

City of Brisbane

Planning Commission CEQA Training A Brief Introduction to CEQA



August 9, 2012



Presented by:

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Technical Director
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City of Brisbane
Agenda
Planning Commission CEQA Training

August 9, 2012

7:30-9:30 A Brief Introduction to CEQA

- Background and Policy of CEQA
- Typical EIR Preparation Process
- Program Environmental Impact Reports
 - ✓ Purpose
 - ✓ Content
 - ✓ Alternatives
 - ✓ Mitigation Measures
 - ✓ Subsequent Analysis

- EIR Considerations
 - ✓ Project Description
 - ✓ Environmental Setting/Baseline
 - ✓ Level of Detail
 - ✓ Analysis Methods
 - ✓ Technical Data
 - ✓ Whose EIR is it?

- Role of the Planning Commission
 - ✓ Draft EIR
 - ✓ Final EIR
 - ✓ Consideration of the Project

9:30—10:00 Tips for Running Effective Meetings

10:00-10:30 Discussion and Questions

Antero (Terry) Rivasplata

Terry Rivasplata is a senior environmental planner with ICF International, a consulting firm specializing in environmental planning and natural resource management. He specializes in CEQA compliance and general plan preparation. Before joining ICF International, Mr. Rivasplata was with the Governor's Office of Planning and Research (OPR) from 1985 to 1998, including a stint as the chief of the state clearinghouse.

Mr. Rivasplata has worked on a variety of projects, including a review of County general plan consistency for Mariposa County; EIRs for general plan updates in Davis, Fairfield, Inyo County, and Union City; environmental documents for schools in Dixon, Livermore, and Watsonville, and redevelopment projects in the Cities of San Jose and Watsonville; NEPA documents for federal and local agencies; and the City of Modesto's Master EIR update. In addition, he is the editor of the "Environmental Assessor" for the Association of Environmental Professionals (AEP).

Mr. Rivasplata is co-author of the 1998, 1990, and 1987 editions of *General Plan Guidelines*, as well as the author of several OPR publications, including *A Planner's Guide to Financing Public Infrastructure*. He also contributed to several reports issued by the Governor's Interagency Growth Management Council, including *Planning and Growth Management*.

Mr. Rivasplata was involved in drafting the 1998, 1997, and 1994 revisions to the CEQA Guidelines. In addition, he is the author of *Focusing on Master EIRs: Examining AB 1888 or 1993, Tracking CEQA Mitigation Measures Under AB 3180*, and five other publications in OPR's series of CEQA advisory memoranda.

Before joining OPR, Mr. Rivasplata spent seven years as a planner for the Kern County Planning and Development Services Department. He also has worked for the City of Davis and County of Sacramento planning departments. Mr. Rivasplata is a member of the American Planning Association, American Institute of Certified Planners, and the AEP. He received a B.S. in environmental planning and management from the University of California, Davis.

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Valerie Holcomb

Valerie Holcomb is a senior community affairs specialist who has worked with nonprofit, private sector educational and government organizations—focusing on state and regional water policy issues in California and the West. Valerie develops and implements public involvement and education programs, with extensive experience in stakeholder outreach and media relations.

Valerie returned to ICFI in September 2011 (she was with Jones & Stokes from 2004-2006) after earning a certificate from the Culinary Institute of America at Greystone and working as a restaurant pastry chef.

Clients she has worked with include California Bay-Delta Authority, California Department of Water Resources, CalTrans, Napa County, Sacramento Area Flood Control Agency, San Joaquin River Group Authority, San Luis & Delta-Mendota Water Authority, South San Joaquin Irrigation District and Yolo County.

Her previous experience includes: executive director of the American River Parkway Foundation; public affairs director of the CALFED Bay-Delta Program; program director, Sacramento Water Forum; and program director at the nonprofit Water Education Foundation.

She has a B.A. in American Studies and English from Mount St. Mary's College at Los Angeles.

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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

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



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

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



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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

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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

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