

Environmental Law Often Misused to Block Projects

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The Tri-City area is currently considering projects that will affect our community for generations to come, such as development of Patterson Ranch, Union City's Intermodal Station and Fremont's new downtown. Each project will have to pass environmental review prior to its approval. Enacted in 1970, the California Environmental Quality Act (CEQA) requires state and local agencies to review potential environmental impacts of projects. The goals of CEQA, however, are often lost in political debates generated by new projects. A brief reminder of CEQA's intentions may help balance its application.

CEQA does not regulate or prohibit projects. It ensures that government agencies do not make decisions in a vacuum and are informed of the environmental impacts of their actions. CEQA further requires that feasible mitigation measures be taken to reduce any significant environmental impacts.

Generally, most large projects are subject to CEQA review, and the government agency overseeing the project will prepare reports summarizing the project's environmental impact and any mitigation measures. After considering all the evidence presented during CEQA review, the agency can then approve the project if it determines specific benefits of the project outweigh the unmitigated adverse environmental impacts. Adverse environmental impacts do not bar a project; they must simply be considered and balanced against the project's benefits.

Unfortunately, CEQA is often just used to block projects regardless of the sufficiency of a project's environmental review. Asserting that a project's CEQA review was inadequate, opponents can seek a court order requiring the

CEQA process be redone. Although redoing CEQA review does not stop a project outright, battling in court to support the initial CEQA determination can take months or years. Regardless of the merits of a claim to overturn a CEQA determination, the resulting delays and added costs can make a project impractical and ultimately result in the project's abandonment. Alternatively, proponents are forced to negotiate with opponents to modify the project in exchange for the opponents' withdrawal of their court appeal. Although the negotiated modifications may improve a project, changes often merely address concerns of a vocal minority and do not benefit the greater community.

The recently unsuccessful effort by Newark to block Fremont's new garbage transfer station near the Fremont/Newark border is an example of the abuse of CEQA. Although a court found no merit in Newark's arguments to block the project under CEQA, Newark's efforts delayed the project for more than two years and cost Fremont over \$100,000 to defend the project's initial CEQA review.

CEQA demands that substantial environmental impacts be considered and mitigated when possible. Yet, the community must acknowledge that some environmental impacts are unavoidable or are simply outweighed by the benefits that the projects will bring to us collectively (such as new housing, improved transportation infrastructure or waste disposal). CEQA ensures that our governmental decision-makers are educated about the environmental impacts of their actions; but it does not seek to block necessary projects that benefit the community at large.

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