More than a year ago, California's Little Hoover Commission convened the first in a series of public hearings designed to interrogate the California Environmental Quality Act (CEQA) as well as Californians' often tense relationship with that landmark legislation. In recent years, some pro-housing advocates have pointed to CEQA as the bogeyman driving the state's affordable housing crisis; defenders of the law say CEQA stymies relatively few developments that would close the housing gap but does serve as a crucial public participation tool for long-burdened environmental justice communities. (You can read a good overview of the Commission and the CEQA reform debate here.) Following the conclusion of the Commission's hearings, it aimed to release a study reporting on the current state of CEQA and providing recommendations on possible amendments to the statute.

Today, it finally did. But the report, which bills itself as presenting "targeted reforms," does anything but. And it is the product of a process that started fair but turned flawed, which is concerning given that it may be leaned on as a guidepost for state law- and policymakers.

The Commission's long—and ultimately flawed—process

The report has been a long time coming. What was originally supposed to be a series of three hearings over two months expanded into five hearings over four months. Experts from all sides of the CEQA spectrum prepared testimony and flew to Sacramento to debate CEQA's relationship with environmental justice, California's housing crisis, and the state's desperate need for infrastructure. There were hours of public comment at each hearing, often running well over the meetings' allotted time.

But once the hearings were over, the Commission went silent for months. And when the draft report was finally prepared, the Little Hoover Commission quietly finalized it during a routine business meeting on March 28—even though the public had not been given any opportunity to review the report and all public comment for the meeting was taken *before* the adoption item was heard.

The remarks from the commissioners prior to their adoption of the report were sometimes defensive in tenor and did not acknowledge the fact that most members of the public had no way of accessing the report. Calls for a 60-day public review period went unanswered by the commissioners, as did more general calls to make the draft report publicly available. It was an unceremonious end to a process that had begun with a great deal of thoughtfulness.

The report's Jekyll-and-Hyde approach to CEQA reform

For both CEQA reformers and CEQA defenders, the Commission's process was a staging ground for a broader battle waged in California courts, the Legislature, and in public discourse. While the Commission has no regulatory or legislative authority, its recommendations carry weight with lawmakers, who have already proposed over 200 bills to amend CEQA in the last couple of years and passed 72. There are numerous policy reports and studies looking at CEQA's impact on California, but they are rarely written by impartial observers. A clear-eyed report from a respected and impartial body, informed and revised through public process and stakeholder engagement, is sorely needed.

The start of the process seemed even-handed and intensive. But despite this care and diligence (and nearly a year of waiting), the ultimate product is a disjointed document that begins with measured analysis and concludes in a series of extreme recommendations that depart from the report's own supporting text and evidence.

The report is divided into two sections—its body text and the Commission's recommendations—and makes for a dissonant read. The body is often thoughtful and balanced. While it makes little use of the great majority of the evidence presented to the Commission, citing to the testimony of only a couple of experts, it advocates for the adoption of "targeted and limited reforms," noting that CEQA's "value is especially apparent in disadvantaged communities that have a history

of environmental degradation." It includes a laundry list of notable case studies in which CEQA has played a significant role in protecting Californian communities and preserving the environment (most of which can be found on the CEQA Works website).

The report also implicitly recognizes that, while the Legislature has created numerous CEQA exemptions (for everything from certain types of infill or affordable housing to clean energy projects), there isn't much empirical evidence supporting the claim that further chipping away at CEQA will address California's housing shortage. It cites to studies finding that fewer than ten percent of housing projects required an environmental impact report and that only two percent of projects requiring environmental review resulted in litigation. Finally, the report takes care to recognize the interconnected policy interests that have used the CEQA debate as a proxy, many of which implicate issues related to exclusionary zoning, gentrification and displacement, and access to transit. Given this evidence and a wave of recent legislation modifying the law, the body of the report proclaims: "We believe the state should wait to measure the success of recent reforms before embarking on major additional changes."

But the recommendation section that follows veers sharply from this reasoned tone, proposing a raft of significant reforms, including some that go well beyond what the Legislature has considered to date. These recommendations are wholly divorced from—and in some cases directly contradict—the body text of the report. Here are a few examples:

- ***An overly broad infill housing exemption.*** The report proposes doing something no state legislator has tackled to date: creating a broad, across-the-board exemption for infill housing. It's hard to overstate how radical this recommendation is, particularly in light of the fact that the report itself calls on the state to proceed with caution in the face of recent CEQA streamlining reforms. Rather than following its own advice to let the dust on those changes settle and assess their success in delivering much-needed additional housing, the Commission proposes that the Legislature go one giant step further, exempting all infill housing "without additional qualifications or conditions." The problem? While the Commission asserts that the commonly-used definition of infill housing—"that which is developed on sites that are at least three quarters surrounded by existing urban uses"—should prevent sprawl development from taking advantage of the exemption, urban uses are defined broadly enough in state statute that in practice, plenty of sprawl development would qualify for streamlining. And such an unqualified exemption would do nothing to ensure that new housing is the affordable kind we need, or that it will be sited in ways that do not expose environmental justice communities to even greater harms.

- ***Limitations on so-called "data dumps."*** The notion of "data dumps" is one that does not feature too often in CEQA debates, likely because it's not a genuine problem. The terms "data dumps" and "late hits" conjure images of a duplicitous would-be petitioner showing up at the eleventh hour with thousands of pages of documents, probably aiming to obstruct an affordable housing or solar project in bad faith. But the report offers no evidence that this problem actually exists. In fact, the body text of the report does not mention this issue a single time, let alone explain why it is significant enough to merit a legislative effort.
- ***Modifications to standing requirements.*** The Commission recommends that CEQA be amended to explicitly state that "the intent of CEQA is environmental protection and that the law should not be used for suits that do not align with this intent." But, once again, this recommendation seems to be a solution in search of a problem. Far from presenting evidence that the volume of CEQA litigation is unmanageable, the body text of the report acknowledges that "[m]ost CEQA projects do not result in litigation." Nor does the report—either in the body text or in recommendations—explain why existing limitations on standing, and the fact that CEQA suits cannot succeed without claiming legitimate violations of the statute, are not enough to weed out bad challenges. In practice, the amendment proposed by the Commission's report would simply open the door to discovery that attempts to prove petitioners' "purposes" in filing suit are not legitimate. The result will either be a chilling of meritorious CEQA claims, something state policymakers should not want to endorse, or an extension of the CEQA litigation timeframe to allow for discovery on standing issues, which will only add to the burden on courts and litigants.

These are just a few of the most egregious examples of the recommendations' misalignment with the body text of the report—and, for that matter, with much testimony and evidence the Commission considered during its hearing process, the majority of which did not make it into the report. CEQA remains a highly controversial battleground, and the devolution of this well-considered process into extreme and unsubstantiated recommendations is truly disappointing. One thing is clear: State policymakers should take the Commission's recommendations with a serious grain of salt.

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