

City of Brisbane



Brisbane Citizens Committee CEQA Presentation



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Section 1

BACKGROUND AND POLICY OF CEQA

A Brief History of CEQA

- Born from the Ecology Movement
- Enacted in 1970 – modeled on NEPA
- California public agencies' responsibility
- Fully realized after “Friends of Mammoth” decision in 1972:
 - CEQA applies to public agency actions, including approval of private projects
- CEQA Guidelines establish a state-wide process
- The primary venue for land use litigation

Guiding Policies

- Identify significant environmental effects, alternatives, and mitigation
- Reduce or avoid significant effects through mitigation
- Provide meaningful disclosure to decision-makers and public
- Consult with other agencies regarding the project
- In all, promote informed decisions through a good-faith disclosure of the project's environmental impact

What CEQA is, and What it Isn't

- CEQA is a process, not a permit:
 - It doesn't prescribe development standards
 - It doesn't prescribe acceptable levels of risk
 - It doesn't specify regulations that projects must follow
 - It doesn't establish study methods

What CEQA is, and What it Isn't

- CEQA does not prescribe the outcome of the deliberations over a project:
 - An EIR does not “approve” a project:
 - The EIR provides enough information to enable informed decision-making
 - An EIR does not “deny” a project:
 - An agency may approve a project with significant, unavoidable impacts

What CEQA is, and What it Isn't

- CEQA requires mitigation, but doesn't give an agency mitigation superpowers:
 - Agencies adopt the mitigation that is within their power to implement or require as a condition of project approval
 - CEQA gives no new powers to any agency



Section 2

THE EIR

What is the Purpose of an EIR?

- Examine the project's potential adverse effects on the environment:
 - Direct effects (on-site, immediate)
 - Indirect effects (off-site, less immediate)
 - Short term and long term
 - Individual and cumulative
- Disclose the significant effects to decision-makers and the public
- Specify feasible mitigation measures to reduce the significant effects
 - Measures must be carried out
 - EIR identifies measures for Lead and Responsible Agencies
- Analyze project alternatives

If the project is approved, the required “findings” and “statement of overriding considerations” hold the Lead Agency accountable to explain its decision

One Project, One EIR

- The EIR prepared for a project by the Lead Agency must also be used by the Responsible Agency(ies):
 - A Responsible Agency may prepare a subsequent EIR in limited situations
- Each agency is responsible for imposing the mitigation measures within its powers:
 - Except when the agency finds that the mitigation is infeasible for specific reasons
- A Responsible Agency is not limited by the EIR – it must still carry out its statutory and regulatory obligations
 - The EIR does not limit the authority of a Responsible Agency to impose additional requirements on the project
 - The EIR does not prohibit a Responsible Agency from denying the project

Study Methods

- CEQA does not specify or require any particular study method
- Analyses from air quality to utilities, and everything in between:
 - Methods based on professional practice
 - Methods recommended by responsible agencies
 - Methods required/indicated by other laws

How Does an EIR Influence Decision-making?

- The Lead and Responsible Agencies must consider the information in the EIR before taking final action on the project
- Feasible mitigation must be incorporated into the approval, reducing the project's environmental impacts:
 - Mitigation becomes conditions of approval or other requirements enforced by the agency
- The City Council must explain itself:
 - “Findings” are adopted that describe the disposition of each significant impact and rejected alternatives
 - “Statement of Overriding Considerations” is adopted if any impacts are unavoidable



Section 3

THE EIR IN GENERAL

Who Prepares the EIR?

- The Lead Agency decides to either:
 - Prepare it in-house,
 - Hire a consultant to prepare it, or
 - Allow the developer to submit a preliminary draft and help on the final EIR
- The Lead Agency must exert its “independent judgment” over the public draft EIR and final EIR
 - It is responsible for calling the shots regarding scope, format, mitigation, etc.

Program EIRs

- Program EIRs typically analyze activities that are:
 - Linked geographically or
 - Parts of a chain of planned events
- A program EIR is the foundation for additional CEQA analysis of later actions on the project
- The level of detail is commensurate with the project's level of detail
- Similarly, mitigation may lack details pending further expected refinement



CALFED
BAY-DELTA
PROGRAM

Final Programmatic Environmental
Impact Statement/Environmental
Impact Report

CEQA Guidelines sec. 15168

Program EIR Content

- The essential content of a Program EIR is no different than an EIR for a small project
 - Summary
 - Project Description
 - Impact Analyses
 - Alternative Analyses
 - Mitigation Measures
 - Etc.
- Typically, however, a Program EIR tends to take a broader view of the project
- This does not change the responsibility to analyze all potential impacts, disclose their significance, and identify mitigation measures

Program EIR Process for Subsequent Activities

- A PEIR does not become outdated
 - CEQA does not require a Program EIR to be updated with new information after it is certified
 - But, each new discretionary action to implement the project must be examined to determine whether a subsequent EIR and additional mitigation are needed
- Program EIR provides CEQA coverage for subsequent activities
 - Activities must be within the scope of the original project
 - Impacts of activities must have been described in PEIR
- No new “subsequent” EIR is required unless:
 - Changes in project or circumstances would result in new or more severe impact
 - New information indicates subsequent activity would have new or more severe impact

Program EIR's Subsequent Documents

- Subsequent EIR
 - Focuses on new or more severe impact
 - Preparation, content and review like any EIR
- Supplemental EIR
 - Similar to subsequent EIR
- Addendum
 - Minor technical changes to the project
 - No new or more severe impacts
 - No public review required

Program EIR Streamlines Later Approvals

- Program EIR satisfies CEQA requirements for later approvals, except as described previously
- Subsequent CEQA documents can focus on new or more severe impacts and may take less time to prepare
- Courts have held that the interest of finality limits the preparation of a subsequent or supplemental EIR unless the above have occurred
- Any litigation over the subsequent document focuses on the Section 15162 process, not the original PEIR



Section 4

TYPICAL EIR PREPARATION

The Key Steps -- NOP

- Notice of Preparation:
 - Advance notice of EIR
 - “Scoping” of issues of interest
 - Minimum 30-day review period
 - Comments considered in preparing the Draft EIR

The Key Steps -- DEIR

- Draft EIR:
 - Analyzes project's potential impacts on the environment:
 - Incorporates available information and studies
 - Discloses significant impacts
 - Identifies feasible mitigation
 - Identifies potentially feasible alternatives
 - Minimum review period of 45-days
- Baylands EIR review period: 120 days

The Key Steps -- FEIR

- Final EIR:
 - Responds in writing to comments received on the DEIR:
 - Incorporates DEIR revisions if needed
 - Lists commenters
 - Includes the DEIR
- The FEIR must be “certified” before a project may be approved:
 - FEIR meets CEQA requirements; it reflects “independent judgment;” and is familiar

DEIR Contents

- Basic contents of a typical DEIR
- Table of Contents
- Executive Summary
- Impact Chapters:
 - Environmental setting, impact analysis, impact conclusion, mitigation measures
- Project Alternatives
- Cumulative and Growth-Inducing Impacts
- Lists of Preparers and References
- Technical Appendices

Public Involvement

- Comment during the NOP review period:
 - Typically in writing, but verbal if there's a public scoping meeting
- Comment on the DEIR:
 - Submit written comments by mail or by e-mail
- Participate in any meetings on the DEIR:
 - Submit written or verbal comments
- Participate in the City's hearings on the project:
 - Submit written or verbal comments



Section 5

EIR CONSIDERATIONS

Project Description

- Narrative description of the proposed project
 - Construction, remediation, and operational activities
 - Related activities (new roads, etc.)
- Graphic description of proposed land uses
- A list of project objectives
 - This is the City's EIR, these are the City's objectives* for the project
- A list of necessary permits and Responsible Agencies

* Although these are the City's objectives, that *does not* obligate the City to approve the project.

Environmental Setting

- The EIR must describe the environment in the vicinity of the project as it exists before commencement of the project
- The environmental setting varies, depending on the resource being examined. For example:
 - Air quality setting = the air basin
 - Water quality setting = the watershed
 - Visual setting = the “viewshed”
- The regional setting can be crucial to assessing impacts, especially for rare or unique resources, or resources that have a regional aspect (air quality, for example)
- Good practice: Discuss the regulatory setting as well as the physical setting:
 - Provides context for impact analysis

CEQA Guidelines sec. 15125

Environmental Setting as the Baseline for Analysis

- Environmental setting is the physical environmental conditions at time of NOP release
- Environmental setting is *normally* the baseline for determining significance of impacts:
 - “Normally” provides flexibility to consider fluctuations in conditions
 - The baseline can reflect variations in conditions -- flowering season, for example
- The baseline cannot be “hypothetical future” conditions
 - It may be reasonable projected future conditions, when based on reliable projections

CEQA Guidelines sec. 15125

Significance Determinations

- Is the project's impact "significant?"
 - "Significant" = a substantial adverse physical change in the environment
- EIR discloses the significance of each of the project's impacts:
 - Feasible, fully enforceable mitigation measures must be adopted for each significant impact
- What makes an impact significant?
 - Exceeding a *threshold or standard*, certainly
 - Conflicting with community values, perhaps
- Quantitative thresholds of significance
 - Air emissions level (air quality), road level of service standard (traffic), noise standard (noise)
- Qualitative thresholds
 - Visual impact, impact to cultural/historic resources

Analytical Methods

- CEQA does not specify or require any *particular* study method
- Analyses from air quality to utilities, and everything in between:
 - Methods based on professional practice
 - Methods recommended by responsible agencies
 - Methods required/indicated by other laws
- CEQA itself does not make value judgments over the methodology that is chosen by the Lead Agency
 - Good faith effort at disclosure

Level of Detail in Analysis

- Level of detail will be commensurate with the project's level of detail
 - Typically, a Program EIR will reflect less detail than an EIR for a small project
- Program EIR must analyze known and reasonably known impacts
 - This includes projecting future levels of impact (traffic, air quality, etc.)
- Program EIR does not engage in speculation
 - EIR must disclose what is speculative and why that is so
- Typically, the level of detail for a large project that would be developed over a number of years is less than for a small project that is precisely described
 - EIR for a general plan or specific plan v. EIR for a 20-lot residential subdivision
 - “blob diagram” v. specific land use/activity

Cumulative Impacts

- Some significant impacts result from the *collective* contributions of past, present, and foreseeable future actions
 - Individual contributions, *by themselves*, may be less than significant
 - Examples: air emissions, noise, traffic
- The EIR describes the cumulative impacts to which the project will contribute:
 - List method (list of contributing actions)
 - Plan or projections method (plan or projection describing overall impact)
- The EIR determines whether the project's contribution is “considerable” in the cumulative context:
 - Even a less-than-significant individual impact may be considerable in the cumulative context
 - Mitigation would address the project's incremental contribution

Mitigation Measures

- Mitigation = an action that will avoid, minimize, reduce or eliminate, rectify, or compensate for a significant effect
- Mitigation must be feasible and fully enforceable
- Measures must be sufficiently detailed to be effectively implemented
- An EIR is not required to mitigate every impact below the level of significance
- The Lead Agency cannot defer its obligation to adopt feasible mitigation measures

Mitigation Measures

- Where permitting is not yet completed or project design is not sufficiently advanced, detailed mitigation measures cannot be prepared
- In those situations, the mitigation measures must include:
 - A commitment to mitigate;
 - Performance standards that will ensure that adequate mitigation is implemented, or a menu of effective mitigation measures; and
 - Objective criteria for measuring success

Technical Data

- An EIR is intended to be accessible to the average resident
- Technical data may be summarized and key studies included as appendices at the agency's discretion:
 - Technical appendices can include traffic, noise, and air quality analyses, and hazardous materials assessments
 - There is no mandated set of appendices
- References are to be available for review on request
 - The references are not expected to be appendices
- A Lead Agency is not expected to undertake original research in preparing an EIR:
 - It is expected to analyze potential impacts and employ technical experts as may be necessary to study the impact mechanisms

Mitigation Monitoring and Reporting Program

- The Lead Agency must adopt a MMRP that will ensure the mitigation measures imposed by the agency will be implemented
- Each Responsible Agency must adopt its own MMRP to ensure that the mitigation that it imposes will be implemented



Section 6

ROLE OF THE PUBLIC

NOP Review

- Notice of Preparation:
 - Issued December 10, 2010 (revised NOP)
 - Written comments received
 - Scoping meeting in January 2011
 - Written and verbal comments received
- Formal comment period is closed
 - Comments were considered during preparation of the Draft EIR

Draft EIR Review

- DEIR to be released Winter 2013:
 - Formal comment period will be 120 days
- Planning Commission DEIR hearing:
 - Opportunity for verbal comments
 - No need to reiterate written comments on DEIR
- Formal Review Period is Not a Strict Cut Off:
 - Comments received after 120 days must also be considered
 - But... Final EIR might not respond in writing

The Final EIR

- There's no formal comment period on the FEIR
- You can still comment:
 - In writing before or at City Council hearing(s)
 - Verbally at Council hearing(s)
- Focus comments on the FEIR:
 - The FEIR will revise the DEIR
- City Council must consider comments on the FEIR before certifying it

A Few Words About Comments

- Written comments are best
 - Express your concerns in your own words
 - Can be more comprehensive than verbal comments
 - Can attach references, or cite specific websites for reference
- Timely comments are appreciated by the City -- please don't spring "late hits"

Commenting at Hearings

- Provide concise testimony on the EIR:
 - Be fair to others who may want to speak
 - Don't be repetitive
 - Submit written comments with details
- Focus on environmental issues – not personalities or perceived intentions:
 - The EIR is about the impacts on the environment, it doesn't decide whether to approve the project



Section 7

EFFECTIVE INVOLVEMENT

Reviewing the EIR

- Start with the Executive Summary
 - Review chapter(s) and appendices of particular interest
 - Review references if warranted (these are separate from the EIR)
- Considerations:
 - Is the scope adequate?
 - Is the discussion of existing conditions complete?
 - Is there analysis to support the conclusions?
 - Are the determinations of significance clear?
 - Mitigation measures: are they feasible and fully enforceable?
 - Is there sufficient information for a “reasoned choice?”
 - City’s decision
 - Responsible agencies’ decisions
 - Is it technically adequate?
- If there are shortcomings, explain what they are, and your factual basis for that contention.

Commenting on the Draft EIR

- **Remember:** the EIR is about the impacts on the environment, it doesn't decide whether to approve the project
- Just the Facts, Ma'am: focus on environmental issues – not personalities or perceived intentions
- Effective comments:
 - Are concise, focusing on the DEIR
 - Relate to the project's potential for impact
 - Identify the specific part of the DEIR at issue
 - Include supporting evidence/facts
 - References – copies of references or citations to specific website, if available