Donations

If you enjoyed this newsletter and found it informative, we could use your help! The unions just take dues from their members, but we have to rely on the generosity of people like you. With your donations we will continue to inform you on the latest union tactics and to proactively combat them.

Comment?

If you have any suggestions or comments on the newsletter, please send them to us. If you would like to submit an article or opinion piece in the next letter, please email it to the following address

Email:
Cfec.ca@gmail.com
Phone:
(858) 382-5639
Fax:
(760) 690-4471

Coalition for Fair Employment in Construction

Recently Decided…

The following case is an example of how CEQA has been used to stall development. While it may not directly involve greenmail, they are examples of ways lawyers have abused CEQA.

Health First v. March Joint Powers Authority. (Riverside County)

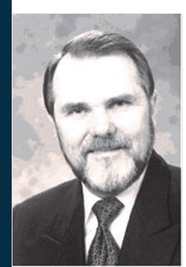
This case involved an appeal by Health First that a project for Tesco, a British grocer, did not comply with CEQA and required further environmental scrutiny. The case hinged on whether the environmental review done by the March Joint Powers Authority, was discretionary or ministerial. If the review is considered ministerial, then CEQA does not apply. The definition of a ministerial review is, "a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project." For example, ff the public official merely applies the law, then CEQA does not apply. Also, the decision states that the public agency involved in the project is the most appropriate body to decide what is ministerial and what is discretionary. What this means to you:

- When proposing to do a project, check to see what type of law applies. If it gives discretionary power to the public agency approving the project, CEQA could apply. If there is something like a checklist of yes or no questions, CEQA probably will not apply.
- Get a commitment by the public agency whether their role is ministerial or discretionary as early as possible. The court will defer to their decision.
- If the applicable reviewing process seems to be discretionary, push your local representative to put in place laws that are more along the lines of a "checklist" approach. This may seem more restrictive, but it takes away CEQA litigation as well as the discretionary power of rogue government officials.

Disclaimer: The case analysis is merely a suggestion. It should not be relied upon for any litigation or legal negotiations. Its sole purpose is to inform and provide a simple base of knowledge on environmental law.

The Face of Greenmail

Who has been responsible for the union extortion tactics used for well over a decade? His name is Bob Balgenorth. He is the president of California Unions for Reliable Energy (CURE). Under this umbrella organization of the largest construction unions in California, he has pushed the greenmail tactics to the extremes they are today. Since CURE has been intervening in the permitting process, 34 of 35 private power plant projects have been forced to sign PLAs. Coincidentally, as a result of "environmental negotiations" with the developers, most of those projects were delayed by at least two years. The most recent example is the Russell City Energy Center, which was just a few months ago approved after a series of environmental legal disputes. CURE "endorsed" the project only after the "contract price" was amended. The project was supposed to be operational in 2005.



The Russell City Energy Center example is just one of many. CURE has been able to funnel union dues to pay expensive, high profile environmental lawyers that bring suit against developers if their extortion tactics do not work. Therefore, every time you wonder why we are constantly in energy shortages and why our energy bills are so high, just remember Bob Balgenorth. Without him, California might actually have operational energy plants that were produced safely and efficiently with open and fair competition by union and merit shop construction businesses.

ISSUE 01 Summer 2009

MONTHLY NEWSLETTER ABOUT GREENMAIL AND CEQA

The Greenletter

this issue

Stories From the Site...

In future newsletters, this area will be reserved for your own stories of union blackmail. We will keep your business' name anonymous if you wish. The purpose of this section is to highlight just how low the unions are willing to go if they do not get their way. Therefore, if you have an example of when anyone threatened you with environmental litigation and how you dealt with it, we would greatly appreciate an email to:
Cfec.ca@gmail.com

This is a story of how a Sacramento developer dealt with greenmail:

Just a couple months ago, a group named "Coalition for Responsible

From the Editor:

This is the first of a periodic newsletter that will be sent out to help the construction industry keep up with current environmental litigation threats. This edition includes the following segments: What is Greenmail?, What is CEQA?, Current News, and Recently Decided. Following newsletters will have Q & A's based on questions we receive from you. If there is something you want to know about environmental lawsuits, even if it is a specific scenario, we would love to hear from you and respond via the newsletter so everyone can benefit from the question.

What Is Greenmail?

Greenmail is simply union endorsed blackmail. It is used as a tool to get developers to sign project labor agreements that give bidding monopolies to union shops at the detriment of merit shops. The unions have used these threats with increasing frequency and follow through with the lawsuits enough to make the threats credible.

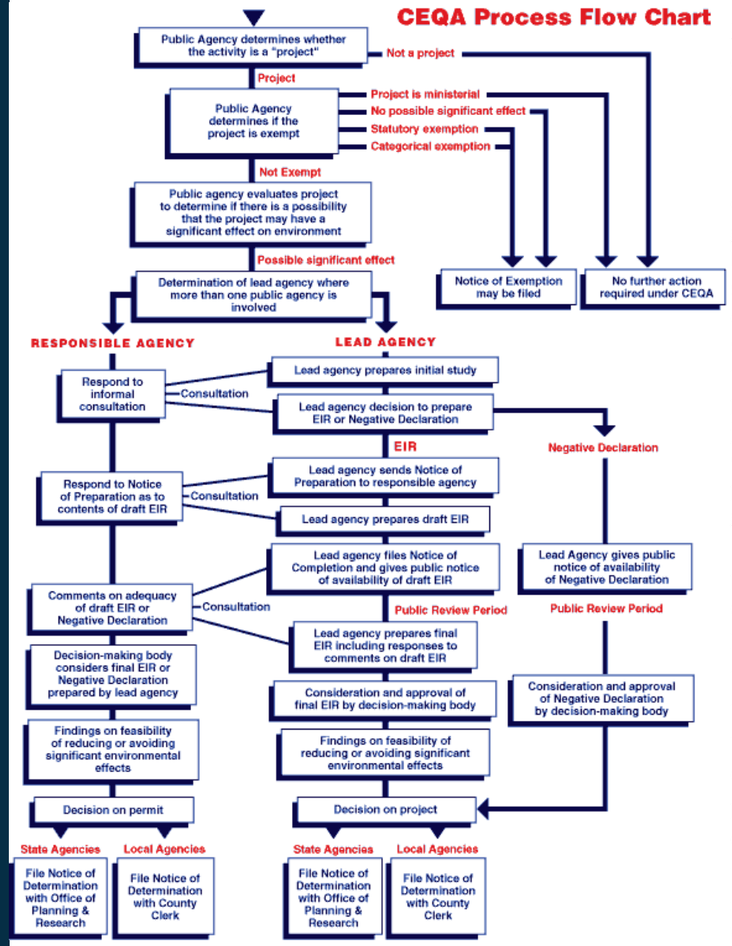
Greenmail is NOT any sort of environmental movement. It is the exact opposite. A Developer's best efforts to develop environmentally friendly projects will not stop "greenmail" lawsuits. Likewise, once a developer concedes to a project labor agreement, the lawsuits are usually dropped no matter the legitimacy of the environmental claim. Therefore, do not be fooled into thinking this has anything to do with the environment. The sole goal of the unions is to gain a monopoly over construction projects, and environmental lawsuits are the latest effective tool to achieve that goal.

What Is CEQA?

CEQA stands for the California Environmental Quality Act. It was passed in 1970 shortly after NEPA (National Environmental Protection Act). CEQA establishes a process by which an agency can determine if a proposed project has an impact on the environment. If the agency determines that the project does not have a large impact, the agency will file a Negative Declaration. If the agency determines that the impact can be mitigated so that the plan can be fixed so that the affect is no longer significant, the agency will file a Mitigated Negative Declaration. If the agency decides that a project does have an

Coalition for Fair Employment in Construction

Development" filed a lawsuit against a Sacramento developer who planned to build a 500 home community, Delta Shores. Who do you suppose is part of the "coalition?" None other than your local construction union, more specifically: Plumbers and Pipefitters Union, Local 447; the International Brotherhood of Electrical Workers Union, Local 340; and the Sheet Metal Workers Union, Local 162. According to the Coalition's attorney, Thomas Enslow, "You're seeing these unions embrace this idea of sustainable development… they are not out for the quick buck." He continues to claim that these unions are just looking out for the community. The developer's representative, Greg Thatch, claimed, ""They want a project labor agreement…I don't think there is any real camouflage there. It isn't a new tactic using the (environmental) process to get a project labor agreement." Of course, this situation makes more sense considering the lawsuit was filed after the labor unions failed to negotiate a PLA for the project. Thatch stated the developer will not start construction on shops, restaurants, and a movie theater until there is a resolution to this lawsuit. This is a good example of a tactic a developer can use to keep the environmental extortion out of the back room and put it out into the public. For more information about this news story visit:
www.OpenCompCA.com

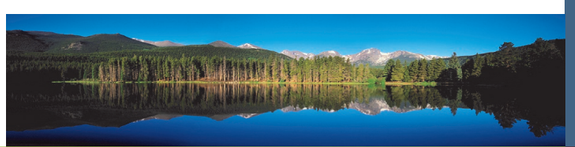


impact it will then develop an environmental impact report (EIR). The agency conducting the search is more often than not a government agency, but the actual research is normally done by an outside source. As a rule of thumb, CEQA applies when the project is discretionary (i.e. has to be approved by a local government body).

The largest problem with CEQA, and why it has been used as a tool to give affect to greenmail, is the term "significant" environmental impact has no clear definition. Since the term can be read relatively broad and the process (see chart) is so long, trial attorneys contest every decision along the process, holding up building projects for as long as they wish. This forces the developer to waste large amounts of money and time on the litigation. Projects such as Petco Park and the proposed Gaylord Entertainment project in San Diego are just two examples of CEQA abuse. For more information on CEQA and its uses, please visit our website at:
www.OpenCompCA.com

What You NEED to Know...

CEQA was originally a tool to protect our environment, but has been hijacked by unions to stall development. They rely on the vagueness of the term "significant" to get their court decisions.



Current News

- America's Builders Trade Union met on May 18th, 2009, to introduce their new slogan "Value on Display. Every Day." The keynote speaker at the event mentioned his excitement for the Obama Administration and his encouragement of project labor agreements. Therefore, for all the upcoming federal projects in the state of California, NEPA (National Environmental Protection Act) and other environmental policies could be abused just like CEQA to extort developers into using PLAs.

- (Central California) A Wal-Mart Supercenter project in Victorville has been delayed because of a pending lawsuit filed by Briggs Law Corp. for not "properly" preparing an environmental impact report. Briggs Law has also filed lawsuits to stop the development of a Barstow Wal-Mart, a town center in Rialto, and a Wal-Mart/ Home Depot marketplace in Hesperia. All of these suits have been through small "environmental" or "smart development" groups. Allegedly, Briggs creates these groups as fronts to sue developers so that "the concerned group" can settle privately out of court with the large developers. Some of the lawsuits have been at the behest of the retail clerks union. Briggs has also represented California Unions for Reliable Energy (CURE) (see pg. 4). The best part is no one knows what and for how much these cases get settled for. Therefore, when you see groups like "Build Smart" or "Citizens for Smart Growth," you will know what that really means.

- (Bay Area) In Redwood City a development plan that would revitalize the downtown area and provide over 2,500 high-rise housing units was dropped by the city after it refused to appeal a decision in the court that its environmental impact report was not complete since it did not consider how the "shadow buildings" would affect the area. The suit was not part of a greenmail attempt, but demonstrates the vagueness of "significant impact."

This Month's Q&A

Do you have a question about greenmail? Send it in to CFEC and we will answer it for you in the next newsletter. Hopefully, by answering individualized questions, everyone can learn from and adapt to the ever changing tactics used by unions to apply CEQA to development projects.