Intro to Biological Review for CEQA Planners

Scott Gressard

Ascent Director of Biological Services

Outline

- Biological Resources & the CEQA Process
- Existing Conditions: Survey Methods & Results
- Impact Analysis
- Mitigation
- Additional Considerations
- Q/A

Biological Resources and the CEQA Process

CEQA Environmental Factors

- Aesthetics
- Agriculture and Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Energy
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation
- Tribal Cultural Resources
- Utilities and Service Systems
- Wildfire

CEQA Determinations/Coverage Supported by Biological Resource Analyses

- Exemption (documentation recommended)
- Initial Study
  - Determine level of analysis (MND or EIR),
  - Determine focus for additional analysis
- Mitigated Negative Declaration
- Environmental Impact Report
- Previous CEQA
  - Tiering from prior CEQA document (e.g., Programmatic EIR)
  - Subsequent/Supplemental/Addendum

Types of Biological Resource Documents

- **Biological Resource Letter Reports/Memoranda**
  - IS/MNDs and projects with low levels of impacts
- **Biological Technical Reports**
  - More common support documents for project-level EIRs and sites with complex biological resource analyses
  - Often required when listed species have been detected or have potential to occur
- **Biological Sections of EIRs (no technical document)**
  - Common for both low biological impact and programmatic EIR documents
  - Vary from simple to complex

General Format of a CEQA Biological Supporting Documents

- **Project Location and Description Information**
  - Site characteristics – soils, topography, etc.
  - May include "project design features" (applied before mitigation)
- **Regulatory Setting**
  - Federal, state, local regulatory setting description
- **Survey Methods**
  - Database Review (e.g., SANDAG, USFWS occurrences, etc.)
  - Surveys (reconnaissance or focused)
  - Level of detail needed determined based on resources present
- **Results**
  - Vegetation communities, aquatic resources, and plant and/or wildlife species
- ***Impact Analysis***
  - Define the project-specific significance criteria/thresholds
  - Analyze direct, indirect, and cumulative impacts
- **Mitigation**
  - Determination of significance after mitigation

Existing Conditions: Survey Methods & Results

Evaluating Biological Resource Existing Conditions

- Biological Reconnaissance & Vegetation Mapping Surveys
- Aquatic Resources Delineation
- Determining Species Potential to Occur – Plants & Wildlife
- Focused Surveys
  - Plants
    - Were blooming periods for species with potential to occur accounted for in survey timing?
  - Wildlife
    - Were surveys conducted during appropriate times of the year and by qualified biologist (e.g., biologist holds Section 10(a)(1)(A) Recovery Permit for specific listed species)?

Biological Reconnaissance Surveys

- Publicly available databases may reviewed prior to survey
- Vegetation mapping uses appropriate regional classification system (e.g., Holland [1986] & Oberbauer [2008])
  - Tabular acreage tables recommended
  - Sensitive natural communities (CDFW List used as baseline)
- Identify if suitable habitat for listed species is present and determine need for focused surveys
- Should include list of plant and wildlife species detected on-site during surveys
- Level of effort often comparable to size of project and resources present

Table 1 –Vegetation Communities and Land Covers

Vegetation Community	Oberbauer Habitat Code	On-Site (acres)	Off-Site (acres)
Sensitive Upland Vegetation Communities			
Diegan Coastal Sage Scrub: Baccharis Scrub-dominated	32530	0.43	0.70
Diegan Coastal Sage Scrub	32500	-	-
Non-Native Grassland	42200	0.02	-
	Subtotal:	*0.45*	*0.70*
Wetlands and Non-Wetland Waters			
Southern Coast Live Oak Forest (including disturbed variety)	61310	1.01	2.35
Sycamore Riparian Forest	61330	0.03	0.44
Southern Willow Scrub	63320	-	0.34
Non-Vegetated Floodplain or Channel	64200	0.01	0.02
Disturbed Wetland (Invasive-dominated)	11200	-	-
	Subtotal:	*1.05*	*3.14*
Non-Native Upland Vegetation Communities and Land Covers			
Eucalyptus Woodland	79100	0.02	-
Non-Native Woodland	79000	-	0.07
Disturbed Habitat	11000	0.14	1.65
Urban/Developed	12000	-	-
	Subtotal:	*0.16*	*1.72*
	TOTAL:	***1.66***	***5.57***

Aquatic Resources Delineation

- Publicly available datasets should be reviewed prior to delineation
  - E.g., NWI, NHD, RWQCB Basin Plan
- May be conducted separately or in conjunction with reconnaissance survey
  - Sites with variety of aquatic resources should have appropriate number of data points
- **Note**: aquatic resources are "potentially" jurisdictional until agency determination and/or permit(s) are issued

Focused Species Surveys

- Should address listed species identified as having potential to occur (reviewer to check this)
- Listed Plant Species
- Listed Wildlife Species
- Survey Timing
  - February – September, generally
  - In Encinitas, common species requiring focused survey protocols: coastal California gnatcatcher, least Bell's vireo, southern willow flycatcher, and Ridgway's rail

Impact Analysis

Significant Impacts and Biological Resources: Why They Matter

- The CRUX of this Process is CEQA's substantive mandate:
  - **Are the effects to biological resources "significant"?**
  - *Public agencies must refrain from approving projects with significant environmental effects if "there are feasible alternatives or mitigation measures" that can substantially lessen or avoid those effects.*
- Section 15064(b)
  - *The determination whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on factual and scientific data. An ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting.*

CEQA Thresholds of Significance

- What is considered a "significant" impact to biological resources under CEQA?
- Establishing significance thresholds
  - Appendix G checklist questions often used as a baseline
    - Thoughtful assessment of impacts needed
    - City will apply case-by-case thresholds to projects based on analysis (no City-defined CEQA thresholds)
- Mandatory Findings of Significance
  - Can also use these as a guide for ensuring biological resource info collected is sufficient

Appendix G Checklist Questions for Biological Resources

- Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special-status species in local or regional plans, policies, or regulations, or by CDFW or USFWS?
- Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by CDFW or USFWS?
- Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal) through direct removal, filling, hydrological interruption, or other means.
- Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors or impede the use of native wildlife nursery sites?
- Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?
- Conflict with the provisions of an adopted HCP, NCCP, or other approved local, regional, or state HCP?

What does "*Substantial*" mean in a biological context?

How many acres, individuals, nests, breeding sites, etc. disturbed or removed should be considered *substantial*?

- Often project and location specific answer
- City of Encinitas has not defined CEQA significance thresholds
  - Project thresholds should be defined in each technical report on a case-by-case basis
    - **Context** is important
  - Should be based on the magnitude of the effect
  - Should use discernable biological units (individuals, local and regional populations, habitat area, etc.)
- Biological analysis should address *how* the impact translates into effects on key species, habitat functions/values, etc. with direct connection to resources described in the Results section

Project-Specific Factors to Consider

- Type of Project (e.g., development, restoration, vegetation management, infrastructure)
- Infill or new development?
- Project footprint – size, shape
- Baseline conditions on the project site
  - Land cover, sensitive resources, surrounding land uses, existing disturbance sources, historic land use on site (e.g., agriculture, mowing, ongoing maintenance)
- Mechanism of impact
- Direct vs. indirect impacts
- Construction vs. operation

Mandatory Findings of Significance (CCR §15065)

- Pertaining to biological resources, reviewers must consider if a project would:
  - "substantially reduce the habitat of a fish or wildlife species"
  - "cause a fish or wildlife population to drop below self-sustaining levels"
  - "threaten to eliminate a plant or animal community"
  - "substantially reduce the number or restrict the range of an endangered, rare, or threatened species"

Local Polices and Ordinances

- Appx G: "Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?"
  - City of Encinitas has local policies and ordinances that govern biological resources in the City:
    - Local Coastal Program (LCP),
    - City's General Plan (e.g,. Resource Management Element, Land Use Element, etc.)
    - Municipal Code.
  - The City may also use the Draft MSCP Subarea Plan as a guidance document, however, it has not been adopted and there is no implementing agreement, so it may be used for informational and consistency purposes, but not required for significance determination

Challenges and Conundrums

- CEQA impact analyses are a balancing act and often require that we make biological predictions based on incomplete information
  - Collect data to the extent feasible, but it can be difficult to entirely rule out an effect on a complex site from a limited number of surveys
  - However, overuse use of terms like “potential” and being too conservative when evaluating “substantial” effects can signal uncertainty to a reader
- Objectivity is imperative
  - Complexities of biology + human interpretation = variation in conclusions
  - Analysis should use substantial evidence to draw a logical conclusion that leads to a defensible significance determination.

Impact Analysis Summary

- Significance Analysis is the crux of CEQA Mandate
  - Project-specific assessment and rationale required to determine significance of impacts
  - Establishing threshold guidance (CCR §15064.7)
- Requires direct connection between significance thresholds defined, project components, and biological resource survey results
  - Appendix G Checklist
- For local policies related to biological resource impacts, City of Encinitas must also consider consistency with:
  - City's General Plan (e.g,. Resource Management Element, Land Use Element, etc.)
  - LCP (CCA)
  - City's Municipal Code

Mitigation

December 15, 2022

When is Biological Mitigation Needed

Significant Effect: Substantial and adverse environmental change

- Not required for no impact or less than significant impacts

> *Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so*. PRC 21002.1(b)

Note: biological resource documents should only use the term "mitigation" or "mitigates" when referring to the legal CEQA circumstance of responding to a significant or potentially significant effect.

Components of a Mitigation Measure - CEQA Guidelines §15370

- Avoiding the impact altogether by not taking a certain action or parts of an action.
- Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

Typically Adequate Biological Mitigation

- Measures applied during construction intended
  - E.g., BMPs, avoiding breeding seasons, pre-construction surveys, buffers
- Actions to protect analogous resources,
  - E.g., conservation easements, habitat preservation
- Compensatory actions
  - E.g., Replacement of lost habitat through establishment, re-establishment, restoration or enhancement
  - Mitigation banks, PRM, APRM, etc.

Conditionally Adequate Biological Mitigation

- Monitoring to ensure impacts do not occur
  - Can be adequate so long as there is commitment to a mitigating response (e.g., adaptive management)
- Other agency's permit approvals, as long as compliance would reasonably result in mitigation, such as 404 permit
  - Must include details of what the permit process includes
  - Can't just say "we're going to get a permit"

Inadequate Biological Mitigation

- Monitoring without a mitigating response
- Compliance with existing non-discretionary, prescriptive law
  - E.g., building code
- Future study to determine if mitigation measures are needed, or what type is required (deferral)
- Non-committal verbs in the mitigation, such as “may” do this, or “should” do that

Mitigation Must be "Feasible"

- *Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors* (CCR §15364)
- Try to think of an example of an infeasible biological mitigation measure you have encountered

Feasible Mitigation

- Some considerations for feasibility:
  - Cost prohibitive?
  - Legal?
  - Timing for implementation realistic?
  - Availability of qualified staff and/or technology?
- Can engage the applicant early on if there are concerns
  - Ask them if/how measures in question would be meet feasibility criteria

Deferring Mitigation

- **Cannot** defer impact assessment or recognition of significant effects
- **Cannot** defer adoption of mitigation or formulation of significant aspects of mitigation until future study
- **Can** recognize significant effect, commit to actions, define performance criteria, and defer details, if they are not practical to define at the time
  - Explain why details are not practical to describe now (often overlooked)
- **Can** rely on compliance with environmental regulations if there is reasonable expectation that compliance reduces the effect sufficiently (but see bullet above)

Sample Mitigation Structure

- MM BIO-1: Coastal Sage Scrub Restoration (short title)
- Objective: …to compensate for the significant loss of coastal sage scrub habitat on the project site
- Description: specific actions or types of actions, location, how they reduce/compensate for the impact (usually at higher ratio for temporal loss of function)
- Performance Criteria: …specific % cover of native species by certain year (often spelled out in Restoration Plan and/or HMMP)…
- Timing: …initiate prior to project implementation
- Responsible Party: …project proponent or third-party contractor
- Significance After Mitigation: Less than significant

Do “Project Design Features” Skirt Environmental Planning Process?

Not necessarily, but this decision establishes qualifiers.

- Consider if environmental protection measures are part of physical project, shown in plans or designs
- Avoid including clear mitigation actions as part of the project, such as compensatory actions
- Lots of gray area, still (BMPs? Protective policies?)
- Consider impacts before applying these measures to allow for full disclosure first
  - Do not overlook or omit analysis of potentially significant effects the protection measures are intended to address

Mitigation Summary

- Mitigation only for *significant* impacts
- Mitigation should be reasonable, proportional to impacts, and feasible
- Should include evidence about how measures reduce the impact with performance criteria and description of what will happen if the criteria are not met.
- Follow the what, why, where, how, when, and who of each mitigation measure
- Numbering or notation system useful to clearly link impacts and mitigation
- Consider if any "project design features" should really be mitigation measures

Additional Considerations

Biological "Red Flags" to Look Out For

- Significant impacts identified without mitigation
- Statements regarding absence of listed species (ESA, CESA, Fully Protected) with no focused survey result support
- Significant impacts on listed species
- Unusual or unexpected conclusions
  - E.g., presence of multiple resources, but no significant impacts and/or mitigation measures

Questions/Discussion