Is CEQA Preventing Housing from Being Built in California?

No, say CEQA experts at legislative hearing

By Melanie Curry | Mar 13, 2019 | 4

Two Senate committees—Judiciary and Environmental Quality—held a joint informational hearing yesterday to discuss whether the California Environmental Quality Act is slowing or impeding housing production across the state. It is not, said several CEQA experts.

Committee members heard testimony from Terry Rivasplata, a planner who has worked on CEQA issues for over forty years and teaches about CEQA for the University of California extension programs and Justice Ronald Robie, a judge with the California Court of Appeal.
who works on CEQA issues and trains other judges to do so. A team of researchers from UCLA also presented their investigation of claims that California environmental law is being abused to hold back development or for personal gain.

Their conclusions were that most of the time the CEQA process does not unduly delay projects, and that few projects even end up in court. CEQA lawsuits that do take place are usually about whether exemptions and streamlining rules were properly applied, rather than potential environmental harms.

Other impediments do more to delay or stop housing projects, they said. Developers may walk away because they have their own business issues, or can’t put the funding together, or can’t find a suitable site, for example. Complex local planning processes and procedures can slow projects; local opposition that has nothing to do with environmental issues can arise; high developer fees can discourage development.

“Are these greater problems than CEQA?” asked Committee Chair Hannah Beth Jackson. “They are at least of equal concern.”

Jackson didn’t exactly hide her agenda for holding the hearing. “We’re here to talk about the mythology that CEQA stops development, and debunk it as far as it can be debunked,” she said. “We’re here to ask whether CEQA truly is the source of the housing crisis, as some allege,” she said.

Rivasplata gave an overview of what CEQA is—and is not. It is not a regulation, he said, “but a procedure used to identify potential problems.” It does take time to comply with the law—anywhere from three months to five years, depending on whether a full Environmental Impact Report is required. And that depends on the type of project and whether it qualifies for some of the exemptions and streamlining efforts that the legislature has put in place in an attempt to “fix” CEQA.

But the withdrawal of projects during the CEQA process is overstated, he said. “And we’re not even sure that CEQA is the cause of a developer backing out.”

The UCLA team found that every one of the nine cities it studied requires discretionary review to almost all housing projects in their jurisdiction, even those that comply with the local zoning code. That is a local option, not something that the state or CEQA requires. The pace of development seems to be driven by that discretionary review, they said, not CEQA, and design is the primary mechanism used to require that review.
In other words, cities are using aesthetics to slow down housing production, not environmental law.

Although one law firm has released a study they say shows that infill developments are disproportionately subject to CEQA litigation, other researchers have disagreed, strongly, and still other studies have found that overall CEQA litigation rates are low.

A few of the legislators weren’t convinced, notably Andreas Borgeas (R-Fresno), who went ahead with prepared comments that began: “CEQA has been frankensteined…. CEQA threatens and discourages projects from moving forward,” he said.

“Your report says there is no evidence that CEQA poses a major barrier to development,” he said, “and yet the Governor [has] talked of the need for CEQA reform. Does the governor have it wrong?”

Rivasplata responded that adverse impacts from CEQA tend to affect large, high-profile projects, although not a large percentage of those—& not enough to have an affect on housing production numbers throughout the state. CEQA can discourage projects that aren’t good ones to begin with, he added, and it brings to light environmental issues that can be settled before a project gets built.

Borgeas wanted to know whether the threat of lawsuits discouraged projects from being built. “I have no idea,” responded Justice Robie. “There are relatively few lawsuits [compared to the number of projects]. Anecdotally we’ve heard information about issues being settled directly with developers out of court, but we don’t know how many. We just know that the vast majority [of projects subject to CEQA] are not in court.”

Although Jackson had said at the outset that the purpose of the hearing was to listen, not “fix” CEQA, Robie did point out that most delays blamed on CEQA come from the preparation of materials like Environmental Impact Reports. “That could be changed to make it happen more quickly,” he said. He also pointed out that many of the so-called CEQA lawsuits are not about environmental issues, but instead tend to be about “ancillary issues that don’t actually deal with whether CEQA is being used correctly.”

The hearing finished up with public comments, most of which emphasized the importance of CEQA as a tool for communities to find out about and weigh in on projects that affect them. A representative from the Western Center for Law and Poverty said “It’s frustrating to watch CEQA be blamed for the housing crisis. It’s also important to note that projects change
throughout the CEQA process.... The heart of CEQA is the information it provides, and the way that can improves projects... and prevent projects that are harmful to the environment.
Kevin Withers • 2 months ago
CEQA the boogieman? Laughable. It's always been the whipping boy and an excuse for failed projects. Just. Like. Prop 13.

Jeffrey Baker • 2 months ago
Developers all know that if they don't spread the cash around to the right people there can be CEQA actions. It doesn't seem like the lack of suits proves anything, and there's plenty of anecdotal examples of suits being filed by unions or "community benefits" organizations that are later dropped after the right payments are made. Although this case was not about housing, this article describes how the CEQA shakedown works. https://www.voiceofsandiego...

Kirk Effinger • 20 days ago
This "analysis" is so clearly biased from the outset, it's laughable. To claim that delays and outright legal extortion being enabled by CEQA abuse isn't having an effect on our housing development is academic and legislative malpractice.

Rob Anderson • 2 months ago
Recall that the SF Bicycle Coalition joined Walmart in objecting to
Bloom acknowledged that last month’s legislative action on housing was indeed a turning point.
After 4 Years, Key Rule Requiring Development to Account for New Miles Driven Moves Forward

By Melanie Curry | Nov 28, 2017

Yesterday the California Office of Planning and Research released a comprehensive update to CEQA. It marks a milestone in efforts to align transportation performance metrics with community values.

The Next Step in Getting Rid of Level of Service: Coming Soon

By Melanie Curry | Oct 9, 2015

After several years of work, the Governor’s Office of Planning and Research (OPR) is almost ready to release draft guidelines on replacing vehicle Level of Service measures under the California Environmental Quality Act (CEQA). The shift was called for by Senate Bill 743, which passed late in the 2013 legislative session. OPR will propose measuring [...]
Legislative Update: Bills Supporting More, Fairer, and Infill Housing

By Melanie Curry  |  Sep 7, 2018

Bills that make changes to the way regions set and enforce housing allocations, that expand exemptions from the California Environmental quality Act, and that affirm fair housing rules.
L.A. Transpo Committee Denies CEQA Challenge Against Mar Vista Great Streets
By Joe Linton | Feb 28, 2019
Committee affirmed that the Mar Vista Venice Boulevard Great Streets project is exempt from CEQA review under state law.

State Releases Proposed Rules That Would Finally End LOS in Enviro. Law
By Damien Newton | Jan 22, 2016
Earlier today, the State of California released its anticipated final draft set of changes to the state’s environmental law, the California Environmental Quality Act (CEQA). Under the new CEQA rule, environmental studies will use measurements that better correspond to actual environmental costs and benefits. This realigns the CEQA process to foster better transit, more walking and bicycling, and […]

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