

# Overview of the City of San Diego's Implementation of the California Environmental



# What is CEQA ?

- “California Environmental Quality Act”, a State law passed in 1970
- It is a **process** triggered by a discretionary action to disclose to the public and decisionmakers the environmental impacts of development projects.
- Requires identification and adoption of and feasible mitigation measures and/or alternatives for the significant environmental effects of project



# Development Services Department Organizational Chart

DSD is charged with implementing CEQA on behalf of the City of San Diego

▶ Gary Halbert, DSD Director

▶ Kelly Broughton, LDR Deputy Director

▶ Chris Zirkle, Assistant Deputy Director

▶ EAS

▶ MMC

# Pre-Public Review CEQA Process

- Preliminary Review for Completeness of Application
  - Determine if action is discretionary
  - Determine whether action is a project
- Review for Exemption
  - General Rule
  - Statutory Exemption
  - Categorical Exemption
- Commence Initial Study and complete within 30 days.
  - Based on results, conclude previously addressed or prepare ND, MND, Addendum, EIR, or other document.

# CEQA Applicability – (cont'd.)

- CEQA does not apply to “ministerial” actions
  - actions where there is little or no personal judgment as to the wisdom or manner of carrying out the project. Uses no special discretion or judgment, uses only fixed standards or objective measurements.
- “Discretionary” means that decisionmaker exercises judgment or deliberation when deciding to approve or disapprove. Conditions can be added to address environmental impacts.

# CEQA Applicability

- CEQA does not apply if:
  - 15060(c)(3), the action is not a “project” (an action having no direct, physical change on the environment or reasonably foreseeable change in the environment)
  - 15061(b)(3), (“General Rule”) where it can be seen with certainty that there is no possibility that the project may have a significant effect.

# Exemptions

- **Statutory Exemptions**
  - Used to exempt ministerial (e.g., building permits and Substantial Conformance Review) and certain types of discretionary projects (e.g., emergency projects, pipelines less than a mile) regardless of impacts.
- **Categorical Exemptions**
  - Used to exempt certain types of discretionary projects where there is no “reasonable possibility” for a significant impact.

# Project Analysis Tools

CEQA Statutes and Guidelines

Initial Study Checklist (not all inclusive)

Biology Guidelines

Historical Resources Guidelines

Community Plans

Land Development Code

Technical Reports

Significance Thresholds



# Result of the Analysis: the draft Environmental Document

- Negative Declaration (ND)
  - No significant effect.
- Mitigated Negative Declaration (MND)
  - Significant effects are mitigated.
- Environmental Impact Report (EIR) – “If there is substantial evidence, in light of the whole record before a lead agency that a project may have a significant effect”
  - Addendum
  - Supplemental EIR
  - Subsequent EIR
- Master Environmental Impact Report (MEIR)
  - MEIR Findings of Conformance

# EIRs and MNDs

## Differences:

### EIRs

- project may be approved with significant unmitigated impacts
- project alternatives are analyzed
- Cumulative impacts are separately analyzed
- Findings and Statement of Overriding Considerations must be adopted

### MNDs

- all significant impacts mitigated through conditions of project approval
- no project alternatives are analyzed
- Cumulative impact analysis required but no separate, explicit discussion required
- Findings and Statement of Overriding Considerations not required

## Similarities:

Same technical reports and level of analysis

Same mitigation measures: adoption, nexus, and rough proportionality

# Public Review



- 20-30 days for ND or MND
- 30-45 days for EIR
- Staff responds to public comments. Environmental document revised/recirculated if necessary.
- Final document distributed 14 days before first public hearing (LDC Section 128.0310(a)).

# Recirculation

Conditions under which re-circulation of an environmental document is required pursuant to Sections 15073.5 and 15088.5 of the CEQA Guidelines:

- A new significant impact requiring new mitigation is identified.
- A previously identified impact is found to be significantly increased, and mitigation is needed to reduce the impact to a level below significance.
- Change in circumstances occur which would result in a new or significantly increased impact.

Preparation of subsequent documents guided by Section 15162.

# 15162 - Subsequent Documents

“When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines...”

- Substantial changes are proposed in the project which result in new or increased significant effects or
- Substantial changes occur with respect to the circumstances under which the project is undertaken and result in new or increased significant effects or
- New information shows:
  - New significant effects
  - More severe significant effects
  - New mitigation measures are feasible

# Documents – Subsequent, Supplemental, Addenda

- If the conditions in Section 15162 are met, a subsequent EIR/ M/ND, a Supplement to an EIR (Section 15163) or an Addendum to an EIR/M/ND pursuant to Section 15164 can be prepared.
- For Addenda:
  - Minor or Technical Changes to project
  - There can be no new significant impacts or substantial increase in previously disclosed impacts.
  - There is no CEQA requirement for public review of an addendum.
  - The Land Development code requires a 14-day public review if the EIR was certified more than 3 years previously.

# Project Decision



- Certify/adopt environmental document or note Exemption
- Approve project
- Notice of Determination (NOD) Filed; sets limits on legal challenges

# Mitigation Monitoring and Reporting Program (MMRP)

- MMRPs are components of EIRs and MNDs.
- MMRP measures become conditions of project approval.
- MMRP conditions must specify mitigation requirements, methods for implementation, timing for compliance, and the entity responsible for ensuring compliance.
- MMRP measures enforced by EAS, R.E., MMC, consultants



# CEQA Guidelines and Court Cases

- CERES Web Site
- Statute as amended January 1, 2003  
Guidelines as amended September 7, 2004  
2004 Amendment Text with Strikethrough
- **Statute/Guideline Search:**
- **1972-2003 Case Law Search:**

# Environmental Appeals Regulations

# Environmental Appeals Regulations

## Why?

CEQA amended to require the City to facilitate appeals to Council of:

- Exemptions
- Negative Declarations
- Mitigated Negative Declarations
- Environmental Impact Reports

# Environmental Appeals Regulations

## Scope

- Does not allow appeals of:
  - CEQA actions not listed in the legislation:
    - Including use of previously-certified documents, addenda
  - Decisions already subject to Council approval or appeal to Council:
    - Including Process 4 and 5 decisions and decisions outside of the Land Development Code permit process
  - Statutory exemptions:
    - All classes, including ministerial projects

# Environmental Appeals Regulations

## Who Can Appeal?

- Any person can appeal an exemption or ND, MND, or EIR in conjunction with a City Manager action.
- Only “Interested Persons” can appeal CEQA determinations made at public hearings.
- Appeals of exemptions may need to be considered by Council before the project goes forward.

# Environmental Appeals Regulations

## Noticing the Right to Appeal

- No new notices required by State Legislation
- SDMC requires posting a “Notice of Right to Appeal” in the Development Services Center for:
  - All categorical and “General Rule” exemption determinations made on projects subject to approval by or appeal to Planning Commission
  - All City Manager determinations
- Staff is working on posting notices on Web

# Environmental Appeals Regulations

## Timeline for Filing an Appeal

- For City Manager project approvals and exemptions, 10 business days from posting of notice or 15 days from determination
- For NDs, MNDs, or EIRs prepared for projects subject to approval by or appeal to Planning Commission, within 10 business days of Planning Commission decision.

# Environmental Appeals Regulations

## Appeal Hearings

- Public Noticing Required
- By a majority vote, the Council may:
  - Deny the appeal and uphold the determination
  - Grant the appeal and make superseding environmental determination or CEQA findings
  - Grant the appeal, set aside the determination, and remand for re-consideration by DSD Director, City Manager, or Planning Commission



# Environmental Appeals Regulations

## Additional Considerations

- Ordinance does not facilitate second appeals of the same environmental determination.
- Staff is working on adding a requirement that the appeal be based on the same factors required to appeal a Process 4 decision:
  - Factual error
  - Unsupported findings
  - Conflicts with plans, policies or codes
  - Citywide significance

# City of San Diego Significance Determination Thresholds

For Implementation of the  
California Environmental Quality  
Act

# Staff Proposes Amendments to the Significance Thresholds

- Adoption not required by CEQA, may not matter in court (fair argument standard)
- Thresholds provide staff with guidance on determining the significance of an impact
- If an impact is determined to be significant, mitigation or an Environmental Impact Report is required.
- Lower thresholds result in more significant impacts and preparation of more Environmental Impact Reports when impacts cannot be mitigated.

# Administrative History

- Thresholds have been used by City staff since the 1980's.
- Thresholds were published in a single booklet in the 1990s, periodically updated, and made publicly available.
- In 2000, the thresholds were approved as an appendix to the Land Development Manual

# Thresholds Amendment Procedure

- The Land Development Manual classifies the proposed changes as a “Major Amendment.” Council approval required.
- The proposed thresholds were noticed and sent out for public review for 30 days. They were sent to 290 organizations and individuals.
- 20 comment letters were received.

# Amendment Procedure (cont'd.)

- Public Review – March 1-30, 2004
- Development Service's TAC – May 12, 2004
- Land Use and Housing – May 19, 2004
- Planning Commission Workshops
  - August 12 and September 15, 2004
- Plng Comm Hearing - October 14, 2004
- CPC Environmental Subcommittee
  - September/October, 2004
- CPC – October 24, 2004
- Land Use and Housing – January 19, 2005
- City Council - TBD

# Reasons for Proposed Changes

- Initially, to Reorganize and Clarify for ease of use by staff
- Respond to Court Case
  - Traffic Impacts at Level of Service “F” facilities (CBE, “cumulatively considerable” vs. “de minimus”)
- Respond to PS&NS
  - Police and Fire-Rescue Response Times
- Respond to new standards & science
  - APCD Standards Updates
  - Stormwater Ordinance, adoption of new regulations

# Staff Recommendations

- Traffic – Recommend lowering thresholds at LOS F facilities.
- Recommend addressing Police and Fire-Rescue response times on a subregional, not project-by-project, basis.
  - Until plans updated, recommend addressing response times via a permit finding.
- Recommend addressing other public services (parks, libraries, schools) impacts outside CEQA.
- Recommend recognizing significance of brush management to non-covered species outside the MHPA



# Effects of Changes

- Traffic – Some projects would not be able to mitigate additional impacts and EIRs would therefore be required.
- Public Services (Police and Fire-Rescue, Schools, Parks, Libraries) - Some projects would not be able to mitigate their impacts and more EIRs would be required.
- Biology – Most projects would be able to mitigate their impacts.

# TAC/Planning Commission/CPC/LU&H Input

- **Development Services Technical Advisory Committee** voted to recommend no changes to the Significance Thresholds unless required by state or federal law.
- **Planning Commission**
  - Voted 3-3 on including Police and Fire-Rescue Response Times in the Significance Thresholds.
  - Voted 5-1 in favor of the balance of the staff proposal.
- **CPC**
  - Voted 12-6 in favor of not including park, school, or library service levels, and housing units in the Significance Thresholds but requiring an informational discussion in CEQA documents.
  - Voted 11-7 against including Police and Fire-Rescue Response Times in the Significance Thresholds.
- **LU&H**
  - Voted 3-2 in favor of the staff recommendation.

# Questions?

## **CEQA Statutes, Guidelines and Cases**

<http://ceres.ca.gov/ceqa/>

## **City CEQA Implementation Ordinances**

[http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter12/Ch12Art08  
Division01](http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter12/Ch12Art08Division01)

[http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter12/Ch12Art08  
Division02](http://clerkdoc.sannet.gov/legtrain/mc/MuniCodeChapter12/Ch12Art08Division02)

## **City Significance Thresholds**

<http://www.sandiego.gov/development-services/news/newslist.shtml>







# Traffic

- “Communities for a Better Environment” case ruled that lower thresholds for cumulative impacts should apply when the existing environmental conditions are worse (i.e., at Level of Service “F” facilities).
- Although the following thresholds are not proposed for change, opposition has been raised about the manner in which staff has historically treated the following issues:
  - 15-minute delay at freeway ramps (after 15 minutes, drivers waiting at a freeway ramp are likely to take an alternative route or mode).
  - Mitigation for freeway impacts.

# Examples of Existing Traffic Threshold Application

- Rancho Encantada – The freeway contribution exceeded the threshold but the project built other local improvements to mitigate the impact.
- Zoo Promenade Project – Contributed 65 trips to SR163. Caltrans has no improvements programmed; no opportunity for fair share contribution
  - Significant and unmitigable impact



# Police and Fire-Rescue Response Times

- CEQA allows but does not require evaluation of this issue (“shall”/”should” in Section 15126.2).
- Mitigation may be limited to mandatory funding during budgeting but project could be approved by a lower decision-maker; therefore, staff recommends a permit finding or community plan updates rather than a CEQA significance threshold.
- Implementation either way would entail significant involvement by and expanded role of Police and Fire-Rescue in land use decisions.

# Police and Fire-Rescue Response Times

## – Issues that would be considered:

- Would the project result in response times to the site or other areas in the service area be affected because of traffic conditions (existing conditions or post-project conditions)?
- Are the project site and other areas in the service area subject to substandard response times because of existing operational budget restrictions?
- Are the project site and other areas in the service area subject to substandard response times because of existing facility deficiencies?

# Police/Fire-Rescue Response Times – Example 1

- Project does not propose more than 75 dwelling units or 100,000 square feet of non-residential space.
  - No potentially significant impact on Police/Fire-Rescue Response Times

# Police/Fire-Rescue Response Times – Example 2

- Project Proposes > 75 dwelling units or > 100,000 square feet of non-residential space, regardless of current response time in service area. Project substantially impacts traffic which in turn substantially impacts response time.
  - Significant Impact to response times; EIR required.
  - Maybe mitigable via traffic improvements or re-design to shift project traffic elsewhere.

# Police/Fire-Rescue Response Times – Example 3

- Project Proposes > 75 dwelling units or > 100,000 square feet of non-residential space. Existing response time in service area, including project site, is substandard.
  - Significant impact from new occupants in hazardous area; EIR required.
  - Whether the impact is mitigable depends on the reason for substandard response time.

# Police/Fire-Rescue Response Times – Example 3 (cont'd.)

- If existing substandard response time is due to lack of facilities, mitigation cannot be achieved until new facility is built.
- If existing substandard response time is due to lack of personnel (operational budget), mitigation cannot be achieved except via mandatory, ongoing funding.

# Police/Fire-Rescue Response Times

- EIRs with Findings would be required for a lower decision-maker to approve a project that can mitigate only via mandatory future budget increases if this threshold is adopted.
- The staff proposal for addressing this issue via a permit finding would be more practical and would provide more flexibility in implementation.
- Addressing the issue community-wide approach is a more coordinated approach.

# CPC Subcommittee Discussion Item

## Land Use (cont'd.)

- Would the proposal result in a land use which is inconsistent with the adopted community plan land use designation for the site?
- Would the proposal adversely affect the adopted community plan?
- If the project does not include a plan amendment, would the proposal result in a land use which is inconsistent with the adopted community plan land use designation for the site or, if the project does include a plan amendment, would the proposal adversely affect the adopted community plan?