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PERSPECTIVE

Address housing costs with balance

By Jeffrey McCoy and Jeremy Talcott

Housing prices in California continue to rise, with home ownership simply out of reach for many families, even those in the middle class. And as the California Legislative Analyst's Office reported in 2015, the single greatest cause of that problem is that there aren't enough houses being built to meet demand. If California really wants to lower housing costs, it needs to start approving more development.

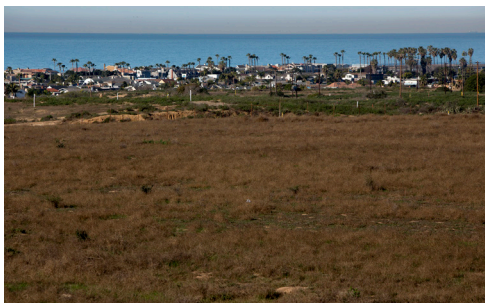
But even that only tells half the story. Last September, the White House issued a blistering housing report stating that accumulation of rules and regulations at both state and local levels discourages new development and substantially raises the prices of homes that are built. In California, the combination of insufficient supply and staggering time and compliance costs ensures that housing often requires at least 30 percent — and even as much as 50 percent or more — of a family's income (the national average is 23 percent).

The California Environmental Quality Act (CEQA) is one such burdensome law. The act can add years of environmental review to development projects, adding substantial delay and expense to housing in areas where it is desperately needed.

Even worse, third parties often file lawsuits alleging that developers have failed to comply perfectly with CEQA's many rules, regulations and timelines. If the court agrees, developers often must start again, resubmitting reports and declarations and hoping that no i's go undotted and no t's are left uncrossed. Under CEQA, anti-development environmental groups can add years of compliance and litigation costs to development, costs that are then paid by aspiring homeowners.

Last week, just such a scenario played out in the California Supreme Court. *Banning Ranch Conservancy v. City of Newport Beach* (*Newport Banning Ranch LLC*), 2017 DJDAR 3045 (March 30, 2017). It ruled that the city of Newport Beach needed to redo its environmental analysis for a proposed housing development outside the city limits. The court's decision adds additional delay to a project that has already been through an eight-year-long permitting process.

The property at issue is Banning Ranch, a 400-acre plot of largely undeveloped coastal property in Orange County. The city recently approved a development plan that would add 1,375 housing units, 75,000 feet of retail facilities, and 75 hotel rooms, while still leaving the vast majority of



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the property as natural open space. Coupled with a new park the city has planned for an adjacent property, Banning Ranch has the potential to create desirable new housing and business opportunities near Newport Beach that effectively balances preservation of natural habitat and outdoor recreation.

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In accordance with CEQA, the city drafted an environmental impact report for the project. The report examined all the potential environmental impacts from the proposed project and the mitigation measures needed to address those impacts. The city, however, decided not to issue a determination about whether there were any Environmentally Sensitive Habitat Areas (ESHA), as defined by the California Coastal Act. Since Banning Ranch is outside city limits, the California Coastal Commission has to issue the final coastal development permit. The city decided to simply collect environmental information, issue their approval, and allow the commission to make the final determination on ESHA during their permitting process.

The Court of Appeal accepted the city's actions, but the California Supreme Court did not. Even though the commission would examine the issue of ESHA before issuing a development permit, the Supreme Court held that the city's 600-page environmental review was inadequate. Though identification of ESHA is only required under the Coastal Act, the city must now conduct another environmental review under the commission's terms before either the development or the park can go forward.

The purpose of CEQA is to ascertain potential environmental impacts and identify feasible alternatives to mitigate those impacts. In the Supreme Court's view, the environmental impact report could not identify feasible alternatives without identifying ESHA. The city's report, however, provided enough information to determine the environmental impacts of the proposed project, and outlined alternatives and mitigation measures. During the commission's subsequent review, it will be required to identify any ESHA and make a decision based on that information. Both of these reviews will ensure that all feasible alternatives and mitigation measures are identified and considered.

But because of the court's decision, the city will now have to conduct another analysis that will likely need to be repeated by the commission anyway. The Banning Ranch development and the city's park are put back on hold.

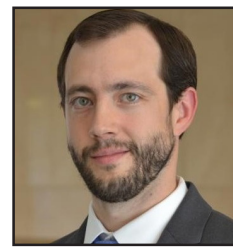
If California wants to seriously address the issue of rising housing costs, it needs to encourage more development. Protection of the environment can be achieved in ways that also balance the housing needs of California citizens. The California Environmental Quality Act places procedural hurdles in front of both cities and developers, and then opens both up to litigation by groups that are often seeking only to discourage development by creating insurmountable delays and expenses. By requiring Newport Beach to go back and conduct environmental review under the commission's ESHA standards, the California Supreme Court's decision adds unnecessary delay and expense to a sorely needed development project.

Meanwhile, 1,375 future homeowners are left waiting.

Jeffrey McCoy and Jeremy Talcott work for Pacific Legal Foundation in Sacramento. Pacific Legal Foundation filed a friend of the court brief in support of the city of Newport Beach at the California Supreme Court.



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