Prospectus

Unintended Consequences of CEQA Procedures:
A Case Study of the Cordoba Center and the California Environmental Quality Act

Public Policy and Administration

Walden University
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Problem Statement

The California Environmental Quality Act (CEQA, 1970) has been controversial during its history (Barbour & Teitz, 2005), but policy researchers have given it little attention. As California has endured economic hardships and growth pressures over the past several decades, complaints from all sides of the development issue (e.g., Barbour, 2005; LAO, 1997) share a common theme that CEQA does not support effective regional planning for land use and the environment. Although CEQA is “fundamentally a law about process” (Landis, 1995, p. xvi), it has a vague and dynamic nature that can be confusing and costly as the following examples show:

CEQA has been criticized for inconsistent applications across different jurisdictions making it harder to prepare plans (Bilir, 2012).

- Because some CEQA challenges are unrelated to environmental impact, developers included extra details in their Environmental Impact Reports (EIR) in order to create defensible “bullet proof” documents to meet the court’s requirements. These costs are paid by the project proponents and the agencies involved (Nelson, 2012).
- Although the original intention of CEQA policy was to protect the physical environment (air, land, and water), CEQA has been successfully used to halt projects mid-construction on issues such as urban decay and other social justice issues (Amur, 2007; Curtin, 2005).
- CEQA conflicts with major components of comprehensive planning and long range plans and emphasizes project-by-project analysis (Little Hoover Commission, 2005; Olshansky, 1996).
Mitigation of environmental impacts are not always effective or reasonable (LAO, 1997).
• Broad rules allow a wide range of plaintiffs, even those that are more than likely economically or politically motivated (Diaz, 2012; Trapenberg Frick, 2013).

CEQA’s only enforcement mechanism is through citizen legal challenge, which can require costly Environmental Impact Reviews. EIRs can cost tens and even hundreds of thousands of dollars, with preparation times running from six months to several years (Lefcoe, 2007, p. 1023). By using CEQA as a mechanism to increase project costs and change timelines, challengers hope that “delaying a project will ultimately lead to its being abandoned or substantially revised” (p. 1023). While private developers may have the financial resources to defend against CEQA challenges, non-profit organizations, such as places of worship, typically have fewer resources to defend against somewhat dubious CEQA challenges, which may result in a project coming to a sudden end after years of costly planning.

A report by the California Legislative Analyst’s Office (1997) states that while there is a general agreement that CEQA problems exist, the evidence is often anecdotal. Stakeholder major complaints include that CEQA is subject to abuse for non-environmental reasons (Amur, 2007; Little Hoover Commission, 1995; Trapenberg Frick 2013); it is cumbersome and unpredictable (LAO, 1997); resolving disputes under CEQA is costly and time-consuming (LAO, 1997); and it can have vague requirements (Bilir, 2012). A review of the literature showed that most research focused on how CEQA policies hinder economic development, but seldom how it prevents the siting of places of worship, such as mosques.

To date, while studies have documented legal actions used to stop controversial development in neighborhoods (Amur, 2007; Curtin, 2004; Lefcoe, 2006; Nelson, 2012; Shigley, 2010; Trapenberg Frick 2013), no studies have been done to explore how or why citizens who
oppose the siting of Islamic mosques in their community have chosen to use CEQA in a problematic way to stop development. The purpose of this study is to provide empirical data about CEQA and its impact on the development of Cordoba Center, a proposed mosque in San Jose, California.

**Significance**

Since the enactment of CEQA in 1970, the population of California has nearly doubled (US Census, 2010), and Islam is now the fastest growing religion in the United States (Hacking, 2010). Although stakeholders agree that CEQA litigation can be costly, cumbersome, unpredictable, unreasonable, and sometimes has nothing to do with the environment (LAO, 1997; Shigley, 2010; Trapenberg Frick, 2013), little research has been conducted on how CEQA is affecting social freedom of religious expression. As the population of California continues to grow, policy makers will require more information about how CEQA is being used so that they can make decisions regarding the siting of mosques.

Described as a “blunt instrument” by planners (LAO, 1997, p. 17), and used by the Tea Party to stop development because they believe that regional planning by unelected officials is unconstitutional government overreach (Trapenberg Frick, 2013), CEQA land use policy procedures have significant potentially negative social change implications. CEQA may be a policy tool which empowers local governments to design their communities, while allowing citizens to select their neighbors. By simultaneously addressing CEQA concerns in the context of the siting of the Cordoba Center, this study will provide desperately needed data about unintended consequences of current CEQA procedures.
Background

Selected articles and reports relating to the Cordoba Center Case, land use, and the common theme that CEQA does not support effective regional planning for land use and the environment are described here:


2. Landis et al. (1996) prepared a two-volume comprehensive evaluation of CEQA. Their evaluation included case studies from 12 California cities and two counties as well as reform proposals.

3. Although CEQA is over 40 years old, Nelson (2010) discussed how there is still uncertainty as to what projects proponents must do to comply with CEQA and offers suggestions for best practices to avoid frivolous lawsuits.

4. Olshansky (1996) discussed the roles that CEQA has in the General Plan process.

5. Shigley (2010) focused on the challenges that developers express with CEQA compliance including how CEQA litigation sometimes has nothing to do with environmental protection.

6. Tayfun Amin (2007) addressed the use of CEQA to challenge projects on urban decay and other social justice issues.

7. Trapenberg Frick (2014) conducted research on Tea Party and property rights activists in the San Francisco Bay Area (the same location of the proposed Cordoba Center) who are fiercely opposed to city and regional planning efforts.
8. Wimberger (2009) provided a history of CEQA and discussed the importance of CEQA’s procedural requirements.

**Conceptual /Theoretical Framework**

The conceptual/theoretical framework for this study combines Kingdon’s (1984) discussion on policy entrepreneurs and Roe’s (2006) narrative policy analysis. Policy entrepreneurs invest their resources in hopes of future returns, to promote their personal interests and values, and to shape public policy (Kingdon, 1984, p. 129). In the case of the Cordoba Center, research can provide insight into how the vagueness of CEQA can be used to initiate dubious CEQA challenges in order to promote personal interests and values. According to Roe (2006), many public policy issues require a metanarrative through narrative policy analysis because they are uncertain, complex, and polarized. A metanarrative of the Cordoba Center case could allow the CEQA issue to be recast so that conventional policy-analytical tools can be used to assist decision makers to make sure that the law is being used properly.

**Research Questions**

The central research question is: In what ways could expanded invocation of the California Environmental Policy Act (CEQA) policy framework compromise social justice rights of California citizens? Subquestions include:

1. Did citizens who opposed the siting of the Cordoba Center in their community choose to use CEQA in a problematic way to stop development?

2. Was the CEQA challenge a significant obstacle in the siting of the Cordoba Center?

3. What are the social and economic consequences of the CEQA case brought against the Cordoba center?
The central research question focuses on understanding whether the growing reach of CEQA and the ability of any citizen to sue under CEQA compromises social justice rights of California citizens. In order to explore the central research question, the Cordoba Center case will be examined to understand who initiated the court case, why CEQA was chosen, and how it was used. While the Cordoba Center withdrew its application to build the mosque and cemetery during the CEQA court case, it is unknown if the CEQA challenge was the primary reason the application for development was withdrawn. If CEQA was the primary reason, could the CEQA case have been avoided? If so, at what social and economic costs? Lastly, the research will examine CEQA’s impact on the progressive social agenda and provide insight into if and how CEQA is being used as a tool for dubious agendas.

**Nature of the Study**

The nature of this study will be qualitative. Qualitative research is consistent with needing a complex, detailed understanding of how CEQA has been used to prevent the siting of the Cordoba Center, which is the focus of this dissertation. By conducting a case study and interviewing the people involved in the court case against the Cordoba Center, the research will provide insight into a problem through a specific example. By focusing on why CEQA was used to prevent the siting of the Cordoba Center, the study will provide an enhanced understanding of how the vagueness of CEQA can be used for dubious challenges and entrepreneurial aims.

**Possible Types and Sources of Information or Data**

1. Interviews with the leadership and members of the Southern Valley Islamic Community.
2. Interviews with the leadership and members of People's Coalition For Government Accountability.
3. Interviews with government officials responsible for the land use approval for Cordoba Center.

4. Review of Court Documents.

5. Review of public hearing transcripts and video.

6. Information from local news outlets including newspapers and television.

7. Review of social media websites.
References


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