

City of Brisbane



Planning Commission CEQA Training A Brief Introduction to CEQA



Presented by:

Terry Rivasplata
Technical Director
ICF International

Valerie Holcomb
Community Affairs
ICF International

August 9, 2012



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

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 reasonable disclosure of project impacts:
 - But, an EIR is not a technical report:
 - It's intended to be accessible to the general public
 - Technical reports are often prepared to inform and provide the basis for the EIR's conclusions
 - Agency must describe the disposition of all significant effects

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

TYPICAL EIR PREPARATION PROCESS

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 3

PROGRAM 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

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

Alternatives

- The EIR must examine a range of reasonable, potentially feasible alternatives and the “no-project” alternative
- The alternatives must:
 - Meet most or all project objectives
 - Substantially reduce one or more significant impacts
- The Lead Agency chooses whether to examine alternatives at the same level of detail as the project

Alternatives (Cont.)

- The EIR need not examine every possible alternative:
 - The “rule of reason” governs
- The EIR must identify the “environmentally superior” alternative:
 - The Lead Agency is not obligated to select that alternative over the project
- The EIR must identify any alternatives that were considered and rejected from further analysis

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

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

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

The Program EIR's Not the End of the Story

- Subsequent discretionary actions will require CEQA analysis
- As Remedial Action Plans are developed, additional CEQA review may be needed:
 - Mitigation refinements may also require additional CEQA review
- 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
 - Additional environmental analyses examine whether there is a new or more severe impact that would trigger need for subsequent EIR



Section 4

EIR CONSIDERATIONS

Project Description

- Narrative description of the proposed project
 - Construction activities
 - Remediation activities
 - 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

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

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

Typical Analytical Methods

- Air Quality:
 - BAAQMD's TAC screening methodologies
 - CalEEMod for traffic and land use AQ emissions (Offroad, EMFAC)
 - CALINE4 for CO hotspot analysis, if necessary
- Noise:
 - Traffic noise model (Ex: FHWA Traffic Noise Model Version 2.5)
 - Construction noise model (Ex: FHWA Roadway construction, typically modified for project construction)
- Traffic:
 - Traffic demand model (Ex: BAYCAST-90 from MTC; Synchro; etc.) depending upon aspect of traffic

Technical Data

- An EIR is intended to be accessible to the average resident
- Technical data may be summarized and studies included as appendices:
 - Typical technical appendices include traffic, noise, and air quality analyses, and hazardous materials assessments
- 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

The Role of the Planning Commission



Considerations for Planning Commissions

- CEQA does not *mandate* a public hearing on the Draft EIR
- Planning Commission will probably hold a DEIR hearing
 - Opportunity for public to offer verbal comments
 - Public can submit written comments too
- This is the City's EIR:
 - The City is responsible for all content and adequacy
 - The City has hired qualified consultants to prepare the EIR
 - The EIR must reflect the City's independent judgment
- If there is litigation over the EIR, the City will be the defendant
 - Use discretion in your hearings
 - The administrative record includes your statements

Public Process – Draft EIR

Subject to City Council Approval:

- Informational workshops / “open houses” sponsored by City
 - Presentations by EIR consultant on topics in EIR
 - Opportunity for questions
 - Not for formal public comments on Draft EIR
- Formal public hearings conducted by Planning Commission
 - Interested parties can present written and oral comments
 - Focus on receiving comments – you are not deliberating on the project
 - You are not responding to the comments
 - Responses to comments will be in the Final EIR
- Formal Review Period is Not a Strict Cut Off for Comments
 - Comments received after 120 days will also be considered
 - But... the Final EIR might not respond to them in writing

The Final EIR

- The Final EIR consists of two parts:
 1. Final EIR: Comments, City's written responses to comments, list of commenters, and any changes to the Draft EIR
 2. Draft EIR
- Commission will consider the FEIR while deliberating on the project
 - Comments received from the public during deliberations become part of the record and must be considered
 - Do not ignore or minimize the importance of "late hits"

The Project

- The Planning Commission will consider the project, informed by the Final EIR.
 - The EIR provides information, but it neither approves nor denies the project
- Prior to deliberating on the project, the Commission will close public testimony on the EIR
- The Commission may recommend the project's approval, approval with modifications, or denial
- The Commission may recommend adoption of one of the project alternatives instead of the project

Tips for Running Effective Meetings



Keys to an Effective Meeting

- No surprises – tell people what to expect and follow through
- Choose meeting format to meet your goals – hearing, workshop, informational
- Pre-meeting preparation – adequate notice, multiple sources; materials; script; ground rules
- Follow through – don't get sidetracked
- Post-meeting follow-up – next steps

No Surprises

- Clear purpose and consistent messages - Why are you having the meeting?
 - Provide information;
 - Update community
 - Receive public comments
- What do you hope to accomplish?
 - Better public understanding of project
 - Public input into project
- What can people expect at the meeting and after?
 - Presentation
 - Comment opportunities

Planning a Public Hearing

- Hearing notice
 - Multiple delivery – web, newspaper, newsletter
 - Include what, when, why, how
- Meeting plan
 - Who will conduct hearing – hearing officer, Commission chair
 - Establish ground rules for behavior, time limits, queuing for comments
 - Time limits ensure everyone will be heard who wants to speak
 - Written comments can be submitted to support oral comments
 - All comments weighted equally [oral comments are for neighbors; written comments more beneficial to plan developer]
 - Hearing panel does not answer questions or respond to comments
 - Oral comments recorded or use court reporter
 - Announce next steps
 - Support materials

Conducting a Public Hearing

- Introduce hearing officer and panel
- Review procedures/ground rules
 - Emphasize that panel will not respond to comments or questions
 - Explain what happens to comments after hearing
 - Remind public that all comments have same weight, oral or written
 - Ask those who want to comment to fill out comment cards
- Invite public to make comments
 - Use comment cards to call people forward – queue 2-3
 - 30 second warning
 - Invite written comment when out of time
- Summarize with next steps

Dealing with Challenging People

- Person keeps talking after time is called
 - Remind him/her that others want to comment
 - Suggest a written comment, which carries equal weight
 - Call next commenter forward.
- Person demands response to question
 - Reiterate purpose of hearing – to take comments
 - Offer opportunity to answer questions at another time
 - Allow time to run out

Next Steps

- Final date to submit comments
- What happens to comments?
- Additional opportunities to comment
- Schedule for Final EIR

Thank you for attending

Public CEQA Training

A Brief Introduction to CEQA