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THE PLANNING & DEVELOPMENT NETWORK

The Complete Roundtable Discussion: The California Environmental Quality Act (MP3)

This session was recorded on May 17, 2006 in Los Angeles.

Participants



Sean Hecht

Executive Director of the UCLA School of Law Environmental Law Center



Dr. Dan Silver

Executive Director of the Endangered Habitats League



Andy Henderson

Vice President and General Counsel of the Building Industry Association of Southern California



Chris Joseph

President and Principal of environmental consulting firm Christopher A. Joseph & Associates



David Gest

Planetizen Managing Editor, discussion moderator

Areas of Discussion

- How CEQA sometimes acts as a **substitute for urban planning** as a whole in California, when its scope is primarily environmental
- The need for a more robust, outcome-driven, **state planning law**, and how it would relate to CEQA
- The political feasibility of such a law
- Whether CEQA aligns with urban planning philosophies like **smart growth**
- How CEQA attempts to balance the interests of **environmentalists** and **developers**
- How CEQA impacts the state's problem with **affordable housing**
- CEQA in a national environmental law context
- Problems with CEQA related to development delays and costs; the threat of lawsuits
- The **mechanics** of CEQA: how Environmental Impact Reports (EIRs), Mitigated Negative Declarations (MNDs), and Tiering are used to regulate environmental quality in the state at a local level, on a project-by-project basis
- What life would be like without CEQA

Track Listings

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Transcript Of Discussion Highlights

Note that this transcript of discussion highlights covers the highlights, but not the entirety, of the 80-minute discussion. In the following transcript, sections that have been edited out are summarized in [brackets].

David Gest: Welcome to Planetizen's first roundtable discussion on important or controversial planning and development issues. I'm David Gest, Planetizen's Managing Editor.

Today's discussion focuses on the California Environmental Quality Act, or CEQA, as it's known here in California. At its most basic level, CEQA gives the public the power to examine real estate development projects throughout the state, in order to determine what action, if any, must be taken to offset negative environmental impacts of such development. The law covers everything from air to noise pollution, to traffic congestion, to the aesthetic appearance of new development. Today we're going to discuss how CEQA impacts urban planning and development throughout California; how it has survived, largely unmodified, for over 35 years; what its major strengths and weaknesses are; how it can be improved; and what other states and localities can learn from the law. Our roundtable discussion participants are all experts in CEQA:

Sean Hecht is Executive Director of the UCLA School of Law Environmental Law Center; Dr. Dan Silver is the Executive Director of the Endangered Habitats League, based in Los Angeles; Andy Henderson is Vice President and General Counsel of the Building Industry Association of Southern California; and Chris Joseph is President and Principal of his own environmental consulting firm, Christopher A. Joseph & Associates.

Thank you everyone for being here today.

Now CEQA is a controversial law, and has been called many things, just to give you a few quotes from various sources:

It's been called "One of California's most cherished institutions...(and) one of its most controversial..."

It's been called "The most important law governing land use...the key to understanding planning in California..."

"The most important environmental protection law in this state...(and also) the basic good government law..."

And also it's been called "Cumbersome, costly, and often abused..."

So there are obviously a lot of different viewpoints on the law, and we hope to get into that today with our participants.

To give you a little more background on CEQA as we get started, the law was enacted in 1970, one year after the National Environmental Policy Act (or NEPA), and it was the first of twenty state-level NEPA-like laws. Early court cases in California established the wide application of CEQA, so that all development proposals in the state were subject to its regulations.

According to statute, CEQA has four major purposes: To "inform governmental decisionmakers and the public about the potential significant environmental effects of proposed activities." To "identify ways that environmental damage can be avoided or significantly reduced." To "prevent significant, avoidable damage to the environment by requiring changes" when the governmental agency finds the changes to be feasible." and To ensure that a governmental agency "discloses to the public the reasons why [it] approved [a] project...if significant environmental effects are involved."

So Sean, I wanted to start with you, as an academic who has covered and studied CEQA for many years, I wanted you to give us a general overview of CEQA.

Sean Hecht: Sure, thanks for having us here David. So the main idea of CEQA is to incorporate an environmental impact analysis, including expert and public input, to inform the public and decisionmakers of the environmental consequences of proposed actions, before the actions are actually taken or approved by local and state governments. It's inspired by NEPA, the National Environmental Policy Act. It is very similar to NEPA, but it has one important requirement that distinguishes it from NEPA, which is that it has the requirement of adopting feasible mitigation measures, something that under federal law, federal agencies do not have to do, and it gives a little bit more teeth to CEQA.

CEQA applies both to public projects, that is, projects that are created by public agencies -- so for example the building of a road, the improvements that are done on a road, building of any sort of public works project, if its approved by a state or local agency, or created by a state or local agency -- but also private projects over which a local agency might have permitting authority, so for example any development of any significant amount of housing is going to be subject to CEQA.

[Discussion on the mechanics of CEQA and definitions of CEQA terminology.]

David Gest: Ok, well I think that gives a good general overview of CEQA, so thank you.

I wanted to go around right now and have everyone else introduce themselves a little bit more, to give us more background on them. Chris Joseph, could you start about telling us more about your company and what you do?

Chris Joseph: Yes, my name is Chris Joseph, I'm a consultant who prepares environmental impact reports (EIRs) and Mitigated Negative Declarations (MNDs). We do work that complies with CEQA and also with NEPA. We're a 45-person firm with five offices throughout the state of California.

David Gest: Thank you. Andy Henderson, you're with the Building Industry Association of Southern California, could you please tell us more about what you do?

Andy Henderson: Yes, thank you, and thank you for having us. I'm the Vice President and General Counsel of the Building Industry Association of Southern California, we have about 2,000 member

companies who build about 45 percent of the homes in California, and we are in six counties going all the way to the borders of Mexico and Arizona.

David Gest: And finally Dan Silver is with the Endangered Habitats League. Could you please introduce yourself and tell us more about your organization?

Dan Silver: Yes, the Endangered Habitats League is a regional conservation group in Southern California, we've worked extensively on large-scale habitat planning and general plans, and we use CEQA day-in and day-out.

[Discussion on CEQA's effectiveness at protecting the environment; development delays and costs associated with CEQA; the threat of lawsuits. Discussion on CEQA's impact on the need for affordable housing in the state.]

David Gest: Great, thank you. Chris Joseph, I know you've dealt with a lot of projects in infill environments in cities. Is it particularly more difficult to engage in those projects with CEQA, than more greenfield type development?

Chris Joseph: I think it depends on the jurisdiction. I think projects that go through EIRs are inherently more difficult and cumbersome and cost more for the developer. I'm not so sure it's necessarily a bad thing -- as I sit across the room from two different sides of this issue, I think if the environmental groups are unhappy and the developers are unhappy, maybe this process is working. Maybe it's not working as efficiently as it could be...but it's working.

David Gest: Andy, do you want to comment on that?

Andy Henderson: Well, I just think that's an interesting point of view from a CEQA consultant...but I would say it's not working, and it's not working for either side -- it's not working for the industry in that the delays and the costs are very high, and it's a waste of time and money in many respects. Notwithstanding there are some benefits of CEQA, it's just that along with the benefits comes a lot of undue waste of money. And I don't think it's working for the environmentalists side in that the only thing they get out of it in many cases is just delay; they win a few battles along the way, they buy some time, but they're losing the war in the long run in that CEQA's focus on project-specific approvals is not taking the kind of 80,000 foot approach that I think that the environmentalists would rather we be taking.

David Gest: Dan Silver, would you like to comment on that?

Dan Silver: Actually, I agree with Andy that the whole regime in California needs fundamental reform. In the context of fundamental reform, I think that CEQA needs to be adjusted. Until that reform occurs, CEQA is like a lifeboat on a sinking ship -- you don't want to give up your lifeboat, in fact you may want to make your lifeboat stronger, as long as the ship is sinking. But in a funny way, the environmental community has come to rely on CEQA, and it creates an illusion sometimes that you're going to protect something, or that you have a seat at the table, when our energies would be better spent looking at the general plan...looking at the underlying planning policies.

I think the fundamentals of CEQA -- the disclosure, doing surveys, finding out what's there, mitigating impacts -- these are things that will not go away under any circumstances, because they're just good ideas. And if we do get a different planning regime, many aspects of CEQA will continue. But I think some of the things we've talked about could and should be adjusted if we got a different regime, looking at alternatives on a larger scale than the project-by-project basis. Project-by-project becomes almost

meaningless to look at alternatives -- you can only do that on a bigger picture scale.

So there are many things we can do if we got together on the planning outcome-driven process. Until that time, I think there's probably not a single environmentalist in the state who would want to tinker with CEQA outside of a bigger-picture reform. The affordable housing, workforce housing, low-income housing, in-filling...the environmentalist community has been very supportive in general of narrow exemptions, even exemptions to CEQA for true in-fill, for truly low-income housing. So there I think we have agreement with the BIA on the need to do something in that aspect, even absent a larger-scale reform.

David Gest: Dan you had mentioned the need for some kind of larger-scale planning initiative in California. Is that the type of initiative that could be integrated with CEQA, that CEQA could somehow be expanded to incorporate more planning issues, or are you envisioning a similar law at a statewide level that focuses very specifically on planning issues only?

Dan Silver: The state of California actually passed a law, it's called AB 857, that sets planning policies for the state and particularly for the expenditure of state funds. It's kind of a "mom and apple pie" list of smart growth principles; you know, "use land more efficiently", "build closer to existing urban services", "save cultural and habitat lands". So we actually have these in the statute. The problem is that local governments that actually have land use authority aren't required to follow them. I believe that California does need a real planning law that would not micromanage planning at the local level, but at least set a framework for it.

Thus far in the state we have an utter absence of political leadership. There's never been to my knowledge a state which has addressed the planning issue successfully without actual forceful gubernatorial leadership. California is missing that right now. Maybe the leadership could come from the legislature, but I've always felt that if you've got the differing interests in the room, plus the political leadership, you get somewhere. Absent the political leadership, we don't seem to be able to bridge those gaps by ourselves.

David Gest: Andy Henderson of the Building Industry Association, what do you think about a law like that?

Andy Henderson: Well, I think that we do have to remember that historically land use approval is a local matter. Here in California we have the League of Cities that is very much against the kind of top-down, state-mandated planning that Dan is talking about. Within my own industry, there are some "merchant builders" who are nomadic and nimble enough to not care where they build units, as long as they can be building units and sell them profitably. But there's also a broad swath of our industry that doesn't have that point of view, and that instead is very protective of property rights, and the ability of people who own land to reasonably try to convert it to another use when the market suggests that's the right thing to do.

So our industry is not particularly monolithic, but I would say it is generally disinclined to like the kind of top-down planning that Dan just mentioned. And I think the cities themselves are very protective of their land use planning authority. So as long as that remains the reality, I'm in favor of a more robust planning process, but not the kind of prescriptive mandates that I think Dan is talking about.

David Gest: Chris Joseph, you have a private environmental consulting group. How do you feel about a top-down law that instructs about planning in California?

Chris Joseph: (*Pause*) I don't think it's ever going to happen, so to be honest with you I haven't given it

a whole lot of thought. (*Laughing*)

Dan Silver: Why waste your time? (*Laughing*)

Chris Joseph: Why waste my time? I think Dan was right -- it's not just the current leadership, I don't think we ever had that kind of leadership. I don't think there's the political will to do it. I think there's plenty of pressure from all sides, I just don't see it happening.

Sean Hecht: Well I agree with that, but I also think there are other things that could potentially move us in a similar direction. For example, providing financial incentives for planning that complies with, for example, regional planning guidelines or blueprints that would implement smart growth principles. The question would be, could there ever be a consensus about what it would mean to implement those principles, and about where the right places to build might be, and would the state even be willing to do that at the level of financial incentives. But certainly, there are things that the state could do at the state level that would be far short of a comprehensive planning process, but that would at least encourage cities voluntarily to participate in systems that would promote the kind of planning that at least Dan would prefer, and that I also would prefer.

[Discussion on CEQA and smart growth; what life would be like without CEQA.]

David Gest: Thank you all very much, I really appreciate your participation in our discussion on CEQA. Once again our participants were:

Sean Hecht, Executive Director of the UCLA School of Law Environmental Law Center; Dr. Dan Silver, Executive Director of the Endangered Habitats League; Andy Henderson, Vice President and General Counsel of the Building Industry Association of Southern California; and Chris Joseph, President and Principal of his own environmental consulting firm, Christopher A. Joseph & Associates.

Thanks again to all of you.

For more information on CEQA and this discussion, you can visit our website, Planetizen, www.planetizen.com. That's www.p-l-a-n-e-t-i-z-e-n.com.

For Planetizen, I'm David Gest.

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