



CEQA Is the Boogeyman, but with More Bark Than Bite in Terms of Impact on Housing

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Toward the end of the recall election, [CalMatters did a very good article](#) on CEQA (California Environmental Quality Act) and the housing crisis. In some sense the article is dated in that they were asking the mostly Republican recall candidates their opinion of the housing crisis and what they would fix.

Most of them blamed CEQA, had little other in the way of suggestions, and the overall analysis from the article is that CEQA was a small piece of a large puzzle and probably not even the most important piece.

When CalMatters asked candidates Larry Elder, John Cox, Kevin Kiley and Kevin Paffrath, all said they would reform CEQA.

As the article explained, “CEQA is landmark legislation signed into law in 1970 by Republican Gov. Ronald Reagan. It requires public agencies to reduce or mitigate the environmental impacts of development wherever feasible. Essentially, the law tells developers to study a project to see how it could harm the environment and explain how they will lessen the damage. The law has been invoked by NIMBYs to block or delay multiple high-profile housing projects.”

The ask the critical question: “Is this law really the culprit behind the state’s housing woes, or just an easy target?”

The answer: “Overall, experts said CEQA is a huge headache for developers, and there are ample opportunities for reform. But getting rid of CEQA doesn’t get at the heart of the matter because it’s only one of many tools cities and local neighborhood groups use to block housing.”

CEQA is “the boogeyman or the poster child for housing delays, but it’s an oversimplification of our challenges,” said Dan Dunmoyer, president and CEO of the California Building Industry Association. “It’s an important component of it, but there are many projects that we have a hard time getting to ‘yes’ that have not had CEQA pulled on them.”

CEQA then is seen as one of many tools and, as the article explained, the candidates are not interested in most of them because they won’t touch local control.

“CEQA lurks behind so many reasons we don’t have housing,” said Jennifer Hernandez, a San Francisco and Los Angeles-based attorney who often defends developers from CEQA litigation. “Instead of three months getting approval, we can spend 10 years in 39 public hearings, getting sued four times over.”

Hernandez studied lawsuits and found in 2018 that 60% of CEQA lawsuits filed between 2010 and 2012 targeted residential housing developments, and the vast majority of them were urban infill developments, not projects in outlying areas.

For her, “the law was being abused by unions and NIMBYs.”

On the other hand, others who have studied CEQA lawsuits, such as researchers for the environmental nonprofit Rose Foundation, “concluded that fewer than 1% of projects subject to environmental review — housing or not — faced lawsuits.”

Another study “found that fewer than 3% of 2,001 total projects with more than five housing units approved in 20 California jurisdictions between 2014 and 2017 were ever litigated.”

Instead they argue as Moira O’Neill, a senior research fellow at UC Berkeley’s Center for Law, Energy & the Environment, “the number of steps and time it took to get a project approved varied wildly between jurisdictions, even though CEQA applied to all of them.

“By reforming CEQA you’re not solving the problem, because the biggest problem is local governments placing obstacles in the way of housing development,” O’Neill said.

Dunmoyer from the California Building Industry Association supports CEQA reform but also said that “he’s had projects that took 15 years to approve that never encountered environmental litigation.”

Another problem is that even changing CEQA has proven tough—even with a Democratic supermajority or perhaps because of a Democratic supermajority, CEQA reform bills have failed to even get out of policy committees.

They cite one obstacle: labor unions. Labor unions, as we have seen, have used litigation or the threat of it to get union worker concessions for projects.

The recall candidates did not have many great answers for that. Elder suggested “he would use his bully pulpit to take on special interest groups.” We know how well that works.

“The candidates have criticized Newsom for not making more progress toward his goal of adding 3.5 million housing units by 2025. Housing costs, they say, are forcing Californians to leave,” the article notes. “But besides killing CEQA, they have not proposed many solutions.

“When asked what they would do about local control, the recall candidates said they would leave it untouched,” the article reports.

None of the candidates, for example, would have signed bills to increase density on single-family zoned land.

Instead, “most of the candidates proposed developing land outside of major cities, which is often blocked by the government-established boundaries that separate urban areas from rural land, according to a [recent CATO Institute study on housing affordability](#).”

Paffrath proposed “the development of new communities, master-plan style communities outside of our large cities. So that way we’re not going into Santa Monica and trying to infill a ton of new housing.”

David Garcia, policy director for [UC Berkeley’s Turner Center](#), said it was “hypocritical to use CEQA as a punching bag without a clear plan to tackle some of the most powerful interest groups that often block housing legislation and production.

“I think it’s a bit of a red herring,” Garcia said. “If you get rid of CEQA, that doesn’t mean much new housing is going to get built because they’re not for zoning reform, they’re not for any of these other things that we’ve identified are important to spur housing development.”

This discussion I found enlightening. Everyone wants to punch California for its housing crisis—and for good reason. But the solutions that came out appear to be CEQA reform, which no one really believes is at the heart of the housing crisis—and they oppose density and want to build outside of towns, in some places, perhaps create new towns.

Even in Davis, which has had a much larger percentage of CEQA suits than just 1 to 3 percent, CEQA hasn’t actually done anything other than delay housing for a year or two. Other tools

have been much more effective at blocking housing—most of them local rules that no one wants to touch.