

TO: James L. App, City Manager

FROM: Ed Gallagher, Community Development Director

SUBJECT: CEQA Reform

DATE: April 2, 2013

NEEDS: For the City Council to consider options for participation in CEQA Reform.

FACTS:

1. On February 22, 2013, Senator Steinberg introduced SB 731 to pursue strategies to reform the California Environmental Quality Act (CEQA). Presently, this bill is in "placeholder" format; it includes legislative findings but has yet to be fleshed out with actual amendments to CEQA Code Sections.
2. Attached is a bullet list of key elements for SB 731 prepared by Senator Steinberg's Office. The overarching reasons cited for CEQA reform are related to fostering economic recovery and continued economic development.
3. A coalition of organizations that support CEQA Reform known as the "CEQA Working Group" has been established. Participating organizations in this group include realtors, economic development, chambers of commerce, building industry association, etc. Attached is a list of participating organizations as of March 22.
4. The CEQA Working Group has prepared a list of "Policy Principles for CEQA Modernization" and a list of Questions and Answers related to this effort. These lists are attached.
5. The CEQA Working Group's web site, www.ceqaworkinggroup.com, also includes case studies demonstrating how CEQA has been used to thwart economic development and public improvement projects that appear to have relatively mild adverse environmental impacts but also have considerable beneficial environmental effects. One case study, for the proposed Netflix campus expansion in Los Gatos, is attached.

ANALYSIS &

CONCLUSION: The body of environmental laws has continued to swell in recent years. CEQA documents must now address Low Impact Development, air quality and climate change, an increased number of biological resources, and other concerns. Consequently, the opportunities for legal challenge that could forestall economic recovery and development increase proportionately.

If the Council desires to participate in the CEQA Reform effort, options could include:

- Sending a letter of support for CEQA Reform to the Governor and State Legislators; (A sample letter of support is attached.)

- Joining the CEQA Working Group and providing review and comment on proposed legislation as it develops;
- Outreach/coalition partner recruitment;
- Media, e.g., provide letters to the editor, Op/ed articles;
- Financial contributions to the CEQA Working Group. The Working Group's website does not indicate that there is a membership fee. It does indicate that new members would be contacted to further discuss financial contributions.

POLICY

REFERENCE: California Environmental Quality Act (CEQA) and related Case Law

FISCAL

IMPACT: Preparation of a letter of support would entail minimal staff time. Outreach and media efforts, if done by staff, would entail additional staff time. Should Council wish to join the CEQA Working Group, requests for financial contributions would be brought back for Council consideration at a later date.

OPTIONS:

- a. Direct staff to prepare a letter of support for CEQA Reform to the Governor and State Legislators for signature by the Mayor on behalf of the Council.
- b. Amend, modify or reject the foregoing option.

Attachments:

1. SB 731 (Steinberg) Key Elements
2. CEQA Working Group Coalition List
3. Policy Principles for CEQA Modernization
4. CEQA Modernization and Reform Questions and Answers
5. Case Study: Netflix Expansion in Los Gatos
6. Sample Letter of Support for CEQA Reform

SB 731 (Steinberg): Key Elements

- Updating CEQA to encourage and expand infill developments to reduce urban sprawl. This will help jump start the state's housing market while promoting development consistent with state climate and planning laws like SB 375.
- Expedite the CEQA process, without compromising underlying public disclosure or environmental protection, for new investments in clean energy, bike lanes and transportation projects that help California meet its renewable energy, clean air, jobs, and transit goals.
- Modernize CEQA and its implementing regulations to set clear minimum thresholds for impacts like parking, traffic, noise and aesthetics to allow local agencies to standardize mitigation of those impacts. This change would preserve local control to set more stringent thresholds where communities choose to do so.
- Reduce duplication in Environmental Impact Report filings by expanding the use of "tiering." This streamlines and limits further paperwork whereby local land use plans that have sufficient detail and recently completed EIRs can be used by people building projects within those plans.
- Where Environmental Impact Reports have been successfully challenged, allow the courts to send back for repair only the portion of the EIR that is found to be incomplete or lacking required specificity. This would eliminate the need for the entire EIR to be recirculated for public comment which can create additional delays.
- In those cases where project developers and agencies haven't made any substantive change to a project and the public has already had time to comment on it, limit or prohibit so-called "late hits" and "document dumps" designed solely to delay projects late in the environmental review process.
- Appropriate \$30 million in new funding to local governments to update their general, area, and specific plans so that they can be better used to "tier" and streamline environmental review of projects built pursuant to those plans.



Coalition List

www.CEQAWorkingGroup.com

- California Alliance for Jobs
- Silicon Valley Leadership Group
- California's Coalition for Adequate School Housing
- California Hospital Association
- Transportation California
- California Transit Association
- Riverside County Transportation Commission
- California Housing Consortium
- San Diego Housing Commission
- San Francisco Housing Action Coalition
- SummerHill Apartment Communities
- UnitedAg
- California Small Business Association
- Southern California Association of Governments
- San Francisco Planning + Urban Research
- Bay Planning Coalition
- Association of California Cities Orange County
- Central City Association of Los Angeles
- Southern California Water Committee
- Pacific Merchant Shipping Association
- Associated General Contractors of California
- Los Angeles County Economic Development Corporation
- Santa Clarita Valley Economic Development Corporation
- San Mateo County Economic Development Association
- San Diego Regional Economic Development Corporation
- East Bay Economic Development Alliance
- California Chamber of Commerce
- National Federation of Independent Business California
- Los Angeles Chamber of Commerce
- Greater Antelope Valley Economic Alliance
- Bay Area Council
- Central California Council
- North Bay Leadership Council
- Orange County Business Council
- Sonoma County Alliance
- Southwest California Legislative Council
- San Gabriel Valley Economic Partnership
- Inland Empire Economic Partnership
- Valley Industry and Commerce Association
- Los Angeles County Business Federation
- Antelope Valley Board of Trade
- American Council of Engineering Companies of California
- American Institute of Architects California Council
- American Institute of Architects Los Angeles
- West Coast Lumber and Building Material Association
- Long Beach Area Chamber of Commerce
- San Francisco Chamber of Commerce
- Oakland Metropolitan Chamber of Commerce
- Hollywood Chamber of Commerce
- South Bay Association of Chambers of Commerce
- Chambers of Commerce Alliance of Ventura and Santa Barbara Counties
- Brea Chamber of Commerce
- Fresno Chamber of Commerce
- Pleasanton Chamber of Commerce

(more)

- Silicon Valley Chamber of Commerce
- San Diego Regional Chamber of Commerce
- Chamber of Commerce Mountain View
- Santa Clara Chamber of Commerce
- Greater Bakersfield Chamber of Commerce
- California Association of REALTORS®
- California Construction & Industrial Materials Association
- California Building Industry Association
- California Business Roundtable
- California Business Properties Association
- California Retailers' Association
- Arcadia Association of REALTORS®
- Southwest Riverside County Association of REALTORS®
- Humboldt Association of REALTORS®
- Placer County Association of REALTORS®
- San Mateo County Association of REALTORS®
- Ventura County Coastal Association of REALTORS®
- Contra Costa Association of REALTORS®
- San Francisco Association of REALTORS®
- Santa Barbara Association of REALTORS®
- Rancon Real Estate
- Beal & Associates Inc.
- The High Country Group
- Temecula Homes and Land
- Cerrell Associates Inc.
- Atlantis Group



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Policy Principles for CEQA Modernization

Problem: Thoughtful Reforms to CEQA Long Overdue

- When the California Environmental Quality Act (CEQA) was enacted 40 years ago, the wide array of local, state and federal environmental and land use regulations that are now on the books didn't exist. CEQA was essentially it.
- In the 40 years since, Congress and the Legislature have adopted more than 120 laws to protect environmental quality in many of the same topical areas required to be independently mitigated under CEQA, including laws like the Clean Air Act, Clean Water Act, Endangered Species Act, GHG emissions reduction standards, SB 375 and more.
- Despite these stringent environmental laws and local planning requirements, public and private projects throughout the state are commonly challenged under CEQA even when a project meets all other environmental standards of existing laws.
- Many lawsuits are brought or threatened for non-environmental reasons and often times these lawsuits seek to halt environmentally desirable projects like clean power, infill and transit.
- It is time to modernize CEQA to conform with California's comprehensive environmental laws and regulations. Thoughtful CEQA reforms can preserve the law's original intent – environmental protection – while preventing special interest CEQA abuses that jeopardize community renewal, job-creation and the environment.

SOLUTION: Modernize CEQA to Protect Environment and Informed Public Participation, While Limiting Abuses

The Working Group Supports the Following Four Principles to Modernize CEQA:

1. Integrate Environmental and Planning Laws

- ✓ CEQA should continue to serve as *the* state environmental law for environmental impacts not regulated by standards set forth in other environmental and planning laws adopted since 1970.
- ✓ However, where a federal, state or local environmental or land use law has been enacted to achieve environmental protection objectives (e.g., air and water quality, greenhouse gas emission reductions, endangered species, wetlands protections, etc.), CEQA review documents like EIRs should focus on fostering informed debate (including public notice and comment) by the public and decision makers about how applicable environmental standards reduce project impacts.
- ✓ State agencies, local governments and other lead agencies would continue to retain full authority to reject projects, or to condition project approvals and impose additional mitigation measures consistent with their full authority under law other than CEQA.

(more)

2. Eliminate CEQA Duplication

- ✓ As originally enacted, CEQA did not require further analysis of agency actions that already complied with CEQA-certified plans. But a 1987 court decision dramatically changed CEQA's application and required CEQA to be applied even for projects that complied with such laws.
- ✓ Reforms should return the law to its original intent and not require duplicative CEQA review for projects that already comply with approved plans for which an environmental impact report (EIR) has already been completed – particularly since existing laws also require both plans and projects to comply with our stringent environmental standards.
- ✓ Local governments and other lead agencies would continue to retain full authority to reject projects or to condition project approvals and impose additional mitigation measures, consistent with their full authority under law other than CEQA.

3. Focus CEQA Litigation on Compliance with Environmental and Planning Laws

- ✓ CEQA lawsuits would still be allowed to be filed for failure to comply with CEQA's procedural and substantive requirements, including, for example adequate notice, adequate disclosure, adequate mitigation of environmental effects not regulated by other environmental or planning law, adequate consideration of alternatives to avoid unmitigated significant adverse impacts.
- ✓ However, CEQA lawsuits could not be used to challenge adopted environmental standards, or to endlessly re-challenge approved plans by challenging projects that comply with plans.
- ✓ Environmental and other public advocacy efforts to enact environmental protection laws should not be affected by any CEQA reform, and limiting CEQA litigation abuse can also inform advocacy efforts to revisit standards or plans.
- ✓ Finally, "real" environmental lawsuits - seeking to enforce true environmental objectives - could still be pursued against agencies that fail to make regulatory or permitting decisions in compliance with standards and plans.
- ✓ However, the current system of broad brush CEQA lawsuits that can be filed by any party for any purpose to challenge any or all environmental attributes of projects that comply with standards and plans are an outdated artifact of the "anything goes" environment of 1970, which now hinders both environmental improvement and economic recovery.

4. Enhance Public Disclosure and Accountability

- ✓ CEQA would continue to mandate comprehensive environmental disclosure and informed public debate for all environmental impacts, including those covered by standards set in other environmental and planning laws.
- ✓ CEQA's public disclosure principles are enhanced by requiring an annual report of project compliance with required mitigation measures made electronically available to the public as part of the existing Mitigation Monitoring and Reporting Plan process.
- ✓ CEQA lawsuits could no longer be filed by "anonymous" unincorporated associations with shadow members and hidden interests. Anyone seeking to enforce CEQA through litigation needs to disclose who they are, similar to campaign finance disclosure laws and court mandates for third parties seeking to file advocacy briefs in lawsuits.



www.CEQAWorkingGroup.com

CEQA Modernization Reforms

Questions & Answers

Do we need CEQA reform - and what do the reforms being pursued by the CEQA Working Group do?

CEQA was adopted in 1970, at a time when it was *the* environmental law for our state: there was no federal or state Clean Air Act, Clean Water Act, Endangered Species Act, National Historic Preservation Act, hazardous waste laws, or any of the other environmental laws (and thousands of federal and state regulations), or dozens of federal, state, regional and local agencies that now administer these laws to protect our environment and the health and safety of our communities.

After 40 years and the enactment of thousands of new environmental protection laws and regulations, it's time to update CEQA to better integrate our environmental standards and policy priorities, without diminishing environmental protection or informed public participation in the decision to consider or approve plans and projects. That's what the reforms do:

- CEQA will continue to serve as *the* state environmental law for environmental impacts that are not regulated by standards set in other environmental and planning laws adopted since 1970.
- CEQA will continue to mandate comprehensive environmental disclosure and informed public debate for all environmental impacts, including those covered by standards set in other environmental and planning laws.
- An agency's authority to reject projects, or to condition project approvals on requirements that are more stringent than applicable standards, are preserved based on the legal authority - other than CEQA - vested in public agencies (e.g., constitutional police powers and other statutory authority conferred on cities and counties).
- Duplicative CEQA lawsuits are eliminated for projects that comply with plans for which an Environmental Impact Report (EIR) has already prepared.
- CEQA's public disclosure principles are enhanced by requiring an annual report of project compliance with required mitigation measures made electronically available to the public as part of the existing Mitigation Monitoring and Reporting Plan process.
- With limited exceptions, CEQA lawsuits may still be filed for failure to comply with CEQA's procedural and substantive requirements (e.g., adequate notice, adequate disclosure, adequate mitigation of environmental effects not regulated by other environmental or planning law, adequate consideration of alternatives to avoid unmitigated significant adverse impacts, etc.).
- To resolve conflicting judicial interpretations, CEQA is also clarified to assure that changes to private views and aesthetics are not appropriately considered as "impacts" for CEQA purposes.
- No changes to "standing" (the right of a party to file a CEQA lawsuit) are proposed, nor do the reforms pursued by the CEQA Working Group change the opportunity of a prevailing party to recovery attorneys' fees. CEQA will continue to be subject to private enforcement lawsuits.

How do the reforms integrate environmental standards with CEQA?

California is a national leader in environmental protection, and as a state we are committed to protecting the environment, human health and safety. CEQA's 1970 vintage predates our 40-year history of passing thousands of stringent new environmental standards and CEQA represents a different paradigm for environmental protection. CEQA requires costly, often multi-year consultant studies of all potential environmental impacts, a project-specific determination by consultants, staff and agency decisionmakers as to whether each impact is "significant" even if it complies with other environmental standards, and a project-specific mandate to adopt "all feasible" measures - including mitigation measures, alternate project designs, and even alternate project locations - to avoid or further reduce significant impacts. As a result, even if a project complies with all of California's stringent environmental standards, CEQA lawsuits can be filed and a judge can overturn project approvals and require more study.

The reforms pursued by the CEQA Working Group would create a level playing field for California state law by excluding from the scope of CEQA litigation impacts for which there are adopted environmental standards for which the EIR mandates compliance.

How do the reforms protect the environment and public health while eliminating duplicative CEQA review?

CEQA review is required not just for projects, but also for plans or programs adopted by a public agency. CEQA also requires environmental impacts to be considered at the earliest phase of public agency decisionmaking to assure that environmental and public health issues are considered early - before an agency is committed to a particular course of action.

Before a 1987 court decision, duplicative CEQA review was not required for projects that complied with land use plans like General Plans and zoning designations. Since then, new rounds of CEQA review have been required every time a project receives a "discretionary approval" from any state or local agency, even if the project complies with both environmental standards and applicable plans. Each discretionary approval creates a new CEQA litigation opportunity.

While the bill continues to require lead agency conduct project level environmental review even for projects that are consistent with applicable plans, it would end duplicative CEQA litigation for land use projects that comply with the land use type, density and intensity designations in a land use plan that has been adopted based on an EIR, and for projects included in other types of plans that have undergone CEQA review, provided that:

- Such projects are required to comply with applicable mitigation measures from the Plan EIR; and
- Annual reports are filed electronically, and made available to the public on a public website, describing the project's compliance with applicable mitigation measures to allow for public monitoring and auditing of plan implementation activities.

While plans may have "program-level" or "programmatic" EIRs, such EIRs must still address all CEQA environmental and public health impacts, and must still assess the environmental significance of plan approval and implementation, and require feasible mitigation measures to reduce or avoid adverse impacts.

Less than 2% of CEQA decisions are challenged in litigation - there is no CEQA litigation abuse.

CEQA abuse occurs not only through meritless lawsuits, but also by the *threat* of litigation. Considering that the outcome of CEQA litigation is only 50-50 at best (even when a full EIR has been undertaken) the mere threat of litigation is enough to cause uncertainty and stall or prevent projects from going forward.

We recently passed a number of CEQA reforms. Shouldn't we give these time to work?

Recent CEQA legislative reform efforts have focused on providing "exemptions" from CEQA for projects that meet a complicated matrix of qualifying criteria, or of offering very limited reductions in either the scope or schedule required to comply with the CEQA process. These efforts have failed. Special exemptions for a minor handful of projects have not benefited California.

In 2011, two "reform" statutes were enacted that purported to streamline the CEQA compliance process.

- AB 900 eliminated superior court review for qualifying employment and renewable energy projects, and established an elaborate enrollment process whereby both Governor's approval and further legislative review was required for projects seeking this status. SB 900 was challenged as unconstitutional in a recent lawsuit filed by the Planning and Conservation League, and only one project has completed the enrollment process. Further, AB 900 expires in two years.
- SB 226 was enacted to create an exemption for solar PV rooftop installations, which were already commonly approved throughout California through categorical exemptions and Negative Declarations. AB 226 also attempts to create CEQA streamlining for qualified infill projects that comply with land use plans including "performance standards" established to avoid or minimize impacts. The regulations needed to implement this part of AB 226 are not scheduled to become effective until December 2012, and litigation has again been threatened over the issue of whether streamlined CEQA documents required under AB 226 for infill projects are subject to a "fair argument" standard of review or the "substantial evidence" standard of review. If the fair argument test is ultimately determined, through litigation, to apply to AB 226 streamlining, it is highly unlikely that project sponsors or lead agencies will use AB 226. Even if the substantial evidence test does apply, the judicial loss rate remains 50/50 - a coin toss.

None of the adopted reforms has had any actual effect (i.e., none have resulted in projects being approved or built), and all are subject to known severe limitations on availability and practical effect.

Why not just give exemptions to specialty projects?

Providing exemptions to a small number of projects doesn't address the underlying need to bring CEQA up to date with current environmental law. It's a matter of fairness. Small infill projects, affordable housing, schools, small businesses and other local projects should be entitled to reforms, not just select special projects. Additionally, project by project CEQA exemption bills remove entire projects from the requirements of CEQA. The reforms pursued by the CEQA Working Group maintain and enhance CEQA's goal to ensure environmental disclosure and informed public debate by (1) preserving the requirement to develop environmental documents for projects, and (2) mandating public release of annual reports disclosing project compliance with required mitigation measures.

Doesn't your proposal gut California's environmental law that protects our air, water and public health?

No. Federal and state Clean Air, Clean Water, and toxic materials handling laws protect air, water and public health based on science and laws - and these standards are in effect every day, for thousands of regulated activities, and violators are subject to civil and criminal prosecution.

The reforms retain all existing California environmental laws and regulations, and ensure that CEQA remains a tool to evaluate the impacts of a proposed project, to provide adequate input from the community, and to require mitigation to reduce projects' impacts on the environment.

Can project opponents still sue under CEQA?

Yes, with limited exceptions opponents can challenge whether lead agencies complied with the procedural requirements of CEQA (e.g., adequate project descriptions, adequate notice and public hearings, etc.). Opponents can also sue under CEQA's substantive requirement to feasibly mitigate significant adverse impacts for topical areas that are not subject to federal, state or local standards or plans. Opponents cannot sue an agency under CEQA over whether project impacts that are subject to federal, state or local standards or plans are significant or adequately mitigated for CEQA purposes.

Can communities sue if they believe projects will not comply with applicable federal, state or local standards and plans?

Yes, opponents can sue the agency responsible for implementing the standard or plan requirements for failure to enforce its standards or plans if they believe a project is being unlawfully considered by another agency. An opponent can sue under a "writ of mandate" - the same legal mechanism used for CEQA lawsuits - to compel an agency to fulfill that agency's obligation to enforce that agency's standards and plans, but they cannot sue such agencies under CEQA.

Can communities sue if they don't like a standard or plan?

Yes, but not under CEQA. The reforms pursued by the CEQA Working Group do not change other existing laws, which allow lawsuits to be filed against agencies that unlawfully adopt or implement regulations and plans that violate the statutes. To the extent CEQA was being used by advocacy groups to bypass the legislative process that resulted in adoption of a statute, and use CEQA lawsuits to create "another bite at the apple" by re-opening the adequacy of standards adopted by statute (e.g., AB 32 or SB 375), the reforms eliminate this CEQA abuse and upholds the role of elected officials in making policy decisions about environmental standards.

Does this proposal change the fair argument standard?

No. Negative Declarations, and categorical exemptions for projects with "unusual circumstances", will continue to be subject to the "fair argument" standard of review for topical areas not superseded by applicable environmental standards and plans.

Will this prohibit groups from suing because of aesthetics?

Yes in part. Aesthetic impacts to designated public scenic resources such as highways continue to be covered by CEQA, and can be the subject of a lawsuit. The reforms clarify that changes to private views and other aesthetic design issues are not properly considered impacts for CEQA purposes.

Will Native American Cultural considerations be protected?

Yes. The reforms specifically clarify that there will be no change in the consideration and protection of Native American resources under CEQA.

What is the problem when 99% of CEQA studies go unchallenged in court?

The judicial loss rate remains 50/50 - a coin toss - under CEQA litigation. Such lawsuit outcomes typically emerge 2-4 years after project approval, and project approval itself typically follows 1-3 years of study, community outreach, and agency permitting. In other words, projects that are challenged under CEQA are substantially affected, often derailing projects in their entirety. The reforms will address such outcomes without negatively impacting the environment.

Does the bill exempt large or high-polluting projects from environmental review?

The bill does not create *any* exemptions for *any* project: CEQA continues to apply to all types of projects. It also preserves full disclosure, informed debate, and the right of communities and lead agencies to impose mitigation measures and other conditions to assure that community-based standards and concerns are met. The bill does prevent CEQA from being used as a basis for suing projects that comply with environmental standards, or with plans that have already gone through the CEQA review process.

Do the reforms pursued by the CEQA Working Group Weaken SB 375, Greenhouse Gas Law or other CEQA Infill Reforms?

No. In fact, the reforms are critical to the successful implementation of SB 375, which requires California to adjust our land use pattern to encourage higher density infill and transit-oriented development. Community plans for implementing SB 375 have repeatedly been delayed and threatened with derailment by CEQA lawsuits. For example, a CEQA lawsuit has delayed implementation of the San Diego Sustainable Communities Plan - which CARB approved as meeting SB 375 mandates. And scores of infill projects have also been sued under CEQA, even though these projects comply with applicable standards and adopted community plans that have already gone through the CEQA approval process. We cannot achieve SB 375 under CEQA's current structure, which allows anyone to sue any project - often multiple times - even if projects comply with law and will help implement SB 375.

Will the proposal promote urban sprawl?

No. It only applies to projects that comply with applicable environmental standards (including SB 375 and other infill-oriented mandates) or land use and other plans that have been adopted in compliance with CEQA. It also requires full compliance with standards and plans requiring preservation and mitigation of parks and agricultural lands.

Does the proposal exempt projects based on outdated plans?

No. The bill's plan-consistency provisions require projects to comply with environmental standards and applicable plans. If an outdated plan does not comply with an applicable environmental standard, then the project would be required to meet the environmental standard - and the project's compliance with an outdated plan provides no legal shelter from a lawsuit challenging a project that violates environmental standards.

Would the reforms apply even where plans conflict with one another?

The bill's plan-consistency provisions would require compliance with applicable environmental standards and applicable plans (including mitigation measures). The proposal makes no change to existing law, which requires consideration of all applicable plans and informed disclosure and

appropriate resolution of any plan conflicts, including potential conflicts in density, intensity and use restrictions.

Aren't you falsely blaming our economic problems and job loss on CEQA when the real culprit is the mortgage meltdown, tight availability of credit, and slow consumer demand?

There are a number of factors contributing to the economic meltdown. Both before and during this recession, however, the current version of CEQA is an obstacle to achieving the next generation of necessary improvements. CEQA's power to derail progress means it is now an obstacle to the change we have decided is critical for the environment and public health: transit-oriented, higher-density development patterns; renewable power; a new manufacturing base for Greentech; and major new infrastructure projects like high speed rail and Bay Delta and water supply protections.

Aren't the real interests behind this proposal the polluters and exploiters of our natural resources who will profit from this destructive plan?

A broad coalition of groups representing schools, hospitals, public transit, affordable housing, renewable energy, local governments and many others agree it's time to reform CEQA to preserve its original intent – environmental protection and information – while stamping out abuses of the CEQA process brought for non-environmental reasons.



CEQA: A GOOD LAW IN NEED OF REFORM.

Neighbors Use CEQA in Attempt to Block Infill and Job-Creation Project

In August of 2011, Los Gatos Business Park, LLC received approval from the Town of Los Gatos to redevelop an old business park. Their update to the existing office complex called for a Planned Development Rezoning to accommodate up to 168 senior homes and up to 550,000 square feet of office space. The 21 acre site, which includes the office park and surface parking lots, is within 1,000 feet of a planned light rail extension, and is bordered by Highway 85—making it a quintessential smart growth infill development.

Across the highway from the Los Gatos Business Park project is the 10 year old Netflix campus. The well-known technology company had been looking for a new home for its 900 and growing employees for some time. When Netflix heard that the Los Gatos Business Park was considering plans to redevelop the site across the freeway, they approached the developers about using the new site as an expansion of the neighboring Netflix campus. Netflix was already a valued member of the community and their expansion would stimulate economic development and create new jobs in the community.

The Los Gatos Business Park agreed to partner with Netflix and completed a mitigated negative declaration environmental review of the project to comply with CEQA.

Unfortunately, there has been a great deal of local NIMBY opposition to using the Business Park redevelopment to house Netflix. Los Gatos, nestled in the Southwest section of Silicon Valley, is an extremely affluent community and neighbors couched their opposition in terms of a fear of the destruction of the “Town character.” These concerns—which are fundamentally about local aesthetics and not environmental impacts—are questionable given that the town already houses an existing old office park on the site and many other businesses nearby the adjacent freeway off-ramp.

Nonetheless, when local elected officials did not agree with the opponent’s complaints about this mixed-use, infill project they filed a CEQA lawsuit to try to block the Netflix expansion alleging that potential impacts must be studied in a lengthier, full blown Environmental Impact Report, rather than a Negative Declaration.

In anticipation of further litigation delays and associated carrying and development costs, Netflix decided to scale down the design plans and remove the senior housing component entirely. They also decided to complete a costly and lengthy full Environmental Impact Report for the infill project.

COST OF CEQA MISUSE:

- Elimination of 168 units of affordable senior housing
- Costly delays to the project timeline
- Increase in overall project costs due to litigation
- Delay in job creation and fewer jobs created due to smaller project

About this series:

The California Environmental Quality Act (CEQA) is an important environmental law. However, today’s CEQA is too often misused to stop or delay projects that comply with all applicable environmental laws and standards. “CEQA: A Good Law In Need of Reform” will call attention to the many examples of CEQA misuses, and the consequences on vital projects, our environment and our economy. Visit www.CEQAWorkingGroup.com for more case studies or information about efforts to modernize CEQA.

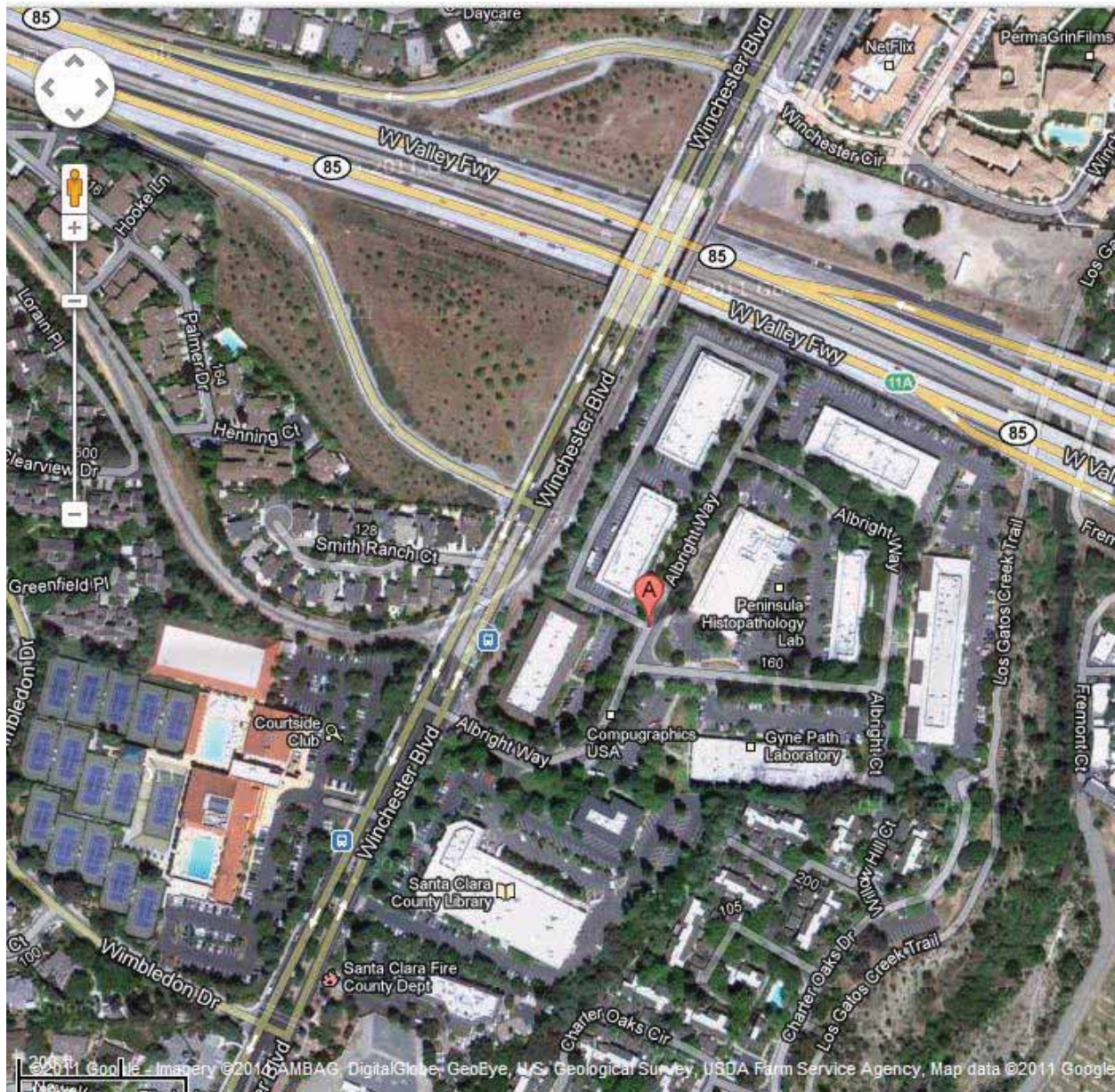


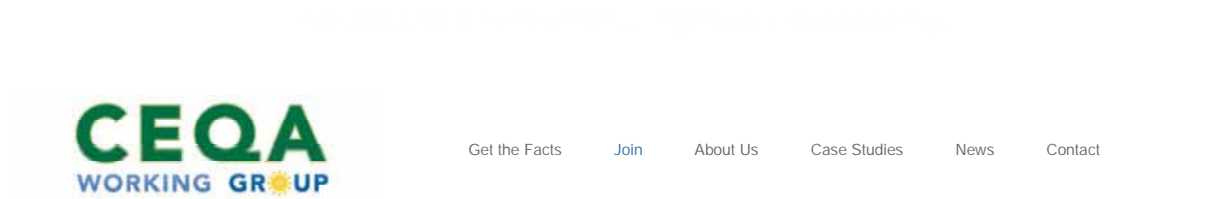
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The CEQA delay forced Netflix to abandon its 2012 target date to hire new workers at the site. In reducing the size of the project to cater to a few local neighbors, Netflix was also forced to eliminate the senior housing component completely. Despite the overwhelming consensus that infill and mixed use developments are critical to CEQA's goals of protecting the environment, CEQA litigation was used in this case to significantly reduce the size of the project and to deprive the community of desperately-needed affordable homes for seniors and high-quality jobs at a time when it is struggling to grow its economy.

To read the complete case study, visit www.CEQAWorkingGroup.com/netflix





Sign on: Local Government Official Letter

Call to Action: Endorse Local Government Official Letter in Support of CEQA Modernization

An open letter to the California Legislature.

Dear Governor Jerry Brown, Members, California State Senate and Assembly:

We, the undersigned local elected officials, urge you to adopt legislation that would modernize the California Environmental Quality Act (CEQA) to preserve the law's original intent – environmental protection and public disclosure and participation – while allowing environmentally responsible local decision-making, local economic development and jobs, and 21st century growth.

CEQA is an important law to ensure local governments have the information and tools to protect our local communities, and to allow for citizen involvement in local land-use decisions.

However, many important local projects are being held-up by CEQA challenges or even the threat of challenges-often times for reasons that have nothing to do with environmental protection or mitigation.

It's much easier to challenge a CEQA decision than any other type of local land-use decision. This means that local governments must spend a lot of time and a lot of money – which could be spent on actual environmental mitigation or for some other local purpose – taking excessive steps to protect against litigation and the threat of litigation.

CEQA challenges, and the threat of CEQA challenges, also undermine the ability of local governments to approve projects that carry out other important State policies such as infill development and affordable housing.

We appreciate the efforts of legislative leaders and the Governor to adopt meaningful CEQA reform. Local agencies play a critical role in CEQA and the protection of the environment. As such, we encourage you to take the interests of local decision-makers into account as you work to reform CEQA in a meaningful way.

We look forward to working with you to promote meaningful and responsible CEQA reform this year.

I agree to be publicly listed on this letter as a supporter of CEQA modernization.

Your Name

Title

City

Phone

Email

Zip Code

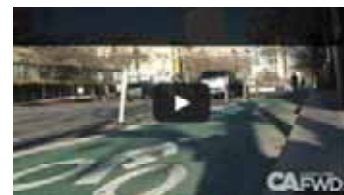
VIDEO: Gas Station Owner uses CEQA to Stall Competitor's Expansion



VIDEO: CEQA Lawsuit Derails Sacramento Railyard Infill Project



VIDEO: San Francisco Bike Lanes, Green Enough for CEQA?



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March 5th, 2013

[Response to Senator Hill as New Chair of Senate Environmental Quality Committee, 3/5/13](#)

FOR IMMEDIATE RELEASE: March 5, 2013

CONTACT: Kathy Fairbanks, 916-443-0872, kfairbanks@bcfpublicaffairs.com Carl Guardino, co-chair of the CEQA Working... more »

March 4th, 2013

[In Case You Missed It: Southern California Association of Governments Calls for "top to bottom" review of CEQA, 3/4/13](#)