



CEQA RELIEF FOR HOUSING

ISSUE

The California Environmental Quality Act (CEQA) was established under Governor Reagan in 1970 to disclose significant environmental impacts created by development projects so policy makers can make informed decisions. Unfortunately, what began as a well-intentioned law to protect the environment has been used by many, including labor unions and no-growth advocates, as a tool to delay and block construction, especially housing. This has severely hampered the entire development process by adding expense and delay, thus contributing to the housing crisis we are experiencing today.

BACKGROUND

The State is facing a housing shortage of 3-4 million units and is not on track to meet that demand. CEQA delays further exasperate this shortage. In 2018, bills that encouraged greater housing opportunities through density and streamlined efforts failed passage because of special interest and local jurisdictional opposition. Over 80 percent of the construction projects challenged under CEQA are higher density infill construction projects that are already located in developed areas, arguably less impactful to new environmental concerns.

Even affordable housing projects face CEQA challenges. In 2018, one property owner and a firm of attorneys delayed the construction of a 20-unit housing project in downtown Redwood City by Habitat for Humanity. The case was eventually resolved in favor of the project, but the housing delivery was delayed, and project costs increased.

EXISTING LAW

Projects that fall under CEQA not only include any development that requires discretionary review by a jurisdiction, but also Municipal Plan updates that jurisdictions undertake to alleviate the housing crisis. These projects often require the preparation of a costly and time-consuming environmental impact report (EIR). Virtually any entity or individual can file a CEQA lawsuit to challenge an EIR, and litigant groups often hide the identity of their members and/or litigation funding source.

Often these suits appear frivolous and are the source of CEQA abuse. This can delay a project for years until a decision is made by the court and can be extremely costly. Even when a case is resolved in favor of the local agency and applicant, the costs, delays and fees incurred must be absorbed by the developer and are ultimately passed on to the homeowner/renter in the form of higher housing costs.

SOLUTION

The following recommendations address the ways CEQA relief can be applied to housing during an emergency housing crisis:

Local

- Update guidelines for thresholds of significance and implement all applicable statutory and categorical exemptions

State – Support California Building Industry Association (CBIA) strategies:

- Extend CEQA benefits previously set-aside for high-profile development projects, such as sports stadiums, to all housing projects
- Eliminate multiple lawsuits against the same project, and limit CEQA lawsuits by applying federal standing rules to CEQA petitioners
- Create a presumption of compliance with other environmental laws
- Provide more transparency and disclosure in CEQA litigation by requiring the identities of those who financially support CEQA litigation
- Eliminate CEQA review duplication for projects that are already contemplated by existing EIRs
- The Office of Planning & Research (OPR) should also be directed to update the CEQA Guidelines to clarify and encourage the use of "tiering" to eliminate duplicative environmental review for projects that comply with previously adopted plans that were implemented after CEQA review
- Establish response times for all public agency permits