

How to Participate in the Environmental Review Process



Updated: August 2015

Terminology

- CEQA - California Environmental Quality Act
- ND – Negative Declaration
- DEIR – Draft Environmental Impact Report
- EIR – Environmental Impact Report
- FEIR – Final Environmental Impact Report
- MMP- Mitigation Monitoring Plan

Purpose of CEQA

- Statutory requirement for 45 years.
- Requires public agencies to identify environmental impacts of projects and to avoid, or reduce, impacts when feasible.
- Procedure-oriented (notice, review periods, etc.)
- Intended to complement policy analysis and agency best judgment
- Technical perfection not required.

CEQA won't tell us if a project should be approved

CEQA identifies environmental impacts. The local agency may approve a project that has impacts, or reject a project that does not.

Roles

- Agency: Tell the truth; exercise independent judgment
- Community: Contribute information and opinions
- Courts: settle disputes
- Consultants: Technical experts for Agency
- Applicants: Pay the bills (can be Agency, for public projects)

What Are Environmental Impacts?

- Agricultural and Biological Resources
- Air Quality and Traffic
- Noise and Hazards
- Aesthetics and Cultural Resources
- Utilities and Public Services
- Economic (depending on type of project)
- EIR may “scope out” impact areas, like tsunamis in Davis

What Aren't Environmental Impacts?

- Community sentiments
- Property values
- Most economic impacts
- Policy shifts
- “Quality of Life”
- Fiscal impacts to Agency

What is a Significant Impact?

- The courts have been deciding this since 1970!
- Working definition: a substantial adverse change in a physical condition of an area or site due to a project.
- Substantial adverse: defined by each agency based on thresholds of significance (ex: Level of Service for traffic).

Levels of Environmental Review

- Exemptions (projects that are exempt from environmental review under State law, such as small projects)
- Negative Declaration (no significant impacts identified that cannot be mitigated)
- EIR (analysis indicates one or more areas of potentially significant impact)

EIR Process Flow Chart

City decides to prepare an EIR



City sends Notice of Preparation to responsible agencies and public



Scoping meeting held



City prepares Draft EIR



EIR Process Flow Chart (cont.)

City issues Notice of Availability of DEIR;
opens public comment period, including
public hearing before Planning Commission



City prepares Final EIR including responses
to comments on Draft EIR



EIR Process Flow Chart (cont.)

Planning Commission public hearing on project (for land use applications)



City Council public hearing / meeting on project



If approved, certification of EIR by City Council, with Findings for Approval

“EIR Scoping”

- First formal opportunity for public participation in CEQA process
- Agency may usually provide “initial study” with its first take on the issues
- What potential impacts would come from this project? What will be analyzed in the EIR? Are there any issues that won't be addressed – and why?

Questions for Reader

- Does this actually describe the project?
- Are likely impacts accurately described?
- What alternatives would you suggest for analysis?

EIR Documents

DEIR (Draft EIR)

- May have appendices
- Still a working document
- Released for public comment period
- Comments solicited to improve accuracy

EIR Documents (cont.)

FEIR (Final EIR)

- May have appendices
- Response to comments
- Additional evaluations, if any
- If new significant impacts are identified, then re-circulation is required

EIR Documents (cont.)

- Findings of Fact – this may include rejecting alternatives or mitigation measures as infeasible
- Statement of Overriding Considerations
“We’re doing this anyway, because...”
- Mitigation Monitoring Plan
- Notice of Determination

Public Review and Comment

- Draft EIR Released for Public Comment
- 45 day review period typical minimum
- Comments submitted in writing for public record (or provided at public hearing) and published in Final EIR
- All comments will get response in FEIR
- The EIR will address environmental issues, not policy questions.

Reviewing the DEIR

Where to focus your energy depends upon how much time you have to review:

- 30 minutes? – focus on summary tables/mitigation measure summary
- 1 hour? – add in executive summary
- 5 hours? – add in reading EIR text
- More? – add in technical appendices

Questions for Reader

- Does the document actually describe the project?
- Are impacts accurately described?
 - some will be quantifiable (traffic)
 - some will be qualitative (glare, aesthetics)
- Will “mitigation measures” really fix the impacts?
- Are there other mitigation measures that should be considered?

EIR May Not Answer All Questions

- For large or phased projects, the EIR may not have all the answers
 - Subsequent studies may be needed for future phases/entitlements
- Does the EIR have a good plan for future studies and performance standards?
- EIR won't determine whether it's a "good" project

How to Comment

- Optimally, in writing
- Focus on whether the EIR asks the right questions and provides enough information to describe the likely impacts of a project
- Responses received will be at similar level of detail as the comment submitted
- The time to voice support or opposition for project can wait for Planning Commission/ City Council hearings

Mitigation Measures

- Supposed to reduce or eliminate the impact
- Feasible mitigation measures must be adopted
- Some issues may be addressed in General Plan or standard conditions, and don't require explicit mitigation
- Will the measures work? Are they enforceable? Are there others?

Biological Impacts

- Who did the study? When?
- Usually two components – impacts to resource (plant or animal) itself, and impacts to habitat
- What happens if things change between the time of EIR certification and construction?

Air Quality Impacts

- Short-term construction impacts, such as dust
- Long-term operational impacts – usually coming from any additional vehicle trips

Traffic Impacts

- Is the project accurately described?
- What are the trip generation rates? Where did they come from? Do they match local reality?
- How are trip movements assigned? Is that where people will really go?
- Are the right roads/intersections analyzed?
- Should there be an “alternate routes” analysis?

Cultural Resources

- CEQA: Historical resources are listed or **eligible to be listed** on California registry
- Changes consistent with *Secretary of Interior Standards* are not significant
- Other alterations or demolitions are significant impacts
- May come down to issue of competing expert opinions

Public Services

- Not the same as fiscal impacts on the public jurisdiction
- Will project require new facilities that will cause their own impacts?

Cumulative Impacts

- Need to consider project plus reasonably foreseeable future projects
- Could be based on list; could be based on long-term plan or strategy
- Is this the probable future?
- Are impacts accurately described?
- Is mitigation adequate?

Conclusion

- A project with “significant and unavoidable impacts” may still be approved.
- A project with “significant and unavoidable impacts” may still be a good project.
- An adequate EIR does not mandate project approval.
- Public review and comment is integral part of CEQA process

Thank You!