

BENICIANS FOR A SAFE AND HEALTHY COMMUNITY

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How to Participate in the Environmental Review Process

Powerpoint borrowed and adapted from the City of Davis, Community Development Department
by Marilyn Bardet, with permission from Mike Webb, Director

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Training for Citizen Participation

Mike Webb
Community Development Director
Katherine Hess
Community Development Administrator

Terminology

- **CEQA** – California Environmental Quality Act – law adopted in 1970
- **ND** – Negative Declaration
- **DEIR** – Draft Environmental Impact Report
- **EIR** – Environmental Impact Report
- **MMP** – Mitigation & Monitoring Plan

Purpose of CEQA

- It's **only** a disclosure process – it does **not** determine whether a project is right or wrong or should or shouldn't be approved.
- Requires state and local agencies to identify significant environmental impacts of projects and to avoid, or reduce impacts to "less than significant" when feasible.
- Technical perfection is not required.

Roles

- **Agency/"Lead Agent"**: Tell the truth; exercise independent judgment; provide oversight for the review process.
(In Benicia, the City serves as Lead Agent for CEQA review)
- **Community**: Contributes information and opinions
- **Courts**: Settle disputes
- **Consultants**: Technical experts for Lead Agency
- **Applicants**: Sponsor of the Project under review; pay the bills*
*Most jurisdictions prepare project EIRs, maintaining an arms-length from the project applicant. Some jurisdictions allow the applicant to prepare the EIR.

What Are Environmental Topics in a DEIR? (limited list, examples only)

- Biologic Resources
- Air Quality
- Traffic
- Noise
- Hazardous Materials and Hazards
- Aesthetics
- Cultural Resources
- Utilities and Services
- Economic (depending on type of project)

What Aren't Considered 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 impact:** defined by each Agency based on “thresholds of significance” (Examples: Level of Service for traffic.)
- **Cumulatively considerable impacts:** those that can be attributed to the project taken together with impacts from existing large scale facilities in the vicinity (regional neighbors) as well as similar large-scale industrial projects that are being planned for or are under concurrent review. (Most applicable to Air Quality impacts.)

What is a Direct or Indirect Impact? (CEQA Guideline §15064)

- **Direct Impact:** a physical change in the environment which is caused by and immediately related to the project. Examples of direct physical changes in the environment are the dust, noise, and traffic of heavy equipment that would result from construction of a sewage treatment plant and possible odors from operation of the plant.
- **Indirect Impact:** a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct physical change in the environment in turn causes another change in the environment, then the other change is an indirect physical change in the environment. For example, the construction of a new sewage treatment plant may facilitate population growth in the service area due to the increase in sewage treatment capacity and may lead to an increase in air pollution.
- An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

Levels of Environmental Review

- **Exemptions:** projects that are categorically or statutorily exempt from environmental review under State law.
- **Negative Declaration:** initial review indicates no significant impacts identified that cannot be readily mitigated.
- **EIR:** analysis indicates one or more areas of potentially significant impact

EIR Process Flow Chart

1. City/Lead Agent decides to prepare an EIR
2. City sends Notice of Preparation to responsible agencies
3. "Scoping" meeting held (discretionary) First formal opportunity for public participation in CEQA process
4. City prepares **Draft EIR**
5. City files Notice of Completion and issues Notice of Availability of DEIR
6. City prepares **Final EIR** including responses to comments on Draft EIR
7. City prepares Findings of Fact and Statement of Overriding Considerations
8. Planning Commission public hearing on project
9. City Council public hearing on project
10. **Certification of EIR by City Council**

EIR Documents

DEIR (Draft EIR)

- May have appendices
- Still a working document
- Comments solicited to improve accuracy

FEIR (Final EIR)

- May have appendices
- Response to Comments
- Additional evaluations (includes any specific study requested)
- If new significant impacts are identified, then re-circulation is required
- Findings of Fact: this may include rejecting alternatives or findings that mitigation measures are infeasible.
- Statement of Overriding Considerations – "We're doing this anyway, because...."
- Mitigation Monitoring Plan(s)
- 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 are published in Final EIR
NOTE: Comments may legally be submitted up until final vote on FEIR certification
- All comments will get response in FEIR, including those given orally at hearing
- Separating EIR issues from project and policy issues

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 - 10 hours? Add in reading EIR text, especially Project Description and Impact Analyses
- More? Add in technical appendices

Questions for Reader of DEIR

- Does the DEIR actually describe the project? (It's full scope?)
- Are likely impacts accurately described? (some will be quantifiable (traffic); others will be qualitative (glare; aesthetics))
- Would "mitigation measures" recommended really fix the significant impacts identified?
- Are there other mitigation measures that should be considered?
- What alternatives to the project would you suggest for analysis?

DEIR 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?
- The EIR won't determine whether the project is a "good" project

How to Comment on the DEIR

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

Mitigation Measures

- Mitigation measures are intended to reduce or eliminate an impact identified as significant.
- Feasible mitigation measures must be adopted
- Some issues may be addressed in the General Plan or standard conditions, and don't require explicit mitigation
- Will the measures as described work? Are they enforceable? Are there others?

Biological Impacts

- Who did the study? When?
- Usually tow components to the discussion: 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 and diesel from trucks and other equipment
- Long-term operational impacts – coming from varied sources, both “direct” and “indirect” owing to the project.
- Must have *current* baseline statistics in order to evaluate claims for emissions reductions
- The Bay Area Air Quality Management District, as primary regulator of air emissions in the region, may weigh in to verify emissions reporting during the public comment period and submit agency response

Traffic Impacts

- Is the project accurately described with regard to existing and anticipated traffic conditions?
- What are the anticipated conditions and how were estimates established for project-related impacts?
- What, if any, traffic conditions become more difficult as related to the project?
- Are the right roads and intersections analyzed?
- Where are the most obvious areas of concern?
- Should there be an “alternate routes” analysis?

Cultural Resources

- CEQA: Historical resources are listed, or are 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 (fire or police) that will cause their own impacts?

Cumulative Impacts

- Depending on topic and impact under question: need to consider project plus existing facilities contributions to those impacts plus reasonably foreseeable future projects’ impacts in the region.
- Could be based on list; could be based on long-term plan or strategy
- Is this the probable or likely future?
- Are impacts accurately described?
- Is mitigation feasible, and if so, 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 to the CEQA process.

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