

Celebrating the
Heroes of Not In My
Back Yard litigation

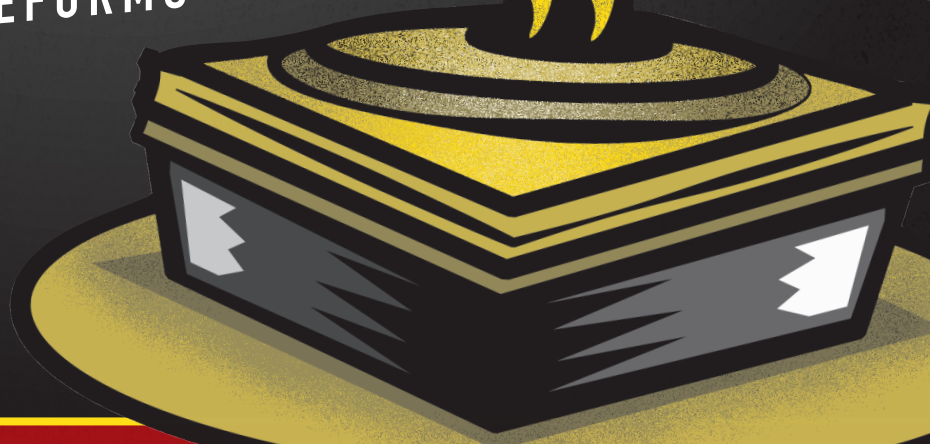


THE NIMBY'S

THE
WINNERS!

HOW TO
GET YOUR
PROJECT
NIMBY'D

TOP 10
CEQA
REFORMS



A special project of N&R Publications



THE NIMBY AWARDS

HOW WE DID IT

The NIMBYs was produced by N&R Publications, an independent division of News & Review that produces custom mini-newspaper inserts for nonprofits and government agencies around the country. Learn more at www.nrpubs.com. This publication was produced for Sacramento News & Review President/CEO Jeff vonKaenel. For further explanation of vonKaenel's interest in this topic, see his weekly column, Greenlight, page 8.

HOW TO GUM UP A PROJECT IN **7** EASY STEPS!

Let's say you want to build a low-income housing project ...

1. You submit your plans to an agency

2. Agency evaluates the project

The agency (such as a city planning department) looks over plans for your proposed project.

OR

2a. Agency declares project exempt

Recognizing that NIMBY warriors rely on CEQA to spawn litigation when shouts fail to block an irksome construction project, N&R Publications created the Not In My Backyard Award Contest — the NIMBYs.

We created four special categories that best embody the “Let’s sue ‘em” approach to municipal planning disagreements, and asked readers to contribute cases for consideration. Here are the categories:

1. BIG SWITCHEROO

This is where the nominee files an environmental lawsuit to win some unrelated concession, which – get this – has absolutely no connection with the environment! We promised to award extra points for lawsuits that were speedily dropped once concessions were granted.

2. LIFETIME ACHIEVEMENT

Here we honor an individual who made a very good living by filing numerous NIMBY lawsuits, which in a perfect case disappear after a financial agreement has been reached (without anyone admitting any responsibility for anything).

3. STICKY SANDCASTLE

Here’s an award for the plaintiff who makes an unfathomable legal argument that’s inevitably washed away by the tides of justice, but not before it’s gummed up a project for a year or two and devoured many thousands of dollars in legal fees.

4. INTENDED CONSEQUENCES

This award goes to an individual who, amazingly enough, used the NIMBY process to accomplish something that really was in the public interest.

Needless to say, the nominations poured in. We reviewed them all. To embrace the NIMBY spirit, our judges will not be publicly named, but will be referred to as “Citizens For A Better Contest.” Their methodology is ambiguous.

Disclaimer: For what it’s worth, we at News & Review and/or the sponsors of the contest are not and would never imply, suggest, or even hint that NIMBY heroes are doing anything illegal or immoral. The contest’s goal is to demonstrate the opposite — to celebrate wonders of legislative intent and creative environmental litigation in the Golden State.

3. Agency decides to do Environmental Impact Report

This document (which can be upward of 1,000 pages) looks at things such as how many trees need to be cut down or whether cute, woodland creatures will be disrupted by your housing project. It also suggests alternatives to these environmental impacts.

OR

3a. Negative declaration

Agency determines there will be no significant impact on the environment. Hooray for woodland creatures!

4. Public review

A draft EIR is created and made available to the public for comment. NIMBYs clamor to get their copy.

5. Final EIR

A final EIR addressing all comments is presented to a decision-making body (such as a city council).

6. Project approved

The decision-making body approves the project. Hooray for low-income housing!

7. NIMBYs file lawsuit

Your project

- is not aesthetically pleasing
- actually harms previously mentioned woodland creatures
- creates noise/light/water pollution
- commits any number of real or imaginary indiscretions against the environment

ILLUSTRATION BY HAYLEY DOSHAY

by R.E. GRASWICH

STRANGE ATTRACTION

How an unlikely pair — CEQA and NIMBY — are coming together to stall projects, win concessions and inspire creative litigation

Welcome to the NIMBY Award Contest. Be warned. You have tumbled down a rabbit hole of irony and unintended consequences, wrapped in a lyrical, ambiguous public disclosure law called CEQA.

The birth father was Ronald Reagan. His inspiration was Richard Nixon. The goal was miles out of character for those political bedfellows: to make California a magical place where “man and nature can exist in productive harmony.” Or so Reagan’s new law demanded.

NIMBY is shorthand for “Not In My Backyard.” It’s a philosophy of status quo, a notion that new ideas, progress and expansion can be stopped dead. CEQA – shorthand for California Environmental Quality Act – has become NIMBY’s bullwhip, a legislative blessing to rain litigation hell upon a construction project, from a gas station to an old folks home to a basketball arena.

CEQA and NIMBY were not supposed to hook up. But they did, with an explosion of self-interest. The result inspired a colossal mess – and our contest.

As bedrock utopian policy goes, CEQA has no match in California law. Argue with this, straight from Division 13, Chapter 1 of the California Public Resources Code, the mother of CEQA: “Major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian.” CEQA’s baseline is seductively simple:

disclose and discuss the potential hazards of developments. Make life better. Do no harm. That’s all.

Signed into law by Gov. Reagan in 1970, months after President Nixon authorized the National Environmental Policy Act, CEQA is memorialized by a 1,704-word preamble. Soaring and poetic, the language terrifies developers, enriches attorneys, fattens consultants, emboldens labor leaders, employs bureaucrats and numbs taxpayers to sleep.

“
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”

Maneuvered by a tenacious NIMBY, CEQA can be an expensive delay tactic or a tool of legalized extortion and protectionism. And it’s a document that’s underscored 45 years of growth and enrichment in the nation’s most technologically creative, entrepreneurial and wealthiest state. Go figure.

The land of NIMBY and CEQA is a place where opponents cry for reform, where almost everybody agrees change is needed, where envi-

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ronmentalists, union bosses, angry neighbors and fearful competitors cohabitate while pursuing concessions and project labor agreements. It's where California politicians fear to tread. And where nobody thinks about "man and nature living in productive harmony."

Don't say we didn't warn you.

MEET NIMBY'S MVP

Cory Briggs didn't win our NIMBY award contest, but he's a champion – the unofficial king of California CEQA plaintiff attorneys.

Briggs has filed more than 100 CEQA lawsuits in the past decade, including over 50 against the City of San Diego.

He's a tough opponent with no patience for developers who claim some CEQA lawsuits are extortion.

And he'll defend NIMBYs to the death.

"What developers really mean when they say that is they didn't do a good enough job of community outreach, they just talked to city staff and the council, and that's not good enough," he says. "Rather than ask for a 30-day continuance and sit down and work through the issues, they say, 'Screw it, I'll take my chances.' Whose fault is that?"

Nor does Briggs buy the argument that city councils and county supervisors should have the final say on local construction projects.

"It's not just some guy filing a lawsuit to undercut the authority of the city council," he says. "The authority of the state Legislature trumps that of the city council, and the Legislature wrote the rules, and we have to follow the constitution, so it's bullshit to say we're undercutting the authority of the city council."

Briggs' high profile has attracted media investigations of his business practices. The San Diego City Attorney has reviewed his work for possible conflicts of interest. And he's been accused of hiding behind invisible clients, which really insults him.

"It's just a flat-out fucking lie," Briggs says. "I want to get paid. I don't file these lawsuits for any reason other than to get paid. You can't win a lawsuit without proper standing."

He adds, "The definition of a frivolous CEQA lawsuit is a CEQA lawsuit you have to defend."

Briggs has several ideas for CEQA reform, including standard, electronic formatting and Environmental Impact Reports of 100 pages, rather than 1,500 pages.

"CEQA doesn't change, because there's a cottage industry that's grown up around it," he says. "There are a lot of people who make a lot of money and go around complaining that there has to be reform. But where we are now is, nobody trusts each other enough."

He adds, "If you like \$50,000 for a glorified public records request, you really don't want CEQA reformed."

“

You shouldn't file these lawsuits just to screw things up. That's malicious. I don't like these mom-and-pop auto repair shops suing another auto repair shop because they're worried about competition. That's not right.

”

CORY BRIGGS, attorney who's filed more than 100 CEQA suits

A ROADBLOCK TO ECONOMIC GROWTH

Mark Friedman could live comfortably anywhere in the world. He chooses Sacramento.

He's an owner of the Kings with a focus on the new arena, a developer bringing new life to forgotten acreage in West Sacramento and a member of the family that owns Sacramento's biggest tax revenue generator – Arden Fair Mall. Friedman loves his hometown.

And he believes the community's economic growth and prosperity could be improved by reforming CEQA.

"It's expanded as a tool for interfering with the duties of elected or appointed public officials on all sorts of other issues that have nothing to

do with the environment, and it's inappropriate," he says.

Friedman believes the environmental review process has plenty of checks and balances to protect various interests in a community. The ultimate threat – a CEQA lawsuit – only invites abuse.

"Think about the process you have to go through on a development project: You typically must do a full EIR, which is a very comprehensive document, then you publish it and wait for appeals. Then you have to answer and address every single one of them. Then you have to get the approval of various subcommittees of government, such as planning commissions," he says.

"And finally, you have to get the approval of the elected body, like the city council. But then, when you



BIG SWITCHEROO

OR, IT'S THE ENVIRONMENT, STUPID

WINNER: VillaSport Roseville, attorney Christian Marsh

VillaSport filed a CEQA lawsuit against the City of Roseville for reasons that go beyond the environment – and seem to have more to do with stopping the competition. The idea was to block entitlements for a competing Roseville gym, Life Time Fitness. Marsh made heroic efforts to hook into environmental meat, but had trouble finding endangered biological resources among wet gym towels. The lawyer wrote, "A white-tailed kite, a California Fully Protected species, was observed foraging on the Project site." Too bad such birds are common and don't ruffle environmental feathers. VillaSport came clean on Page 7 of its petition, writing the company would be "adversely affected by the Project both financially and physically." The candor impressed our NIMBY judges, but not the real judge, who tossed the case. Marsh did not respond to our requests for comment. (Placer County SCV0034098)

HONORABLE MENTION

Committee For A Better Roseville and attorney Steven Herum, whose CEQA lawsuit in the Life Time Fitness controversy (yes, the gym generated two NIMBY actions!) focused on damaged egos suffered by committee members when they testified at Roseville City Council meetings. If there was a law against rude and indifferent politicians, the Committee For A Better Roseville might have a case. But CEQA? Please. Herum did not respond to requests for comment. (Placer County SCV0034096)

ILLUSTRATIONS BY JASON CROSBY

think you're over the finish line, one unelected, private individual who may live miles from the project, has the right to come in and stop you in your tracks by filing a CEQA suit."

The easy threat of a lawsuit troubles Friedman, not just for the delays caused by a CEQA petition. It's an affront to the democratic process.

"This person gets to substitute their judgment for the collective wisdom of your community's elected officials," he says.

Friedman would like to see the evidence requirements raised for CEQA lawsuits. And he'd like to see petitions focus on legitimate environmental issues, such as air quality, water resources and population growth.

"A lot of people have a stake in protecting the status quo," he says. "That's why the abuse continues."

NO RUBBER STAMPS

Donald B. Mooney makes no apologies for filing CEQA lawsuits. His work reflects exactly what informed, engaged Californians should do, he believes.

Mooney, a veteran Davis attorney and the "Lifetime Achievement" honorable mention with three suits nominated in the NIMBY award contest, believes CEQA brings a balance of power to the development process in California. That's why CEQA exists, he says.

"From the biggest state agency to the smallest public authority, CEQA has forced them to think about what they're doing, and not just rubber stamp a project," Mooney says. "It's leveled the playing field and made the state better economically, and better from a healthy environment standpoint."

Mooney filed one of several CEQA suits to challenge construction of the Kings arena downtown. His petition on behalf of "Sacramento Coalition for Shared Prosperity" was denied, but the court accepted his argument that the city of Sacramento didn't adequately address the arena's traffic impact.

"The court rejected the petition, but directed them to modify for traffic mitigation," he says. "When there are 17,000 people in the arena and another 10,000 in the plaza outside, I think some people are going to be very surprised by what happens in terms of traffic."

As for CEQA reform, Mooney would like to see the "administrative record" of documents become available electronically. E-documents would allow anyone to quickly check out a proposed project.

"I've had cases where an agency turns over boxes and boxes of documents from various staff people," he says. "There's no way a city council member is going to read that before they vote. But if you could click on a document, everyone benefits."

CEQA suits are easy to pick on, Mooney notes, but sometimes a CEQA lawsuit is the only way neighbors can get serious attention from public officials.

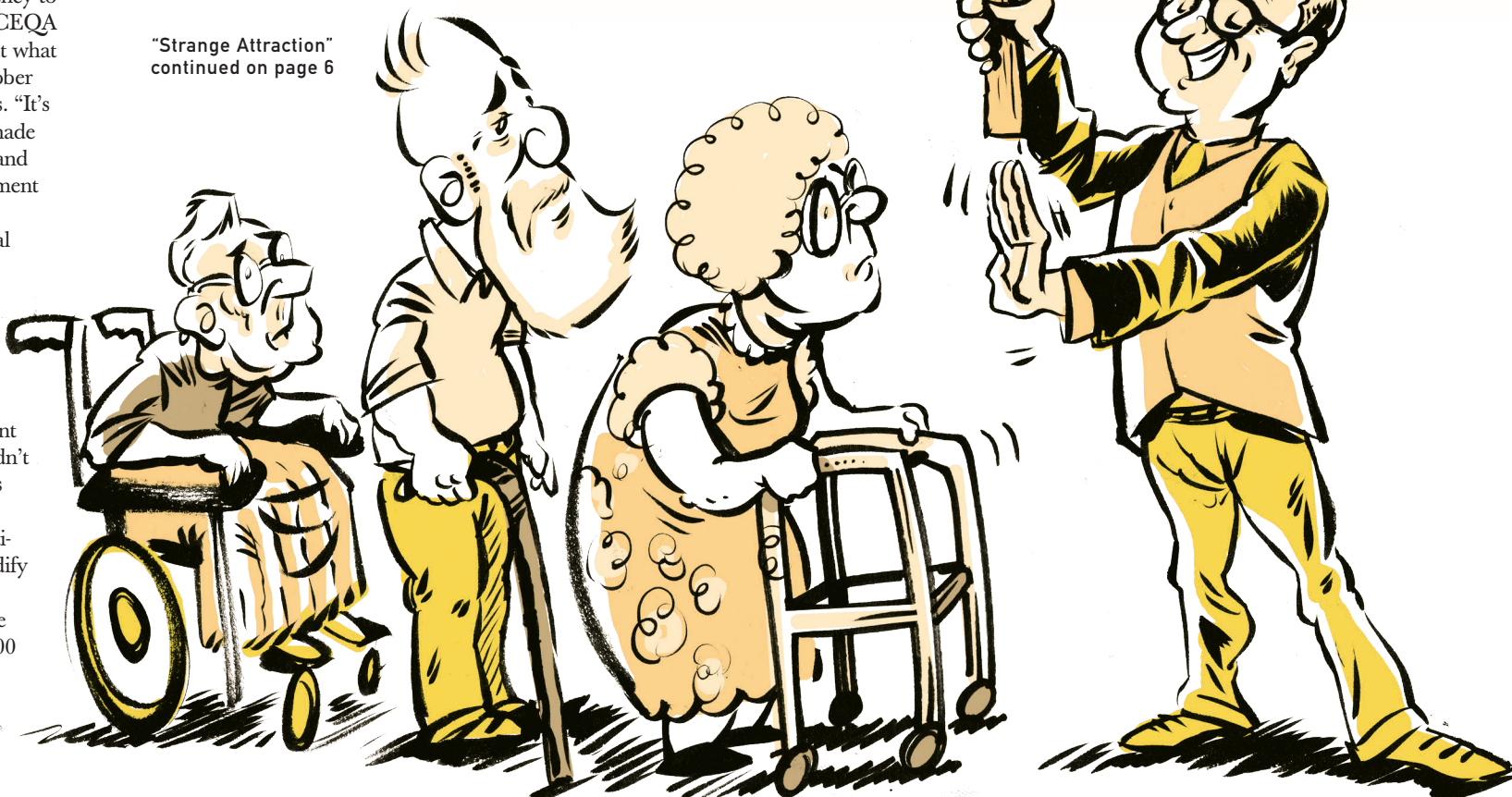
"CEQA is a public participation process," he says. "It makes projects better. If you're a moneyed interest, you have access to elected officials. If you're not well funded, you have the courts. It's called checks-and-balances."

DON'T KILL DEMOCRACY

Jennifer Lynn Hernandez was raised in a working-class home in Pittsburg, Contra Costa County, where her father toiled for U.S. Steel. The academic world beckoned the millworker's daughter. She went to Harvard. And picked up a law degree at Stanford.

Today, Hernandez is among California's pre-eminent environmental lawyers. Working from offices

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LA

LIFETIME ACHIEVEMENT

OR, SO MANY CEQA SUITS, SO LITTLE TIME

WINNER: Attorney Ash Pirayou, for clients East Sacramento Partnership for a Livable City and Dessins LLC.

Our champion was relentless in East Sacramento, using CEQA to blockade or stall two infill projects over the past year. One petition sought to stop the 336-unit McKinley Village housing development. And there was an effort to snuff a senior housing facility at 3333 I Street. Our judges were impressed by Pirayou's NIMBY efforts. The CEQA petition warned the "massive three-story" senior center would overwhelm city infrastructure, especially sewer pipes, which couldn't swallow the elderly effluence. "thereby creating the potential for a sewage outflow that risks the health of the community." The lawyer insisted his client's home would be "directly and significantly impacted by the increase in environmental impacts" caused by gray hairs. When reached to elaborate, Pirayou told us his firm's policy is not to comment. Pirayou's McKinley Village NIMBY suit was funded by an anonymous "grassroots organization whose purpose is to enhance the livability of East Sacramento," which sounds nice if you already live there and don't dream of buying a place in McKinley Village. The old folks prevailed. A judge denied both petitions. (Sacramento County 34-2014080001760 and 34-2014-80001851.)

HONORABLE MENTION

Donald Mooney, a renowned Davis attorney with a trigger finger on CEQA suits, had two solid entries (some of his older work was disqualified for time reasons). He used CEQA in a failed effort to block the downtown Kings arena, and is working to prevent construction of an apartment house in El Dorado Hills. Our judges felt the NIMBY apartment battle made clever use of CEQA's "aesthetics" category. Pleads Mooney: "The drawings were misleading and resulted in failure to disclose the full extent of the impact because the drawings depicted a four-story apartment complex while the Project approval allows for a five-story building." The case continues. (Sacramento County 34-2014-80001879 and El Dorado County)



STICKY SANDCASTLE OR, DOES ANYONE HERE SPEAK GIBBERISH?

ILLUSTRATIONS BY JASON CROSBY

WINNER: Adriana Gianturco
Saltonstall, etc., attorney
Kelly Smith

*"The 'Throwaway arena'
Is a blight fostered by the public money
Thrown to corporate sport promotion.
No funding is identified in the DEIR
For the maintenance of demolition
Of the existing arena.
No timeline of its fate
Is even attempted
In the document."*

Shakespeare? Dickinson? No, those evocative, haunting lines were straight from a CEQA lawsuit filed by Smith for 12 citizens, led by former state transportation director Gianturco Saltonstall. The suit had moments worthy of a NIMBY poetry slam. Consider: "All however are harmed by the paper blizzard environmental impact reports which ignored a potential traffic disaster on surrounding

interstate highways from cars piling up at off-ramps, by evading disclosure and mitigation of the amplified noise and after-game crowds that will drive them from downtown Sacramento and Old Sacramento, and harmed by the EIR's failure to fully analyze the current Sleep Train as an alternative, an alternative lacking only 'luxury suites' that the NBA wants to make more money." Whew – one sentence, ladies and gentlemen! Our judges were captivated, but the court missed the joke and tossed the case. (Sacramento County 34-2014-80001840)

HONORABLE MENTION

Donald Mooney won a strong consideration with his CEQA lawsuit against the downtown Kings arena, filed for a classically anonymous petitioner, "Sacramento Coalition for Shared Prosperity." Mooney lost points for making legitimate arguments about traffic, but rallied with tangled logic to claim downtown wasn't necessarily downtown. To wit: "The Project cannot qualify as a 'Downtown arena' until after the completion of an NBA season." Come again?



Ambiguity provides would-be petitioners with footholds on which to build their theories. When the courts or statutes provide black-and-white answers, lawsuits do not get filed.

TINA A. THOMAS, attorney, warning of NIMBY abuse in 1991



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in San Francisco and Los Angeles, she's a whirlwind advocate for CEQA reform.

"CEQA makes you come in and answer something like 100 environmental impact questions," Hernandez says. "You've got to come in perfect, every time. If you miss half of one, you have to go back and start all over from scratch. It's like taking a test and getting 99.5 percent right and being told, 'Sorry, you're a failure.'"

Hernandez has many ideas for reform, including a few that hinge on state legislators finding the courage to disagree with special-interest groups that fund political campaigns and feast on CEQA's ambiguity.

"CEQA has become the most anti-democratic law in the history of the state," she says. "One disgruntled person can stop a project that's been approved by your elected representatives."

Hernandez saves some venom for anonymous plaintiffs who create problems for a project, then call CEQA for redress. One Bay Area group sued over noise at a Planned Parenthood clinic – noise generated by the plaintiffs themselves.

"Plaintiffs should have to say who they really are – there should be transparency as to their motives," she says.

And she believes the review process should be streamlined. Under current rules, the NIMBY process can seem perpetual.

"California has the most stringent environmental status in the world," she says. "When it comes time to build your plant, you should know that CEQA is integrated with our environmental standards and not standing alone to give somebody another chance to stop you."

Ultimately, Hernandez returns to the original intent of CEQA – a good law that allows communities and public officials to reflect on the

potential environmental problems stirred up by a prospective building project.

"CEQA wasn't designed to stop projects," she says. "It was intended to let people consider the consequences to the environment. Nobody wants bad projects, and it's good for us to know what we're getting into. That's the value of CEQA, not its ability to stop your project."

GIVING 'JOE BLOW' A VOICE

Kelly T. Smith didn't stop the Kings and Sacramento from building their new downtown arena, but he got their attention.

In his CEQA lawsuit filed on behalf of 12 community members, the Sacramento attorney called the arena "an enormous cavern that looks like a crushed aluminum can."

And Smith warned of the environmental consequences of riots by drunken fans – "crowds flowing onto the streets, bonfires, teargas if necessary" – which really upset some people.

"Everybody was talking about that," Smith says. "And hell no, I won't take it back. I was in L.A. when it happened. Look at San Francisco, it's happened there. You know it will happen here."

He adds, "I know all of my fellow catechism-teaching friends aren't going to do that, but they've got to think about the tailgaters."

CEQA suits proliferate for one reason, Smith believes: "People don't trust their government. In this country, Joe Blow has every right to go before a judge for redress."

And CEQA shouldn't catch the blame for slowing down projects.

"They should make their changes, but they've got to do it right. Make full disclosure. Follow the law," he says.

THE CEQA SHAKEDOWN

How labor gets what it wants under threat of lawsuits

by R.E. GRASWICH

Five years ago, when the City of Sacramento seriously began to consider partnering with the Kings on a downtown arena, Mayor Kevin Johnson had a big problem.

He needed organized labor's support for the arena. But he despised the "Project Labor Agreement" that union bosses would demand in exchange for their blessing.

So Johnson stayed silent about his distaste for PLAs. And when time came to start the public campaign for taxpayer participation in the arena, the mayor stood alongside his friends in labor, signaling that a PLA, which required unionized workers at the arena construction site, was a done deal.

Johnson was not the first politician to suspend his moral opposition to PLAs. Like others, he knew he had no choice. If the arena project moved forward without union support, labor leaders would file a CEQA lawsuit and delay the arena for years.

"It's straight up extortion, and everybody knows it," says an environmental lobbyist who asked not to be named. "Labor has formed an unholy alliance with environmentalists, and they use the threat of CEQA lawsuits to get what they want. They don't even have to file the lawsuits. The threat is understood."

And that's not all. Labor leaders who fund campaigns for the California Legislature have made it clear that politicians should steer clear of significant CEQA reform. Labor likes having CEQA as a convenient extortion tool.

"It would be great to see more independence from our elected officials in Sacramento, but I'm not overly optimistic," says attorney Jennifer Hernandez, a CEQA expert and reform advocate.

“

It's straight up extortion, and everybody knows it.

”

This year, with 10 CEQA cases before the California Supreme Court, reform advocates are counting on the judicial branch to resolve the NIMBY wars. Reformers know nothing will happen while labor and environmentalists produce votes and dollars for the state's elected officials.



INTENDED CONSEQUENCES

OR YOU MEAN THAT'S WHAT CEQA STANDS FOR?

WINNER: City of Auburn, city attorney Michael Colantuono

Auburn city sued Placer County over inadequate environmental reviews of a proposed Costco store. Amazingly, the city used CEQA for all the right reasons — to examine the potential environmental

consequences of a Very Big Deal for the community. Despite a loud and steady drumbeat from locals dying to see the 148,000-foot Costco built near Auburn, the city said the county supervisors who approved Costco didn't do their homework, especially where traffic was concerned. For once, the NIMBY spirit was properly focused. A month after the lawsuit hit, Costco packed its shopping cart and left town. (Placer County SCV0035751)

SAVING OURSELVES FROM NIMBYS

Top 10 ways to reform CEQA

- 1. No anonymous CEQA lawsuits.** Put your real name on your suit or stay home.
- 2. Raise bar for legal standing to file a CEQA lawsuit.** Today, anyone who files a comment during the review process can come back with a lawsuit. Plaintiffs should have legit connections to projects.
- 3. Integrate CEQA with environmental standards to eliminate "second bite of apple" lawsuits by NIMBYS.** There's plenty of opportunity to deal with real problems. Time to eliminate the extortion threat of a CEQA lawsuit.
- 4. Shorten and simplify EIRs, by 90 percent.** Environmental reviews are a big waste of time and paper at 1,500 pages.
- 5. Create a special NIMBY court for CEQA lawsuits.** This would keep frivolous CEQA suits from wasting Superior Court time and promote judicial expertise.
- 6. Send CEQA lawsuits straight to state appeals court.** Appeals courts would only take legit cases.
- 7. End last minute "document dumps."** Shorten public input, with no last-second comments designed to slow project.
- 8. Eliminate arguments not related to the environment.** Currently, CEQA provides a scattergun approach that allows lawyers to complain about arbitrary, ambiguous, irrelevant issues, such as "aesthetics."
- 9. Standardize e-formats for the administrative record.** No more box loads of documents nobody bothers to read.
- 10. Limit plaintiff's attorney's fees.** If an attorney settles a lawsuit with nine frivolous arguments and one good one, judges should reduce fees by nine-tenths.



ILLUSTRATION BY JASON CROSBY

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