



Policy Role in Land Use Planning

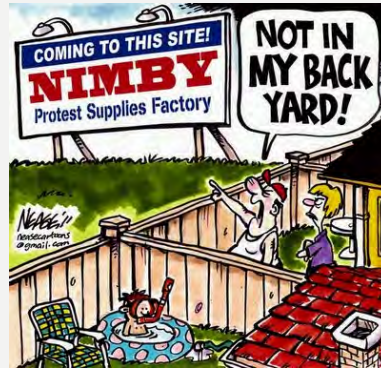
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**NEW MAYORS & COUNCIL
MEMBERS ACADEMY
JANUARY 17, 2109**

IMAGINE...AT YOUR FIRST MEETING



Don't worry... you have the tools to make informed decisions & achieve the city's vision



THE ROLE OF THE CITY COUNCIL

LOCAL

ESTABLISH
CITY'S VISION



STATE

INFLUENCE
LEGISLATION




Overview of Land
Use Regulations

The Regional
Context

Land Use and CEQA
(not an oxymoron)





Arose from “good
government” movements a
s response to
unsanitary urban
conditions

Based on government’s
Police Power: health,
safety and welfare

1927: California passes law
requiring that cities and
counties have a Master Pla
n

LAND USE POWERS

GENERAL PLAN
SPECIFIC PLANS
ZONING
OTHER
REGULATIONS
AND TOOLS
CEQA

TOOLS OF THE
TRADE

GENERAL PLAN

Bedrock of California planning
“Constitution” for planning &
development

Provides long-range vision (20-30 years)

Basis for local land use decisions

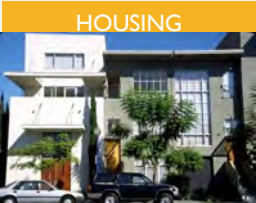
Identifies important community issues & values

Promotes community participation

Sets the ground rules

Costly and take a long time to prepare

REQUIRED GENERAL PLAN ELEMENTS



ADDITIONAL GENERAL PLAN ELEMENTS

- Parks and Recreation
- Sustainability
- Public Health
- Economic Development
- Public Facilities and Services
- Implementation

GENERAL PLAN

VISION



GOALS & OBJECTIVES



POLICIES



IMPLEMENTATION PROGRAMS

Required Contents

Regional Housing Needs Assessment (RHNA)

Housing need by income category

Specific sites zoned for housing

Policies to facilitate housing development

Actions to remove barriers to housing production

Annual report to the State on implementation

HOUSING ELEMENT



SPECIFIC PLAN

Implements the goals and policies of the General Plan for a specific geographic area

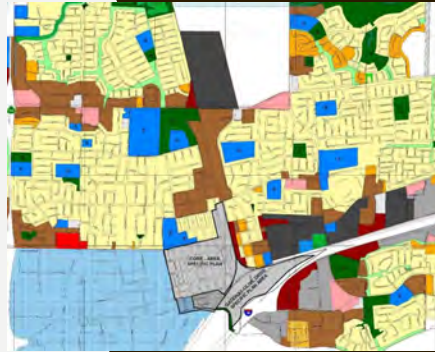
Contains locations and standards for land use densities, streets, and other public facilities in greater detail than the general plan map and text



The General Plan's
implementation document

**Divides the city into various
zoning districts**

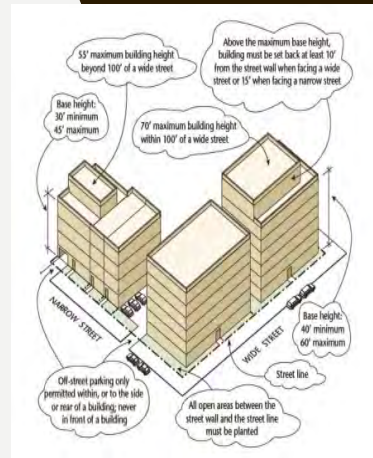
**Identifies different land uses
permitted and allowed in each
district**



ZONING

Establishes Detailed Standards

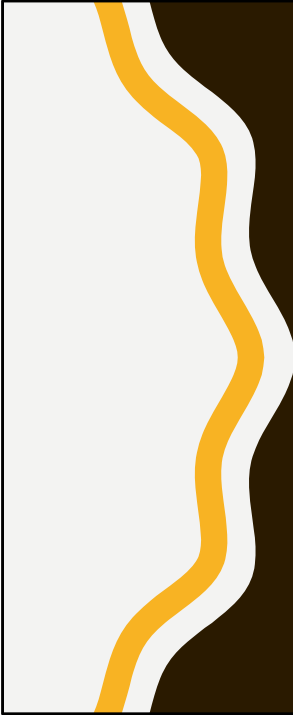
- Building uses
- Building size (height, lot coverage and setbacks)
- Landscaping
- Signs and billboards
- Parking requirements
- Other performance standards



ZONING

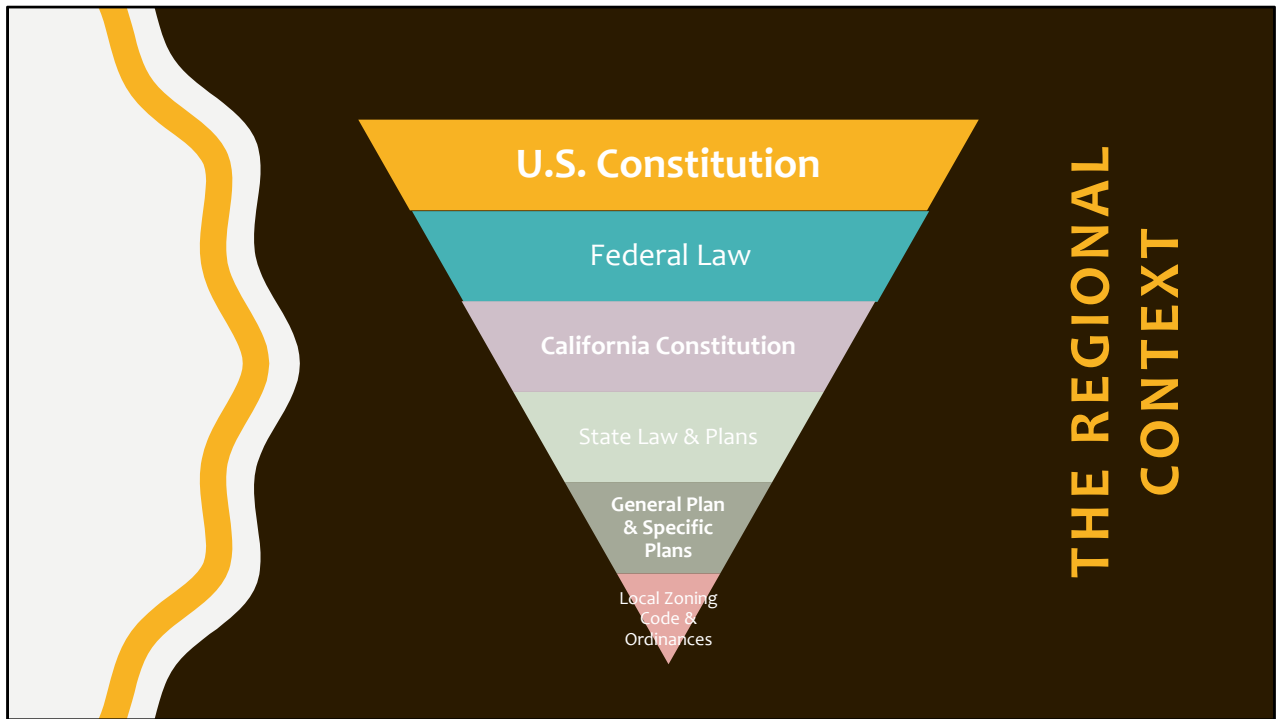
OTHER TOOLS

- DESIGN GUIDELINES
- SUBDIVISION REGULATIONS
- CONDITIONAL USE PERMITS
- DEVELOPMENT PERMITS
- SPECIAL OVERLAYS
- VARIANCES



Requirements placed on discretionary projects to implement the approved project and further a governmental purpose

CONDITIONS OF APPROVAL



CALIFORNIA ENVIRONMENTAL QUALITY ACT

- Intent of CEQA
- Why does it take so long and cost so much?
- Mitigation Measures
- How to read an EIR
- Showing your work
- Tips to a speedy CEQA process... Really!

CEQA is not Latin for 'delays project' although it can often seem that way. This quick overview is intended to provide tips and suggestions that help you review a completed CEQA document, and understand its purpose and role in making land use decisions. This presentation will also explain why things happen the way they do, and how applicants often sabotage the process costing more and taking longer. Finally, we'll provide some tips on ensuring a speedy CEQA process.

INTENT OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

- ❖ To provide objective information regarding the environmental consequences of a proposed project to the decision makers who will be reviewing and considering the project.
- ❖ To provide the public and applicable regulatory agencies the ability to participate in the public decision making process and comment on the environmental effects of a proposed project (based on established thresholds).

The California Environmental Quality Act (CEQA), enacted in 1970, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if feasible. At the very basic level, the environmental process is all about disclosure. The idea is to ensure that you, as the decision maker, fully understand the possible impacts of the action you are asked to take. Some of the impacts are pretty obvious, while others are a bit of an educated guess. Ironically, some of the most interesting guesses run to several decimal points...leading to many considering the educated guess as fact. While the largest and most public of the technical documents submitted for a project, the environmental document is only one part of the record of decision.

PAPERWORK IS NOT THE PURPOSE

- Reports on solutions to environmental impacts of the project
- Provides alternatives
- No requirement to speculate (on some things)
- Not an advocacy document
- Not an exhaustive study
- Not Perfect Not a ‘worst-case’ analysis

An environmental document is not the place for creative writing, all that should be in the staff report. The EIR reports on solutions to environmental issues associated with the project. It's important to understand that the document(s) are a snapshot in time and are not a treatise, term paper, or an exhaustive report. At best it's a macro tool to identify the largest of the impacts on a regional level, and a micro tool to show what happens on site. The mid-range impacts are hardest to quantify because we often don't know how people react, and it's also hard to predict the level of adaptation. One of the hardest messages to convey to the public is that the EIR is neither an advocacy document nor a means of stopping a project. Quite the opposite. A properly prepared environmental document is neutral, blandly explaining what might happen, then providing a means to approve the project regardless of environmental impact. Certainly, the time, cost, and seemingly endless process of CEQA affects project approvals, but the environmental document itself does not 'kill' a project.

WHY DOES CEQA TAKE SO LONG?

- Incomplete project information
- Changing project information
- Statutory review periods
 - 30 – days IS/MND
 - 85 – days EIR
- Timing of Technical Studies
- Having to solve the problem

The factor that most affects timing of an environmental document is the rush to start the CEQA process before the project has been fully defined. Because the CEQA process can take a while to complete, there is an urgency to start early and 'get it done'. Unfortunately this comes with a serious penalty because if the courts find inconsistency in project description it's almost always an automatic 'do-over' which of course wipes out any time savings. For example, the technical study with the longest run time is usually traffic. The foundation of this 8- 12 week study is the project description. So if there are 100-units on week 1, then the applicant changes to 125 units on week 12, the study has to be run again. The traffic study provides the foundation for air quality, greenhouse gas, and noise. So if the traffic study changes, then all the other studies have to change. Also, if the documents have been written...individual chapters for each topic...then they too must be amended. In the consulting world this is a change order, and frustrating because it would be easier if we just did this once. Another issue is 'waiting for the EIR to solve the problem'. As smart as the environmental teams are, we aren't wizards. If the applicant and the City can't solve the problem, its flattering but a tad unrealistic to expect the environmental consultant to have an answer. That said, we do work in lots of different agencies and can provide insight, but if the problem is local and significant, the best solutions come from there...and should be written into the documents.

LATE HITS

- A “late hit” = lengthy comment arriving just before a decision on a project.
 - Intentional delays
 - Inadvertently delays by requesting additional studies after the CEQA document has been completed
- They happen so don’t let the hit derail your process.
 - Give your staff time to review
 - Don’t be afraid to postpone a decision
 - Don’t be afraid to make a decision

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The CEQA challenge process has become quite the game, and like all games there are rules that affect the outcome. One of these is that the public comment period effectively extends through the final action on the project. This is frustrating for everyone because of the ‘late hit’. As this happens at the very end of the often lengthy process there is a tendency to want to just plow through and get things done. A safer way is to take a break, let your staff review the comments, and possibly delay a decision until a thorough review can be completed. After all the time expended, a single meeting delay likely isn’t a significant issue...while there may be a comment worthy of response that the court would use to upset your approvals. That said, if there really isn’t a revelation in the comment, don’t be afraid to move forward. There can be more certainty in legal process.

WHAT IS MITIGATION?

- Avoids the impacts altogether
- Minimizes the degree of magnitude of impacts
- Doesn't need to result in no impact
- Must be within your power to enforce
- Should be objectively measurable
- All mitigation measures are conditions
- Not all conditions are mitigation measures

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Mitigation is the lifeline for the project. Mitigation completes the statement “We could approve this if only you changed that...” An agency can only enforce a project change as mitigation if they already have the ability to do so. While obvious, this is a fact often overlooked in the heat of the negotiations. If the mitigation measure isn't objectively measurable, its likely not going to be effective, and may result in challenge. If the agency feels compelled to include the measure, then add it as a condition of approval instead.

CHANGES TO CEQA

- New Checklist
- New Acronym VMT instead of LOS
- Emphasis on Exemptions (Particularly for Housing)
- Processing changes



The CEQA process is always changing, and we roll with them. Most of the changes will show up gradually over 2019, as projects move through the system. The largest change is the addition of VMT to the analysis. Depending on the agency we may go only with VMT, or more likely do a little of both. From an eyebrow raising point of view, an unacceptable LOS will no longer be grounds for preparing an EIR. That will take quite a bit of education for a public who both drives, understands congestion...and will not understand that we no longer care about 'gridlock'.

WHAT TO READ FIRST...

- Final EIR Errata
- Project Description
- Comment Letters & Responses
- **Findings**
- Staff Report

What to Skim

- Introduction & Setting
- Methodology & Thresholds



The intent of this is to help you wade through the myriad of pages, reports and information about the project. The EIR is not a mystery novel and there is no point in starting from the title page. It's not written in that format, so skip to the end and see how it turned out! In this case the Final EIR should be reviewed first. This tells you changes to the project description and any modifications to mitigation measures. What it also tells you is who is opposed to the project and what 'they' think is wrong with the EIR. This allows you to focus on issues you'll hear again during the meeting...and understand the EIR's response. Then take a look at the mitigation measures in the EIR sections, make sure they make sense and that you agree they will solve the problem. Finally, the staff tries to do a good job of giving you the highlights of issues and solutions. Attached to the staff report is often a set of findings...those are vital and appear again later. If you read nothing in the EIR...read the findings.

FINDINGS: SHOWING YOUR WORK

- Made for every significant impact
- Substantial Evidence
 - EIR and Technical Studies
 - Testimony at Public Hearings
 - Staff Report
- Not just the EIR without pictures
- Staff Drafted, Council Approved
- Can include more than what is in the EIR
- Provides evidence for the statement of overriding considerations

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The findings are considered by many to be a necessary evil. I recommend you embrace them as a means of explaining why a project is worth approving even though it may have environmental impacts. Findings are where you show your work, and are only a draft when provided in your staff report. Its ok to modify them and even include information from the testimony and public hearings held for the project. Every set of findings seems to have a different format, but they all lead to a the statement of overriding considerations. These statements (and there should be more than one) establish the reasons why the project remains worthwhile even though impacts cannot be reduced to less than significant. Here is where the thinking of the Council is put into words.

EIR MYTHS

- The EIR will stop the project.
- The EIR will tell me how to vote.
- The EIR will be more expensive than a mitigated negative declaration.
- The EIR will take longer and than a mitigated negative declaration.
- The EIR will be more thorough than a ND/MND.
- The EIR will be challenge-proof.

An EIR is intended to solve problems, and if they can't be solved, provide a way for you to make a decision on the project anyway. Far from killing a project it's a way to ensure one gets approved. The EIR must not make a recommendation on the approval of a project. Instead, it should only disclose information on the probable impacts of making the decision. Substantial evidence, in the form of technical studies, are required for both documents. Thus, the cost is often the same. More for the MND if you then have to do an EIR. Same here, the studies take the time, and if you have to go back and do an EIR, the time is much longer than an MND. No such document exists or can given the legal world we live in.

TIPS FOR A 'SPEEDY' PROCESS

- Don't start too soon
- Resist changing the project
- Don't dodge the question
- Be patient
- Pay attention to the commenters
- Meet with your staff to ask questions
- Meet with other agencies to understand their issues
- Take control of CEQA locally by adopting your own thresholds



From the author's side of the equation, these are the things that an agency (and applicant) can do to make the process move as fast as possible. For example, it IS possible to complete an EIR in less than six months. An IS/MND can be done in less than 60-days. But it takes a solid and unchanging project description, attention to the issues, and close coordination. Finally, many agencies rely only on Appendix G (for generic) and do not customize the CEQA process to reflect the needs in their community. The process is simple and public, and will pay dividends in the long term with shorter document and a more focused analysis. The appendix G is intended to capture questions for a large and diverse state, each agency should adopt a version that is edited to meet their specific needs.

TIPS FOR SUCCESS

Focus on the big picture

Place your efforts on where you can make an impact - setting the city's vision, goals and policies; working with counterparts at the regional level; lobbying at the state level

Appoint and trust your planning commission and other commissions to implement your vision

Trust and rely on your staff

Be transparent

QUESTIONS?

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