

A photograph of a street intersection in Encinitas, California. A large green sign with white lettering reads "ENCINITAS" and is supported by a metal truss structure. In the background, there are buildings, palm trees, and traffic lights. A sign for "ACTIVE & TRANSITIONS CELEBRATING 7 YEARS" is visible on one of the buildings. A street sign for "D Street" is also present. The scene is bright and clear, suggesting a sunny day.

# City of Encinitas CEQA Series

## Project Description & Mitigation Measures

Presented by: Chad Beckstrom, AICP and Kathie Washington

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# Introductions

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ASCENT



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# Acknowledgement

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**SANDAG**

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# Agenda

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- 1** Project Description
- 2** Mitigation Measures
- 3** Q&A

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## **Preparing an Adequate Project Description**

# About the Project Description



Tells the “story” of your project



Establishes the parameters that will be used



Allows the document preparer to accurately evaluate potential impacts



Must contain enough detail so that the reader can accurately assess the scale and scope



Should mirror the complexity of the project



The distinction between the “normal” and the “CEQA” meaning is very important, as it can determine whether an action is subject to CEQA compliance or not.

# Definition of a “Project”

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An Activity undertaken by a public agency, including:

- Activities directly undertaken by public agency
  - Construction projects
  - General plan and ordinance adoption
- Activities supported through public agency contracts, grants, subsidies, loans, or other assistance
- Activities involving public agency issuance of a lease, permit, license, certificate, or other entitlement

# Discretionary Project

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A project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.



# CEQA Guidelines Requirements

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The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

- (a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.
- (b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project and may discuss the project benefits.
- (c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.
- (d) A statement briefly describing the intended uses of the EIR.
  - (1) This statement shall include, to the extent that the information is known to the Lead Agency,
    - (A) A list of the agencies that are expected to use the EIR in their decision making, and
    - (B) A list of permits and other approvals required to implement the project.
    - (C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.
  - (2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.

# Project Location

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## CEQA Guidelines:

- *(a) The precise location and boundaries of the proposed project shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.*

## What you should include:

- Regional map
- Detailed local map
- Site boundaries
- Special features

# Project Site and Surrounding Area



Outline Site



Area Affected by  
the Project



Label Roads and  
Key Features



Date the Aerial



North Arrow

A blue pen with a silver tip is resting on a document. The document features a bar chart with blue bars of varying heights. The background is a light blue color with a subtle grid pattern.

# Project Objectives

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CEQA Guidelines:

- *(b) A statement of the objectives sought by the proposed project. A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the **underlying purpose** of the project.*

# Ob-jec-tive

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Something that one's efforts or actions are intended to attain or accomplish; purpose; goal; target.

## PROJECT

## OBJECTIVE

Subdivision



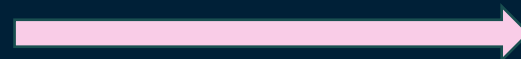
To provide needed housing

Shopping Center



To provide opportunities for people to shop

Office Building



To provide a place for people to work

Roadway



To get from point A to point B

# Tips for Good Project Objectives

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Be specific to the site

Try to avoid "fluffy" statements

Applicant vs. Lead Agency objectives

Identify key or primary objectives

Link your project to existing plans

Ensure that other alternatives could potentially meet the objectives

# Project Characteristics

## CEQA Guidelines:

- *(c) A general description of the project's technical, economic, and environmental characteristics, considering the principal engineering proposals if any and supporting public service facilities.*

## What you should include:

- Narrative overview explanation of project concept
- Proposed buildings and activities
- Buildout assumptions
- Diagrams/conceptual plans
- Construction and grading
- Operational characteristics
- Supporting services and infrastructure

# Key Information to Include



Types of equipment to be used during construction



Maximum # construction workers



Access locations



Traffic and parking



BMPs for stormwater



Design features to minimize impacts



# Be Inclusive

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- Better to include an area than to leave it out
- A project can be approved as less than described
- Don't forget any off-site improvements
- Think about staging areas for construction
- *\*Adding new area(s) later can result in recirculation*

# Consider the “Whole of the Action”

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- The description must include the “whole of the action”
  - Direct physical change
  - Reasonably foreseeable change
  - No Piece-mealing or Segmenting
    - Project and related actions must be analyzed together
    - Including related activities occurring over time (i.e., phase 2, phase 3, etc.)

# The Whole of the Action

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Project features must be considered part of the project if:

- Activity B is a **reasonably foreseeable consequence** of Activity A
- Activity B is a **significant future expansion** of Activity A
- Activity B **provides essential public services** needed to implement Activity A
- Activity A and Activity B are **integral parts** of the same project

# Deferred Evaluation of an Action

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Evaluation of project features may be deferred if:

- **Meaningful information is unavailable** about Activity B when Activity A is being evaluated
- Activities A and B will be **evaluated in separately tiered EIRs**
- Activity A **does not commit** implementation of Activity B
- **Information is not needed** about Activity B **to decide** on Activity A
- Activity B is **independent** and not a part of Activity A

# Intended Uses of the EIR (or MND)

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- CEQA Guidelines:
  - *(d) A statement briefly describing the intended uses of the EIR.*
    - *(1) This statement shall include, to the extent that the information is known to the Lead Agency,*
      - *(A) A list of the agencies that are expected to use the EIR in their decision making, and*
      - *(B) A list of permits and other approvals required to implement the project.*
      - *(C) A list of related environmental review and consultation requirements required by federal, state, or local laws, regulations, or policies. To the fullest extent possible, the lead agency should integrate CEQA review with these related environmental review and consultation requirements.*
    - *(2) If a public agency must make more than one decision on a project, all its decisions subject to CEQA should be listed, preferably in the order in which they will occur. On request, the Office of Planning and Research will provide assistance in identifying state permits for a project.*

# Intended Uses of the EIR (or MND) – cont.

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- What you should include:
  - List of responsible agencies (who may also need to use the EIR)
  - List of all lead agency permits, approvals, discretionary actions:
    - General, Specific, or Area Plan Amendments
    - Zoning or Rezoning
    - Conditional Use Permit
  - List of other agency permits:
    - Endangered Species Act (CDFW)
    - Clean Water Act (US Army Corps of Engineers)
    - San Diego Air Pollution Control District permit to operate

# Importance of a Stable Project Description



It's foundational



Impacts are directly related to construction and operations



Provides analysts with information to determine impacts and intensity



Provides readers with chain of logic



Ripple effects



May require re-do's



Legal implications

# Important Project Description Cases

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- County of Inyo v. City of Los Angeles (1977) 32 Cal. App. 3d 795.
- Laurel Heights Improvement Association v Regents of University of California (1988) 47 Cal. 3d 376.
- Lotus v. Department of Transportation (2014) 223 Cal.App.4th 645
- Washoe Meadows Community v. Department of Parks & Recreation (2017) 17 Cal.App.5th 277, 286-287
- Stopthemillenniumhollywood.com, et al. v. City of Los Angeles, et al. (2019) \_\_\_Cal.App.5th \_\_\_



# Practice Tips

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Finalize the project description early



Obtain consensus on scope



Provide sufficient detail for evaluation of impacts



Consider connected actions



Clearly define objectives



Start preparation of the CEQA document when the project description is likely to remain stable.



Encourage early participation of the CEQA document preparer in the project development process.

# 2

## **Writing Adequate Mitigation Measures**

# Mitigation: CEQA Guidelines 15370

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Mitigation includes:

- a) Avoiding
- b) Minimizing
- c) Rectifying
- d) Reducing or eliminating
- e) Compensating

# Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects

## (a) Mitigation Measures in General.

- 1) An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.
  - (A) The discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project. This discussion shall identify mitigation measures for each significant environmental effect identified in the EIR.
  - (B) Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.
  - (C) Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant. Examples of energy conservation measures are provided in Appendix F.
  - (D) If a mitigation measure would cause one or more significant effects in addition to those that would be caused by the project as proposed, the effects of the mitigation measure shall be discussed but in less detail than the significant effects of the project as proposed. (*Stevens v. City of Glendale* (1981) 125 Cal.App.3d 986.)
- 2) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally binding instruments. In the case of the adoption of a plan, policy, regulation, or other public project, mitigation measures can be incorporated into the plan, policy, regulation, or project design.
- 3) Mitigation measures are not required for effects which are not found to be significant.
- 4) Mitigation measures must be consistent with all applicable constitutional requirements, including the following:
  - (A) There must be an essential nexus (i.e. connection) between the mitigation measure and a legitimate governmental interest. *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987); and
  - (B) The mitigation measure must be "roughly proportional" to the impacts of the project. *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Where the mitigation measure is an ad hoc exaction, it must be "roughly proportional" to the impacts of the project. *Ehrlich v. City of Culver City* (1996) 12 Cal.4th 854.
- 5) If the lead agency determines that a mitigation measure cannot be legally imposed, the measure need not be proposed or analyzed. Instead, the EIR may simply reference that fact and briefly explain the reasons underlying the lead agency's determination.

# Requirements for Mitigation Discussion in EIRs and MNDs

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For each significant impact, the lead agency must:

- Discuss whether measure avoids or substantially reduces significant environmental effect
- Distinguish measures proposed by project proponents
- Identify responsibility for implementation
- Discuss basis for selecting particular measure
- Discuss significant side effects associated with implementation of each mitigation measure

# Feasibility

“Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors”

**(CEQA Guidelines §15364)**

- Consider economic, environmental, legal, social, and technological factors
- Must be fully enforceable
- Takings clause is a constraint—nexus and proportionality
- Specific limitations for some resources

# 5 W's of Mitigation



## Why

State the objective of the mitigation measure and why it is recommended



## What

Explain the specifics of the mitigation measure and how it will be designed and implemented

Identify measurable performance standards by which the success of the mitigation can be determined

Provide for contingent mitigation if monitoring reveals that the success standards are not satisfied



## Who

Identify the agency, organization, or individual responsible for implementing the measure



## Where

Identify the specific location of the mitigation measure



## When

Develop a schedule for implementation

# Adequacy of Mitigation

## Adequate



- Avoid
- Minimize
- Rectify
- Reduce over time
- Compensate

## Questionable



- Provide funding for
- Hire staff
- Monitor or report
- Comply with existing regulations or ordinances
- Preserve already existing natural area

## Inadequate



- Consult with
- Submit for review
- Coordinate with
- Study further
- Inform
- Encourage/discourage
- Facilitate
- Strive to



# Deferring Mitigation Measure Details

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- Mitigated Negative Declaration must not defer mitigation
- EIR may defer the specifics of mitigation
- Improper to defer when details can be presently developed
- Beware of the “future study”

# Rules for Mitigation Deferral



The environmental document must not defer formulation of mitigation, but . . . may defer the specific contents of the measure under certain circumstances



Agency must commit to mitigation



Measure must identify performance standards



Measure may offer mitigation options (i.e. a menu, to be chosen depending upon later circumstances)



There must be substantial evidence that the measure will be effective

# Improper Deferral to Future Study

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<b>Geology &amp; Soils</b>	Prepare erosion control plan
<b>Aesthetics</b>	Prepare landscape plan
<b>Hazardous Materials</b>	Prepare Phase I Environmental Site Assessment
<b>Biological Resources</b>	Conduct plant surveys
<b>Cultural Resources</b>	Conduct field survey for archaeological resources

# Mitigation Practice Pointers

ONLY include mitigation for significant effects

Generally, use “commitment” verbs (e.g., ‘will’ or ‘shall,’ not ‘may’ or ‘should’), but lead agency may have standards or preferences

Measures linked to conditions of approval

Use a numbering or notation system to clearly link impacts and mitigation

Provide evidence about how measures reduce or avoid the impact in the description

# Pitfalls to Avoid

Requirements that cannot be independently measured

Substantial changes to or elimination of measures

Requests that are out of proportion to the project

Requests that are intended solely to address existing problems

Surprise conditions or requests

# Mitigation Checklist

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- ✓ **Mitigation measures presented for all impacts?**
- ✓ **Measures adequate and feasible?**
- ✓ **Measures defined in sufficient detail (who, what, when, where, why)?**
- ✓ **Any impacts that cannot be mitigated?**
- ✓ **Proposed for Alternatives**

# Relevant Case Law

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- *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296
- *Sacramento Old City Assoc. v. City Council of Sacramento* (1991) 229 Cal. App. 3d 1011
- *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884

# Mitigation Monitoring and Reporting

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(a) This section applies when a public agency has made the findings required under paragraph (1) of subdivision (a) of Section 15091 relative to an EIR or adopted a mitigated negative declaration in conjunction with approving a project. In order to ensure that the mitigation measures and project revisions identified in the EIR or negative declaration are implemented, the public agency shall adopt a program for monitoring or reporting on the revisions which it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. A public agency may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed the lead agency remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program.

(b) Where the project at issue is the adoption of a general plan, specific plan, community plan or other plan-level document (zoning, ordinance, regulation, policy), the monitoring plan shall apply to policies and any other portion of the plan that is a mitigation measure or adopted alternative. The monitoring plan may consist of policies included in plan-level documents. The annual report on general plan status required pursuant to the Government Code is one example of a reporting program for adoption of a city or county general plan.

(c) The public agency may choose whether its program will monitor mitigation, report on mitigation, or both. "Reporting" generally consists of a written compliance review that is presented to the decision making body or authorized staff person. A report may be required at various stages during project implementation or upon completion of the mitigation measure. "Monitoring" is generally an ongoing or periodic process of project oversight. There is often no clear distinction between monitoring and reporting and the program best suited to ensuring compliance in any given instance will usually involve elements of both. The choice of program may be guided by the following:

- (1) Reporting is suited to projects which have readily measurable or quantitative mitigation measures or which already involve regular review. For example, a report may be required upon issuance of final occupancy to a project whose mitigation measures were confirmed by building inspection.
- (2) Monitoring is suited to projects with complex mitigation measures, such as wetlands restoration or archeological protection, which may exceed the expertise of the local agency to oversee, are expected to be implemented over a period of time, or require careful implementation to assure compliance.
- (3) Reporting and monitoring are suited to all but the most simple projects. Monitoring ensures that project compliance is checked on a regular basis during and, if necessary after, implementation. Reporting ensures that the approving agency is informed of compliance with mitigation requirements.



# Mitigation Monitoring and Reporting (cont.)

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(d) Lead and responsible agencies should coordinate their mitigation monitoring or reporting programs where possible. Generally, lead and responsible agencies for a given project will adopt separate and different monitoring or reporting programs. This occurs because of any of the following reasons: the agencies have adopted and are responsible for reporting on or monitoring different mitigation measures; the agencies are deciding on the project at different times; each agency has the discretion to choose its own approach to monitoring or reporting; and each agency has its own special expertise.

(e) At its discretion, an agency may adopt standardized policies and requirements to guide individually adopted monitoring or reporting programs. Standardized policies and requirements may describe, but are not limited to:

- (1) The relative responsibilities of various departments within the agency for various aspects of monitoring or reporting, including lead responsibility for administering typical programs and support responsibilities.
- (2) The responsibilities of the project proponent.
- (3) Agency guidelines for preparing monitoring or reporting programs.
- (4) General standards for determining project compliance with the mitigation measures or revisions and related conditions of approval.
- (5) Enforcement procedures for noncompliance, including provisions for administrative appeal. (6) Process for informing staff and decision makers of the relative success of mitigation measures and using those results to improve future mitigation measures.

(f) Where a trustee agency, in timely commenting upon a draft EIR or a proposed mitigated negative declaration, proposes mitigation measures or project revisions for incorporation into a project, that agency, at the same time, shall prepare and submit to the lead or responsible agency a draft monitoring or reporting program for those measures or revisions. The lead or responsible agency may use this information in preparing its monitoring or reporting program.

(g) When a project is of statewide, regional, or areawide importance, any transportation information generated by a required monitoring or reporting program shall be submitted to the transportation planning agency in the region where the project is located and to the California Department of Transportation. Each transportation planning agency and the California Department of Transportation shall adopt guidelines for the submittal of such information.

# Mitigation Monitoring and Reporting

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## Purpose

Serves to ensure that mitigation measures and project revisions are implemented

## Implementation

Provides feedback to agency staff and decision-makers about the effectiveness of their mitigation measures

Identifies the need for enforcement action before irreversible environmental damage occurs

# Preparing the MMRP

**When approving the project, the lead agency:**



Prepares master mitigation checklist and adopts specific mitigation performance standards



Identifies specific monitoring activities

Assigns responsibility

Develops schedule



Establishes specific reporting requirements

Field visit verification reports

Applicant compliance reports

# Mitigation Enforcement

Stop work orders

Denial of building occupancy permits

Revocation of project approval

Misdemeanor criminal sanctions

Performance bonds

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Q&A

# THANK YOU!

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