ESP 171 Urban and Regional Planning

Class 6: CEQA and the Environmental Review Process

National Environmental Protection Act (NEPA) – 1969
   EISs for federally built or funded projects, as well as private projects requiring discretionary federal approvals
California Environmental Quality Act (CEQA) – 1970
   EIRs for publicly funded projects and discretionary government actions, including approvals of private projects

Functions of CEQA
Basic goal: “to develop and maintain a high-quality environment now and in the future”

Functions: primarily informational – a “full disclosure” law
   - 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
   - Mitigate environmental damage
   - Disclose to the public why a project is approved even if it leads to environmental damage

Applies to any “project” – activities that have potential to impact the environment, including:
   1. Adoption of general plan, zoning ordinance, other plans and policies
   2. Approval of projects (public or private) and issuance of development permits

Important case: Friends of Mammoth vs. Board of Supervisors of Mono County, 1972

Guidelines: Governor’s Office of Planning and Research (OPR) and the California Resources Agency required to prepare guidelines for CEQA on a regular basis. Courts give great weight to guidelines when they interpret CEQA.

CEQA Process
   “Lead agency”: agency with principal responsibility for issuing permits to project; responsible for seeing that environmental work is done in accordance with CEQA; coordinates with “responsible agencies.”

Exemptions:
   - Statutory (by legislature): e.g. some mass transit projects, small infill and affordable housing projects
   - Categorical (by California Resources Agency): e.g. small projects, land transfer for parks
   - Approval of a project by voter initiative
Initial Study:
- Checklist to assess potentially significant environmental effects
  - Issue: What are thresholds for “significant”?
- Outcomes:
  - Negative declaration (ND): no further review needed
  - Mitigated negative declaration (MND): conditions attached to project
  - Environmental Impact Report (EIR)

EIR Process:
- Notice of Preparation (NOP) and scoping meeting
- Draft EIR (DEIR) circulated for review with notifications
- 45-day review period
- Final EIR (FEIR) prepared
- Lead agency certifies Final EIR
- If major project changes or substantial new information on environmental impacts after project approval, supplemental or subsequent EIR (SEIR)

Contents of EIR include:
- Project description and statement of project’s objectives.
- Description of project’s environmental setting (the “baseline”)
- Consideration and discussion of environmental impacts, esp. significant impacts
  - Impact analysis: significant, unavoidable, significant irreversible impacts
  - “Back of the book” items: cumulative impacts, growth-inducing impacts
- Consideration and discussion of mitigation measures for significant impacts
- Consideration and discussion of alternatives to the proposed project – including “no project”

If EIR identifies “significant environmental effects,” then agency has four options:
- Deny the project
- Approve an environmentally preferable alternative to the project, as identified in the EIR
- Approve the project but only if mitigation measures adopted to lesson environmental impact
- Approve the project in spite of environmental effects and adopt a statement of overriding considerations, but only if mitigation is infeasible

Enforcement
Role of the courts:
- Generally enforced through citizen litigation, but governmental agencies often also have power to sue
- Two consequences of reliance on litigation:
  - Citizen groups have used threat of lawsuits to “obtain leverage” to force project changes or get money
  - Courts have had the opportunity to shape the law and how it is used

Kinds of court rulings:
- Whether CEQA applies
- Whether an EIR should be prepared
- Whether EIR is adequate
- Whether procedures were followed

**General Plan EIR:** “program EIR”, done concurrently with GP revision
**Development Permit Process:** EIR and development review concurrent, by lead agency
**CEQA and Climate Change:** AB32 lawsuits on General Plan, SB375 streamlining as incentive
**Environmental Justice:** CEQA does not directly address EJ but an important EJ tool

Readings: Chapter 9 plus articles