

LEAGUE OF CALIFORNIA CITIES
2019 City Attorneys' Spring Conference

REVIEWING AN EIR
(Ten Steps for Success)

REVIEWING AN EIR

STEP 1

Support All Assumptions
and Conclusions
With Substantial Evidence

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A determination that mitigation would “substantially” reduce significant impacts, which is not supported by facts or other evidence, is insufficient.

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- Do ask “why” or “who says so”
- Don't accept assumptions or conclusions at face value

REVIEWING AN EIR

- Quantify
- Quantify
- Quantify

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STEP 2

Verify All Numbers

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- Do check all numbers
- Don't ignore the tables or appendices

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The proposed project would improve on-site parking and reduce the demand for street parking by providing garaged and surface parking spaces that increases the number of on-site parking spaces by 85%, meeting City standards.

[NOTE: The increase from 311 spaces (existing) to 520 spaces (proposed) is an increase of 67%, not 85%.]

REVIEWING AN EIR

As shown in Tables 4.2-4 and 4.2-5, air emissions associated with project construction and operation would not exceed the applicable regional emissions thresholds.

REVIEWING AN EIR

Table 4.2-5
Summary of Project Operational Emissions
(pounds per day)

[illegible]

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STEP 3

Address the Question Asked

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Thresholds of Significance

- Do address the question asked
- Don't combine separate questions

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Responses to Public Comments

- Do restate the comment in the response
- Don't ignore any part of a comment

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STEP 4

Analyze the Extent
of
Significant Impacts

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An EIR's designation of a particular adverse environmental effect as "significant" does not excuse the EIR's failure to reasonably describe the nature and magnitude of the impact.

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- Do discuss the magnitude or extent of significant impacts
- Don't skip from the nature of an impact to the recommended mitigation

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- *Would the project be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?*

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No soil or geologic conditions were encountered during the geotechnical investigation that would preclude the development of the property as presently planned, provided the recommendations of the geotechnical report and requirements under the CBC are followed. Therefore, impacts would be less than significant.

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STEP 5

Address Post-2030
GHG Emissions

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- *Cleveland National Forest Foundation v. SANDAG* (2017)
3 Cal.5th 497
- *Cleveland National Forest Foundation v. SANDAG* (2017)
17 Cal.App.5th 413

REVIEWING AN EIR

- Impact Analysis
- Mitigation Measures
- Alternatives

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STEP 6

Make Mitigation Measures
Effective and Enforceable

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Do specify the four “W’s” in every mitigation measure:

- Who
- What
- When
- Where

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STEP 7

Use the Active Voice

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The Project Applicant shall implement the following PDF ~~would be implemented~~ to reduce potential impacts to burrowing owls:

PDF BIO-2: The Project Applicant shall retain a qualified biologist who shall perform a pre-construction clearance survey for burrowing owl ~~shall be performed by a qualified biologist~~, not more than 30 days prior to initial ground disturbance, to ensure avoidance of this species during construction.

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If the qualified biologist determines that burrowing owls are
~~determined to be present, the Project Applicant shall implement~~
avoidance measures in accordance with the CDFW (2012) Staff
Report on Burrowing Owl Mitigation ~~shall be implemented. The~~
Project Applicant shall submit c~~Copies of any survey results and~~
~~forms shall be submitted to Kings County.~~

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STEP 8

Don't Defer Mitigation

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- Do commit the agency to devising the measures in the future
- Do provide specific performance standards
- Do identify the types of potential actions that can feasibly achieve those standards

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Brand names may be an appropriate substitute for performance standards

- HVAC: “PremAir or similar catalyst system”

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STEP 9

Require Evidence of Infeasibility

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- Do require comparative cost, profit and economic data
- Do perform independent analysis of the evidence provided
- Don't accept unsupported assertions that mitigation or an alternative is “too costly”

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STEP 10

Embrace Public Comments

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- Early warning of potential litigation (Exhaustion Doctrine)
- Last opportunity to address problems

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- Do remember who your audience is
- Do repeat the comment in the response
- Don't use “Comment Noted”
- Don't be snarky

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Comment: The proposed reverse-angle parking will be shunned by most drivers.

Response: Commenter has offered no evidence whatsoever to support this assertion. Section 2.4.6 of the EIR states unequivocally that reverse-angle parking would improve sight-lines for approaching bicyclists and motorists, which completely refutes commenter's interpretation.

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QUESTIONS