

## IN NEED OF OVERHAUL?

### OBJECTION OVER PLANNED TRUCK STOP WEST OF LODI ADDS NEW FIRE TO DEBATE OVER CALIFORNIA ENVIRONMENTAL QUALITY ACT

By **Alex Breitler**

February 19, 2013

Record Staff Writer

February 19, 2013 12:00 AM

Virtually no one objected to developer Kevin Huber's plans for a new truck stop.

Not the environmental groups. Not the air quality cops. Not the county bureaucrats.

Indeed, since the project was formally pitched nearly three years ago at Flag City west of Lodi, there has been only one objection on record: that of the rival truck stop across the street.

Pilot Flying J fought the plan and delayed it - also delaying the 40 jobs the new Love's truck stop is supposed to provide, the \$400,000-plus per year in tax revenue and the extra space for big rigs that clog the streets around the existing facility.

Perhaps most telling, however, is that Pilot based its challenge upon the state's foremost environmental law, less than five years after Pilot CEO Jimmy Haslam complained publicly of California's "extreme" regulations to protect the environment.

"It's unbelievable," Huber said last week.

Overhauling the California Environmental Quality Act is a hot topic in Sacramento this year, and the Flying J case might be one example why.

"Unfortunately, CEQA has been abused by people who really don't care about the environment," Huber said. "I think when a competitor uses the CEQA sword as a means to delay competition, that is an abuse of the legislation."

Gov. Jerry Brown has indicated his desire for change, last year referring to CEQA reform as "the Lord's work." Legislation is expected this year.

Coalitions have mobilized on both sides of the debate. The developers argue the law is misused and manipulated by sometimes shadowy interest groups and unions, bogging down projects in costly litigation; environmentalists say these fears are overstated, that the law is the only way for citizens to challenge potentially damaging projects and preserve their quality of life.

All this discussion comes at a time when the state is considering a massive infrastructure project in the Delta - twin tunnels to send water to southland farms and cities. Some Delta advocates fear weakening CEQA will pave the way for that plan.

"I'll be honest: CEQA will be one of the tools to prevent the utter destruction of this estuary," said Stockton environmentalist Bill Jennings.

This city is no stranger to CEQA battles.

A fight over its growth-inducing general plan resulted in a 2008 settlement agreement among the city, the Sierra Club and then-Attorney General Jerry Brown. New policies attempt to reduce the city's climate footprint and curb urban sprawl.

It wouldn't have happened without CEQA, said Rachel Hooper, a San Francisco-based land use attorney who represented the Sierra Club in its challenge.

"There is no other law that could have made this difference," Hooper said. "CEQA absolutely saved the day for this monumental project for the city of Stockton. And that's why those of us who work with CEQA are so intent upon preserving it. We see the difference it can make."

It took a CEQA challenge to upend the privatization of the city waterworks. Hooper was involved in that case too.

And a challenge under the same law led to the creation of a farmland preservation program that requires developers, before they pave over the fields, to pay a fee toward saving open land elsewhere.

"That's been a huge success that never would have occurred without CEQA lawsuits," said Eric Parfrey, a Sierra Club activist from Stockton, and a planner himself.

"There are always these individual horror stories people can dredge up" about the law being abused, Parfrey said. "But considering how many CEQA documents are written - thousands each year - out of all those thousands less than 1 percent are challenged in court."

But attorneys remember well that 1 percent.

Four years ago Stockton attorney Howard Seligman defended a group that wanted to build a mosque in Morada. Residents sued to block it under CEQA, citing concerns

about fire safety, traffic, groundwater and soil, though documents at the time also suggested cultural concerns.

The case ended with a settlement. Much like Huber's truck stop, the end result was that the project was allowed to move forward with essentially the same conditions that had originally been imposed.

"You spend all that money, and the bottom line is, in that particular case, the ultimate disposition was a reaffirmation of what the board had already approved," Seligman said last week.

Some have suggested courts be authorized to require plaintiffs to post bond at the beginning of the proceedings to cover the defendants' attorney fees, if the case turns out to be frivolous. Another solution, they say, would restrict whether CEQA lawsuits can be filed if they satisfy the law in the eyes of approving agencies.

In the truck stop case, Pilot denies that its interest in blocking the project is purely to avoid competition.

"We want to make sure that the cities, counties and state government of California are not setting aside health and safety issues because they are in a fiscal crunch and are trying to create tax revenue as quickly as possible," Bill Mulligan, Pilot's vice president, said in a prepared statement.

Pilot has said it's concerned about air quality and traffic.

But supervisors denied Pilot's latest appeal last Tuesday. And ultimately, despite the extra time and money spent on additional environmental review, the project is essentially the same today as when it was proposed in 2010, Huber said.

And the struggle may continue.

Huber said Pilot could still sue to challenge last week's decision.

Contact reporter Alex Breitler at (209) 546-8295 or [abreitler@recordnet.com](mailto:abreitler@recordnet.com). Visit his blog at [recordnet.com/breitlerblog](http://recordnet.com/breitlerblog).

[http://www.recordnet.com/apps/pbcs.dll/article?AID=/20130219/A\\_NEWS/302190314](http://www.recordnet.com/apps/pbcs.dll/article?AID=/20130219/A_NEWS/302190314)