

**SCOTT WIENER**  
**威善高**

**SUPERVISOR WIENER'S CEQA APPEAL PROCESS REFORM LEGISLATION**

Supervisor Scott Wiener is sponsoring legislation to create a statutory process for appeals to the Board of Supervisors under the California Environmental Quality Act (CEQA). Currently, no such statutory process exists in San Francisco for many projects, and as a result, our CEQA appeal process is opaque and unpredictable. The projects affected by this poor public process are not large developments, but rather smaller public and private projects such as transit, bike, and park improvements, affordable housing, and home improvements like remodels and window installations.

Supervisor Wiener's legislation addresses the lack of predictability in our current CEQA appeal process – one that reduces transparency and broad public participation – by creating a more open process to resolve CEQA disputes, one that is accessible to average citizens and not just those skilled in supporting/opposing projects. It does so by creating clear appeal deadlines, improving notice to the public of CEQA determinations, and clarifying appeal procedures. The legislation is supported by various good government, neighborhood, transit, park, affordable housing, and other organizations.

San Francisco's current CEQA appeal process is so confusing that it usually requires hiring a land-use attorney to understand even the most basic procedure: the deadline for filing an appeal. Even staff in the Planning Department and at the Board of Supervisors—the entities that process, issue and make determinations on CEQA appeals – cannot give clear answers as to whether a CEQA appeal is timely. Rather, every single CEQA appeal, when it arrives at the Board of Supervisors, must be referred to the City Attorney's Office to determine if the appeal is timely and thus properly before the Board of Supervisors. This is bad policy – frankly, bad government – that results in uncertainty and waste and makes it very difficult for the average citizen to fully understand and participate in the process.

We need definitive and clear rules—with robust public notice for proposed projects—as part of a process in which everyone, whether proposing or opposing a project and with or without an attorney, knows the rules going in and can act accordingly. The legislation achieves this goal by establishing clear time frames for filing appeals, enhancing noticing to the public, and requiring that CEQA appeals be considered simultaneously with underlying project approvals instead of in separate, duplicative proceedings.

Contrary to opponents' claims, the legislation does not affect Environmental Impact Reports – typically required for large projects – and does not amend CEQA itself, since only the State Legislature can do that.

The legislation has gone through a robust public process, resulting in Supervisor Wiener accepting 34 amendments to the legislation. Supervisor Wiener has convened three large roundtable discussions with stakeholders, including neighborhood and environmental organizations, and participated in many additional meetings. Moreover, by the time the legislation comes to the full Board of Supervisors, it will have had six public hearings at the Planning Commission, Historic Preservation Commission, and the Board's Land Use & Economic Development Committee.

**ORGANIZATIONS SUPPORTING SUPERVISOR WIENER'S  
CEQA APPEAL PROCESS LEGISLATION**

Bay Area Council

BRIDGE Housing

Mercy Housing

Planning Association for the Richmond

San Francisco Bicycle Coalition

San Francisco Building and Construction Trades Council

San Francisco Chamber of Commerce

San Francisco Council of District Merchants Associations

San Francisco Housing Action Coalition

San Francisco Planning and Urban Research Association (SPUR)

Sheet Metal Workers' Local Union No. 104

Sunset Heights Association of Responsible People (S.H.A.R.P.)

Walk San Francisco



March 6, 2013

Board of Supervisors  
1 Dr. Carlton B. Goodlett Place,  
San Francisco, CA 94102

Dear Members of the Board of Supervisors:

I am writing on behalf of the Bay Area Council in support of the CEQA procedures legislation sponsored by Supervisor Scott Wiener.

CEQA is fundamentally a good law and it gives well intentioned people strong powers to stop bad projects. Unfortunately, it also gives people with intentions not related to any environmental concern, those same strong powers to stop good projects. We believe this legislation, which would make timelines for noticing and appeals more reasonable and streamlined, will help rein in abuse of the CEQA process and provide clarity to project sponsors in San Francisco and their projects that require CEQA review. It is our understanding that the proposed legislation would not reduce or remove any potential appellant's rights, but rather clarifies when an appeal must be filed. This is critical to the success of development projects that will be instrumental in meeting the goals of SB 375 and the Bay Area's Sustainable Communities Strategy.

Streamlining and clarifying CEQA's intricate, and often convoluted, appeals process is an important aspect of the modernization of the law, without jeopardizing its environmental protections or public input on projects. This legislation will provide a more level playing field for both market-rate and affordable housing developers in San Francisco.

I hope you will agree and move this legislation forward.

Sincerely,

A handwritten signature in black ink that reads 'Jim Wunderman'.

Jim Wunderman  
President & CEO  
Bay Area Council

Letter from Bridge Housing on CEQA Reform

President David Chiu and Members of the Board of Supervisors  
City Hall, Room 244  
1 Carlton B. Goodlett Place  
SF, CA 94102

**Ref: Proposed Reform of CEQA**

Dear President Chiu and Members of the Board of Supervisors:

As you know, one of BRIDGE Housing's core missions is to identify solutions that will address California's worsening housing affordability crisis. Nowhere is this more urgent than in San Francisco where our supply of affordable housing has not kept up with our relentless demand. We need to do a much better job of building more housing for our non-wealthy citizens.

Sadly, our local CEQA rules have too frequently been an obstacle that harms our ability to build more housing and do it more cheaply. It is repeatedly used against proposals that embody principles of appropriate land use and sensible urban infill. For example, BRIDGE's landmark Coronet development on Geary Street, built for low-income seniors, is a common example of the misuse of CEQA. Local project opponents fought and delayed this excellent project for many years in an attempt to kill it, using environmental arguments as a pretext.

There are far too many examples of CEQA being invoked locally to appeal negative declarations and categorical exemptions for affordable housing projects, usually long after their approvals have been granted. These abuses increase the risk and uncertainty of building affordable housing, making it take longer and costlier to build. The harm CEQA abuse causes affordable housing is real.

On behalf of BRIDGE Housing, I would like to express my strong support for Supervisor Scott Wiener's sensible and modest CEQA reform proposal. We believe that simple fairness requires that some limits have to be placed on appeals of "neg decs" and "cat exes". Supervisor Wiener's proposal has had months of public hearings and review by community groups. He has made extensive modifications to his proposal in response to this outreach. Unfortunately, we have to acknowledge that in spite of this, some folks will never agree to any compromise or changes to the existing CEQA rules.

Finally, we learned that a competing CEQA reform measure was recently introduced by Supervisor Jane Kim. This last-minute proposal has apparently had no community review, no public hearings and, unfortunately appears to vastly increase the complexity of the public process for project entitlements – something our City does not need. We regret that we cannot support this measure.

I am writing to respectfully request that you support Supervisor Wiener's modest CEQA reform proposal. The reforms it contains are badly needed and it has been subjected lengthy public outreach to make it stronger. It is good policy for our City.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Cynthia A. Parker', with a stylized, flowing script.

Cynthia A. Parker  
President & CEO  
BRIDGE Housing Corporation

## Power, Andres

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**From:** Tim Colen [tim@sfhac.org]  
**Sent:** Monday, March 11, 2013 11:43 AM  
**To:** planning@rodneymong.com  
**Subject:** SUPPORT Sensible CEQA Reform

Dear President Fong,

On behalf of the SF Housing Action Coalition, I respectfully request that you support the modest, long overdue reforms being proposed by Supervisor Scott Wiener to our local CEQA rules. There are sadly too many examples of how CEQA has been invoked to block or delay projects for reasons having nothing to do with improving environmental quality. We have seen again and again how it is used against proposals that embody principles of sensible land use and appropriate urban infill. It is ironic that CEQA has become a potent obstacle to our City addressing the real environmental challenges it faces.

This is not the first time an attempt has been made to reform CEQA in SF. Over the past 10 years, Supervisors Fiona Ma and Michela Alioto-Pier also tried unsuccessfully to introduce similar reforms. At your request, Sup. Wiener has delayed his proposal for months to conduct extensive additional outreach among certain environmental and neighborhood groups. He has done this and made still more modifications to his proposal. Yet it must be acknowledged that some folks will simply never support ANY change to these badly outmoded rules.

The SFHAC believes that for certain projects, there should be fair limits placed on the time they can be appealed under CEQA. Under current rules, opponents can wait months after these projects have received their approvals to file appeals to successfully delay them. These abuses add enormous uncertainty and costs to both private, and more frequently, public projects. Contrary to our opponent's claims, Sup. Wiener's proposal does NOTHING to prevent citizens from being informed and participating in an open, transparent process.

Please support these modest, badly needed reforms.

Sincerely,  
Tim Colen

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Tim Colen, Executive Director  
San Francisco Housing Action Coalition  
95 Brady Street  
San Francisco, CA 94103  
Office: (415) 541-9001  
Cell: (415) 601-1709  
[www.sfhac.org](http://www.sfhac.org)

"The SF Housing Action Coalition advocates for the creation of well-designed, well-located housing, at ALL levels of affordability, to meet the needs of San Franciscans, present and future."



February 19, 2013

Board of Supervisors

1 Carlton B. Goodlet Place

San Francisco, CA 94102

To Members of the Board of Supervisors

I am writing on behalf of Mercy Housing California in support of the CEQA procedures legislation, sponsored by Supervisor Wiener. Mercy Housing California is a non-profit organization whose mission to create stable, vibrant and healthy communities by developing, financing, and operating program-enriched affordable housing for families, seniors and people with special needs.

Mercy Housing does not typically endorse local legislation, but we are making an exception in this case because of the importance of the topic. CEQA law and procedures are complex and poorly understood. As a consequence, even the most well-intentioned efforts to simplify and improve the process are greeted with deep suspicion. In this case, the Board is considering a very reasonable and modest proposal to give some basic shape and logic to the timelines for noticing and appeals.

Mercy supports this legislation because as affordable housing developers, it is critical that we receive some relief from the byzantine nature of the appeals process. To my knowledge, this legislation does not reduce or remove any potential appellant's rights, but simply clarifies when an appeal must be filed. This is a basic fairness issue that any non-profit or for-profit needs in order to do their work.

I hope you will agree and move this legislation forward.

Sincerely

A handwritten signature in black ink, appearing to read "Doug Shoemaker".

Doug Shoemaker

President, Mercy Housing California

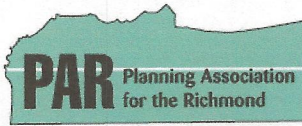
Mercy Housing California

1360 Mission Street, Suite 300, San Francisco, California 94103 o | 415.355.7100 f | 415.355.7101 tty | 800.855.2880 mercyhousing.org

Mercy Housing is sponsored by communities of Catholic Sisters

LIVE IN HOPE





5758 Geary Blvd., # 356 - San Francisco CA 94121-2112  
Voice Mails & Faxes-(415) 541-5652 –Direct & Voice Mails (415) 668-8914  
Email: [president@sfparr.org](mailto:president@sfparr.org) Web Site: [www.sfparr.org](http://www.sfparr.org)

March 4, 2013

The Honorable  
Supervisor Scott Wiener  
City Hall, Room 274  
1 Dr. Carlton Goodlett Place  
San Francisco, CA 94102  
[Scott.Wiener@sfgov.org](mailto:Scott.Wiener@sfgov.org)

**In re: Comments with respect to the proposed legislation to amend Chapter 31 of San Francisco's Administrative Code regarding the State's CEQA legislation**

Dear Supervisor Wiener:

Thank you for hosting "roundtables" to review and discuss your proposed legislation to amend San Francisco's CEQA implementation legislation and thank you for inviting PAR to them.

PAR supports the proposal to codify the requirements for appealing exemptions and negative declarations (whether mitigated or unmitigated) with the intention of having such appeals occur as early in the process as possible before there is a needless waste of time, energy and costs.

A key element of the strategy in that proposed legislation appears to be to ensure the public is promptly and reliably notified of:

- the time, date, and place of the proposed determination that would start the clock running for filing timely appeals and that would do so on a single web site if at all possible;
- the source or sources and the detailed reasons for the proposed exemption and, if applicable, for any proposed mitigations would also be promptly identified; and
- all of these notifications would rely exclusively on the web site of the City and County of San Francisco and those linked to it for its various agencies, departments and commissions that may be making those determinations.

Because many members of the public do not have internet access that ensures their prompt receipts of such information, PAR urges that the currently-proposed 20-day time limit for filing appeals be increased to at least 30, if not 60, days. This would also simplify the proposed legislation since limits of 30- or 60-days are much more consistent with other similar time limits..

Thank you for providing this opportunity to offer our suggestion with regard to the legislation being proposed.

Sincerely,

A handwritten signature in blue ink, appearing to read "Raymond R. Holland". The signature is fluid and cursive.

Raymond R. Holland  
President

Cc: Anmarie Rogers, SF Planning Department ([anmarie.rogers@sfgov.org](mailto:anmarie.rogers@sfgov.org))





February 22, 2013

President David Chiu  
SF Board of Supervisors

Dear President Chiu:

On behalf of the 12,000 members of the San Francisco Bicycle Coalition, I am writing to express my support for legislation proposed to streamline and clarify the process of appealing select CEQA findings.

Many projects that improve bicycling in San Francisco are not found by City staff to require a full EIR, using a strict interpretation of existing CEQA review practices. These projects should be able to proceed to construction at a reasonable pace. But the lack of clarity around the process for appealing and resolving CEQA findings that do not lead to a full EIR creates confusion and delay for City staff and community members. This confusion costs the City money and other resources, and creates deep frustration among community members who have supported the project.

The proposed legislation would still provide opportunity for anyone to appeal a CEQA finding, and would actually help make that process even clearer to navigate for potential appellants. But it would also make the process more predictable and, as a result, less costly for the City, and frustrating for community members, who find the process opaque.

For these reasons, we support the proposed legislation to streamline the San Francisco CEQA process for non-EIR findings.

Sincerely,

A handwritten signature in dark ink, appearing to read "Leah Shahum".

Leah Shahum  
Executive Director



**SAN FRANCISCO COUNCIL OF DISTRICT  
MERCHANTS ASSOCIATIONS**

March 31, 2013

Supervisor Mark Farrell  
San Francisco Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Re: CEQA Reform

Dear Supervisor Farrell,

Supervisor Wiener has introduced a reasonable measure that would bring some certainty to the CEQA appeal process in San Francisco. The problem addressed by Supervisor Wiener's legislation concerns categorical exemptions and negative declarations, the lowest possible level of environmental review under CEQA. Under existing law, when the City approves a categorical exemption or negative declaration for a project, no time limit exists for when that CEQA approval may be appealed. Some project opponents have exploited this oversight and have appealed projects at the last moment after months (or years) of work has been devoted to the project.

Supervisor Wiener seeks to correct this glaring problem by introducing time limits within which these CEQA approvals must be appealed.

Supervisor Jane Kim recently introduced her own "CEQA reform" legislation that not only would thwart Supervisor Wiener's efforts, but also would severely worsen the already broken CEQA regulatory regime in San Francisco. Among Supervisor Kim's proposals are the following:

1. Every project on every building 50 years of older – nearly  $\frac{3}{4}$  of San Francisco's building stock – would no longer be eligible for a CEQA Categorical Exemption stamp (often issued over the counter in a matter of hours) for a minor change, such as changing a window, replacing a rotted out handrail, or replacing a failing roof. Instead, any and all such projects will be required to get a "Categorical Exemption Certificate", which is a detailed report that can take 3-6 months to issue and currently costs \$5,000, as opposed to \$300 hundred dollars for a Categorical Exemption stamp.
2. Similarly, all projects in parks and "open space", which is a very broad term, would require the same 3-6 month and \$5,000 certificate instead of the current Categorical Exemption stamp.

3. Currently, a CEQA document for a single project can be appealed only once, even if the CEQA document covers numerous permits associated with the same project. Under Supervisor Kim's proposed legislation, the CEQA document could be appealed each time a discretionary permit is issued for a project. So, for example, if a home remodel required 3 building permits, a street tree permit, and a curb cut permit – all covered by the same CEQA document – the CEQA document could be appealed five different times, triggering 5 separate appeal hearings at the Board of Supervisors for that single project.

I urge you to approve Supervisor Wiener's proposed legislation which will contribute to the expediting of projects and thus the creating of jobs and building more housing. For businesses in particular commercial tenants will not get caught up in a delay that will have a substantial financial impact.

Sincerely.



Henry Karnilowicz  
President • SFCDMA



SAN FRANCISCO  
CHAMBER OF COMMERCE

David Chiu, President  
San Francisco Board of Supervisors  
1 Carlton B. Goodlett Place, Room #244  
San Francisco, CA 94102

March 25, 2013

RE: Support File #121019 – CEQA Procedures

Dear President Chiu,

The San Francisco Chamber of Commerce, representing over 1500 businesses in San Francisco, is pleased to support Supervisor Scott Wiener's legislation as introduced to create a statutory process for appeals to the Board of Supervisors under the California Environmental Quality Act (CEQA).

Supervisor Wiener's legislation attempts to fix the lack of predictability in our current CEQA appeals process by clarifying appeal procedures, setting clear appeal deadlines and improving notice to the public of CEQA determinations. Currently no such statutory process exists in San Francisco for many projects, particularly those determined to be exempt from, or that receive negative declarations for, environmental review. This results in unnecessary and costly project delays that often do not ensure environmental protection from project impacts. Instead, CEQA appeals are frequently used to disrupt projects, which may then become economically unfeasible due to the costs of long delays associated with adjudicating the appeal.

We need clear rules that everyone understands and vigorous public participation that informs and improves our city's development projects while maintaining the integrity of our environmental review process. Supervisor Wiener's legislation achieves this by establishing time frames for filing appeals, enhancing noticing to the public, and requiring that CEQA appeals be considered simultaneously with underlying project approvals instead of in separate, duplicative proceedings.

The San Francisco Chamber of Commerce commends Supervisor Wiener for taking on long-overdue reforms to our CEQA process, and we urge the Board of Supervisors to support his critical legislation.

Sincerely,

Jim Lazarus  
Senior Vice President for Public Policy

cc: Clerk of the Board of Supervisors; Distribute to BOS



SPUR URBAN CENTER  
654 Mission Street  
San Francisco, California  
94105

415.781.8726

www.spur.org

**Chair**  
Linda Jo Fitz

March 11, 2013

**Executive Director**  
Gabriel Metcalf

Hon. Rodney Fong, President  
San Francisco Planning Commission  
1650 Mission Street, Suite 400  
San Francisco, CA 94103

**Urban Center Director**  
Diane Filippi

SPUR SAN JOSE  
38 West Santa Clara Street  
San Jose, California  
95113

408.510.5688

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**Executive Vice Chair**  
Anne Halsted

**Vice Chairs**

Alexa Arena  
Emilio Cruz  
David Friedman  
Bill Rosetti  
Lydia Tan  
V. Fei Tsen

Dear President Fong and Commissioners,

**Secretary**  
Mary McCue

SPUR strongly supports Supervisor Wiener’s legislation to amend San Francisco’s California Environmental Quality Act procedures. This legislation is an extremely modest proposal that helps clarify appeal procedures for exemptions and negative declarations, creating a fairer and more transparent process for everyone.

**Treasurer**  
Bob Gamble

**Immediate Past Chair**  
Andy Barnes  
Lee Blitch

As you know, San Francisco is unique in California in its application of CEQA. San Francisco’s Municipal Code and Charter contain unique provisions that make enforcement of CEQA different in San Francisco than in other California jurisdictions. CEQA defines a “project” as any permit, approval, or action that is subject to the discretion of a local administrative body. In most jurisdictions there is a clear distinction between “discretionary” actions that require the use of judgment or subjective criteria on the part of the approving body and “ministerial” actions that simply involve comparing of a project against established standards or checklists. For example, in most jurisdictions rezoning a property is considered discretionary, because it generally involves judgment by officials about the appropriateness of the change, while a building permit is considered ministerial because a builder must simply prove he or she has completed a checklist of standard requirements. **San Francisco’s code, however, essentially makes all permits issued by the City for virtually any type of project discretionary and therefore subject to all of the rules and regulations set forth in CEQA, including appeals.**

**Advisory Council**  
**Co-Chairs**  
Michael Alexander  
Paul Sedway

For this reason, the application of CEQA in San Francisco is enormously complex and more far-reaching in its impacts than anywhere else in the entire state. Taken in this context, the legislation before you outlines a series of modest changes that collectively take a small step towards creating a clearer and more streamlined process for everyone.

**Board Members**  
Carl Anthony  
Andy Barnes  
Veronica Bell  
Chris Block  
Larry Burnett  
Michaela Cassidy  
Michael Cohen  
Madeline Chun  
Charmaine Curtis  
Gia Daniller-Katz  
Oz Erickson  
Manny Flores  
Gillian Gillett  
Chris Gruwell  
Dave Hartley  
Aidan Hughes  
Mary Huss  
Chris Iglesias  
Laurie Johnson  
Ken Kirkey  
Richard Loneragan  
Ellen Lou  
Janis MacKenzie  
John Madden  
Jacinta McCann  
Chris Meany  
Ezra Mersey  
Terry Micheau  
Mary Murphy  
Jeanne Myerson  
Adhi Nagraj  
Brad Paul  
Chris Poland  
Teresa Rea  
Byron Rhett  
Victor Seeto  
Elizabeth Seifel  
Carl Shannon  
Chi-Hsin Shao  
Ontario Smith  
Bill Stotler  
Stuart Sunshine  
Michael Theriault  
Michael Teitz  
James Tracy  
Will Travis  
Jeff Tumlin  
Steve Vettel  
Cynthia Wilusz-Lovell  
Cindy Wu

The legislation proposes three key changes:

1. It would codify procedures for appeal of negative declarations (neg decs) and exemptions to the Board of Supervisors, including the timing of those appeals.
2. It would expand noticing provisions related to exemptions, none of which are required by CEQA.
3. It would establish that when the Board of Supervisors must approve a project, it is the CEQA decision-making body and therefore there would not be a separate appeal process.

Each of these three changes helps to clarify and streamline the CEQA appeals process. The Planning Department case report notes that the current Administrative Code does not outline an appeal process for neg decs and exemptions, whereas it does outline a process for EIR appeals. In addition, there is no timeline for appeals of neg decs and exemptions. **Currently, as your case report notes, the Clerk of the Board refers every appeal of a neg dec and exemption to the City Attorney's Office for advice on whether the appeal is timely. This is not an efficient or transparent mechanism to handle appeals.** The proposed legislation addresses this issue by creating clear procedures and timelines that appellants, the Planning Department and project sponsors can rely upon.

Lastly, there has been substantial public discussion about the issue of the timeline of appeals. We feel very strongly that the first approval action should serve as the trigger for the appeal process. It is not efficient or appropriate to wait until the entire entitlements process has been completed before filing an appeal.

We also applaud Supervisor Wiener for making numerous substantive amendments to the legislation in response to community comments. We believe that all legitimate issues have now been addressed in the current third draft of the ordinance, as summarized in your case report.

In summary, we strongly urge you to move this legislation forward.

Thank you for your consideration of our position. Should you have any questions, please do not hesitate to contact me at 415-644-4292 or [skarlinsky@spur.org](mailto:skarlinsky@spur.org)

Sincerely,

A handwritten signature in black ink, appearing to be 'SK', written in a cursive style.

Sarah Karlinsky  
Deputy Director

Cc: Supervisor Scott Wiener  
AnMarie Rogers, Planning Department  
Sarah Jones, Planning Department  
SPUR Board of Directors





February 25, 2013

President David Chiu, San Francisco Board of Supervisors  
President Rodney Fong, San Francisco Planning Commission  
President Courtney Damkroger, San Francisco Historical Preservation Commission

Re: Support: File Number 121019 – CEQA Procedures

Dear President Chiu, President Fong, and President Damkroger:

On behalf of Walk San Francisco, I am writing to support proposed legislation to streamline and clarify the process of appealing select findings based on the California Environmental Quality Act (CEQA), because this will help reduce delays in delivering projects that make walking safer and more pleasant.

Many street improvement projects in San Francisco are not found by City staff to require a full environmental impact report (EIR), using a strict interpretation of existing CEQA review practices.

These projects – which may include, for example, sidewalk corner “bulb-outs” to shorten street crossings, increase pedestrian visibility, and tame traffic speeds – should be able to proceed to construction swiftly, especially as these projects can actually save lives.

However, the process for appealing CEQA findings currently creates confusion and delay in completing important street improvement projects. This confusion increases project costs for the City, frustrates community members who have supported the project, and most importantly, delays critical pedestrian safety measures.

The proposed legislation would still enable the appeal of a CEQA finding, and would help make that process clearer and simpler for potential appellants. It would also make the process more predictable, less costly for the City, and less frustrating for community members, by reducing delays in projects to make people safer on San Francisco streets.

For these reasons, Walk San Francisco supports the proposed legislation to streamline the San Francisco CEQA process for non-EIR findings.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Stampe", written in a cursive style.

Elizabeth Stampe  
Executive Director

# Establishing a CEQA Process in San Francisco

Overview of Legislation Proposed by Supervisor Scott Wiener

Updated February 26, 2013

## **Background: What is CEQA?**

The California Environmental Quality Act (CEQA) is a California statute established in 1970. CEQA does not directly regulate projects, but instead requires public agencies to provide analysis and disclosure of possible environmental impacts before a decision is made to approve or reject a specific proposal. CEQA applies to discretionary actions that change the physical environment, including consideration of development projects, new legislative initiatives, transportation changes, and much more.

In accordance with CEQA, San Francisco has adopted local procedures to implement CEQA, which are codified in San Francisco Administrative Code Chapter 31. San Francisco periodically updates these procedures both to reflect changes in the CEQA statute and to modify and clarify San Francisco's local processes for implementing CEQA based on experience.

The CEQA statute requires local agencies to allow for CEQA appeals to the elected decision making body if a non-elected decision-making body approves the CEQA document. So, when the Planning Department or the Planning Commission issues or approves a CEQA determination, that determination may be appealed to the elected Board of Supervisors, as the Planning Commission is an appointed body.

For activities that must be reviewed under CEQA, the first action is to determine whether a project is exempt from CEQA. The CEQA statute lists some exemptions, called "statutory exemptions." In addition, the State publishes guidelines (CEQA Guidelines) that list classes of actions that have been determined not to have a significant effect on the environment, called "categorical exemptions." CEQA does not require documenting exemption determinations in any particular way. For projects that are not exempt, there are two types of review documents that are produced to satisfy CEQA. These documents are the same statewide. The most robust level of review under CEQA is reserved for projects that are likely to cause environmental impacts – this is called an environmental impact report (EIR). The other document is called a negative declaration. A negative declaration either documents that the project will not cause significant environmental impacts or identifies ways to mitigate impacts to a level that is not considered significant.

As mentioned, under CEQA, any final CEQA determination by the City's Planning Department or Planning Commission – from an EIR to an exemption – can be appealed to the Board of Supervisors. Currently, Chapter 31 of the Administrative Code provides clear and transparent procedures for an appeal of a final EIR, but does not provide procedures for appeal of negative declarations or exemption determinations. To fill this void, the Clerk of the Board of Supervisors has issued interim, non-codified procedures for appeal of negative declarations and exemptions to the Board. Additionally, the City Attorney's Office has provided written guidance to the Clerk of the Board regarding issues related to the timeliness of appeals. These interim procedures have been in place for a decade and are sufficiently complicated that the Clerk asks the City Attorney to advise on the timeliness of every appeal. This determination is critical in that it establishes whether the Board of Supervisors can consider an appeal or not. It can take more than a week for this determination to be made, and its complicated nature is not fair for people who have a valid reason to appeal a determination but may be timed out from filing that appeal because they just didn't know when to file. It is also unfair to project sponsors who also may have

no idea when someone might raise a concern. The only real way to be certain about appeal dates is to hire a land use attorney – which is cost prohibitive for most people; this isn't a good way to conduct a transparent, democratic process.

### **Goals of the Proposed Legislation**

The goal of this legislation is first and foremost to codify procedures for appeals of negative declarations and exemptions in order to maximize transparency, predictability and accountability. It also aims to enhance noticing to the public of CEQA determinations (so they can appeal if they have concerns), and to clarify and update a number of provisions in Chapter 31 based on experience and changing case law over the past number of years.

### **Overview of Proposed Legislation**

*What this legislation **does** do:*

As mentioned in the Background section of this document, the proposed legislation aims to bring transparency and predictability for all parties to the CEQA appeals process for negative declarations and exemptions by codifying clear processes and timelines for appeals. At the same time, the legislation strongly enhances CEQA noticing requirements to make sure that people are aware of CEQA determinations and also how and when to appeal that determination if they disagree with it.

Specifically, the legislation proposes four major types of changes to Chapter 31 in keeping with the goals outlined above:

- Element 1:** Makes non-substantive clerical changes, organizational modifications and updates to some existing procedures;
- Element 2:** Codifies procedures for appeals of exemptions and negative declarations and makes some minor procedural modifications in the process for filing EIR appeals. It establishes consistent 20-day appeal periods for all CEQA determinations after a project is approved and defines what is meant by project approval for each kind of CEQA determination;
- Element 3:** Updates and augments notification procedures. The ordinance includes seven new noticing procedures so that the public is better informed of when and under what circumstances projects may be appealed; and
- Element 4:** Establishes procedures for finalizing CEQA decisions when the Board must approve a project. In such a case, the Board is the CEQA decision making body and there would not be a formal appeal process. Instead, the public could raise CEQA issues through the normal Board process and the Board would affirm the CEQA determination of Planning as part of its approval of the project.

*What this legislation **does not** do:*

This legislation does not limit anybody's right to appeal a CEQA determination. The City does not have the authority to limit appeals nor is there any intent to do so. This legislation also does not intend to limit public participation in the decision making process around project approvals; instead, because this

legislation strengthens noticing requirements, more people will know about projects and appeal rights early on in the approval process. This could conceivably lead to more appeals as neighbors and community organizations will better know their rights and how and when to appeal.

## **Detail of Legislation**

The “Overview of Proposed Legislation” section above lists four main elements of this legislation. The sections below articulate the content of those four elements.

### **Element 1. Clerical and Organizational Modifications**

These minor amendments clarify language, make changes to inconsistencies in the existing ordinance, and codify existing practices. Changes include removing references to the Redevelopment Agency (which no longer exists); specifying that procedures for exemptions apply to all types of exemptions consistent with CEQA and State CEQA Guidelines; updating language concerning initial evaluations of projects, which incorporate language from the State of California CEQA Guidelines on when to prepare an EIR and negative declaration; and updating and clarifying document publication provisions to reflect CEQA requirements and Planning Department practices and recommendations.

### **Element 2. Procedures for Appeals.**

- 1. Time Frames for Filing Appeals.** Currently, codified time limits for filing appeals of exemptions and negative declarations do not exist. The City Attorney has advised that for private projects seeking entitlements from the City, negative declarations and exemptions may be appealed to the Board of Supervisors between the time of the first approval that relies on the CEQA document and the final administrative approval granted by the City. This definition of “timeliness” is nuanced and complicated, and essentially means that each and every project has a different appeal period.

The legislation establishes codified timeframes for filing appeals of exemptions and negative declarations to the Board of Supervisors.

- a. For **exemptions**, the deadline for filing an appeal depends on whether the project is a private project, seeking an entitlement from the City, such as a permit or license or, a City project.
  - i. For private projects seeking entitlements that themselves are appealable, usually to the Board of Appeals, the CEQA appeal may be filed within 20 days after the Approval Action. “Approval Action” for private projects means (1) the first approval of the project at a noticed public hearing either at the Planning Commission or before the Zoning Administrator, or (2) the first approval before another commission, board or official if the approval is of the whole project, or (3) if the building permit or other entitlement for the whole project is issued without a public hearing, then the issuance of the permit or entitlement.

- ii. For all other projects (e.g. the City’s own public projects), the CEQA appeal may be filed within 20 days after the Approval Action if it is taken at a noticed public hearing. If the Approval Action is taken without a noticed public hearing, the appeal may be filed within 20 days of the first date that the Planning Department posts on the Planning Department’s website a notice informing the public of the start of a 20 day appeal period. “Approval Action” for public projects means (1) the first approval of the project at a noticed public hearing, or (2) if the approval is without a public hearing, the decision that commits the City to a definite course of action in regard to the project.
  - b. For **negative declarations**, the deadline for filing an appeal would be within a consistent 20 days after the first project approval that adopts the negative declaration.
  - c. For **EIRs**, the ordinance retains the current deadline for filing appeals – 20 days from EIR certification, except it requires approval of the project as well. Normally, certification and project approval occur at the same time.
- 2. **Process for Appeal**. For all appeals, the proposed ordinance would largely codify procedures already required for EIR appeals or followed by the Clerk and the Planning Department for other appeals.
  - a. The procedures require the appellant to submit a letter of appeal, a copy of the CEQA action being appealed, and a copy of the approval action.
  - b. The proposed ordinance would establish various deadlines for the appeal process including deadlines for: (1) the Planning Department to send copies of the environmental review document to the Board of Supervisors; (2) the Clerk of the Board of Supervisors to schedule a hearing and provide a hearing notice; (3) the Planning Department to instruct the Clerk of the Board of Supervisors on the parties to receive notice; (4) Appellants and real parties in interest, or City Agencies acting as sponsor, to submit written materials; (5) the Planning Department to respond to the appeal; and (6) the Board to act on the appeal.
  - c. The legislation states that once an appeal is filed that the “City shall not undertake activities to implement the project that would physically change the environment except activities that are essential or abate hazards.” Thus, this legislation would allow projects that require multiple approvals from various entities to move forward securing additional approvals after the filing of a CEQA appeal but would preclude actions that begin project implementation. However, if the appeal is upheld, all approvals would be nullified.

**Element 3. Public Noticing.**

This legislation would modify and clarify specific noticing requirements and provide for new noticing requirements. The goal is to increase public notice, or in some instances, make it more effective and efficient.

1. **Modified noticing.** The proposed legislation would not require a separate mailed CEQA notice to property owners in proposed rezoning area of 20 acres or more or within 300 feet of such rezoning areas before adopting a negative declaration or upon completion of a draft EIR. The Planning Code would still require mailed notices to these properties before holding a hearing on the rezoning, and that notice would include language advising the public of the CEQA determination that the project would be relying upon at consideration for approval.
  
2. **Clarified noticing.**
  - a. The proposed legislation clarifies the type of projects involving historic resources and demolitions for which an exemption determination notice must be given under the Administrative Code.
  
  - b. For purposes of these notices, a historic resource is defined as:
    - i. any buildings or sites listed individually or located within districts listed in Articles 10 or 11 of the Planning Code;
  
    - ii. any buildings or sites listed individually or located within districts on an historic resource survey that has been adopted by the City;
  
    - iii. any buildings or sites on the California Register or determined eligible for listing by the State Historic Resources Commission, or on the National Register of Historic Places; or
  
    - iv. a resource that the Environmental Review Officer determines, based on substantial evidence, to be a historic resource under Public Resources Code Section 5024.1
  
  - c. For purposes of these notices, demolition is defined per Section 317 of the Planning Code.
  
  - d. For the types of exempt projects for which an exemption determination is required – projects involving historic resources, demolitions and Class 31 or Class 32 categorical exemptions - the exemption determinations must be in writing, and posted on Planning’s website in addition to being mailed to those who have requested them.
  
3. **New noticing.** The proposed legislation contains **seven** new noticing provisions.
  - a. **Exemptions.** When a public hearing is held on an Approval Action for an exempt project, the public hearing notice must advise the public of the right to appeal the exemption to the Board of Supervisors following the Approval Action.
  
  - b. **Exemptions.** When Planning sends out notices under Planning Code Sections 311 and 312 advising of the opportunity to request discretionary review of exempt projects, the notice must advise when the Approval Action will occur for the project.



- c. **Exemptions.** When the City approves its own exempt projects, it must post a notice of the approval on the Planning Department's web page. The posting starts a 20 day appeal period.
- d. **Negative Declarations.** When Planning sends out notices of intent to adopt a negative declaration, it must advise that no appeal of the negative declaration can be made to the Board unless the preliminary negative declaration is first appealed to the Planning Commission.
- e. **Negative Declarations.** When a public hearing is held on the adoption of the negative declaration it must advise the public that following the Approval Action (taken at the same time) that one may thereafter appeal the negative declaration to the Board.
- f. **EIRs.** When Planning sends out notices of availability of a draft EIR, the notice must advise that only commenters on the Draft EIR will be permitted to file an appeal of the certified EIR to the Board.
- g. **EIRs.** When Planning sends out notices of an EIR certification hearing, it shall inform the public of the expected date of the Approval Action and that after that date, the EIR is appealable to the Board.

**Element 4. Board as CEQA Decision-Making Body**

This legislation would provide that when the Board of Supervisors is the final decision maker in a project's or a proposal's approval path, like in a rezoning, the Board of Supervisors also becomes the body to determine whether the CEQA document is sufficient. The State CEQA statute provides a right of appeal only where a non-elected decision-making body, such as the Planning Commission, renders the final decision about the adequacy of a CEQA document. This legislation would establish that when the Board of Supervisors must approve a project or proposal, it is the CEQA *Decision Making Body* and therefore there would not be a separate appeal process. Instead, in such cases the Board of Supervisors would be required to affirm the CEQA determination rendered by the Planning Department or the Planning Commission as part of its approval of the project or proposal. The CEQA document would be considered in concert with the project itself and the public could raise CEQA issues through the normal Board of Supervisors hearing process. The Board would need to affirm the CEQA documents approved by the Planning Department or Planning Commission as it considers the project on its merits. When the Board is the CEQA Decision-Making Body for a project, Board Committees would be the most frequent venue for raising CEQA-related concerns to the Board. After hearing staff presentations and public comment, the Committee would forward a recommendation for approval or disapproval on the underlying action and the CEQA determination, to the full Board. The action before the full Board would include an affirmation of the CEQA determination earlier rendered by the Planning Department or Planning Commission.