

CEQA Litigation: The Cost Of Doing Business In California

There has been a lot of news lately on the costs of CEQA litigation, as well as the potential for the statute to be used as a tool to stop development, good or bad, or exact concessions or pay-offs.

What is CEQA?

CEQA, or the California Environmental Quality Act, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. A public agency must comply with CEQA when it undertakes an activity defined by CEQA as a "project." A project is an activity undertaken by a public agency or a private activity which must receive some discretionary approval (meaning that the agency has the authority to deny the requested permit or approval) from a government agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. [[Frequently Asked Questions About CEQA](#)]

An [article](#) written by James Brasuell notes the dangers of "greenmail" under CEQA, a practice in which attorneys and groups abuse the statute, tying projects up for years in lawsuits and exacting settlement payments that can be used for attorneys' fees and unrelated matters. One such settlement was recently leaked in connection with a condo project in the Larchmont area of Los Angeles. The Brasuell article further quotes a local lawyer as identifying labor unions and environmental groups as practitioners of this sort of greenmail, and asks: "The natural question is whether the money lost to greenmail would be better spent on design improvements, quality of life or infrastructure investments, or for some kind of public benefit."

Compounding this situation is the potential for big attorney pay-offs if a lawsuit under CEQA is successful, using Code of Civil Procedure section 1021.5, California's "private attorney general" statute.

For instance, in [Healdsburg Citizens for Sustainable Solutions v. City of Healdsburg](#), a June 4, 2012 decision by the 1st District Court of Appeal, a trial court award of attorneys' fees to a group challenging approval of a development project was affirmed, even though attorneys spent considerably more time on the case than legal counsel for the defendant, and overbilling was alleged. The trial court also applied a multiplier of 1.5 to the fees and used an hourly rate considered to be at the high end of reasonableness. But, in the end, the Court of Appeal gave wide discretion to the trial court and let stand an award of more than \$380,000 in attorneys' fees.

How big is the problem of greenmail and abuse of CEQA? Is reform truly necessary?

Based on data from the City of Los Angeles, the problem may not be as large as some suggest. According to an [article](#) by David Petit on the National Resources Defense Council Staff Blog, a spreadsheet of all CEQA applications from January 2011 through July 20, 2012 listed 1,182 projects that received CEQA approvals. Meanwhile, State records showed that only 18 CEQA lawsuits had been filed during the same time period listing the City of Los Angeles as a defendant.

These facts lead Petit to conclude: "There may be reasons to discuss CEQA reform, but the volume of CEQA litigation isn't one of them."

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