



**SPON GENERAL PLAN UPDATE COMMITTEE MEETING  
Saturday, January 12, 2019**

**SUMMARY WORKSHOP NOTES**

**Kevin Johnson's Presentation**

**A Primer on the California Environmental Quality Act**

- Always pay attention early. The SPON Watch List is a great tool for this.
- CEQA – the California Environmental Quality Act – is one of the most conservative laws in California.
  - It requires that nothing changes until you know the direct and indirect impacts.
  - It also holds decision makers accountable by making them confront the facts.
- CEQA requires three things:
  - Evaluate the impacts of a proposed project.
  - Mitigate the impacts of a proposed projects.
  - Allow for public participation throughout the evaluation process.
- CEQA is fundamental due process for the environment.
- Public participation is really important throughout the process.
- A project is an action that has a direct or foreseeable indirect impact on the environment.
- There are two types of projects, with CEQA applying only to the first:
  - Discretionary: one that requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued.
  - Ministerial: if it involves little or no personal judgment by the public official.
- There are two types of discretionary projects that are exempt from CEQA:
  - Statutorily exempt: Projects exempt by statute.
  - Categorically exempt: Projects in categories deemed in the CEQA Guidelines to not have negative impacts on the environment (i.e., acquisition of land for conservation purposes).
- As a side note, voter initiatives are exempt from CEQA and this is being exploited by developers and businesses. For example, a big box store like Walmart can circulate a petition for the store and it can be voted on by the people during an election with no environmental review. Often times, the signature collection process misinforms the people needed to sign it and the project actually DOES have environmental impacts. Having received a petition containing the small number of signatures required to validate it, the local agency even has the option to adopt the measure without putting it to a public vote at all.



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**Types of Projects Under CEQA**

- When there are no exemptions and the project is discretionary then Appendix G of the CEQA Guidelines is used to determine the type of study that needs to be conducted. Appendix G has a summary page, then details the different types of topics that must be considered.
- There are three types of studies under CEQA:
  - Negative Declaration (NegDec or ND)
  - Mitigated Negative Declaration (Mitigated NegDec or MND)
  - Environmental Impact Report (EIR)
- A Lead Agency is responsible for conducting the environmental review. This is the agency where the decision will occur. So for example, the City of Newport Beach or the County of Orange would be Lead Agencies for projects coming before their decision makers.
- The Lead Agency usually hires a consultant to complete Appendix G—this consultant is paid because of fees sent to the agency by the project applicant.
- Often times developers attempt to avoid EIRs.

**Raising Issues Under CEQA**

- As public participants your goal is to be “in the process” as early as possible. If you have concerns about a project—you want boxes checked in Appendix G that say “potentially significant impact.”
- What is a potentially significant impact? It requires a fair argument, based on substantial evidence, that there may be a significant impact.
- Under a Negative Declaration any box can be checked except “potentially significant impact.”
- Substantial evidence is not “Traffic is horrible on Bristol.” Instead it needs to use facts to substantiate a claim, like: “At 7 AM when I leave my house at XYZ intersection, it takes three light cycles to make it through the signal. And, at least once a week there is a vehicle collision at this intersection.”
- Hiring an attorney equates to “you mean business.”
- The Notice of Preparation is where you raise issues. The Lead Agency is looking for possible impacts on a project and the public may submit comments.
- Once the Draft EIR has been prepared, there is another public review period following the Notice of Availability. If you submit comments in writing during that period, the Lead Agency is required to respond in writing.
- Only one to two percent of projects are subject to litigation each year under CEQA.



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- Comments need to have substantial evidence—facts, not opinions.
- One of the most important topics under CEQA is growth inducing impacts and cumulative impacts. Cumulative impacts must show the other impacts within a reasonable distance—these include other projects being considered, approved, or under construction.
- Additionally, there should be multiple project alternatives that show different footprints/scopes that could reduce some of the significant impacts.
- If a project uses an EIR from 5-10 years ago, ask for updated studies via a Supplemental or Subsequent EIR if the circumstances have changed.
- CEQA has the shortest statute of limitations of any law in California. You have 30 days from the decision (filing of the Notice of Determination) to file a lawsuit.
- By submitting comments, you are building an Administrative Record which can be used in a lawsuit. In order to file a lawsuit on a topic, it has to have been raised during the comment periods. Anyone can raise issues and it is officially in the Record. The Record closes when the final public hearing closes.

**Local Example: Esperanza Hills**

- Esperanza Hills is a project in the hills above Yorba Linda. It includes 340 units on 469 acres on steep fire-prone hills.
- In the Table of Contents of the EIR, it lists the discretionary actions the decision makers must do.
- It is also useful to find the Matrix of Mitigation Measures because it shows what the impact was and how the impact will be lessened through mitigation (or won't). If the impact can't be mitigated, usually the decision makers must approve a Statement of Overriding Considerations (in other words, the project benefits outweigh the project impacts).
- Make sure the baseline conditions are accurate. Was the project, its location and its surroundings accurately described in the EIR? If not, that inaccurate description can be challenged. On Esperanza Hills, the project was not accurately mapped—the consultants missed more than 2,000 acres of land (1,200 of which lie immediately adjacent to the project site). Even after being sent the data to correct the mistake, the EIR maps did not accurately describe (map) the project location.
- If you plan to challenge an EIR the burden of proof is reversed compared to a Negative Declaration or a Mitigated Negative Declaration. In short, the applicant is better protected in litigation if an EIR is completed over a ND or MND.
- There are two ways to challenge an EIR:
  - Substantial Evidence: This favors the developer that completed the EIR, and is why



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the litigator should hire experts to contest the findings. Again, this argument favors the applicant.

- Failure to Proceed in the Manner Required by Law: The law states ABC, and the applicant/Lead Agency didn't do that.

**Other Ideas:**

- Residents could ask each local jurisdiction for a list of the projects: Approved, Under Construction or Being Considered to determine if all of them are in the "cumulative impacts list" within the EIR.
- Residents could ask for a list of the development reports each month. These are usually provided to the City Council and Planning Commission as to what activities are occurring in the Planning Division. There will likely be projects that don't matter as much, like a Conditional Use Permit for a physical therapy office to exist in an office building, but this may give a heads up that something is coming that you do care about well before the Notice of Preparation is completed.