

California Environmental Quality Act
Basic Overview
Tips on Reviewing an EIR

Planning Commission Workshop

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GOALS OF WORKSHOP

- Review Basic Elements of CEQA
 - Purpose
 - Role of CEQA in Project Decision Making
 - Environmental Review Process
 - Role of Planning Commission
- Tips on how to review a DEIR

WHAT IS CEQA?

- It is the environmental protection law most frequently applied to land use decisions in California
- It is a very complex law with a simple purpose

CALIFORNIA STATE LAW

State law requirements –

- **California Public Resources Code**
 - Sections 21000 – 21178
- **CEQA Guidelines – Official State Guidelines**
 - Prescribed by the Secretary of Resources
 - California Code of Regulations
 - Title 14, Chapter 3, Sections 15000 - 15387

PURPOSE OF CEQA

- Inform government decision makers and the public about the potential environmental impacts of proposed activities (policies, plans or projects);
- Involve the public in the decision making process;
- Identify ways that environmental damage can be avoided or significantly reduced;
- Prevent environmental damage by requiring changes in projects through the use of alternative or mitigation measures.

BOTTOM LINE

- To assure that decision makers understand and account for the environmental consequences of a project
- How? It prohibits approving projects as proposed if there are feasible alternatives or mitigation measures that would substantially lessen significant environmental impacts that have not been considered and addressed.

TIMING OF CEQA REVIEW

- Environmental review must be completed before granting any approval of a project subject to CEQA
- Decision maker must make a determination regarding CEQA prior to decision on project

IMPACT ON PROJECTS

- Project cannot be approved without CEQA determination
 - CEQA determination must be made first before project approvals
- Project can be challenged if CEQA review process is not followed

DOCUMENTING CEQA DETERMINATIONS

- Can be taken as a separate action from project resolution
 - Two Resolutions
- Can be combined in a single action with project determination
 - One Resolution, but must be called out in both Title of Resolution and in body of Resolution

IMPACT ON PROJECT DECISIONS

CEQA – Does *not* approve or deny a project

- A project can be denied even if there are no environmental impacts
- A project can be approved even if there are environmental impacts that *cannot* be mitigated or reduced to less than significant levels if reasons are disclosed to the public

WHEN IS CEQA TRIGGERED?

- CEQA is triggered by an application for public agency approval- OR-
- Agency decision to consider a project

STEP#1 = PRELIMINARY REVIEW

1. Is the activity a Project?
2. If a Project, is it exempt?
 - Ministerial Approval
 - Statutory Exemption
 - Categorical Exemption
3. Potential impacts?

STEP #2 – INITIAL STUDY

- If not exempt, an Initial Study must be conducted by City to determine whether the project may have a significant impact on the environment
 - City must consult with other responsible agencies responsible for areas that may be affected by the project
 - All phases of project planning, implementation and operation must be considered

CONTENTS OF INITIAL STUDY

- Project Description
- Environmental Setting
- Environmental Checklist
- Discussion of Potential Significant Impacts
- Description of Mitigation Measures
- Mitigation Monitoring Program (if applicable)

ENVIRONMENTAL CHECKLIST

- Aesthetics
- Biological Resources
- Hazards & Hazardous Materials
- Hydrology & Water Quality
- Air Quality
- Geology & Soils
- Land use & Planning

....ENVIRONMENTAL CHECKLIST

- Mineral Resources
- Public Services
- Utilities & Service Systems
- Noise
- Recreation
- Population & Housing
- Transportation & Traffic Issues

...ENVIRONMENTAL CHECKLIST

- Cultural Resources
- Agricultural and Forestry Resources
- Recreation
- Energy Conservation
- Greenhouse Admissions
- Mandatory Findings of Significance

DEFINITION OF “SIGNIFICANT?”

- Not Always Clear
- CEQA Guidelines Definition: “A substantial or potentially substantial adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance...”

TYPES OF IMPACTS

- **Direct Effects** – Caused directly by Project & occur at same time and place
- **Indirect Effects** – Reasonably foreseeable & caused by Project but occur at a different time or place
 - Not immediately related to the project, but direct impact on environment causes change in another aspect of the environment

...TYPES OF IMPACTS

- **Cumulative Effect** – Refers to 2 or more individual effects which considered together are considerable or which compound or increase other environmental impacts.
 - May result from a single project or a number of projects
 - For several projects is the change in environment that results from the incremental impact when added to other past, present and reasonable foreseeable future projects
 - Can be individually minor, but collectively significant

...CUMULATIVE IMPACTS

- Note: Mere existence of significant cumulative impacts caused by other projects alone does not equate to substantial evidence that proposed project's incremental effects are cumulatively considerable

CAUSE OF SIGNIFICANT IMPACT

- Significant Impacts can be caused by all three types of effects:
 - Direct
 - Indirect
 - Cumulative

FINDINGS OF “SIGNIFICANCE”

- An economic or social change by itself shall not be considered a significant effect
- A social or economic change related to a physical change may be considered in determining whether the physical change is significant.

STEP #3 DETERMINE LEVELS OF REVIEW

- **Results of Initial Study Determine Level of Environmental Review:**
 - **Negative Declaration**
 - **Mitigated Negative Declaration**
 - **Environmental Impact Report**

NEGATIVE DECLARATION

- Initial Study shows that the project will not have a significant effect on the environment
- Negative Declaration is prepared
 - Describes why project will not have significant effect

MITIGATED NEGATIVE DECLARATION

- When Initial Study shows that Project may cause significant effect, but appropriate revisions to the project can be made to substantially avoid or reduce impacts to less than significant.

WHAT IS “MITIGATION?”

- Mitigation is feasible, enforceable action that will:
 - Avoid the prospective impact
 - Minimize the impact
 - Reduce or eliminate the impact over time,
 - Compensate for the impact
- Goal is to eliminate or reduce impact to less than significant

.....WHAT IS “MITIGATION?”

- Mitigation cannot be deferred
 - Further study or analysis is not mitigation
 - Consulting with other agencies is not mitigation by itself – needs to be coupled with action
- Mitigation must be made a condition of approval
- Mitigation Monitoring or Reporting program is required with EIR (Separate Action Item)

EVALUATION OF MITIGATION MEASURES

- City must ensure that the measures to mitigate or avoid significant effects on the environment are **fully enforceable through permit conditions, agreements or other measures.**

ENVIRONMENTAL IMPACT REPORT

- EIR must be prepared if the Initial Study identifies significant environmental effects that cannot be eliminated through revisions or other mitigation measures.
- **Fair Argument Standard:** If substantial evidence shows that there is a “fair argument” that a project may have a significant impact, an EIR must be prepared.

ROLE OF “FAIR ARGUMENT”

- EIR is **required** when it can be *fairly argued* on the basis of substantial evidence in the administrative record, that a project may have a significant effect on the environment.
 - **Fairly argued** = issue was raised during CEQA process
 - **May have significant effect** = absolute proof is not necessary

“FAIR ARGUMENT” STANDARD

- Fair Argument is considered heart of CEQA:
 - Can be a disagreement among experts each of whom is supported by factual evidence
 - Ensures that the environment is offered the greatest protection and the potential for impacts is disclosed
 - Is the principal means by which a Negative Declaration or Mitigated Negative Declaration is challenged

WHAT IS SUBSTANTIAL EVIDENCE?

- Factual evidence in the record that indicates the project may result in an unavoidable significant impact
 - Facts, expert opinion based on facts, conclusions drawn from factual basis

WHAT IS NOT SUBSTANTIAL EVIDENCE?

- Does not include:
 - Argument, speculation, unsubstantiated opinion, clearly erroneous evidence, social-economic impacts not related to physical environment change

EIR REVIEW PROCESS

- Notice of Preparation
- DEIR is Prepared
- Notice of Completion of DEIR
- Public Comment Period
- Public Hearing to receive comments
- Final EIR for review & certification w/findings
- Notice of Determination

NOTICE OF PREPARATION

- Contains Description of Project
- Map Location
- Statement of probable Environmental effects
- Sent to other responsible agencies
- Part of scoping process
- Public Scoping Meeting – Allows for public input

DRAFT EIR PREPARATION

- DEIR is prepared based on information from scoping process.
- Should provide a sufficient degree of analysis to allow decision makers to make intelligent decisions.
- Should be drafted with language that can be easily understood.

TYPICAL CONTENTS OF DEIR

- Executive Summary
- Project Description
- Environmental Analysis by Source Type
 - Environmental & regulatory settings
 - Determinations of significance
 - Mitigation measures
- Analysis of alternatives to the Project
- Analysis of grow inducing & cumulative impacts

PUBLIC COMMENT PERIOD

- Begins with Notice of Completion
 - Sent to OPR, responsible agencies, individuals
- Generally public comment period is 30-45 days, not longer than 60 days except in unusual circumstances.
- 45 days if sent to State Clearing House
- PUBLIC HEARING is required in Benicia

UNUSUAL CIRCUMSTANCES

- No set rule or case law on this
- Up to discretion of agency
- Would need to articulate good reasons why public would need more time to evaluate the DEIR

TIPS FOR EVALUATING DEIR

#1 - KEEP OBJECTIVES IN MIND:

CEQA Requires public agency to answer 4 basic questions

TIP#1....KEEP OBJECTIVES IN MIND

1. Has it identified each of the Project's Significant impacts?
2. If so, has each significant impact been reduced or avoided with mitigation measures?

TIP#1 – OBJECTIVES OF EIR....

3. Are there feasible alternatives to the proposed project that would meet its objectives with fewer impacts?
4. If the proposed project will have an unavoidable significant impact on the environment, does it benefit the community despite those impacts?

MAIN REQUIREMENTS OF CEQA

- Disclosure –
 - Project, environment, impacts, mitigation
- Good faith effort
 - Perfection is not required, but doing your best
- Mitigation
 - Significant effects must be mitigated or addressed

TIP #2 – LOOK AT THRESHOLDS OF SIGNIFICANCE

- Look at “Thresholds of Significance”
Standards for determining whether an impact is significant
If the impact exceeds the threshold, it is significant
If it is below the threshold, it is less than significant

How were the thresholds established?

What are the triggers?

Do they reflect community values?

TIP#3 – REVIEW MITIGATION MEASURES

- LOOK AT PROPOSED MITIGATION MEASURES
 - Do they make sense?
 - Do they reflect community values?
 - Can reject mitigation measure if social, economic or other considerations make the measure infeasible for Benicia
 - What are the impacts after mitigation
 - Can they be implemented and monitored

EVALUATION OF MITIGATION MEASURES

- Three choices for each mitigation measure:
 - 1. Adopt the Mitigation Measure
 - 2. Make a findings that the Mitigation Measure is not within the City's jurisdiction, but within the jurisdiction of another agency
 - 3. Determine that specific economic, legal, social, technological, or other considerations, including employment opportunities for highly trained workers, make the mitigation measure infeasible

EXAMPLE:

- Finding that it is socially unacceptable to expose residential neighborhood to increased traffic levels to provide incremental improvement to congestion at an intersection, especially when the improvement to reduce cumulative impacts at that intersection will not be reduced to insignificant levels.

TIP #4 - REVIEW PROJECT ALTERNATIVES

- Potential alternatives should include those that could feasibly accomplish most of the objectives of the project and could avoid or substantially lessen one or more of significant impacts.

TIP #5 - REVIEW “NO PROJECT ALTERNATIVE”

- Must contain No Project Alternative - analysis of environmental impacts of rejecting the project
- Discusses existing conditions at time the notice of preparation is published as well as what can reasonably be expected to occur in the foreseeable future if project is denied.
- Provides a good comparison of the potential environmental impacts if the project is approved or denied

TIP #6

- Do not look to the EIR for all the answers
 - The decision to approval or deny the project is separate and distinct
 - Can approve the project even if there are significant impacts if the benefits to the community outweigh the impacts
 - Can deny the project, even if the EIR is certified as approved

TIP#7 IS THERE A BENEFIT TO COMMUNITY?

FINALLY ...

- If there will be a significant impact on the environment, does it benefit the community despite those impacts?
- The purpose of the EIR is to answer these questions

MORE TIPS...

- Familiarize yourself with the DEIR
- Ask Staff about questions or concerns as early as possible
- Insure that your concerns about environmental impacts are addressed
- Ask questions if you do not understand information in the DEIR

MORE TIPS....

- Every public comment that raises environmental issues must receive a written response in the Final EIR
- Is Analysis Objective & supported by facts
- Is the Project Description consistent throughout the environmental analysis
- Do the alternatives reduce or avoid one or more project impacts

MORE TIPS.....

- Is there one mitigation measure for every impact that is considered significant?
- Are the mitigation measures adequate?
- Is there a reasonable explanation why mitigation is infeasible?
- Does the mitigation measure address the impact of the project?

FINAL STEPS OF CEQA PROCESS

- Preparation of the Final EIR
 - Response to Public Comments
- Certification of EIR

PLANNING COMMISSION RESPONSIBILITIES

- For Projects that you approve,
 - Must Certify the Final EIR and make necessary Findings
- These are your documents
 - You Represent the City
 - Responsible for assuring Good Faith effort to comply with CEQA

QUESTIONS?



Thank You!!!