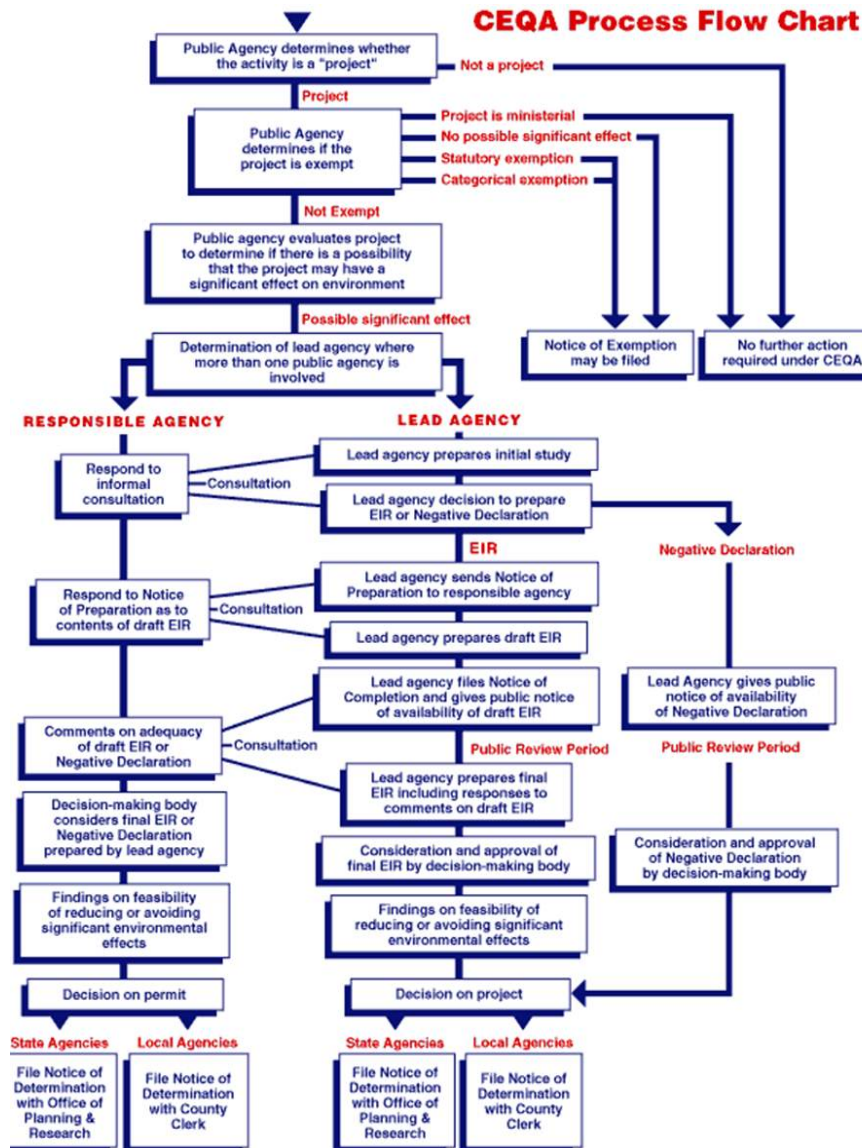
- Community members can and do find ways to halt projects – even if environmental review processes are bypassed
- EU Member States have actually expanded democratic practice and environmental review regulations based on HSR development experience
- HSR development without civic engagement is virtually impossible (long, slow, costly)

Bottomline

Communities do not need CEQA to stop projects –
courtrooms are only one battlefield

Civic engagement is not a barrier to development –
instead, civic engagement enables development

Suggestions?



Source:
<http://ceres.ca.gov/ceqa/flowchart/>