CEQA: The California Environmental Quality Act

ESP 171 Urban and Regional Planning
Professor Susan Handy
Guest Lecture by Jamey Volker
4/21/16
CEQA Context, Background and Goals
Cuyahoga River on fire

Freeway revolts

Environmental Review

- **NEPA** – National Environmental Protection Act of 1969
  - EIS for federally funded or built projects
- **CEQA** – California Environmental Quality Act of 1970
  - EIR for publicly funded or built projects
- What about private projects requiring governmental approvals?
“...not only situations in which the government itself engages in construction, acquisition or other development, but also those instances in which the state regulates private activity.”
“CEQA has easily had as much influence on land use patterns in California as any planning law.”

- Fulton & Shigley
CEQA Goals

In theory: a high-quality environment now and in the future

In practice: a way for interest groups to stall a project and/or get concessions from the local government or private developer
CEQA Functions

• Foster interagency coordination of project review
• Increase public participation
• Inform decision-makers about significant environmental effects
• Identify ways environmental damage may be avoided or reduced – i.e. mitigated
• Mitigate environmental damage
• Disclose to the public why a project is approved even if it leads to environmental damage
CEQA Projects
CEQA “Projects”: 2 Components

• (1) Activities that have the potential to have a physical impact on the environment, and

• (2) are proposed to be undertaken, funded by or requiring approval by state and local government agencies.

Not the original intention?

Source: http://ceres.ca.gov/topic/env_law/ceqa/summary.html
CEQA “Projects” in Local Planning

1. **Adoption** of general plans, zoning ordinances, other plans

2. **Approval** of projects - public or private - and issuance of development permits
# Types of Local Land Use Decisions

<table>
<thead>
<tr>
<th>Type of decision</th>
<th>Legislative</th>
<th>Quasi-Judicial</th>
<th>Ministerial</th>
</tr>
</thead>
<tbody>
<tr>
<td>By Whom</td>
<td>City Council</td>
<td>Planning Commission</td>
<td>Planning Staff</td>
</tr>
<tr>
<td>Does what</td>
<td>Creates policy</td>
<td>Applies discretionary policy to individual projects</td>
<td>Applies nondiscretionary policy to individual projects</td>
</tr>
<tr>
<td>Examples</td>
<td>General Plan revisions, Zoning ordinances</td>
<td>Conditional use permits, zoning variances</td>
<td>Building permits, other permits when conditions are met</td>
</tr>
<tr>
<td>Appeals</td>
<td>Subject to referendum and initiative</td>
<td>Subject to appeal to city council</td>
<td>NOT subject to referendum, initiative, or appeal</td>
</tr>
<tr>
<td>Subject to CEQA?</td>
<td>Subject to CEQA</td>
<td>Subject to CEQA</td>
<td>NOT subject to CEQA</td>
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</table>
The “Tuolumne Tactic”

- If citizens qualify a local land use initiative for the ballot, local legislative body can:
  - Approve the measure
  - Order a special election

- In both cases, project will be exempt from CEQA review because the Constitution trumps statutes

CEQA Process
Many Players Involved...

- Project proponent/developers
- Government agencies
- Consultants
- Interest groups
- The public
- Courts
Lead Agency = the “Bus Driver” of CEQA

- Agency with principal responsibility for issuing permits to project, i.e. city or county planning department
- Responsible for seeing analysis is in accordance with CEQA, but consultants usually do work
- Consult with “responsible agencies”
The CEQA Process
- see textbook -

1. **Is the action a nonexempt project under CEQA?**
   - **NO**
   - **YES**
     - The Initial Study

2. **Is it discretionary?**
   - **NO**
   - **YES**
     - Might the project have a significant environmental impact?

3. **Might the project have a significant environmental impact?**
   - **YES**
     - Environmental Impact Report
   - **NO**
     - **NO**
       - No further action required
     - **YES**
       - Negative Declaration
Categorical Exemptions

- Classes of projects which are exempted by regulation from CEQA because they typically do not have significant impacts, such as...
  - Small projects (less than 10,000 square feet, 3 homes or fewer, minor alterations)
  - Land acquisition for wildlife protection
  - Transfer of land ownership for parks
  - Minor additions to schools

*Total of 33 categories outlined by California Resources Agency*
Statutory Exemptions

- Activities exempted from all or part of CEQA by the State Legislature regardless of impacts

*Examples:*
- Demolition permits
- Family day care homes
- 1984 Los Angeles Olympics
- Some mass transit projects
- Small infill and affordable housing projects
- NEW: bicycle transportation plans (2013)
The CEQA Process

Is the action a nonexempt project under CEQA?

Yes

The Initial Study

Might the project have a significant environmental impact?

Yes

Environmental Impact Report

No

Negative Declaration

Is it discretionary?

No

No further action required

i.e. it is exempt

e.g. OK under zoning

Notice of Exemption
The CEQA Process

Is the action a nonexempt project under CEQA?
- YES: The Initial Study
- NO: Is it discretionary?
  - YES: Might the project have a significant environmental impact?
    - YES: Environmental Impact Report
    - NO: Negative Declaration
  - NO: No further action required
Initial Study

• Assessment to determine if project may produce “significant” environmental effects
• Uses a checklist to assess significance of 18 types of potential environmental impacts
Checklist for Initial Study from CEQA Guidelines Appendix G

Questions about potential impacts, e.g. land use and planning:

X. LAND USE AND PLANNING. Would the project:

a) Physically divide an established community?

b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?

Check one of the boxes:

Less Than Significant Impact
Potentially Significant with Mitigation Incorporated
Less Than Significant Impact
No Impact

Must explain why! No “naked checklists”

Example initial study questions

*Would the project...*

- Substantially deplete groundwater supplies...
- Produce a *substantial* temporary or periodic increase in ambient noise levels...
- Result in *substantial adverse effect* on an endangered species...

*What is substantial? adverse? significant?*
Thresholds of significance

• The line between a significant and less than significant impact is the threshold of significance.

• The state does not specify what thresholds should be.
  – Rationale: what is significant in one place might be less than significant elsewhere.

So how are thresholds set?
Noise impacts are significant if they exceed 60 dB in a residential area.

Traffic impacts are significant if traffic degrades to Level of Service E or F – **BUT** LOS standard is being eliminated.

Aesthetic impacts are significant if building does not follow city design guidelines.

Some are quantitative, some are qualitative.

Some are objective, some are subjective.
Some thresholds set by other policies or agencies

*Examples...*

- Clean Water Act
- Endangered Species Act
- Alquist-Priolo Act
- General Plans
- Air Pollution Districts

*Significant impact if...*

- Dump fill in a wetland
- Kill endangered species
- Build within X ft of fault
- Exceed X noise level
- Exceed X lbs of pollution
Otherwise...

...thresholds should at least be logical, based on facts and legally defensible, according to the CEQA guidelines:

The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data.

An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.
The CEQA Process
- see textbook -

Is the action a nonexempt project under CEQA?

- YES -
  The Initial Study
  Might the project have a significant environmental impact?
    - YES -
      Environmental Impact Report
    - NO -
      Negative Declaration
      - NOT if we mitigate... -
      Mitigated Negative Declaration
  - NO -
    No further action required

- NO -
  Is it discretionary?
    - YES -
      Environment Impact Report
    - NO -
      Negative Declaration
      - NOT if we mitigate... -
      Mitigated Negative Declaration
X. LAND USE AND PLANNING. Would the project:

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Note: Even if there are no potentially significant impacts, an EIR can still be prepared.
CEQA Documents
Which path your project goes through under CEQA makes a big difference in the work you must do!

A one page Notice of Exemption form
Negative Declaration

No further analysis required

Example: Fair Oaks Village Streetscape Project, Sacramento County
Mitigated Negative Declaration (since 1993)

Negative declaration with set of conditions attached

Example: SunPower Solar Facility, Merced County
Mitigation Measures

• Ways to mitigate (Guidelines § 15370)
  – Avoid the impact altogether
  – Minimize impacts by limiting the magnitude
  – Rectify by repairing, rehabilitating, restoring
  – Reduce or eliminate over time
  – Compensate by replacing or providing substitute resources

• Must be feasible

MND Advantage: Saves time and $$$
Environmental Impact Reports

Most thorough analysis of project’s impacts/
Provide information to public and decision makers

Example:
Vacaville General Plan Update
Environmental Impact Reports

Most thorough analysis of project’s impacts/
Provide information to public and decision makers

Example:
Sunrise Douglas Project, Rancho Cordova, CA
Which path your project goes through under CEQA makes a big difference in the work you must do!

A 10,000 page EIR for proposed downtown LA football stadium
Environmental Impact Report (EIR)

• Goal is to provide information to decisionmakers and the public about the environmental effects of the project

• Expensive and time-consuming to produce
  – City projects: City pays
  – Private projects: Developer pays, lead agency (or in some cases developer) hires consultant to prepare
General Plan EIR – or “Program EIR”

• If future actions consistent with GP, then only a more limited EIR needed

• GP Guidelines outline what to include:
  – Must look at secondary effects that may follow from adoption of plan, including growth-inducing effects
  – Should discuss inconsistencies between proposed plan and adopted regional plans as related to environmental issues
Note:
Projects undertaken, funded or approved by both federal and local/state governments do a combined EIR/EIS.

CEQA  
NEPA
The long EIR Process

Notice of Preparation (NOP)
Scoping meeting w/ neighbors
Draft EIR prepared
Notice of Availability (NOA)
Notice of Completion (NOC)
45-day Draft EIR review period
Final EIR prepared
Lead agency certifies finished EIR

Several opportunities for public involvement

Contains full analysis
Use a Draft EIR for Ex. 4

Only contains revisions, comments, responses
Content of EIR

- Project description and statement of project’s objectives.
- Description of project’s environmental setting
- Consideration and discussion of environmental impacts, esp. significant impacts
- Consideration and discussion of mitigation measures for significant impacts
- Consideration and discussion of alternatives to the proposed project – including “no project”
- Economic and social impacts may be considered
Alternatives analysis

- Reasonable and feasible alternatives to the project that achieve MOST objectives of the project
- Must analyze alternatives that could avoid or lessen the project’s significant impacts
- Must evaluate a “No Project” alternative
- Must designate an “Environmentally Superior Alternative” (other than no project)
Importance of project objectives in defining alternatives

Example: Highway projects

- Problem is not enough capacity
- Problem is too much traffic
Content of EIR

- Project description and statement of project’s objectives.
- Description of project’s environmental setting
- Consideration and discussion of environmental impacts, esp. significant impacts
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## Impacts Analyzed in EIR

- **Significant** environmental effects  
- **Unavoidable** environmental effects  
- **Significant irreversible** environmental damage  
- **Cumulative impact** that the project might have in combination with other projects  
- **Growth-inducing impact** of the project

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Bulk of the document

“Back-of-the-Book” items
Cumulative Impacts

e.g. Bakersfield’s 5-year Wal-Mart Battle
Growth Inducing Effects
e.g. Cornell Winery

http://sonoma-county.granicus.com/MetaViewer.php?
Growth Inducing Effects
e.g. Capitol Southeast Connector

http://www.connectorjpa.net/the-project/
Outcomes of the CEQA Process
Lead Agency Action

- When an EIR is completed, the lead agency certifies that the EIR has been completed and CEQA process has been followed.
- After certifying the EIR, the lead agency still must decide whether to Approve or Deny the project...
Lead Agency can...

- DENY the project
  - Rare

- APPROVE the project with mitigation
  - Most common

- APPROVE an environmentally superior alternative
  - Rare

- APPROVE project despite significant impacts
  - Not uncommon

Requirements:

- Requires Statement of Overriding Considerations
General Plan Alternatives:

- Best for environment: compact development in central Tracy
- Best for economy: land for commercial development at fringe of city
Development Permit Process

• Development permit process coordinated with environmental review process
  – e.g. EIR for tentative subdivision map creates opportunities for mitigation:
    • Dedications, e.g. land for open space
    • Exactions, e.g. impacts fees
  – Agency has 180 days after certification of final EIR to approve project
CEQA Enforcement

- No CEQA police!
  - CEQA assumed to be correctly followed, analysis assumed to be complete, unless otherwise challenged by lawsuit

- Citizens usually the ones to sue, but agencies can too
  - Usually have 30 days after EIR certification to sue
Citizens can sue about...

1. Whether CEQA applies
2. Whether an EIR should be prepared
3. Whether EIR is adequate
4. Whether procedures were followed

Note: Ruling is on the EIR, NOT the project!

BUT: If plaintiff wins, courts usually set aside project approvals too, until EIR must is fixed
Lawsuits rarely stops projects forever but...

- Citizen groups get leverage: Lawsuits or even threat of lawsuits lead to delays and mitigations
- Courts have important role: Decisions shape law and its use

"This had nothing to do with the environment...” He says the group used the state's environmental laws "...as a club, and used it to blackmail people – and they did a good job of that."
“CEQA is not a magic bullet that stops all harmful projects, but it does guarantee public participation and a legal process…. CEQA can be utilized as it was intended: to encourage public input on projects that affect those who live in the communities. The proposed Clover Valley development is a prime example of a project that has too many negative environmental impacts on the community; thus citizens plan to use CEQA to the fullest extent.” - Clover Valley Foundation

“CEQA has given us time... Our lawyers always said that it’s not about stopping the project, it’s about making it better.”

– Marilyn Jasper, Clover Valley Foundation
Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova (2007) 40 Cal.4th 412

- Landmark ruling re CEQA water supply impact analysis
- Lengthy legal battle
- End result: EIR held invalid; project approvals set aside; project delayed for nearly 15 years now; current proposal for reduced development
- See Fulton & Shigley, p. 185; Volker (2008)
The 5-Year Saga

2005: City adopts Bicycle Plan and says EIR not needed for “policy framework”

2006: Resident sues city, saying plan needs an EIR; court imposes injunction until EIR completed

2009: City certifies EIR and adopts new Bicycle Plan

2010: Court lifts injunction and plan moves forward

2013: AB 417
Cal’s Memorial Stadium
Three groups sued motivated by concerns over traffic, oak trees, noise, and public services. Lawsuit argued that stadium renovation violated seismic hazard laws.

Berkeley Big House
Berkeley applied two categorical exemptions from CEQA to the project: single-family and infill. Project opponents argued that the house was so big that it presented "unusual circumstances" and should be denied categorical exemption. Cal Supreme Court OK’d it.
How common are lawsuits?

Analyses by Holland & Knight, LLP

613 CEQA lawsuits filed from 2010-2012

95 CEQA challenges resulting in published appellate rulings from 1997-2012

Kevin’s informal web search of CEQAnet database...

7,552 EIRs from 1997-2012

Source: Kevin Fang & Jamey Volker
Emerging Issues and the Future of CEQA
On-going tensions over CEQA...

Business groups want simpler process
Environmental groups want strict protections

And Governor Brown wants reform: the “Lord’s work”

Source: Kevin Fang & Jamey Volker
**INFILL**
Redevelopment within developed areas

59% of lawsuits

**GREENFIELD**
New development in open space or ag. land

41% of lawsuits
CEQA, Planning, and Climate Change

• **AB32**: Lawsuits over EIRs for General Plans to force consideration of greenhouse gas emissions

• **SB375**: Projects consistent with regional “Sustainable Community Strategy” will get CEQA streamlining
Expanding Scope?

• Social and economic impacts
  – Walmart lawsuit in Bakersfield – see article
  – Woodland regional shopping center

• Health Impact Assessments (HIAs)
  – World Health Organization and others

• Environment’s effects on project users?
Environmental Justice
- tied to Title VI of the Civil Rights Act -

“The fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”
(§ 65040.12(e))
Environmental Justice

• **Procedural equity**: equal opportunities for participating in planning process

• **Geographic equity**: fair distribution of both harmful facilities and community amenities

(bad stuff)  (good stuff)
EJ and CEQA?

- CEQA does not directly address EJ, but...
- CEQA “is unquestionably the most useful legal tool for the environmental justice advocate in California...” (Alan Ramo, Planning and Conservation League)
  - Cumulative impacts
  - Alternatives analysis
  - Public hearings
  - Lawsuits
Concluding Thoughts
Does it work?

- Lots of information...
  - More awareness?
  - More sophisticated debates?
  - More environmentally sound decisions?
  - Less harmful projects?
  - A waste of time and money?
  - A mechanism to slow projects?

“The primary goal of CEQA is not to protect the environment. The primary goal is to foster a vigorous debate about the environmental consequences of governmental decisions.” - Fulton

“The Blob” – Governor Brown
Quick Review

• **Functions:** foster agency coordination, increase public participation, inform public & decisionmakers, identify mitigation measures, mitigate environmental damage, disclose reasons for harmful project approvals

• **Projects:** plan adoption, project approval

• **Lead agency:** oversees, certifies, decides

• **Process:** project, exemptions, initial study (checklist), ND, MND, EIR; opportunities for public input

• **EIR contents:** impact, mitigations, alternatives

• **Impacts:** significance, cumulative, growth-inducing

• **Lead agency decisions:** deny vs. 3 types of approvals

• **Court decisions:** applicability, need, adequacy, process
Coming up!

• Tuesday: Guest Lecture – Fred Buder, City of Vacaville

• Wednesday: Midterm review in section!

• Thursday: Development Types
  – Not on Midterm, but IMPORTANT, and will be on final

• Tuesday, April 26: Exercise 4 on CEQA due!

• Tuesday, May 3: Midterm – bring Scantron card!