Opinion: A CEQA advance environmentalists should explore

By Stuart Leavenworth

For environmentalists in the Golden State, few laws are more sacred than the California Environmental Quality Act. Enacted in 1970, the law gives citizens and interest groups the power to challenge the decisions of local governments and state regulators and block projects they find objectionable.

Used at its best, CEQA has protected poor communities from toxic incinerators and landfills. It has helped conservationists stop big development projects in the wrong places, such as the sensitive Martis Valley near Lake Tahoe.

Yet because of its sweeping nature, CEQA has sometimes been abused in cities, undermining the kind of transit-friendly development that environmentalists say they support.

As the S.F. Streets blog has detailed, litigants using CEQA were able to delay for four years a new bicycle plan for San Francisco, delaying safety improvements that would encourage more cycling. Here in Sacramento, a union attempting to organize health care workers sued to block Sutter Medical Center's expansion, ostensibly for environmental reasons, but most likely as a way to leverage labor concessions. I've heard infill developers say that CEQA can add hundreds of thousands of dollars to an urban project, making it easier to develop out in the hinterlands.

In this legislative session, Gov. Jerry Brown's call for CEQA

reform has generated a predictable smackdown, with business interests on one side and environmental and labor interests on the other. Somewhere in between are infill developers and sustainable cities advocates who recognize CEQA sometimes runs counter to their goals.

The business coalition supports a bill by state Sen. Michael Rubio, D-East Bakersfield, which would create a “standards-based” approach to CEQA. Projects would be exempted from environmental review if they met standards established by other laws.

Critics fear this would lead to a “race to the bottom” on standards, with bad developments getting the green light in areas that had weak zoning and pollution rules. Said Bruce Reznik, executive director of the Planning and Conservation League: “The standards-based approach is either naive or an attempt to cut the public out of the process.”

CEQA defenders might be right that Rubio is overreaching. But their failure to acknowledge the law’s abuses almost assures that a Rubio measure, or something like it, will eventually pass. Ask environmentalists about misuse of the law, and they say such cases are infrequent. Show them a study that concludes that infill projects are challenged more often than “Greenfield” projects, and they wave it off, saying such challenges are rarely successful.

I can understand, to a degree, why environmentalists resist any real compromise. They feel under siege. Globally they (and we) are losing the battle to reduce greenhouse gases. Locally, they face an expansion of oil industry fracking and continued urban sprawl. Many are fed up with the politics of compromise that they feel leads to such defeats.

Yet environmentalists need to ask themselves: Is there a reform to CEQA that might actually advance their goals? Could there be a CEQA exemption that, as California grows, might

reduce greenhouse gases instead of expand them?

There might be. Instead of the standards-based approach – which might allow jurisdictions to more easily approve sprawl-type projects – how about a CEQA exemption that helps us renew and green our cities?

The compromise I suggest would create a CEQA exemption for housing, transit and certain mixed-use projects within cities – and only cities. It would not apply to developments that counties might want in their unincorporated areas.

This exemption would not be a blanket pass. We could still require, for instance, that housing proposed for a "brownfields" site underwent a CEQA review for toxics. But if a project met certain conditions that were not of "state interest," then cities could approve it with no CEQA review.

This compromise would still allow environmentalists to block leapfrog projects that threaten sensitive habitats. Yet by applying strictly to cities, it would give a leg up to projects that reused land and were near transit stations – filling in the empty lots that dot central Sacramento and so many cities.

This proposal would hardly avoid controversy. Counties and land speculators would fight it. Unions would seek to kill it, since it would limit their ability to use this environmental law to extract non-environmental concessions.

CEQA defenders may also claim it is unnecessary. They point to a 2011 law, Senate Bill 226, that allows infill projects to avoid environmental review if their potential impacts were addressed in a prior, program-level analysis done by local jurisdictions. Yet the law is so complicated, and is so dependent on state guidelines and local actions, that it is unclear if SB 226 will deliver real benefits.

Gov. Jerry Brown could be the force to bring this proposed

compromise together, or something like it. The governor believes in “subsidiarity” – shifting responsibility from the state to local officials. CEQA could be modified to give elected city leaders more control. If environmentalists didn’t like those decisions, they could organize and elect new city leaders. That’s the way democracy is supposed to work.

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