JUST IN A pair of downtown S.F. towers are on the verge of selling for deep discounts 31 MIN AGO

Rides for moms
Over 4500 on-demand rides provided to and from prenatal appointments.
In partnership with Surgo Ventures
Uber

OPINION // OPEN FORUM

How a few unions are hijacking California environmental law

By **Robert Selna**
Updated July 3, 2022 3:17 p.m.

Gift Article

A 222-unit housing development is planned at site of the burned-down Red Star Apartments in West Oakland. The project is stalled after a CEQA challenge.
Leah Millis/The Chronicle 2014

Since its enactment in 1970, the California Environmental Quality Act — or CEQA, as it is widely known — has expanded exponentially beyond its original scope of protecting the natural environment. It now includes numerous public health considerations such as traffic, noise and tenant displacement to its list of "environmental" impacts that must be analyzed in reviewing development projects.

As most people who follow California housing news know, this expansion of CEQA's scope has become a favorite tool of NIMBYs who file dubious legal challenges under the law to preserve their neighborhood's status quo. Less known, however, is how special interest groups have harnessed the law not to protect the environment, but to extract a self-serving toll from housing developers.

As a lawyer who has seen environmentally sound projects in the Bay Area stalled for years by specious CEQA claims, allow me to fill you in on how this racket works.

ADVERTISEMENT
Article continues below this ad

Faced with the prospect of a CEQA lawsuit, housing developers are forced to make a financial choice about whether to fight an expensive court battle, cave to demands or simply give up on their development. Each of these scenarios is lose-lose, stalling or killing projects or driving up the cost of construction — and therefore rents. Typically, developers choose a non-litigation option.

Opponents of CEQA reform argue that litigation is rarely used to stop housing development. Their oft-cited statistic is that only 2% of projects requiring CEQA-mandated environmental impact reports are subjected to legal claims. But that statistic is a diversion; a much higher percentage of projects are targeted for meritless CEQA litigation *threats* rather than actual lawsuits.

In an example from the East Bay, where I represent housing developers, leveraging the threat of CEQA litigation has been the longstanding strategy of an association of four building trade unions — that demand high-priced no-bid contracts from developers in exchange for an agreement to stand down on meritless CEQA claims.

The association goes by the reasonable-sounding name "East Bay Residents for Responsible Development." In reality, they are the Plumbers and Pipefitters, Local 342; Electric Workers, Local 595; Sheet Metal Workers Local 104; and Sprinkler Fitters Local 483. They make up just a fraction of the trades needed to complete a housing project, but their involvement in politics, including campaign contributions, and skillful use of CEQA, give them outsize influence over whether housing gets built in cities like Oakland.

I learned firsthand how the CEQA scheme works several years ago while representing a developer on a 167-unit, middle-income housing project on a long-vacant parking lot near BART in San Lorenzo.

ADVERTISEMENT
Article continues below this ad

POWERED BY CONCERT
FEEDBACK

More Opinions

After Roe, women need primary care doctors on the front line of abortion access

The repeal of abortion rights sparked an online run on contraception. Bay Area telehealth companies are trying to keep up

First, my client received a call from an East Bay Residents rep requesting no-bid contracts for its trade unions. My client refused. And so the unions opposed the project on CEQA grounds, including specious claims that potential construction emissions and a possible catastrophic gas explosion were not properly analyzed. The county planning commission approved the project anyway, but the unions appealed it to the Alameda County Board of Supervisors. That led to a meeting with a supervisor who represented San Lorenzo, where it was made clear to me and my client that the project likely would not be approved by the board. Further negotiations with the unions, however, might be move things along.

There was no discussion of the project's potential environmental impacts.

In the end, my client agreed to use some, but not all of the unions. The supervisors approved the project. But the project's cost — paid in part by future renters — increased significantly. The no-bid union contracts were estimated to be 10%-20% higher those that would go out to bid.

More recently, East Bay Residents went after a proposed 222-unit project, including 16 low-income units, on a vacant lot adjacent to the West Oakland BART Station. In March 2021, the Oakland Planning Commission unanimously approved the project — and specifically noted that the project's environmental review was sound.

After being denied no-bid contracts, however, the trades appealed the commission's approval to the Oakland City Council. They claimed, among other things, that the project's environmental documents failed to adequately assess soil contamination. In reality, the project's property had undergone extensive soil cleanup and had been the subject of three separate environmental studies, including one that covered all of West Oakland, according to the project's developer.

Nonetheless, in September, the Oakland City Council paused the project to consider whether to require yet another environmental report. That move prompted California's newly formed Housing Accountability Unit to investigate whether the city council violated state housing laws, which prohibit the denial of legally compliant housing projects. The state has still not released the results of its investigation.

On April 19, Oakland's City Council voted unanimously to once again delay the project and requested further review the soils issue. At the close of the meeting, City Council Member Dan Kalb encouraged the developer to meet with the East Bay Residents for Responsible Development for further negotiations.

Based on my experience in San Lorenzo, those words were eerily familiar. It's clear that the only thing negotiable between unions and developers is construction contracts. Environmental impacts either exist or they do not.

Thankfully, state authorities seem to be making good on Gov. Gavin Newsom's recent promises to hold jurisdictions accountable when they wrongly reject housing projects. But it remains unclear if dubious environmental study demands violate housing laws or the extent to which those violations can be enforced if they are indeed illegal. California's Housing Accountability Act limits cities' discretion to reject housing that complies with all planning and zoning laws, but that does not free a project from having to conduct an environmental review under CEQA.

The fact that so many union CEQA appeals have less to do with environmental concerns than no-bid contracts does not appear to phase many local elected officials. It's simply how business is done.

That's why sharper tools are needed to stop the law's abuse. One Los Angeles developer is suing a CEQA-abusing project opponent, alleging three counts of the Racketeer Influenced and Corrupt Organizations Act, known as RICO. Plaintiffs use RICO to allege extortion.

So long as unions continue to wield the specter of environmental harm alongside their political influence, California's housing crisis will spiral even further out of control.

Robert Selna is a founder of Selna Partners LLP, an Oakland law firm specializing in real estate and litigation.

July 3, 2022 | Updated July 3, 2022 3:17 p.m.

Robert Selna

About Opinion

Guest opinions in **Open Forum and Insight** are produced by writers with expertise, personal experience or original insights on a subject of interest to our readers. Their **views do not necessarily reflect** the opinion of The Chronicle editorial board, which is committed to providing a diversity of ideas to our readership.

Read more about our transparency and ethics policies

DripDrop
Fast Hydration
DripDrop Hydration Juicy Variety Pack...
8,759
$35.99 prime
Add to cart

Most Popular

1. California home insurance crisis: These are the major insurers still offering policies
2. The secretive strategy behind Napa Valley's priciest wines — and why some think it needs to change
3. This hit Bay Area bakery has gone tipless. But will customers get sticker shock?
4. One of California's fastest-growing cities is in the Bay Area
5. Fatal shooting near Oakland's Lake Merritt

Vrbo
YOUR WEEKEND SANCTUARY
Book now

Your One Stop Home Gym Shop, Make It Happen.
Marcy Recumbent Exercise Bike with...
20,651
$197.18 prime
Add to cart