

Outline - Lecture 4

- Review – Process: Initial Study
- Announcements
- SUBSTANCE: Population/Housing and Services
- PROCESS: Mitigated Negative Declaration
- 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

- How are meetings going?
 - FIRST JOURNAL DUE in two WEEKS!!!

Resource Area

LAND USE AND PLANNING

LAND USE AND PLANNING

a) Environmental Setting

- Current General Plan Designation
- Specific plans
- Current Zoning
- local coastal programs, etc.

What's a general plan?

- General Plan --
 - 7 elements required by the state (OPR)
 - ◆ land use
 - ◆ circulation
 - ◆ housing
 - ◆ conservation of natural resources
 - ◆ open-space
 - ◆ noise
 - ◆ Safety
 - As of 2003: include guidelines on Environ'tal Justice
 - ◆ <http://www.califaep.org/content.asp?pid=72#1553>
 - City of San Jose General Plan:
 - ◆ e.g. <http://www.sanjoseca.gov/planning/gp/gptext.asp> and http://www.sanjoseca.gov/planning/gp_maps/images/maps/Citywide_General_Plan.pdf,

ENVIRONMENTAL JUSTICE

- “The fair treatment of people of all races, cultures and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies”
 - Originally was reaction to siting dirty industry in racially biased ways
 - Federal Executive Order 12898 (Clinton)
 - SB 115 (Sher); AB 1553 (Keeley) See handout.

Specific or area plan

- implements GP in local area, adds detail
- For example:
 - ◆ City of San Jose
 - http://www.sanjoseca.gov/planning/spec_plan/default.asp

- ◆ Coyote Valley
 - <http://www.sanjoseca.gov/coyotevalley/history.html>

What's zoning?

- General plan is the “constitution”
- Zoning is the “law”
 - Implements general plan policies and goals
 - Must be consistent with General Plan
- For San Jose:
 - ◆ http://www.sanjoseca.gov/planning/pdf/zoning_code.pdf and <http://www.sanjoseca.gov/planning/zonemap/default.asp>

LAND USE AND PLANNING b) Thresholds of significance

If the project would:

- Physically divide an established community,
- Conflict with any applicable land use plan, policy, or regulation, or
- Conflict with any applicable habitat conservation plan or natural community conservation plan
(See biotics as well)

...then its impact would be considered significant

POPULATION AND HOUSING

Thresholds of significance

If the project would

- Induce substantial population growth in an area, either
 - directly or
 - Indirectly, or
- Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere, or
- 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?

PLANNING, POPULATION, SERVICES: Exercise

■ Discuss sections from the initial study on

- Land use and Planning

■ Are the levels of significance clearly marked?

■ For each resource area that is less than significant with mitigation incorporation:

- Is there a clear description of the *environmental setting* at the time of the application for each resource?
- Is the *threshold* used clear?
- Is there an *explanation* of how the significance level was determined? Are references cited?
- Are any *mitigations required, or recommended*?

■ Can you find the recommendation for an ND or EIR?

Initial Study Review

Impact explanation

■ Describe the logic/evidence that supports the significance level, using:

- Field studies
- Research maps, existing publications, species lists
- Projections/assumptions from comparable initial studies
- Expert consultants (ideally with degrees)
 - ◆ cite all sources
 - ◆ Facts, reasonable assumptions, and expert opinion only!
 - ◆ Avoid argument, speculation, opinion, or social factors
 - ◆ consider both direct and indirect effects
- Clearly relate the projections with the threshold

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?

Feasible

■ not a *study*, but an *action*

Performance Standards

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

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

Mitigation Monitoring

- AB 3180 (1988) changed CEQA to require monitoring and reporting of mitigation implementation (Gov... W.).
 - 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

Recommendation for

Negative Declaration or Environmental Impact Report

■ ND

- if all impacts are less than significant

■ mitigated ND

- must mitigate all potentially significant impacts to less than significant

■ EIR

- If even one unmitigatable potentially significant effect remains => complete an EIR

Public Notice of Intent to Adopt N.D.

■ posted at

- *county clerk's* office for 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

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) Negative Declaration

- brief summary explaining why project will not have a significant 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)

Exercise: Draft Mitigated Negative Dec.

- http://www.sanjoseca.gov/planning/eir/Nd2/CP07-063/CP07-063_I2A_MND_HN.pdf

- Identify the
 - Notice of Intent to adopt a mitigated Negative Declaration
 - Public Hearing notice
 - 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?

When must an EIR be prepared?

“Fair Argument” standard

- *Fairly* argued in light of the whole record
 - Based on *substantial* evidence
 - ♦ not *solely* arguments, speculation, opinion
 - however, public opinion and controversy *must be* considered if any substantial evidence exists
- *That the project may* have a significant effect on the environment
 - *Even if conflicting evidence exists*

“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

Initial Study and MND Assignment

- Field Trip next week -- carpool?
- <https://www.sjpermits.org/permits/permits/>
- http://www.sanjoseca.gov/planning/dev_review/recent.asp

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?

