Update on the Status of the California Environmental Quality Act (CEQA) and the Stanford Wedge Development

By Lynda Brother, Retired Attorney

By now you’ve probably heard about Stanford’s proposal to develop a housing project off Alpine Road. The project, locally known as The Wedge, consists of 27 single-family dwellings and 12 additional units in 3-unit multi-family buildings on part of a 75-acre parcel.

Have you also heard of the fifty-two-year-old California law, the California Environmental Quality Act (CEQA)? This article explains the investigations, evaluations and determinations required of a lead agency, in this case the Town of Portola Valley, under CEQA prior to approval of The Wedge. A companion article applies descriptions of CEQA specifically to the environmental assessment of tree removal. Tree removal was chosen because we expected trees to be an easily quantified, uncontroversial part of the proposal. As you’ll see in the companion article, nothing could be further from the truth.

**CEQA is essentially a good-government law that requires the local agency to review the environmental impacts of a proposed project.** The review must include an evaluation of the purpose, need and alternatives, including an alternative location, of the proposed project. The review must also identify and evaluate all environmental impacts, including impacts to historic and Native American resources, the ecosystem, as well as a range of commonly considered impacts such as traffic, wildfire, and geologic seismic impacts, socio-economic impacts, biological and aesthetic resources and impacts on climate change. The review must not be speculative, and it must include evaluation of other foreseeable projects (e.g., the Housing Element), aesthetics, utilities, and surrounding land uses.

**The review and analysis must also evaluate the cumulative impacts of other potential developments.** As part of the review, the Town must determine which of the environmental impacts are significant. For every significant impact a mitigation measure must be adopted that will ameliorate or mitigate that adverse impact. The determination of significance and creation of mitigation measures are key elements of CEQA. CEQA review must be completed prior to the Town taking any discretionary action. Many of the steps and processes under CEQA have strict time limitations. Even though many of those periods can be altered, but being aware of deadlines is an important part of CEQA. For example, the time period to receive public comment can be variable and can be extended at the discretion of the lead agency.

**Over the years, a number of types of projects have been excluded or exempted from the application of CEQA.** In 2007 for example, CEQA was amended to exempt low-income housing projects, under certain circumstances. While many lobbyists representing building and construction industry have attacked CEQA as anti-development, it is actually neutral regarding
development seeking merely to assure that environmental impacts of a project are fully evaluated, and as necessary, fully mitigated. Many observers agree that CEQA compliance results in improved projects and typically costs less than 1% of a project’s costs.

After the preliminary review of impacts, the lead agency decides as to the type and extent of review needed. This decision can result in a negative declaration or mitigated negative declaration for projects with fewer or lesser impacts. For the Wedge, the Town determined the review necessitated an environmental impact report (EIR).

**CEQA requires the agency to obtain public review and comment on the environmental impact report and requires that the agency provide a detailed response to all public comments.** If those comments raise substantial issues, the agency has numerous options available to it including additional research and public review.

If the impact analysis overlooks impacts or makes assumptions that limit the analysis it’s relatively easy for the lead agency to conclude that impacts are not significant and hence do not require mitigation. Mitigation is a key component of CEQA but also represents good project planning and protection of townspeople from added costs to infrastructure from developments. It is not uncommon for agencies to require developers to post a bond for certain costs that will be incurred later or otherwise require express funding mechanisms to deal with the future, foreseeable impacts of the development. In areas where endangered species are present, developers are often required to purchase off-site property, or shares in land banks to ensure habitat for such species.

The determination of “significance” is a bit of an art form and can appear subjective although is typically framed otherwise. A common example of mitigation under CEQA is usually evident as you approach a large Walmart or Costco store, where the company will have been required, usually pursuant to CEQA review, to mitigate traffic impacts by setting aside large areas for parking and paying for the installation of extra turn lanes and traffic lights. Another example of mitigation was the requirement imposed on University of California (UC) for the renovation of the Memorial Stadium, where UC had to plant 2 to 3 additional trees for every aged tree removed. Mitigation is a key aspect of the CEQA review as it saves current and future residents from bearing the costs of the impacts of the proposed project but also requires the instant review to be thoughtful and forward looking.

Finally, CEQA is enforced by members of the public who can bring legal action against the lead agency. The legal action will address the efficacy, adequacy, and fullness of the identification of environmental impacts, the review and analysis of those impacts, including foreseeable and cumulative impacts with other projects and finally the determinations of significance and choice of mitigation measures. Often such suits will identify impacts that were not previously identified. In such citizen suits for enforcement, the prevailing party is awarded attorney’s fees.

**With that overview of CEQA, let us turn to The Wedge.** The Wedge proposal is currently undergoing review under the California Environmental Quality Act (CEQA) with the Town of Portola Valley as the lead agency. The Draft Environmental Impact Report (DEIR) prepared
pursuant to CEQA contains a summary of the project and analysis of the environment. Although the DEIR is captioned as prepared by the Town of Portola Valley, it is important to know that Stanford and the Town entered into a Statement of Understanding on September 13, 2019, when the Wedge project was presented to the Architectural & Site Control Commission (ASCC). Under that agreement, Stanford assumes full responsibility for costs incurred by the Town including apparently (it is not explicit in the agreement) the costs of CEQA compliance.

The Town hired consultants to prepare the DEIR. The public comment period for the DEIR was March 30 – May 13, 2022. Extensive public comments were submitted and can be found here. Take a minute and quickly review the amazing comments submitted by our neighbors. The Town Council, during the August 10, 2022 meeting, approved an additional payment to the CEQA consultant for review of the public comments and preparation of the response to comments, stating that the over 300 pages of comments were more than had been expected.

In the normal process, at this stage, the Town would be evaluating the comments and preparing the detailed responses to public comments and/or considering changes to the proposal with the applicant. According to a schedule on the PortolaValley.net under the Stanford Wedge Housing Project, CEQA/EIR FAQ section, the Town intends to issue a Final EIR (FEIR) and Notice of Determination (NOD) in August. As defined in CEQA, the NOD is filed when the Town has determined the CEQA process has been completed and the Town is prepared to proceed with the project. Upon issuance of the NOD, which typically includes the detailed response to comments, the public has 30 days to bring a legal challenge. The Wedge approvals could be more complicated especially given the number and quality of public comments, but this is what the Town has provided on the town website. Also according to the website, the Town contemplates additional steps in late 2022 including a Certification of Mitigation and a Monitoring and Reporting Program as well as a Statement of Overriding Consideration.

There is no commitment on the town website to any further public comment, although in their discretion the Town can elect to do so, especially if it undertakes additional analysis. Nonetheless, if the town proceeds to a NOD, the NOD must include the entire administrative record for the CEQA aspects of project approval, the FEIR including the response to comment and associated Town findings. Once the NOD is issued, citizens have 30 days in which to file a legal appeal, if not the Wedge project will be deemed approved.

As of today, we do not know the exact timing of the Town’s next intended steps under CEQA except as set forth on the town’s website nor do we know whether they will proceed to an NOD as set forth on the Web site or take some alternative approach. Stay tuned…

[1] Cal Public Resources Code Section 2100 et se. Nothing in this article shall be deemed or considered legal advice