

Fall 2010

Under Review: Stadium Construction and State Environmental Policy Acts

Alex Porteshawver

Follow this and additional works at: <https://scholarship.law.marquette.edu/sportslaw>



Part of the [Entertainment, Arts, and Sports Law Commons](#)

Repository Citation

Alex Porteshawver, *Under Review: Stadium Construction and State Environmental Policy Acts*, 21 Marq. Sports L. Rev. 340 (2010)

Available at: <https://scholarship.law.marquette.edu/sportslaw/vol21/iss1/11>

This Symposium is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. For more information, please contact elana.olson@marquette.edu.

UNDER REVIEW: STADIUM CONSTRUCTION AND STATE ENVIRONMENTAL POLICY ACTS

ALEX PORTESHAWVER*

I. INTRODUCTION

State environmental policy acts (SEPAs) are designed to protect our environment.¹ SEPAs require, before any “state action” is implemented, completion of environmental review that analyzes the project’s potential negative environmental effects, available mitigation efforts to prevent those negative effects, and possible alternatives to the proposed state action.² A state action is, for example, either an action directly undertaken by a state agency, a state grant of money in the form of bonds, or the issuance of a lease, permit, or license.³ Even without any state involvement, six SEPAs require that environmental review be completed before any “local action” is taken, such as approving a private project.⁴ In addition to SEPAs, municipalities may choose to implement local environmental regulations pursuant to zoning and home rule powers—certain powers delegated to the municipality through the state constitution or legislative acts that allow the municipality to govern purely local affairs, such as specific, local environmental issues.⁵ Considering that state money is used to help with stadium building costs, that states often

* Alex Porteshawver received her JD from Marquette University Law School in May of 2010 and was awarded a Sports Law Certificate from the National Sports Law Institute. Alex is a 2007 graduate of Emerson College, where she earned her B.S. in Marketing and Management Communications. In December 2010, she graduated with her Master’s in Environmental Law & Policy from Vermont Law School. Alex is serving as an AmeriCorps VISTA, working as the Energy Program Coordinator for the City of San Joaquin in California.

1. Kathryn C. Plunkett, Comment, *Local Environmental Impact Review: Integrating Land Use and Environmental Planning Through Local Environmental Impact Reviews*, 20 PACE ENVTL. L. REV. 211, 211 (2002).

2. *Id.*

3. *E.g.*, N.Y. ENVTL. CONSERV. LAW § 8-0105(4)(i) (2009).

4. Catherine J. LaCroix, *State and Local Efforts to Restrict or Prohibit Select Corporations from Operating Within Their Borders: SEPAs, Climate Change, and Corporate Responsibility: The Contribution of Local Government*, 58 CASE W. RES. L. REV. 1289, 1290, 1295 (2008); Plunkett, *supra* note 1, at 215.

5. OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 112 (3d ed. 2009); LaCroix, *supra* note 4, at 1290.

take ownership of stadiums, and that states lease these facilities back to the teams, SEPA's require that any stadium proposal undergo environmental review before the state commits itself to the project.⁶

SEPA's also authorize state natural resource agencies to develop guidelines to ensure that environmental review actually happens. Unfortunately, some state agencies' guidelines exempt certain projects and actions from environmental review, including stadium projects. In addition, state legislators may even introduce bills that exempt certain projects and actions from having to comply with SEPA mandates. Recently, California has been the center of controversy concerning both an exemption found in the California Environmental Quality Act's (CEQA) guidelines⁷ and the recently passed Assembly Bill No. 81,⁸ both of which allow stadium developers to frustrate the purpose of the CEQA by either delaying or forgoing further environmental review of the project development plan. These situations raise important issues that must be addressed.

Part II will briefly explain the history of environmental review as it has been applied to sports stadiums and how environmental laws apply to stadium construction now. Part III will explore SEPA's general processes for environmental review. Part IV will explore some exemptions created by state natural resource agencies and an exemption passed by a state legislature post-SEPA promulgation. This section will then go on to explain how those exemptions apply to stadium construction, focusing on the recently approved plan for the San Francisco 49ers stadium in Santa Clara, California and the new NFL stadium in the City of Industry, a suburb of Los Angeles, California. Part V will discuss why these types of exemptions frustrate the purpose of SEPA's, are unsuited as applied to stadium proposals, and put the environment at risk. Finally, Part VI will provide some suggestions moving forward.

II. THE ENVIRONMENT AND STADIUM CONSTRUCTION

Beginning in the 1970s with the passage of the National Environmental Policy Act (NEPA), federal agencies had to consider the environmental implications of any federal action and then inform the public of any environmental consequences of that action.⁹ Soon, states followed suit. Over twenty-five states have passed their own SEPA's,¹⁰ and six states went further,

6. See D.C. CODE ANN. § 8-109.03 (2010); CAL. PUB. RES. CODE § 21065 (2009).

7. CAL. CODE REGS. tit. 14, § 15378(b) (2009).

8. Assem. Bill No. 81, 2009 Leg., 3d Extraordinary Sess. (Cal. 2009).

9. Conor O'Brien, Note, *I Wish They All Could be California Environmental Quality Acts: Rethinking NEPA in Light of Climate Change*, 36 B.C. ENVTL. AFF. L. REV. 239, 243 (2009).

10. CHARLES H. ECCLESTON, NEPA AND ENVIRONMENTAL PLANNING: TOOLS TECHNIQUES,

requiring environmental review of any local government action.¹¹ Environmental review consists of an initial study to determine possible environmental effects and then drafting and issuing an environmental impact report (EIR) describing in detail any potential environmental effects, appropriate project alternatives, and mitigation efforts.¹²

Stadium developers will probably need to conduct environmental review. For example, in California, stadium developers have had to comply with CEQA since the 1970s.¹³ In 1979, CEQA required the Board of Trustees of California State University to complete an EIR before it could approve construction of a new athletic stadium on California State University's Fresno campus.¹⁴ Almost forty years later, in Washington D.C., the Washington Nationals were required to prepare an environmental impact statement (EIS) before implementing any plans to build its stadium in 2008.¹⁵ These are just two examples of stadiums that had to comply with SEPAs; however, as awareness of the environmental impacts of large-scale development increases, states, cities, and teams should be aware of how stadium construction may affect the environment and what laws they must comply with to lessen those effects.

III. STATE ENVIRONMENTAL POLICY ACTS—EXACTLY WHAT IS REQUIRED?

Each SEPA has somewhat different requirements, yet the underlying structure is the same. This section will survey a few SEPAs to provide the basic framework for the environmental review process.

A. State Action Requirement

SEPAs require that environmental review be completed before any state

AND APPROACHES FOR PRACTITIONERS 67 (2008); O'Brien, *supra* note 9, at 257.

11. "The six states are California, Hawaii, Massachusetts, Minnesota, New York, and Washington. In addition, in North Carolina, local governments may require major development projects to submit environmental impact statements." LaCroix, *supra* note 4, at 1294 n.19 (citing N.C. GEN. STAT. § 113A-8 (2007)). The District of Columbia also requires that local action undergo environmental review. D.C. CODE ANN. § 8-109.03(b).

12. MINN. STAT. § 116D.04(2a) (2009).

13. See *Residents Ad Hoc Stadium Comm. v. Bd. of Trs. of the Cal. State Univ. and Colls*, 152 Cal Rptr. 585, 588 (Ct. App. 1979).

14. *Id.*

15. See D.C. CODE ANN. § 8-109.03. An EIS is the report required by NEPA, although some states refer to a similar report as an EIR. Compare Federal Highway Administration, *NEPA Documentation*, ENVIRONMENT.FHWA.DOT.GOV, <http://www.environment.fhwa.dot.gov/projdev/docueis.asp> (last visited May 2, 2010), with CAL. CODE REGS. tit. 14, § 15082 (2010); see generally *Nationals Park*, BALLPARKSOFBASEBALL.COM, <http://www.ballparksofbaseball.com/nl/NationalsPark.htm> (last visited May 2, 2010).

action is carried out.¹⁶ State action can encompass a number of different things, but for purposes of this paper, state action includes the following: state ownership interests in sports facilities, state financial support of stadium development, issuance of a lease or permit, or some combination of the three.¹⁷

B. Exemptions

Once it is determined that an action is subject to SEPA review, the lead agency, which can be a state or local government body, has to determine if the project is exempt from having to comply with the SEPA.¹⁸ A project is exempted by statute either because it falls within a broad category or because that specific project is exempted.¹⁹ For example, certain actions of a state legislature may be exempt from environmental review provided the actions do not negatively impact the environment,²⁰ or certain projects may go through an expedited review process in order to speed up construction.²¹ Other actions that are exempt may include issuance of air permits, school closures, unfinished nuclear power projects, and waste discharge permits.²² The state legislature usually gives the state natural resources agency the power to adopt guidelines so that these exemptions can be properly implemented. Other exemptions may be passed by the state legislature after the initial promulgation of the SEPA.²³ These exemptions are usually passed when the legislature feels that it is necessary for a particular project to be completed quickly because its incidental benefits, like jumpstarting the economy, are important.²⁴

Despite the existence of these exemptions, most projects will still have to undergo environmental review if they “*may* have a significant adverse impact on the environment.”²⁵ Because SEPAs are usually read broadly to ensure

16. Plunkett, *supra* note 1, at 211.

17. See D.C. CODE ANN. § 8-109.03.

18. CAL. CODE REGS. tit. 14, § 15061(a) (2010).

19. § 15061(b)(1)-(3).

20. N.Y. COMP. CODES R. & REGS. tit. 6, § 6.17.5(c)(1)-(37) (2009).

21. 301 MASS. CODE REGS. 11.09 (2009).

22. *E.g.*, DEPARTMENT OF ECOLOGY, SEPA HANDBOOK 2.3.3 (2003), available at <http://www.ecy.wa.gov>.

23. See *infra* Part IV for discussion of other exemptions.

24. Don Muret, *Raising the Stakes: Sports Facility Projects Desperate for Funding Pitch Their Ideas as Vital Components for Reviving a Stalled Economy*, SPORTSBUSINESSJOURNAL.COM, Jan. 12, 2009, <http://www.sportsbusinessjournal.com/index.cfm?fuseaction=article.preview&articleID=61142>.

25. See Plunkett, *supra* note 1, at 216 (emphasis added).

that projects do not degrade the environment, it is unlikely that a project developer will escape environmental review unless the statute or agency guidelines expressly exempt that action.²⁶ If a project developer still believes the project may be exempt from SEPA requirements, then the developer must petition the lead agency assigned to oversee the environmental review process to officially exempt the project.²⁷

C. Initial Determination

If the project is not exempt, then an initial study is completed to evaluate the proposed action, considering any significant environmental effects of the project and any possible mitigation efforts.²⁸ The lead agency considers all phases of the project, including implementation and operation, and may rely on technical studies or other scientific evidence to support its decision.²⁹ Once this initial review is completed, the reviewing agency determines whether a negative declaration is appropriate—meaning that the project will have no significant effect on the environment—or if a more detailed EIR is required because the project may adversely affect the environment.³⁰

D. Environmental Impact Report

The EIR is an analytical document that describes and analyzes significant environmental impacts, appropriate alternatives, mitigation efforts, and economic and sociological effects of the proposed project.³¹ This report is comprehensive and time-consuming because it requires the following: evaluation of scientific data, completion of environmental impact assessment statements and environmental studies, holding of public hearings, and eventually publishing the lead agency's findings concerning the project.³² In some instances, early public consultation will take place to avoid serious conflicts with any aspect of the project in the future.³³ Other consultations

26. *See id.* at 217, 221, 224, 252; *see also* O'Brien, *supra* note 9, at 256, 259.

27. *See* COUNTY OF SANTA CLARA PLANNING OFFICE, PETITION FOR EXEMPTION FROM ENVIRONMENTAL REVIEW 2 (2005).

28. CAL. CODE REGS. tit. 14, § 15063(c) (2010).

29. § 15063(a)(1), (3).

30. § 15063(b)(1); 301 MASS. CODE REGS. 11.01(2)(b). Some states require that, first, an environmental assessment is conducted, and after completion, the lead agency determines whether a more comprehensive environmental impact statement or report is required. Plunkett, *supra* note 1, at 217 (citing N.Y. COMP. CODES R. & REGS. tit. 6, § 617.6 (2010)).

31. MINN. STAT. § 116D.04(2a) (2010).

32. Plunkett, *supra* note 1, at 212.

33. *E.g.* CAL. CODE REGS. tit. 14, § 15083 (2010).

with local agencies, like water agencies, may also be required.³⁴ After these consultations, a draft EIR is prepared.³⁵ Then, the public is given notice that the report is complete and given an opportunity to comment on the draft.³⁶ The lead agency must then evaluate and respond to those comments either by modifying the existing EIR or by issuing reasons why particular comments were not integrated into the final EIR.³⁷ After this, the lead agency can then decide how to proceed with the project.³⁸

E. Judicial Review of Agency Decisions

After the lead agency makes a determination on how to proceed with the project, the agency's decision is often challenged. Individuals or groups of individuals affected by the decision may sue the lead agency alleging violations of the SEPA. For example, groups may challenge the decision not to prepare an EIR;³⁹ the evaluation of the information contained in the EIR, including the decision to implement one project alternative over another; or the decision whether to develop a detailed mitigation plan.⁴⁰ These groups may advocate for adoption of another project plan or different mitigation program, but it is unlikely that a court will substitute its judgment for that of the agency so long as the agency conducts a detailed evaluation of the project's environmental impacts.⁴¹ This deferential standard allows "flexibility of action and conduct of governmental agencies faced with . . . complex and difficult decisions which could affect the environment."⁴²

IV. SEPA EXEMPTIONS

Despite these requirements, statutory exemptions and those exemptions found in bills passed by state legislatures post-SEPA promulgation excuse certain projects and may exempt entire categories of projects from environmental review. It is usually left up to state natural resource agencies that have the necessary expertise to issue guidelines explaining certain parts of the statute including defining categorical exemptions and listing individual

34. *Id.*

35. §§ 15084, 15087.

36. §§ 15084, 15087.

37. § 15088.

38. § 15092.

39. *Wis.'s Envtl. Decade, Inc. v. Pub. Serv. Comm'n*, 256 N.W.2d 149, 152 (Wis. 1977).

40. *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 335-36 (1989).

41. *Wis.'s Envtl. Decade, Inc.*, 256 N.W.2d at 156-57; *See also, e.g., Dubois v. U.S. Dep't of Agric.*, 270 F.3d 77, 83 (1st Cir. 2001).

42. *Karlson v. City of Camarillo*, 161 Cal. Rptr. 260, 269 (Ct. App. 1980).

projects that have no significant effect on the environment.⁴³

A. Exemptions Found in SEPA Guidelines

There are certain exemptions found in regulatory guidelines that either excuse certain projects from environmental review or shorten the review process. New York's SEPA guidelines exempt legislative and gubernatorial actions so long as the action is not a Type I action and it does not have a significant adverse impact on the environment.⁴⁴ Type I actions may include adoption of a municipality's land use plan, granting of a zoning change, construction of new residential units, parking for one-thousand vehicles, and any project that involves a physical alteration of ten acres.⁴⁵ According to the CEQA guidelines, the Secretary of the Resources Agency may exempt certain projects from CEQA provided the projects do not have a significant effect on the environment.⁴⁶ The Massachusetts SEPA guidelines state that the Secretary of Environmental Affairs is allowed to shorten the environmental review periods for any project regardless of size or complexity with the consent of the Proponent (the person applying for the special review) and after consultation with any participating agency.⁴⁷

Especially relevant for stadium project developers are the CEQA and Minnesota SEPA regulatory guidelines, which exempt projects submitted to the people via referendum from environmental review.⁴⁸ In California, a citizen-sponsored proposal circulated and then placed on a ballot is not subject to environmental review because it is not considered a "project" under CEQA.⁴⁹ In Minnesota, submissions of proposals to a vote of the people are exempt from environmental review.⁵⁰

B. State Bills Exempting Certain Projects from Environmental Review

The previously discussed guidelines help to explain current exemptions found in SEPAs, yet state legislatures may also decide to pass new exemptions post-SEPA promulgation. Usually, these types of bills are introduced to

43. See CAL. CODE REGS. tit. 14, §§ 15260, 15300.

44. N.Y. COMP. CODES R. & REGS. tit. 6, § 617.5(b)(1)-(2), (c)(37) (2010).

45. § 6.17.4(b)(1)-(11).

46. CAL. PUB. RES. CODE § 21084 (2009).

47. 301 MASS. CODE REGS. 11.09 (2009). The special review procedure must still comply with the other provisions of the Massachusetts Environmental Policy Act. 11.09. *Id.*

48. CAL. CODE REGS. tit. 14, § 15378(b)(3); MINN. R. 4410.4300(34), 4410.4600(26) (2009).

49. § 15378(b).

50. § 4410.4600(26).

exempt a particular project or type of project from environmental review because of the project's incidental benefits. For example, in an attempt to expedite the construction of wind farms, Montana recently passed a bill exempting wind developers from conducting environmental review under the SEPA if the wind farm is on non-state-owned land.⁵¹ Montana also attempted to expedite the environmental review process for all projects by passing another bill limiting the ability of the public to appeal final agency decisions regarding environmental review of energy development projects.⁵²

C. Exemptions Applied to Stadium Construction

These exemptions apply to stadium development because stadium proposals are often submitted to the citizens so that they may approve or disapprove public financing of the project.⁵³ For example, the referendum exemption, found in the CEQA guidelines,⁵⁴ is particularly relevant in the context of stadium development and may stall or eliminate the need for environmental review. The San Francisco 49ers professional football team (49ers) recently took advantage of this exemption.

1. CEQA's Referendum Exemption and the New 49ers Stadium

The CEQA guidelines state that a citizen-sponsored plan, put to a vote of the people, is not a "project" under CEQA and, therefore, does not require environmental review.⁵⁵ Consequently, if a team is desperate to get the plans for its new stadium approved and move forward with construction, it can essentially delay the need for environmental review as required under CEQA until after a referendum vote on the proposed stadium plan.

The 49ers have done just that. In an effort to move ahead with construction of a new stadium in Santa Clara, California, the 49ers successfully obtained the requisite number of signatures to place the stadium measure on the June 8, 2010 ballot, and the citizens voted "yes."⁵⁶ To accomplish this, the 49ers funded the Santa Clarans for Economic Progress (SCEP).⁵⁷ The SCEP is a citizens group created to advocate for a Santa Clara

51. H.B. 529, 61st Leg. Reg. Sess. (Mont. 2009).

52. H.B. 483, 61st Leg. Reg. Sess. (Mont. 2009).

53. Andrew H. Goodman, Comment, *The Public Financing of Professional Sports Stadiums: Policy and Practice*, 9 SPORTS LAW J. 173, 213 (2002).

54. See CAL. CODE REGS. tit. 14 § 15378(b).

55. *Id.*

56. See *Team Hopes to Open Stadium in 2014*, ESPN.COM, June 9, 2010, <http://sports.espn.go.com/nfl/news/story?id=5267039>.

57. Posting of Neil deMause, *49ers Footing Nearly Entire Santa Clara Stadium Lobbying Bill*,

stadium.⁵⁸ The 49ers supplied SCEP with close to \$364,000 in cash and work time to help them adopt an appropriate proposal, circulate that proposal, and obtain the required number of citizens' signatures so it could be placed on the ballot.⁵⁹ In Santa Clara County, ten percent of the qualified voters from within the county are required to sign the petition before the proposal can be placed on a voting ballot.⁶⁰ This means that, if 4,640 signatures are obtained, the city council must either adopt the proposal as is or submit it to the voters.⁶¹ The SCEP garnered around 8,000 signatures, so this proposal appeared on the ballot.⁶²

Some individuals who were opposed to this plan, such as the owner of California Great America amusement park, took action to prevent this measure from even appearing on the ballot.⁶³ Cedar Fair filed a petition for a writ of mandamus against the City of Santa Clara as a way to stop the stadium plan from moving forward.⁶⁴ Although the California Superior Court dismissed this case in a brief order in the beginning of May 2010, holding that a "nonbinding agreement was not yet subject to environmental impact regulations,"⁶⁵ Cedar Fair still plans to appeal the decision.⁶⁶ Therefore, the following discussion will be helpful in understanding the possible analysis of this claim, assuming the Sixth District Court of Appeals remands the case to the Santa Clara County Superior Court to reevaluate the merits.⁶⁷ In addition, this analysis is important despite the outcome of this specific case, as this issue

FIELDOSCHEMES.COM, Feb. 4, 2010, http://www.fieldofschemes.com/news/archives/2010/02/4015_49ers_footing_n.html.

58. *Id.*

59. Posting of Neil deMause, *supra* note 57; Neil deMause, *Santa Clara 49ers Vote Set for June (Maybe)*, FIELDOSCHEMES.COM, Jan. 22, 2010, http://www.fieldofschemes.com/news/archives/nfl/san_francisco_49ers/.

60. SANTA CLARA COUNTY REGISTRAR OF VOTERS, COUNTY INITIATIVE INFORMATION 3 (2007).

61. *Id.* at 3, 6.

62. Lisa Fernandez, *Santa Clara: 49ers Stadium Supporters Turn in 8,000 Signatures*, OAKLAND TRIB., Jan. 12, 2010, available at 2010 WL 756223.

63. Joe Kukura, *Judge Blocks, Tackles 49ers Stadium Lawsuit*, NBCBAYAREA.COM, May 7, 2010, <http://www.nbcbayarea.com/news/politics/Judge-Blocks-Tackles-49ers-Stadium-Lawsuit-929-97149.html>.; Howard Mintz, *Judge Tosses One of Great America's Lawsuits over Stadium Deal*, MERCURYNEWS.COM, May 5, 2010, http://www.mercurynews.com/breaking-news/ci_15026179?nclick_check=1.

64. *See generally* Petition for Writ of Mandate, Cedar Fair L.P. v. City of Santa Clara, No. 1-09-CV-158836 (Cal. App. Dep't Super. Ct. filed Dec. 7, 2009) [hereinafter Cedar Fair Writ].

65. Kukura, *supra* note 63; Mintz, *supra* note 63.

66. Eli Segall, *Cedar Fair 49ers Stadium Lawsuit Dismissed*, SANJOSE.BIZJOURNALS.COM, May 6, 2010, <http://sanjose.com/sanjose/stories/2010/05/03/daily83.html>.

67. *Id.*

is likely to surface again in the context of stadium development.

When an agency has failed to perform a law-imposed duty, an individual may file a writ of mandamus asking the court to compel the official to perform that duty.⁶⁸ There are three requirements that must be satisfied to be successful when filing a writ of mandamus: (1) “there must be no other adequate relief” at law; (2) “the writ must be sought to enforce a duty imposed by law;” and (3) “the duty sought to be enforced must be a mandatory one.”⁶⁹ The first requirement is probably met because there is no other remedy at law that would require Santa Clara to prepare and consider a new EIR. The second requirement is met because CEQA requires that an EIR is prepared, circulated for public comment, and certified before any project can move forward.⁷⁰ The final question is whether the city had a mandatory duty to prepare an EIR when it first approved the term sheet. Cedar Fair believes that the Redevelopment Agency of the City of Santa Clara, the lead agency for this project, should be compelled to nullify the term sheet and conduct a new environmental study because an EIR was not prepared early enough in the development process.⁷¹

The California Supreme Court has addressed the timing of environmental review and held that EIRs “must be written late enough in the development process to contain meaningful information, but they must be written early enough so that whatever information is contained can practically serve as an input into the decision making process.”⁷² At the very least, an EIR must be completed before any project is approved—when a public agency commits itself to a course of action.⁷³ In *Tara v. City of West Hollywood*, the court held that “postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA’s goal of transparency in environmental decision-making.”⁷⁴ However, the court went on to hold that tentative agreements like purchase option agreements, memoranda of understanding, exclusive negotiating agreements, or other similar types of agreements do not trigger the CEQA requirement⁷⁵ because

68. REYNOLDS, JR., *supra* note 5, at 775.

69. *Id.*

70. CAL. CODE REGS. tit. 14, §§ 15080, 15083, 15087, 15090 (2009).

71. Cedar Fair Writ, *supra* note 64, at ¶ 24.

72. *Tara v. City of W. Hollywood*, 194 P.3d 344, 354 (Cal. 2008) (quoting *No Oil, Inc. v. City of Los Angeles*, 529 P.2d 64, 77 n.5 (Cal. 1974)).

73. *Id.* at 354-55.

74. *Id.* at 358.

75. *Id.* at 359.

this would place unneeded obstacles on the project developer.⁷⁶

The court failed to establish any bright-line rule as to when an EIR must be completed during the initial planning stages.⁷⁷ Therefore, Cedar Fair might ultimately be successful in asserting that Santa Clara had a mandatory duty to complete an EIR before it approved the term sheet. However, the term sheet is not necessarily a binding agreement because it merely sets out proposed terms of the project, leaving room for further negotiations. In this instance, the term sheet contained words that reserved rights to reject the proposed project and acknowledged that it was subject to subsequent review under CEQA—indicating that the proposal was not intended to be final.⁷⁸ However, Cedar Fair alleges that the term sheet was, in fact, binding and that, after the term sheet was approved, Santa Clara and the 49ers went on to develop and define all aspects of the project without consideration of its environmental impact.⁷⁹ If the court, on remand, were to determine that this term sheet was evidence of official approval and required Santa Clara to follow a specific course of action, it would likely force the city to go through the required environmental review process.⁸⁰ In the case of the 49ers stadium project, a subsequent EIR was completed after the original term sheet was approved.⁸¹ So long as Santa Clara's Redevelopment Agency contemplated the project's significant environmental impacts and any project alternatives to avoid those impacts or mitigation efforts, it is not required to adopt any specific measure going forward and may even choose a project alternative with more significant environmental effects than proposed alternatives.⁸²

Furthermore, even if the court orders further environmental review, the CEQA referendum exemption and recent approval of the stadium project means that any additional environmental review of the project will likely be less in-depth and more cursory than normal pre-project approval EIRs.⁸³ This is because the project has already gained city and citizen support, and the plan is moving forward with the new stadium expected to open in 2014.⁸⁴ In addition, because Cedar Fair was unable to block the June vote, it filed another

76. *Id.*

77. *See id.*

78. Cedar Fair Writ, *supra* note 64, ¶ 46.

79. *Id.* ¶ 23

80. *See* Jon Rainwater & Susan Stephenson, *Too Late in the Game: How Ballot Measures Undercut CEQA*, 28 GOLDEN GATE U.L. REV. 399, 402-03 (1998).

81. Cedar Fair Writ, *supra* note 64, ¶ 27.

82. CAL. PUB. RES. CODE § 21002 (2009).

83. Rainwater & Stephenson, *supra* note 80, at 422.

84. *Id.*; *Team Hopes to Open Stadium*, *supra* note 56.

lawsuit on April 12, 2010, alleging that the city of Santa Clara's EIR for the stadium project was insufficient and did not meet state standards.⁸⁵ Cedar Fair claims that the environmental review was merely cursory and not in-depth, like CEQA requires, in an effort to woo voters to approve the plan this past June.⁸⁶ This case is still pending, but a decision favorable to Cedar Fair could also help to uphold CEQA's purpose by requiring thorough environmental review at all stages of the project.

2. California Assembly Bill No. 81—The NFL Stadium Exemption

Another way for stadiums to circumvent the environmental review process is to lobby the state legislature and get a bill passed that exempts the project from further environmental review. In October of 2009, Majestic Realty Company convinced the California Legislature and Governor Schwarzenegger that a new stadium built in the City of Industry would benefit the nearby ailing Los Angeles economy.⁸⁷ Acting pursuant to the California Constitution, which allows the Governor to call a special session after declaring a fiscal emergency,⁸⁸ Governor Schwarzenegger signed California Assembly Bill No. 81 into law.⁸⁹ This law officially exempts from CEQA "any activity or approval, necessary for or incidental to, the development, planning, design, site acquisition, subdivision, financing, leasing, construction, operation, or maintenance of [the proposed NFL stadium]."⁹⁰

The stadium developer must still comply with the City of Industry's mitigation and reporting program developed in connection with this project,⁹¹ but this program does not necessarily protect the environment. CEQA requires that a reporting or monitoring program be established⁹² to ensure that the project developer complies with any changes and proposed mitigation measures set forth as a condition to the lead agency's approval of the project.⁹³ Although the City of Industry's program requires monitoring of the

85. John Coté, *Great America Owner Sues Santa Clara Again*, SFGATE.COM, Apr. 13, 2010, <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2010/04/12/BAGE1CTLO4.DTL&type=49ers>.

86. *Id.*

87. John Adams, *Los Angeles, Are You Ready for Some NFL Football?*, NBCLOSANGELES.COM, Jan. 7, 2010, <http://www.nbclosangeles.com/news/local-beat/Los-Angeles-Are-You-Ready-For-Some-Football-64701932.html>.

88. CAL. CONST. art IV § 10(f).

89. Assem. Bill No. 81, 2009 Leg., 3d Extraordinary Sess. § 7 (Cal. 2009).

90. *Id.* § 3(a).

91. *See id.* § 3(c).

92. CAL. PUB. RES. CODE § 21081.6(a)(1) (2009).

93. DWAYNE MEARS, MITIGATION MONITORING PROGRAM INDUSTRY BUSINESS CENTER REVISED PLAN OF DEVELOPMENT § 1.1 (2009) (discussing the purpose of any mitigation monitoring

construction process,⁹⁴ it does not require the developer or lead agency to conduct any further environmental review for any changes in the project plans that may require additional mitigation efforts.⁹⁵ Furthermore, for this program to have any real positive effect on the environment, the original EIR must have been completed in accordance with CEQA. The adequacy of the original EIR was called into question by the City of Walnut,⁹⁶ but the pending lawsuit against the City of Industry was nullified after Assembly Bill No. 81 was passed, preventing the court from evaluating the sufficiency of the original environmental review process.⁹⁷

V. WHAT DOES THIS MEAN FOR STADIUM DEVELOPERS IN THE FUTURE?

In the name of speeding up development and construction of stadiums, California has allowed stadium developers to delay or forgo environmental review. As of now, the Minnesota SEPA Guidelines contain the only other similar referendum exemption that might allow a stadium developer to circumvent the environmental review process.⁹⁸ In addition, no other governors have signed bills that specifically exempt stadium projects from further environmental review. Although state legislatures and stadium developers might be enticed by these types of exemptions as ways to lure teams to their states, these exemptions should not be implemented for the following reasons: (1) SEPAs' purposes must not be frustrated; (2) stadium referenda expand the exemption too far; and (3) these types of exemptions could harm the environment.

A. Fundamental Purpose of SEPAs: Protect the Environment

California and other states share the same purpose in passing SEPAs—to minimize the adverse environmental effects of various projects by requiring comprehensive environmental review.⁹⁹ However, allowing citizen-sponsored

program).

94. *Id.* § 2.3.1.

95. See Assem. Bill No. 81, 2009 Leg., 3d Extraordinary Sess. § 3(a) (Cal. 2009); *Waiving Environmental Review and Land Use Planning Requirements for Football Stadium Project: Hearing on Assembly Bill 81 X3 Before the Assem. Comm. on Appropriations*, 2009 Leg. Extraordinary Sess. (Cal. 2009) (report by Kevin De Leon, Chair, Assem. Comm. on Appropriations) [hereinafter *Waiving Environmental Review*].

96. Petition for Writ of Mandate ¶ 263, *City of Walnut v. City of Industry*, No. BS119780 (Cal. App. Dep't Super. Ct. filed Mar. 25, 2009) [hereinafter *City of Walnut Writ*].

97. See *Waiving Environmental Review*, *supra* note 95.

98. MINN. R. 4410.4600(26).

99. *E.g.*, CAL. PUB. RES. CODE § 21000 (2009); New York State Environmental Quality Review Act, N.Y. ENVTL. CONSERV. LAW § 8-0101; Washington State Environmental Policy Act, WASH.

stadium proposals to be submitted to a vote, without completing meaningful pre-project approval review, will frustrate the purpose of CEQA and any other SEPA. Without completing environmental review, citizens are put at a disadvantage because they are not able to evaluate all the potential adverse impacts of stadium projects before voting on a stadium plan.¹⁰⁰ In addition, even if an EIR has been completed, EIRs are very complex, lengthy documents containing many facts and figures that are hard to understand for the average person with no scientific training.¹⁰¹ Finally, citizens are forced to approve stadium projects “as is.” This means that, once the proposal gains community and political support and passes a vote, it will not undergo the same environmental scrutiny as it would have pre-referendum vote.¹⁰² In some instances, EIRs completed after citizen approval are merely a stamp of approval rather than a detailed analysis of any environmental impacts of the project or any project changes.¹⁰³ Therefore, the environmental consequences of the project will not be considered or mitigated like SEPAs originally contemplated.

B. Stadium Referenda Potentially Frustrate the Purpose of SEPAs

Utilizing the referendum exemption in the stadium development context will also frustrate the purpose of SEPAs. Referenda have long been employed as the best mechanism to approve financing of stadium projects.¹⁰⁴ Since the 1990s, twenty-seven of thirty-eight stadium referenda in all professional sports were passed.¹⁰⁵ Of those eleven referenda that were originally rejected by voters, ten stadiums were eventually built in some manner after a later vote was passed.¹⁰⁶ More often than not, citizens are convinced that building a stadium will spur nearby development, create new jobs, and attract new people

REV. CODE § 43.21C.010 (2009).

100. See Rainwater & Stephenson, *supra* note 80, at 409-10.

101. Joseph F.C. DiMento & Helen Ingram, *Science and Environmental Decision Making: The Potential Role of Environmental Impact Assessment in the Pursuit of Appropriate Information*, 45 NAT. RESOURCES J. 283, 284-85 (2005).

102. See Rainwater & Stephenson, *supra* note 80, at 422.

103. *Id.* at 404.

104. See Goodman, *supra* note 53, at 213.

105. Posting of James R. Riffel, *Chargers Stadium, Aztecs Hoops, Garland*, SANDIEGOSPORTSBLOG.COM, Jan. 27, 2010, <http://sandiegosports.blogspot.com/2010/01/chargers-stadium-aztecs-hoops-garland.html>; see also Paul Anderson, *An Economic and Legal Analysis of the Professional Sports Facility Lease*, in 10 SPORTS FACILITY REPORTS 20 (2009), available at <http://law.marquette.edu/cgi-bin/site.pl?2130&pageID=3956> (concluding that between 2000-2009 three out of five stadia referenda passed).

106. Riffel, *supra* note 105.

to the area.¹⁰⁷ Teams, cities,¹⁰⁸ and citizens want to attract and keep professional sports teams because a team has the ability to create “national press, media exposure, entertainment value, . . . and [positive] economic and fiscal impacts.”¹⁰⁹ Some of these impacts include a boost in tourism revenues, an increased number of businesses surrounding the stadium, and an ability to use the stadium for special events like concerts or conferences.¹¹⁰ Even politicians, like Arnold Schwarzenegger, put their support behind building the new stadiums because of the potential economic benefits to that location and the surrounding areas.¹¹¹

In addition, teams also stand to benefit from a new stadium and so will sometimes take time to unite and tailor information about the project so that the citizens see it in the best light.¹¹² This is what happened in Santa Clara; the 49ers took time to fund the SCEP to explain the complicated terms of the stadium plan¹¹³ and to provide a positive message that would appeal to Santa Clarans.¹¹⁴ This effort resulted in obtaining the requisite number of signatures needed for the stadium proposal to be placed on the ballot in June.¹¹⁵ In the beginning of March 2010, likely voters were polled asking whether they would vote “yes” on the stadium proposal in June 2010.¹¹⁶ Then, the results indicated a forty-five/forty-five split, but the two hundred voter sampling group was only a small portion of the voters, and the questions asked of these voters did not include project details such as the benefits of a stadium in Santa Clara or the projected costs of the project.¹¹⁷ Another survey indicated that fifty-four percent of citizens opposed spending public monies to subsidize the

107. *E.g.*, KEVIN J. DELANEY & RICK ECKSTEIN, PUBLIC DOLLARS, PRIVATE STADIUMS: THE BATTLE OVER BUILDING SPORTS STADIUMS 37 (2003).

108. *See e.g.*, Complaint for Declaratory Relief ¶ 6, *City of Seattle v. The Prof'l Basketball Club, LLC*, 2007 WL 5262606 (W.D. Wash. Oct. 9, 2007) (No. 07CV1620).

109. Martin J. Greenberg, *Sports Facility Financing and Development Trends in the United States*, 15 MARQ. SPORTS L. REV. 93, 112 (2004).

110. Frank A. Mayer, III, *Stadium Financing: Where We Are, How We Got Here, and Where We Are Going*, 12 VILL. SPORTS & ENT. L.J. 195, 213 (2005).

111. *Gov. Schwarzenegger Signs Bill to Give L.A. Stadium Exemption*, CBSSPORTS.COM, Oct. 22, 2009, <http://www.cbssports.com/nfl/story/12404582>; Muret, *supra* note 24.

112. Goodman, *supra* note 53, at 214.

113. Howard Mintz, *49ers Pump More Than \$1 Million Into Pro-Stadium Campaign in Santa Clara*, SAN JOSE MERCURY NEWS, Mar. 22, 2010, at Sports.

114. *See id.*

115. *See id.*

116. Tracy Seipel, *Poll: Backing for A's, 49ers Plans*, SAN JOSE MERCURY NEWS, Mar. 2, 2010, available at 2010 WL 4460304.

117. *Id.*

new stadium's costs.¹¹⁸ However, a spokeswoman for the SCEP claimed that, once the voters were made aware of the stadium benefits, including that it could be built by implementing a hotel tax¹¹⁹ and using general public funds already budgeted for by the city instead of increasing residents' taxes, the Santa Clara citizens will vote "yes."¹²⁰ Her prediction was correct, as the referendum was passed on June 8, 2010.¹²¹

Considering these pre-referendum surveys, the efforts of the SCEP, and the recent June vote, it is likely that the continued application of the referendum exemption to stadium proposals will most likely result in an expansion of this exemption. This will work to frustrate the fundamental purpose of CEQA and potentially other SEPA's that require comprehensive environmental review at the earliest possible stage of project development.¹²²

C. Harmful Effects on the Environment

Allowing the creation or expansion of a referendum exemption allows stadium developers to ignore many negative environmental impacts of stadium projects. If a meaningful environmental review was completed at the earliest possible stage of the project, certain aspects of the project could be altered or mitigation efforts put in place to reduce the project's effect on the environment.

There are many harmful effects of stadium construction. Commercial construction projects, including stadium projects, use sixty percent of the raw materials, such as wood, gravel, and sand, that the United States consumes each year.¹²³ In general, building construction uses mass amounts of freshwater, energy, wood, and steel, all of which may be transported from locations far away from the project site.¹²⁴ Transporting these materials from long distances correlates to increased carbon dioxide emissions from the

118. *Poll: Santa Clara Unsure About Stadium*, CBS5.COM, Feb. 8, 2010, <http://cbs5.com/politics/49ers.santa.clara.2.1480575.html>.

119. Howard Mintz, *Santa Clara Moves Toward Hotel Tax for 49ers Stadium Deal*, SAN JOSE MERCURY NEWS, Mar. 31, 2010, at Sports.

120. Mintz, *supra* note 113; *Poll: Santa Clara Unsure About Stadium*, *supra* note 118; see also MARTIN J. GREENBERG, *THE STADIUM GAME* 172 (2d ed. 2000); see also Gregory W. Fox, Note, *Public Finance and the West Side Stadium: The Future of Stadium Subsidies in New York*, 71 BROOK. L. REV. 477, 489-90 (2005).

121. *Team Hopes to Open Stadium in 2014*, *supra* note 56.

122. Rainwater & Stephenson, *supra* note 80, at 426; see generally CAL. PUB. RES. CODE § 21000.

123. Sara C. Bronin, *The Quiet Revolution Revived: Sustainable Design, Land Use Regulation and the States*, 93 MINN. L. REV. 231, 243 (2008).

124. *Id.*

vehicles carrying these materials.¹²⁵ In addition, many stadium projects fail to incorporate recycled building materials, increasing construction waste.¹²⁶ Some projects require that national parkland be turned into parking lots.¹²⁷ Other projects elevate air pollution by increasing traffic,¹²⁸ and some may even affect aquatic ecology if located near a water body like the 49ers proposed for the 1997 San Francisco stadium.¹²⁹ In the case of the new NFL stadium in the City of Industry, those who opposed the project claimed there would be increased noise from the trash service, deliveries, and cleanup activities and that the stadium would be built on one of the largest remaining open-space areas harming native trees, riparian habitat, and rare grasses.¹³⁰ Post-construction stadium operations also consume massive amounts of natural resources, including millions of gallons of water for annual maintenance to fields¹³¹ and thousands of kilowatt-hours of electricity.¹³² For example, the new Dallas Cowboys stadium uses roughly 2,036,560 kilowatt-hours of electricity per month or 24,439,918 kilowatt-hours per year.¹³³ This is the same amount of energy the city of Santa Monica, California uses annually.¹³⁴

Stadium developers must consider all of these possible environmental impacts when they begin their planning process. However, if a stadium proposal is passed via referendum, developers may delay environmental review until after significant political and economic support has been built, resulting in abbreviated review, or may avoid future environmental review of

125. *Id.*

126. *Id.*

127. Letter from Tri-State Transportation Campaign to Christine Quinn, City Council Speaker (Mar. 22, 2006), available at http://www.tstc.org/press/2006/032206_Sign-on_Letter_to_Speaker_Quinn-Yankee_Stadium.html.

128. See Charlotte Aguilar, *Bellaire Mayor Challenges Dynamo Stadium Plan; Other On Board*, HCNONLINE.COM, Jan. 28, 2010, http://www.hcnonline.com/articles/2010/01/28/bellaire_examiner/breaking_news/be_dynamo_stadium.txt; Fernanda Santos, *Metro-North Station Opens at Yankee Stadium*, N.Y. TIMES, May 21, 2009, available at <http://cityroom.blogs.nytimes.com/2009/05/21/metro-north-station-opens-at-yankee-stadium/>.

129. Rainwater & Stephenson, *supra* note 80, at 414.

130. City of Walnut Writ, *supra* note 96, ¶¶ 6, 7 (alleging the City of Industry violated various parts of CEQA in relation to approving plans for the new NFL stadium). Assem. Bill No. 81 nullified this and any other pending lawsuits with respect to the NFL stadium project. Assem. Bill No. 81, 2009 Leg., 3d Extraordinary Sess. § 4 (Cal. 2009).

131. City of Walnut Writ, *supra* note 96, ¶ 115.

132. Bronin, *supra* note 123, at 244.

133. Owen Glubiak, *Cowboys New Stadium a Reminder of How to Waste Energy*, POWERMANAGEMENTDESIGNONLINE.COM, Aug. 18, 2009, <http://www.powermanagementdesignline.com/news/219400444>.

134. *Id.*

the project altogether if the state legislature passes a bill specifically exempting the project from having to comply with the SEPA.¹³⁵ For example, there is still some debate about whether an EIR was prepared early enough in the 49ers' planning process to adequately consider any environmental impacts and any alternatives or mitigation efforts to lessen the negative environmental impacts of the project. On appeal, Cedar Fair might be successful in getting the Court of Appeals to compel the 49ers to complete a new EIR, either because it was not prepared early enough in the development process or because the contents of the EIR were insufficient according to CEQA guidelines. However, because the referendum was approved in June, any subsequent EIR would likely be a "post-hoc rationalization" or a report that evaluates the already approved stadium project and concludes without hesitation that the project can go forward.¹³⁶ This happened previously when the 49ers submitted a proposal for the Candlestick stadium project.¹³⁷ After the project passed a referendum, the lead agency approved the project with little evaluation of significant environmental impacts, including "potential adverse affects on air quality, traffic, and pollution."¹³⁸

Farther south in the City of Industry, the city can approve specific actions, e.g., changes in the NFL stadium construction plan or alteration of stadium design, without remaining consistent with this general plan.¹³⁹ It is true that the new NFL stadium general plan has gone through many levels of environmental review that show a reduction in diesel emissions, reduced overall air quality impacts, and less traffic annually.¹⁴⁰ The previously discussed Assembly Bill No. 81 even requires the stadium to comply with a mitigation monitoring and reporting program, which will ensure that mitigation efforts that were a condition of the original project approval are carried out and reported to the city.¹⁴¹ Nevertheless, any subsequent changes in the project will not be reviewed in accordance with CEQA procedures.¹⁴² Usually, when an aspect of the project is changed that may have a significant impact on the environment, the lead agency must either complete a

135. Assem. Bill No. 81, § 3(a); Rainwater & Stephenson, *supra* note 80, at 404.

136. Rainwater & Stephenson, *supra* note 80, at 404, 423.

137. *Id.* at 421. The project failed to get off the ground because there was public concern about using the bond money to fund stadium costs. *San Francisco 49ers Announce Update on Design Plans for New Stadium at Candlestick Point; Team . . .*, ALLBUSINESS.COM, July 17, 2006, <http://www.allbusiness.com/banking-finance/financialmarkets-investing-securities/5339984-1.html>.

138. Rainwater & Stephenson, *supra* note 80, at 404, 421.

139. Assem. Bill No. 81 § 2.

140. *Id.* § 1(l)-(m).

141. *Id.* § 1(j); MEARS, *supra* note 93, § 1.1.

142. Assem. Bill No. 81, § 3.

supplemental EIR where the public will again be given the opportunity to comment or issue a negative declaration.¹⁴³ Here, subsequent actions can be approved without opportunity for public comment and even if they are not consistent with the original EIR.¹⁴⁴ Therefore, the initial positive efforts ensuring that the surrounding environment would be protected may ultimately be rendered ineffective.

VI. SUGGESTIONS FOR THE FUTURE

The risks associated with the two types of exemptions previously discussed create an opportunity for improvement. This section's purpose is to highlight a few suggestions and ideas that should be considered as states continue to implement, change, and expand the reach of SEPA and legislature exemptions. Although the best idea may be to alter the environmental review process completely when it comes to stadium projects, this paper is not focused on that sort of detailed environmental and policy analysis. Instead, it will provide some important areas for consideration in moving forward.

A. Eliminate or Alter the Exemption

The CEQA referendum exemption will effectively allow the 49ers to avoid preparing an EIR at the earliest stage of development and thwart the efforts of Cedar Fair to compel the 49ers to complete a new EIR before the project is approved. When the last 49ers stadium proposal was approved via referendum and environmental review was curtailed, some suggested the solution was to eliminate the exemption or to eliminate the exemption for certain citizen-sponsored measures on development projects.¹⁴⁵ Again, this may be the solution here. Because stadium referenda are passed at such an overwhelming rate, the exemption is broadened beyond what is compatible with CEQA or any other SEPA's purpose. By eliminating the exemption for stadium projects, environmental impacts would be considered at an earlier stage instead of after the voters have approved a project.

California should also consider altering this exemption because of the flaws in the current process. For example, California could require that the environmental impacts of any project be explained to citizens before they vote so that they are aware of the project's environmental impacts and the possibility that environmental review may be more limited once the project is approved. This would not only ensure that the environmental impacts were

143. CAL. CODE REGS. tit. 14, §§ 15162, 15163.

144. See Assem. Bill No. 81 § 2.

145. Rainwater & Stephenson, *supra* note 80, at 426.

meaningfully considered at an earlier stage in the project, but it would be in line with many of CEQA's fundamental goals of evaluating environmental data at the earliest possible stage and providing for meaningful public participation.¹⁴⁶

B. Community Benefits Agreements

Aside from altering CEQA, any other SEPA, or state resource agency guidelines, states may want to consider other tactics that would guarantee thorough environmental review of stadium projects. Community Benefits Agreements could provide a unique opportunity for stadium developers to engage citizens in a meaningful way and educate them about specific aspects of the project, including environmental impacts. These agreements are the product of negotiations between developers and community-affiliated groups.¹⁴⁷ "Typically, a [large-scale real estate developer] agrees to modify the project or promises various benefits, in return for the community's promise to support the project through the approval processes for government permits or subsidization."¹⁴⁸ For example, one agreement was negotiated between the New York Yankees and a handful of elected bodies for the construction of the new Yankee Stadium so that issues concerning financing could be worked on.¹⁴⁹ These agreements may also be focused on environmental issues. Recently, the Association of the Bar of New York called for greater involvement in the environmental review process between New York City and the community during the planning of any large-scale projects in the city.¹⁵⁰

Here, an agreement could be developed between the stadium developer and the citizens. This agreement could contain specific information pertaining to any environmental effects of the project. Working with the developer would give the public an opportunity to express concerns about the project's negative environmental effects or propose alternatives to specific portions of the project at a "visible movement," ensuring that legitimate concerns are not simply disregarded by the developer.¹⁵¹ These agreements would not replace

146. *E.g.*, CAL CODE REGS. tit. 14, §§ 15083, 15086, 15087, 15088.5; D.C. CODE § 8-109.03(a)(1)-(11) (LexisNexis 2010); 1 N.C. ADMIN. CODE 25.0604 (2009).

147. *See* Naved Sheikh, Note, *Community Benefits Agreements: Can Private Contracts Replace Public Responsibility?*, 18 CORNELL J.L. & PUB. POL'Y 223, 224 (2008).

148. *Id.* at 224.

149. *Id.* at 231. This community benefits agreement was questionable because the officials who worked on the agreement would be administering it and the public was not directly involved with this agreement. *Id.*

150. *See id.* at 243.

151. *Id.* at 242.

environmental review processes set out in CEQA or other SEPAs. Instead, these agreements would serve as an additional process ensuring that the public is aware of any potential environmental effects before they vote “yes” on the project proposal.¹⁵² In addition, this knowledge might spur the public to lobby the state legislature and prevent the passage of future bills that exempt projects from environmental review.¹⁵³

The project developer may also find value in entering into this type of agreement with the community because the community will have the opportunity to voice its concerns during all of the planning and development stages. By addressing concerns as they arise, the development process is less likely to be stalled by lawsuits challenging the developer’s compliance with SEPA. In the case of the 49ers stadium, if the 49ers had entered into this type of agreement, Cedar Fair could have expressed its concerns about compliance with CEQA at an earlier stage of development. These concerns would have been addressed and would have possibly eliminated the need for Cedar Fair to file either lawsuit and jeopardize the project.

VII. CONCLUSION

Many states recognize the importance of protecting the environment and have passed SEPAs. These SEPAs require that stadium projects undergo environmental review; however, state natural resources agency guidelines exempt certain projects from having to complete environmental review. The citizens of Santa Clara voted “yes” on June 8, 2010 based on the stadium’s economic and social benefits, effectively nullifying Cedar Fair’s attempt to get Santa Clara to conduct pre-project approval review that would have sufficiently ensured the environment was protected and CEQA’s purpose was upheld. Now, the project has already gained citizen and city support, and as a result, any additional environmental review will be more cursory and possibly insufficient under CEQA guidelines. In addition, the California Legislature passed Assembly Bill No. 81, which exempted the new NFL stadium in the City of Industry from further environmental review under CEQA. Both of these exemptions thwart the purpose of CEQA and would surely frustrate the purpose of other SEPAs should similar exemptions be implemented in other states.

California should begin by either eliminating or altering its referendum exemption. If other states wish to implement a similar exemption, significant alterations need to be made to ensure that stadium developers seriously

152. *See id.* at 224.

153. *See id.*

consider environmental impacts at all planning and development stages. Community Benefits Agreements would also help to ensure that environmental effects are made known to the public and that stadium developers consider these effects at all stages of the project. Whichever route California and other states decide to pursue, it is important to prevent the negative environmental effects of stadium construction and uphold the fundamental purposes of SEPA's.