



Commission Agenda Report

To: Chair Jennings and Members of the Planning Commission

Prepared by: Joyce Parker-Bozylinski, AICP, Planning Director *JPB*

Date prepared: April 25, 2013 Meeting date: May 6, 2013

Subject: Environmental Impact Reports Summary Memorandum

RECOMMENDED ACTION: Receive and file.

DISCUSSION: The attached memo was prepared to provide an overview on the process of certifying Environmental Impact Reports (EIR). The memo includes an overview of the definition of an EIR, what the City's responsibilities in the EIR process are, what determines an EIR to be legally adequate, the contents of an EIR, consequences of an EIR on a project, and the relationship between certifying an EIR and making a decision on the project alone.

ATTACHMENTS:

1. Memorandum regarding Environmental Impact Reports



City of Malibu

MEMORANDUM

To: Planning Commission
From: Joyce Parker-Bozylinski, Planning Director
Date: April 22, 2013
Re: Environmental Impact Reports

The purpose of this memorandum is to provide a brief overview of the process of certifying an Environmental Impact Report (EIR) for a project pursuant to the California Environmental Quality Act (CEQA).

1. What is an EIR?

An EIR is a "detailed statement prepared under CEQA describing and analyzing the significant effects of a project and discussing ways to mitigate or avoid the effects." CEQA Guidelines §15362. An EIR is prepared whenever a public agency finds substantial evidence that a proposed project may have a significant effect on the environment. A "significant effect on the environment" is a substantial adverse change in the physical conditions which exist in the area affected by the proposed project. CEQA Guidelines §15002. The determination regarding significance will, for each potential impact, be measured against an established "threshold of significance" which has been identified in the EIR.

While California courts have recognized various policies to be implicit in the process of preparing and certifying an EIR, it is clear that the basic purpose of an EIR is to ensure that decision-makers, applicants, and the public have a clear understanding of the significant environmental consequences of a proposed project:

"The EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."

County of Inyo v. Yorty, (1973) 32 Cal.App.3d 795, 808-09.

2. What are the City's responsibilities in the EIR Process?

Before it approves or carries out any project that may have a significant effect on the environment, the City must prepare a legally adequate EIR which analyzes the significant environmental effects, identifies alternatives to the project, and discloses ways to reduce or avoid the possible environmental consequences of a project.

The final decision-making body of the City, either the Planning Commission or the City Council, must make the following findings to permit a project for which an EIR has been prepared to proceed:

“(1) The final EIR has been completed in compliance with CEQA; and

“(2) The final EIR was presented to the decision-making body of the [City], and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project.

“(3) The final EIR reflects the lead agency’s independent judgment and analysis.”

CEQA Guidelines §15090.

Even if drafted by a consultant or other person, the City must subject the draft EIR to the City’s own review and analysis and certify that the EIR represents the “independent judgment” of the City. CEQA Guidelines §15084(e).

It is important to note that the decision-making body’s inability to make the above-quoted findings with regard to an EIR is not “fatal” to the EIR. A failure to make these findings regarding an EIR is not the same as denying a project. If decision-makers feel that either or both of the findings cannot be supported, staff and/or the consultant will be directed to remedy any deficiencies in the EIR and present the revised EIR for further consideration.

3. What is a “legally adequate” EIR?

At the most basic level, a legally adequate EIR must contain each of the required elements specified below. More generally, CEQA Guidelines Section 15151 provides the standards for adequacy of an EIR as follows:

“An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.”

A legally adequate EIR must evaluate environmental impacts based on facts and concrete evidence, rather than opinion. The EIR must further provide a reasonably detailed analysis of the project based upon those facts and the evidence. Finally, the EIR must provide conclusions which “reflect the analytic route the agency travelled from evidence to action.” Kings County Farm Bureau v. City of Hanford, (1990) 221 Cal.App.3d 692, 733. The level of detailed analysis and

conclusions based upon quantifiable evidence and facts is essential to "help ensure the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug." Id.

To that end, a typical EIR will identify certain types of potential impacts from a project for study. The EIR will establish "bright-line" thresholds of significance for each type of impact. The thresholds will usually be quantifiable measurements, such as the number of vehicle trips generated per day or per hour, a defined noise level, or a certain amount of a pollutant to be emitted into the air or water. The EIR will then analyze the existing environment and the environment with the addition of the project. If the project will cause an impact that exceeds the threshold of significance, that impact is considered to be significant. For significant impacts, the EIR will then analyze whether feasible mitigation measures can be imposed on the project that will reduce the impact to a level of insignificance.

Members of the public, applicants, and decision-makers occasionally disagree with the standards that make up a threshold of significance. Frequently, those objections are based upon anecdotes or opinions indicating, for example, that a nationally recognized traffic calculation "just isn't right." However, anecdotes and opinion are not cognizable evidence under CEQA, and therefore cannot be relied on by the City. To uphold the purposes of CEQA, environmental impact analysis must be based upon hard evidence and facts, and quantifiable standards. In many cases, the established threshold of significance is beyond the City's control. Air quality impacts, for example, are established by AQMD, and other agencies set standards within their areas of expertise. Detailed analysis based upon facts and evidence helps to ensure that an EIR meets the standard articulated by the California Supreme Court:

"An EIR must include detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project."

Laurel Heights Improvement Ass'n. v. Regents of the University of Southern California, (1988) 47 Cal.3d 376, 404-05.

4. What are the required contents of an EIR?

A. Draft EIR

1. Table of contents.
2. Brief summary, in clear language, of the proposed project and its consequences.
3. Project location.
4. Description of the project's local and regional environmental setting.
5. A discussion of any inconsistencies between the project and an applicable general plan or regional plan.

6. A description of the significant environmental effects of the proposed project, and a description of applicable mitigation measures.
7. Analysis of a reasonable range of alternatives to the project.
8. An analysis of "growth inducing impacts."
9. An explanation of effects determined to be insignificant.
10. A list of all agencies and persons consulted.
11. An analysis of cumulative impacts.
12. An analysis of economic or social effects related to the project's environmental effects.

B. Final EIR

1. Draft or revised draft EIR.
2. Comments on draft EIR, either verbatim or summary.
3. List of persons, organizations and public agencies commenting on the draft EIR.
4. City's responses to comments.

5. **What are the consequences if an EIR is certified which identifies one or more significant effects?**

If the EIR identifies one or more significant effects, the City must make one or more of the following findings, supported by substantial evidence in the record, for each identified impact before it determines to approve a project:

1. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect.
2. Necessary changes or alterations are within the jurisdiction of another public agency, and not the City, and such changes have been or can and should be adopted by the other agency.
3. Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

CEQA Guidelines §15091.

After considering the final EIR and making one or more of the findings above, the City may decide whether to approve, conditionally approve, or deny the project. However, the City may not approve a project for which significant environmental effects have been identified unless it finds:

1. The project as conditioned will not have a significant effect on the environment;

or

2. The City has:

(a) Eliminated or substantially lessened all significant effects on the environment as shown in the findings above;

and

(b) Determined that any remaining unavoidable significant effects on the environment are acceptable due to "overriding considerations."

CEQA Guidelines §15092.

Thus, before the City can approve a project, it must mitigate all significant environmental effects. For any "unavoidable" significant effects which remain after all mitigation measures have been applied, CEQA requires that decision-makers balance the benefits of a project against its unavoidable environmental risks. If the City determines that the benefits outweigh the risks, a "Statement of Overriding Considerations" must be adopted before a project can be approved, and must be included as part of the record of the decision.

6. **What is the relationship between a decision to certify an EIR and a decision on the merits of a proposed project?**

The two decisions are totally separate. With regard to the EIR, decision-makers are asked to certify that the EIR has been prepared in compliance with CEQA, and that it has been presented to and considered by the decision-makers in conjunction with their review of the project. **A decision that an EIR is legally adequate does not control the decision-makers' discretion to approve or disapprove the merits of the project.** CEQA Guidelines §15121. The legal standards and findings required to certify an EIR are completely separate from those standards and findings which must be considered in connection with an application for a land use approval. However, the data and analysis in an EIR can constitute substantial evidence on which the decision-makers are entitled to rely when considering the merits of the project. CEQA Guidelines §15121(c).

Thus, a decision-maker is not necessarily required to find that a project is compatible with its surroundings simply because the EIR does not identify any unmitigated significant environmental effects. A decision that a project is not compatible might be supported by significant effects identified in the EIR such as noise, traffic, and light/glare. However, the conclusions in an EIR do not control the discretion of the decision-maker.

I hope that this memorandum provides a useful overview for you. Please do not hesitate to contact Gregg Kovacevich or myself should you have any further questions.