

## Outline - Lecture 4

- Announcements
- Review - Process: Initial Study
- PROCESS: Mitigated Negative Declaration
- SUBSTANCE: Population/Housing and Services
- Initial Study Assignment/Field Trip info
- Questions for me

### Review

- Freewrite:
  - What is the difference between a NOE and an initial study
  - Define:
    - ♦ Environmental setting?
    - ♦ Threshold of significance?
  - Where might you find thresholds of significance for a city?
  - What four possible significance levels do initial studies identify for each impact area?

### Announcements

- Hand out
  - Freewrites/Questions from end of class
- How are meetings going?
  - FIRST JOURNAL DUE in two WEEKS!!!
- **(Mitigated) Negative Declaration**
- brief summary explaining why project will not have a significant environmental effect
- Identifies
  - Project Description and Location (w/map)
  - project proponent/lead agency
- Includes
  - copy of initial study
  - finding of no significant impact
  - summary of impacts and mitigations
  - mitigation monitoring program (MMP)\*  
\*optional

### Public Notice of Intent to Adopt N.D.

- posted at
  - county clerk's office for at least 20 days
  - for projects of regional importance: sent to State Clearinghouse (SCH) and posted online - 30 Days
- mailed to
  - responsible agencies
  - any party requesting a copy in advance
- and either
  - published in newspaper
  - posted on and near project site, or
  - mailed to owners and occupants of contiguous properties

### Circulation of Init. Study/ND

- Initial Study
  - preapplication consultation
    - ♦ with applicant\*
  - (preconsultation
    - ♦ w/responsible and trustee agencies)
  - consultation
    - ♦ w/responsible and trustee agencies during prep\*
  - (applicant consultation
    - ♦ whether would revise project to qualify for ND rather than EIR)

\*=required

- Negative Declaration
  - Notice of intent to adopt\*
  - Agency consultation\*
    - ♦ mediated through SCH (see p. 77)
    - ♦ ARB, BCDC, Coastal Comm, RTC etc.
  - If change mitigation after circulation, must hold hearing\*
  - Notice of Determination w/in 180 days
  - 30 days to file lawsuit

### Certification

- Before approving project, decisionmakers consider and adopt
  - ND or mitigated ND
    - ♦ only if it finds there is no substantial evidence of a significant effect on the environment
  - Mitigation Monitoring Plan (if appropriate)
- Then file a Notice of Determination
  - county clerk and possibly State OPR
  - starts statute of limitations -- 30 days

### Timeline: Permit Streamlining Act

- From when application is submitted
  - 30 days to decide whether complete
- From when application is complete (varies)
  - 30 days to decide whether EIR or ND
    - ♦ checklist
  - 45 more days to hire consultants
  - 180 total days to complete ND
    - ♦ initial study only needed
  - 365 total days to complete EIR
- Penalty for late papers?
  - Project may be "deemed approved"

### "Mitigated" Neg. Dec. vs. EIR

- Pro - MND
  - mitigations are required for all impacts
- Con - MND
  - MND may encourage behind-the-scenes

- negotiating
- alternatives need not be evaluated
- makes the EIR process more of a “threat” than a process
- Less public review than EIR
- Comments must be “considered” by decisionmakers, not necessarily answered in writing

### **Exercise: Draft Mitigated Negative Dec.**

- <http://www.sanjoseca.gov/planning/eir/Nd2/pdc06-060/pdc06-060MND.pdf>
- <http://www.sanjoseca.gov/planning/eir/Nd2/PDC07-002/PDC07-002MND.pdf>
- Identify the:
  - Notice of Intent to adopt a mitigated Negative Declaration
    - Public Hearing information
  - DRAFT mitigated ND
    - project description
    - legal finding
    - potential impacts, and
    - mitigations required
  - Are mitigations
    - specific and clear?
    - easy to monitor whether they reduce potential impacts to less-than-significant?
    - enforceable?
  - How long must the MND be posted? Where?

### **Mitigations**

- Measures that reduce the impact of human activities
  - from “potentially significant” to “less-than-significant”
    - ♦ See Figure 5-2 (p.97)

### **Mitigations Must Successfully (in order of preference)...**

- avoid
- reduce
- “rectify”
  - by repairing, rehabilitating or restoring
- reduce or eliminate *over time* or
- compensate for potentially significant impacts

### **Mitigations Must Be...**

- Required, not suggested
- Specific (what, how, when, where, who)
- Feasible
- Tied to specific impacts (Nexus)
- Monitored for compliance

### **Writing Mitigations Well...**

- Certainty

- “must,” not “should”
- What is to be done?
- How?
- When?
- By whom?

### **Performance Standards**

- specific, minimum, measurable criteria
- contingency if it doesn’t work?

### **Feasible**

- not a *study*, but an *action*

### **Mitigation Monitoring**

- AB 3180 (1988) changed CEQA to require monitoring and reporting of mitigation implementation
  - The agency requiring the mitigation monitors
  - cost may be passed to developer
- Monitoring
  - *must* cover whether mitigation is carried out
  - *should* cover whether it works
- see Appendix 4 of Bass
  - [http://ceres.ca.gov/topic/env\\_law/ceqa/more/tas/CEQA\\_Mitigation/CEQA\\_Mit.html](http://ceres.ca.gov/topic/env_law/ceqa/more/tas/CEQA_Mitigation/CEQA_Mit.html)

### **Monitoring and Reporting**

- Should Include
  - impact
  - mitigation
  - monitoring requirements
  - frequency of monitoring/reporting
  - person responsible for report
  - Fees for costs
  - Response to failure to comply: stop work
  - Success criteria
  - Response to mitigation failure

### **Biological Monitoring reports locally**

- [http://www.sanjoseca.gov/planning/eir/Resources\\_Environmental%20Consultants/MMRP.doc](http://www.sanjoseca.gov/planning/eir/Resources_Environmental%20Consultants/MMRP.doc)
- <http://www.sanjoseca.gov/planning/eir/mmr.asp>
- Accessibility is improving
- Reporting on other resources still limited
- Review monitoring report handout:
  - Are the mitigation success criteria clear and

- appropriate? How could they be improved?
- Did the mitigation work?
  - What should happen if the success criteria are not met?
  - How long do you think this project should be monitored?
- 

## **POPULATION AND HOUSING**

### ***Thresholds of significance***

If the project would

- a) Induce substantial population growth in an area, either
    - directly or
    - Indirectly, or
  - b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere, or
  - c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere,
- ...then its impact would be considered significant

## **PUBLIC SERVICES**

### ***Thresholds of significance***

If the project would result in substantial adverse physical impacts associated with the provision of or need for:

- new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:
    - Fire protection
    - Police protection
    - Schools
    - Parks
    - Other public facilities
- ...then its impact would be considered significant

## **RECREATION**

### ***Thresholds of significance***

- If the project includes recreational facilities or requires the construction or expansion of recreational facilities which might have an adverse physical effect on the environment
- ...then its impact would be considered significant
- If the project would increase the use of existing neighborhood and regional parks

or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated, or

## **UTILITIES AND SERVICE SYSTEMS**

### ***Thresholds of significance***

a-e) WATER treatment  
(we'll cover this under hydrology, also)

SOLID WASTE (resources)

- f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?
- g) Comply with federal, state, and local statutes and regulations related to solid waste?

### ***Initial Study and MND Assignment***

- Field Trip next week -- carpool?

#### ***Questions:***

- What was the muddiest part of today's lecture?***
- What one question would you like to be answered?***
- What was the most interesting part of today's class?***