

The Sierra Club Supports the Alternative CEQA Appeal Ordinance for the City of Los Angeles



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**Angeles Chapter
Conservation Legal Committee**

There is currently no City of Los Angeles Ordinance that governs the procedure for appealing a CEQA environmental determination made by a city agency to the full city council. State law requires that environmental determinations made by a nonelected decision-making body such as a planning commission be appealable to the city council. Other cities, e.g. Long Beach, have such ordinances, and they benefit everyone by providing clear guidance on the CEQA appeal process within the city.

The Los Angeles City Attorney has issued a draft ordinance that would add a section to the L.A. Municipal Code prescribing procedures for the appeal to the Los Angeles City Council of environmental determinations made by city agencies. The Sierra Club supports the idea of such an ordinance, but the one proposed by the City Attorney is flawed in many ways. It would put in place a procedural obstacle course, which would make it more difficult for ordinary citizens to be heard by the city council when they disagree with an agency's environmental findings. The Sierra Club has worked with other local activists and environmental organizations to draft an alternative version of the CEQA appeal ordinance, which does a better job of serving public policy goals and balancing the rights of all parties.

Background

The purpose of CEQA is to allow agencies to have full information on the environmental consequences of their actions and on possible alternatives before they approve projects. Under CEQA, when the City of Los Angeles is considering a project, it must make determinations of whether the project will be likely to have significant environmental impacts, and whether these can be mitigated into insignificance. If there is substantial evidence to show that the project may have a significant effect on the environment, the agency must prepare an Environmental Impact Report. The EIR describes the likely environmental impacts of the projects, alternative projects that may be less harmful to the environment, and measures that may be taken to mitigate the environmental impacts. If no EIR is required, the agency must make certain findings – that no environmental review is necessary, that the project will have no significant environmental effects, or that any significant effects can be mitigated into insignificance.

The determination of the potential environmental effects of a project is usually made by an agency within the city, such as the city planning commission or board of sanitation. CEQA requires that a decision made by a non-elected city agency may be appealed to the elected city council. There are two reasons for this: first, it makes someone politically accountable for the decision – the elected city council-members can't lay the blame off on the agency; second, it supports CEQA's policy that the environmental harm should be avoided if possible. Appeals are sometime made in two

steps: first to a city council committee such as the Planning and Land Use Committee, then if the appellants aren't satisfied with the committee's decision, to the full city council.

An appellant who believes that the city has not followed CEQA in making environmental determinations or approving a project may file a lawsuit asking the court to vacate the environmental determinations and/or project approvals.

CEQA Appeals Under Existing Law

Under existing law it is unclear who may appeal an environmental determination to the city council, and on which issues such an appeal may be based. One purpose of a CEQA appeal ordinance is to clarify this.

There is currently no city appeal process for implicit determinations that projects are not subject to CEQA, and the City Attorney's proposed ordinance does not fix this problem. When an agency approves a project without explicitly making an environmental determination, the only way a citizen can effectively object is to sue the city under CEQA. This gap could be filled by allowing implicit determinations to be appealed to the city council.

Under existing state law, if an appellant wants to preserve the right to sue the city regarding its certification of an EIR or other environmental determination by a city agency such as the planning commission,

- someone (not necessarily the appellant) must have appealed the determination from the agency to the city council;
- the appellant must have objected to the project during the city council appeal process; and
- someone (not necessarily the appellant) must have raised the issue on which your lawsuit is based during that appeal process.

It is not necessary for the appellant to have participated in earlier phases of the CEQA process in city council committees or in the agency, though the city may require that an appeal be taken by someone from the agency to a city council committee (e.g. the Planning and Land Use Management Committee, for determinations made by the city planning commission), and that an appeal be taken from that committee to the full city council. Nevertheless, under existing law, if the determination is appealed to the city council, anyone may object during the appeal process to the project, based on any issues, even issues that were not raised to the agency or the subcommittee, and this can serve as the basis for a CEQA lawsuit against the city.

The version of the ordinance proposed by the City Attorney would substantially restrict the right to appeal an environmental determination to the city council, and would therefore restrict the right to sue for judicial review.

Ordinance Proposed by Los Angeles City Attorney

(Available at <http://envirodefenders.org/laceqa/LACityProposedOrdinance21151.pdf>)

The ordinance proposed by the L.A. City Attorney would add a section to the L.A. Municipal Code requiring that, in order to have the right to appeal an environmental determination to the city council,

- the appellant must have participated in the agency's CEQA process; and
- the exact issue on which the appeal is based must have been raised during the CEQA process before the agency.

The proposed ordinance sets a very short deadline and provides a minimal notice period:

- 10 calendar days to appeal an environmental determination.
- 10 calendar days notice before the city council hearing.

It also requires the appellant to pay a filing fee, in an amount that has not yet been determined. Furthermore, the proposed ordinance provides that, if the city council remands an environmental determination back to the agency for decision, the agency's decision will be final; no further appeal is possible, and no further city council action is required. This provision violates CEQA, which requires that decisions of nonelected decision-making bodies be appealable to the elected decision-making body, i.e. the city council.

Lawyers are accustomed to following detailed procedures with short deadlines, such as the ones required by the proposed ordinance; they know that failure to raise a critical issue in the trial court, or to file a notice of appeal on time will mean they can't appeal. But citizen activists should be given more leeway, and not subjected to the procedural obstacle course embodied in the ordinance.

The purpose of the appeal provision of CEQA is to make the elected officials on the city council politically accountable when the city approves projects with major environmental consequences. It is preferable that issues concerning environmental determinations be raised earlier in the process, with the agency initially making the determination. But if a citizen doesn't know in time that the project is being considered by the agency, or doesn't know about the issue during the agency review process, it is preferable to allow an appeal to the city council based on the issue than to preclude the city from any consideration of the issue following the agency determination. It's important that the city council be given the broadest possible range of inputs when it's considering whether to approve a project with major environmental consequences. And the proposed ordinance is much more restrictive of who may appeal, based on which issues, than existing law.

Local Activists' and Environmentalists' Alternative Ordinance

(Available at

<http://envirodefenders.org/laceqa/AlternativeLACEQAAppealOrdinanceV6.pdf>)

A group of local activists and environmental groups, including the Sierra Club and the NRDC, has drafted an alternative ordinance which we feel is superior in many respects to

the ordinance proposed by the city attorney. Here is a summary of some of its improvements:

- It applies to implicit environmental determinations, when an agency approves a project without an explicit CEQA finding. Allowing implicit environmental determinations to be appealed to the city council provides those opposed to the project with an option other than suing the city.
- It allows any person to appeal an environmental determination, on any grounds. This allows the city council to have as much input as possible, from as many people as possible, when deciding whether the value of the project outbalances the environmental cost. It is also more consistent with existing law.
- It requires no filing fee to appeal, making sure that all citizens will be able to afford to appeal a determination they believe is wrong.
- It gives the public 30 days to file an appeal after notice of the environmental determination, and 180 days when no notice is provided.
- It requires that notice of environmental determinations made by city agencies be posted on the city's Web site, and in public places.
- It requires that the city council staff prepare a report on the appeal.
- It requires that the city council provide 21 days notice in advance of the city council hearing, and mail this notice to appellants.
- It requires the city council to provide the appellant a reasonable time to present a case at the city council hearing, and allows the appellant to reserve time for rebuttal after the agency makes its presentation.
- It states that, if the city council remands an environmental determination back to the agency, the agency's subsequent environmental determination may be appealed to the city council, as required by CEQA.
- It provides that environmental determinations made by city agencies do not become final until the appeal period has run and any appeals have been decided by the city council. Any associated project approval is not effective until then, and no CEQA Notice of Determination or Notice of Exemption may be filed until then.

One purpose of allowing CEQA appeals to the city council is to reduce the number of lawsuits against the city. Citizens who feel that their concerns have been heard at more than one level are more likely to feel that the concerns have been taken into account, and are less likely to sue. Another purpose is to insure that environmental concerns are carefully weighed against project benefits. The city council, as a body of elected officials responsible for all aspects of city governance, will review the project from its generalist point of view, taking into account many more factors than the specialist agency that initially approved the project.

For More Information

The full texts of the proposed ordinance – both the City Attorney’s version and the Local Activists’ and Environmentalists’ version – are available at the following Web site:

<http://www.EnviroDefenders.org/laceqa>

Also available from that Web site is a letter from the NRDC, subscribed to by numerous local organizations including the Sierra Club, giving more detailed legal background on the proposed ordinance.

Proposed Action

Please contact your Los Angeles City Councilmember, and the Mayor, and copy the new City Attorney, Carmen Trutanich on the letter. Ask them to adopt the alternative ordinance instead of the original version proposed by the previous City Attorney.

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