APPLICATION OF ENVIRONMENTAL ASSESSMENT PROCEDURES AT THE LOCAL GOVERNMENT LEVEL

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ABSTRACT

Analysis of urban development and its impact at the individual project level involves translating the philosophical intent of planning theory and known technical standards into a process which helps to ensure the highest quality of development possible. This thesis examines the environmental impact guidelines as required by the California Environmental Quality Act (CEQA) as a tool of systematic analysis for determination of compliance with good planning and design criteria for application at the local government level.

A description of the environmental requirements of CEQA, how it is commonly implemented at the local level in Orange County, and a discussion of its advantage and disadvantages as a planning tool are presented.

The major findings of the thesis are:

A. Present EIR requirements of CEQA can represent an effective means of systematic analysis of project design if properly implemented.

B. CEQA requirements provide cities with the legal framework to require developers to present all relevant data by which to evaluate a project and affect change.

C. Public participation in the decision-making process can be greatly enhanced and becomes a meaningful tool for determining community needs through the EIR process.

D. While governmental control and public participation are increased, it is often at the expense of increased costs of development due to higher overhead and lengthy delays.

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INTRODUCTION

Translating planning theory and good design principles into physical reality has always been made difficult by the practical aspects of economic limitations on the developer and legal restrictions of government. Public agencies have seldom had the staff, expertise, or legal resources to demand or require a developer to design and build projects in the best interest of the community rather than mainly a profit motivation. A major drawback in most states is that the responsibility is put on the local agency to develop the criteria to analyze a project. The government agency is the one which must produce some evidence of a problem before the developer is required to modify his plan or provide other alternatives to his proposal. The burden of proof has been the responsibility of the city. This thesis will explore the impact that the California Environmental Quality Act had in Orange County in creating a situation where it is the responsibility of the developer to prove his project will not adversely impact the environment or community. By requiring submission of an environmental impact report and the accompanying review process, the project could be thoroughly analyzed, alternatives and problems identified, and mitigating measures presented. It is the author's contention that this process as applied in various Orange County cities constitutes a highly effective means of systematically analyzing a problem and has greatly assisted in ensuring that good planning and design principles are translated into physical reality.

To better illustrate the above premise, the author has utilized the example of Tustin, a small Orange County city where the size of the staff and heavy

workload bring out the importance of having a thorough and logical manner of analyzing projects which may effect the urban area involved. An example is presented in the discussion of the Packer's Square project to show how the elements of the EIR are structured to deal with the many varied and complex urban problems of traffic circulation, land use compatibility, demand on public services, long term impacts on the community, etc.

The author has chosen to explore this topic in this particular manner because of his exposure to the planning process in various regions of the United States, and his belief that processes and techniques used in Tustin and made possible by CEQA can be employed successfully in almost any political or economic climate.

It is hoped that the author has created a document which will be useful to others in the planning field and perhaps assist in the development of techniques where good design and sound judgment can be incorporated into the planning and review process. The translation of theory into everyday practice is one of the hardest, but most worthwhile goals a planner can strive for. Considering that his profession is less of a science than an art, the development of effective implementation tools is critical.

HISTORY AND INTENT OF CEQA

In 1970 the California Select Committee on Environmental Quality prepared a report entitled "The Environmental Bill of Rights."[1] This report was a status report on the current state of the environment in today's society and outlined a series of recommendations aimed at correcting the existing conditions and trends.

The two most important recommendations implemented were the creation of the Office of Planning and Research (OPR) and the adoption of the California Environmental Quality Act of 1970 (CEQA). While CEQA has become the foundation for environmental protection in California, the importance of OPR is seldom fully realized. Not only has this state office shaped environmental goals and policies of statewide impact, but it has also been responsible for the creation of the recently published "Urban Strategy."[2]

The Office of Planning and Research, formerly a division of the State Finance Department, was elevated to an independent state organization reporting directly to the Governor. OPR was given "primary responsibility for shaping environmental policy and its implementation."[3]

OPR's most important functions are as follows:

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1 - California Office of Planning and Research; Environmental Bill of Rights, Sacramento, CA 1970

2 - California Office of Planning and Research; Urban Strategy, Sacramento, CA 1978

3 - California Office of Planning and Research; Environmental Goals and Policies, Sacramento, CA March 1972

1. To assist in formulating long range goals and policies for land use, population growth and distribution, urban expansion, open space, and other factors which affect state development and environmental quality.

2. To assist state departments and agencies in preparing functional plans in such areas as transportation, water development, open space and recreation in line with overall state planning objectives.

3. To regularly evaluate plans and programs of state agencies which affect state planning and to make recommendations when needed.

4. To assist the Department of Finance in preparing the State Budget as it relates to implementing state functional plans and statewide environmental goals in order to better integrate planning and budgetary functions.

5. To coordinate development and operation of a statewide environmental monitoring system to pinpoint emerging problem areas or threats to public health, natural resources, and environmental quality.

6. To coordinate state research that relates to growth and environmental quality and to advise the Governor, his cabinet, state agencies, and departments, and the Legislature.

7. To assist the Council on Intergovernmental Relations in coordinating provision of technical aid by state agencies to assure consistency with state environmental policy.

8. To coordinate with state, regional and local agencies for development of objectives, criteria and procedures for evaluating public and private impacts on environmental quality and to guide the preparation of environmental impact reports by state and local agencies called for under the California Environmental Quality Act of 1970.[4]

The above eight functions represent one of the most comprehensive and far reaching sets of responsibilities an agency can undertake. While many state offices are responsible for assisting in the formulation of long range goals and policies for land use and other environmental issues, the Office of Planning and Research has aggressively pursued a course of action designed to implement its long range goals and policies for land use and environmental quality. By setting forth the guidelines for local units of government to utilize for environmental impact reports, the state has exercised great influence over the type and design which occurs in a community.

While suffering many setbacks on the political front, the Office of Planning and Research has achieved significant victories. Not satisfied with simply trying to assist or coordinate activities on the land use and environmental scene, the Office of Planning has made many of its requirements and policies mandatory upon business and local government. The updated and expanded environmental impact report requirements represent only one portion of the activities in which the Office of Planning and Research

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4 - Annual Report of the Office of Planning and Research, published by California State Office of Publications (1972)

has become involved. Over the last two years this agency has also produced a set of regulations requiring that a local agency adopt an updated housing element of its general plan, which includes a housing assistance plan. This housing assistance plan also requires a coordination with regional housing goals, as well as consideration of the recently announced urban strategy for California requiring the infilling of existing urban areas. The state's allocation of 701 Planning Assistance Grants has also been used to give local communities an incentive to direct their future growth to coincide with the aims of these regulations of the Office of Planning and Research. These requirements for a housing assistance plan in the housing element and the Governor's Urban Strategy have caused some resistance at the local level. Despite many efforts designed to weaken OPR's goals, the state has had a significant degree of success. In the future, the local agencies are anticipating the state to become more involved in the 208 Water Quality Planning efforts and the placing of more power and responsibility with the Councils of Governments within the state land use and environmental quality goals; however, it is being done at the expense of local controls and some degree of self-determination.

In analyzing the significant progress that OPR has made, it is important to realize that it was able to do so by proposing legislation at the state level where special interest groups like the League of Cities and environmental groups were able to influence legislators. Many of the actions imposed at the state level would have been impossible if attempted at the local level because of differing power structures.

At the local level the elected officials often are businessmen in the community who are dependent on their fellow businessmen for their own economic and political survival. For a businessman serving as a local elected official to advocate a detailed and costly review process would be contrary to the economic welfare of his peers and, perhaps most importantly, could prove counterproductive to his own community. Obviously, if Community A has a very lengthy and costly review procedure, development may tend to seek out Community B where the review process is nominal and not viewed as an obstacle.

Perhaps one of the major reasons the environmental impact report process has been so widely accepted, is that competition is minimal because growth is so widespread. Few Orange County cities ask how they can attract new business or industry. The issue has become one of managing all the problems this new growth has caused.

The basic requirements of an EIR have been greatly expanded since CEQA was originally enacted. The courts and legislature have played a major role in redefining what an EIR is, is not, and what it should be. This expansion of the contents of an EIR, as required by the state, represents both a refinement of the assessment process after time and experience, as well as the realization that more detailed information must be utilized. The contents of an environmental impact report, as required by the state, were adopted by the City of Tustin and incorporated within its environmental guidelines. The expanded environmental impact report regulations, drawn up by the Office of Planning and Research, reflect their continued

effort to ensure that the environmental assessment process is as meaningful as possible. Projects which have statewide impact, and therefore require that the state be the lead or chief coordinating agency, often require environmental impact reports of several hundred pages in length. Examples of these types of projects would include a new highway, or a dam and reservoir project. The majority of the projects on the smaller local scale do not require as much detail. Typically, the EIR's for a local unit of government are for such items as the creation of a new residential subdivision, a street widening, or a rezoning, the vast majority of which are projects of a relatively small size involving only a few acres or less. Translating the existing and updated requirements of CEQA to the smaller scale local level is a continuing problem for communities. Many areas of the state still do not follow the state guidelines and even ignore the fundamental requirements of the environmental laws. Other communities only go through the motions of CEQA compliance and may ignore the actual findings of the environmental analysis. This problem was recognized as being widespread by the Council of Environmental Quality which noted, "Too many environmental statements have been deadly, voluminous, and obscure with too much space devoted to description rather than analysis of impacts and alternatives".[5]

5 - Sixth Annual Report of the Council of Environmental Quality
U.S. Printing Office, Washington, D.C. 1973 - p.632

THE USE OF EIR'S AS AN ASSESSMENT TOOL

In the Planning process prior to CEQA, it usually fell on the local government to ensure that a project did not adversely impact the community or its environment. Unfortunately, very few local governments really had the time, the staff, or the expertise to evaluate fully the impact of any development on the community. Local government was often put into the position of trying to prove that the project might have an adverse effect or needed some type of modification. Also, with the exception of a few communities, most local units of government did not have standards that apply to other than zoning and building concerns. Because of this, a developer usually could be aggressive in seeking approvals for his project since there were no standards by which to judge the detrimental impacts of that development. Oftentimes, the elected officials had little desire to seek out means to delay development which meant economic growth and jobs for a community.

Typically, a developer would bring in his project, and if it met the zoning and building code requirements, he could not be refused a permit to build. Consequently, except in cases where there was public concern and outcry. projects were often built without sufficient review of all aspects of a development. The negative aspects of a development seldom were known until after it was completed and thus, too late to do anything about them.

In pre-CEQA days, it was the local unit of government which was on the defensive. Unless it developed its own tools of analysis, it was left

with very few options with which to react or require changes in a particular type of development. The developer, on the other hand, was in a position which did not require that he bring out the potential negative aspects of his development unless it was in violation of some health or safety aspect of the existing governing state or local code already on the books.

Under CEQA and the mandated EIR process, a more or less uniform methodology for reviewing projects and establishing the requirements was imposed by the state. It was required that the proponent of a project document and publish information that was in sufficient detail to allow the local officials and their staffs to analyze what the impact would be on that community. The EIR process has represented a major step forward for planning at the local level. It has helped provide the community at large the means to study and analyze development impacts in an orderly and logical manner. Now it is the city which is on the offensive in the sense that it can require the developer to provide all the information necessary to make a complete and thorough analysis of all aspects of that development. The developer, on the other hand, can no longer as easily hide the negative aspects of his project. He can be forced to identify and mitigate the adverse impacts that his project might have prior to undertaking the development. Further, it has also meant that people can now participate to a greater degree and have an opportunity to be made aware of projects which might adversely impact their neighborhood and the area in which they live.

The environmental impact review process has had its drawbacks. The most serious of these is obviously the major expenditure of time, money, and

staff resources in reviewing draft EIR's, and research in preparing an analysis for the public and local agencies to review before granting final approval.

Developers often argue that because of this extra review process, a very costly and unnecessary imposition or red tape and delays has occurred, which results in very minor changes in the overall design. They, in turn, are forced to pass on new and added costs caused by changes or delays which makes that cost of development more expensive for everyone.

Developers point out that projects that fully satisfy the intent of CEQA and are agreed to by all parties to be of no significant harm, can be delayed for months simply by meeting the legal technicalities of filing a Declaration of Negative Impact, going through the review process, and getting a clean bill of health from a community.

Time delays of several months can add five to ten percent, or more to the cost of a development due to labor and material costs affected by inflation, loss of time during prime building season, need for interim financing to hold the land while governmental requirements are satisfied, etc. While it is commonly understood that the developer passes on these costs, it is also true that this process tends to eliminate the financial resources to absorb the "front end" costs of development. This elimination of small competition allows larger developers to demand higher profit margins to cover the cost of the risk they are taking.

In preparing an EIR, there are basically two approaches employed by applicants/developers. One is the type of environmental impact report

which seeks to overwhelm the reviewer. Vast amounts of information are provided, but often this represents little more than technical window dressing to give the appearance of validity of the statements made. If a document is too voluminous, the staff doing the review is forced to devote either an excessive amount of time to analysis, or is likely to become discouraged and not perform an in-depth review. While the developer's aim might be to discourage the reviewer and thus have possible shortcomings passed over, the city staff can require a redrafting of the EIR into a format which addresses the issues in a more concise manner. In a case where a project is not large enough in scope, a focused EIR which concentrates on specific key issues, is often required in liew of a full-scaled EIR. In this way the staff is able to address the key potential adverse impacts and ensure that they are considered and not passed over by some superficial analysis. The finished written document often does not reflect the hours of discussion and negotiations that go on between members of the city staff and the developer in trying to work out alternatives and identify the key problem areas.

The second type of environmental impact report, which is most common, is the one which is a very brief statement of the proposed development and its potential impacts. Usually, these are prepared by the developer himself, with some assistance from professional consultants familiar with environmental impact assessment procedures. The document may omit significant impacts or avoid issues which are detrimental to the developer's cause. These documents may be so inadequate at times that the staff can require the developer to pay for the city staff to prepare the EIR or contract with another consultant to have it prepared. There is, of course, a

natural tendency on the part of a developer to prepare an EIR which presents his project in the most favorable light. It can be expected, in cases like that, that some adverse impacts will be omitted, and the degrees of other adverse impacts will be minimized. Beneficial impacts are given the most exposure. As an example, in the case study presented in the Appendix, the developer stresses the beneficial impact on property taxes and the generation of more economic activity in the city. The adverse noise and traffic impacts, on the other hand, are addressed, but minimized by the consultant.

The "give and take" that takes place between the developer, staff, and public officials takes on more the traditional aspects of compromises, horse trading, and concessions by both sides. But one key factor that exists is that in pre-CEQA days the public officials, unless they had enacted local controls, did not have the law to fall back on. Very few tools have been as helpful to local officials than to be able to say, "I cannot let you go ahead without providing solutions to these problems you are creating. If I do, I violate state law (CEQA) and have the wrath of the public on me, who see me as failing in my responsibility."

Both staff and public officials have the leverage of being able to say that even if they wanted to, they could not ignore a problem because they would be violating state law. The environmental impact issue has, thereby, become, in many cases, an effective bargaining tool. True, many public officials do ignore the requirements of CEQA, but the law remains as a sort of hidden bomb since ignoring CEQA requirements means that at some later

date impacted parties may go back and review the record to determine if state law was complied with. If not, both the local unit of government and the developer could face significant liabilities.

In the state guidelines for CEQA, the Office of Planning and Research has specifically provided that an EIR may not be used as an instrument to rationalize approval of a project. Originally, these guidelines were set-up to prevent local units of government from preparing an EIR for a Public Works project in such a manner as to hide any negative impacts which might create the need for additional costly mitigating measures. Local units of government, such as Tustin, have adopted the same rationale and try not to allow EIR's to become propaganda instruments for the developer. The format of the EIR is set-up so that the document can be presented in as objective a manner as possible.

While developers often complain about the delays that the EIR process causes, additional criticism has come from the environmental forces which claim that the EIR process really only concentrates on certain physical characteristics of a project and that long-term social and economic impacts are seldom given the treatment they deserve. The EIR process is somethimes criticized because EIR's, being fairly simplistic in nature and in practice, seldom study more than one or two true alternatives. These environmentalists often claim that the EIR is viewed as an end in itself, and attention is focused more on meeting the requirements of the guidelines than on working out a development plan which is in the best interest of all. While these arguments have a degree of validity, the

biggest problem that faces the staff, is the fact that there is really a lack of expertise and time available to do an in-depth social or economic analysis -- especially projects of such a small scale where the impact may only be incremental in nature. Commonsense dictates that staff use the EIR to get to the heart of a problem without turning the EIR process for a single project into a drawn out and time-consuming affair.

As with any set of procedures or processes, the effectiveness of that procedure depends on the people who administer it. In the case of the City of Tustin, the City Council and Planning Agency have attempted to develop procedures which ensure that the most complete analysis practical is provided. Still, it is largely up to the staff to provide the analysis upon which the City Council or the Planning Agency bases their decisions.

Small cities with limited staffs often have to rely on the state or regional planning offices to provide information and expertise. In Southern California, many smaller units of government turn to SCAG (Southern California Area Council of Governments) for assistance. The Office of Planning and Research continues to be the leading source of assistance to local units of government by providing the format with which to do reviews as well as methodology for analysis.

While the environmental impact process has its drawbacks, it is still recognized as being a useful tool in meeting the communities' needs for good planning. Like any tool, it is subject to political pressures and

the personal prejudices of a particular official. Environmental impact reports can be distorted to serve the interests of a particular group or a particular point of view. For example, in a conservative growth-minded community, environmental aspects may be minimized or ignored. On the other hand, some communities dominated by environmentalists sometimes place their sole concern on the potential environmental impact and have little concern for the social and economic needs of a larger population base. In any event, the requirements of the California Environmental Quality Act as exemplified by the Environmental Impact Review Process, have represented a major step forward in implementing good planning principles.

Perhaps the most meaningful aspects of CEQA has been the way in which it has been implemented by the state and local units of government. In the beginning it was not altogether clear to what CEQA applied.

The first major clarification of CEQA and its requirements came in a court battle in 1972. The case, Mammouth vs. Mono County, helped set the ground rules for local government in that the courts clarified that CEQA indeed did apply to most forms of public and private development. In its opinion the court stated:

"We conclude the Legislature intends CEQA to provide the fullest protection to the environment. We also conclude the Legislature intended this to include all private activities requiring government permits."[8]

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8 - Friends of Mammouth et al vs. Board of Supervisors of Mono County et al; 8 Cal 3d 247 ; 502 P 2d 1049; 104 Cal Rptr. 761 (1972).

While this established the mandate, where was the line to be drawn? If a "project" as defined by the court was anything with "a significant effect on the environment" did this mean all building permits required an EIR? Assembly Bill 889 approved by the California Legislature a year later clarified local government's role by distinguishing between discretionary and ministerial acts,[9] (i.e., building permits). Examples of discretionary acts are:

a. Amendments to zoning ordinances
b. Issuance of variances
c. Conditional Use Permits
d. Approval of Subdivision Maps

Local units of government have greatly expanded their interpretation of the law to reflect their own community attitudes. In Orange County, in particular, the CEQA requirements have been largely adopted by local governments as applying to all projects that are large scale in nature regardless of the fact that by zoning they are an outright permitted use.

9 - Land and the Environment prepared by Sedway and Cooke, William Kaufman, Inc., Los Altos, California, 1975; p. 98.

IMPLEMENTATION OF CEQA AT THE LOCAL LEVEL

While the state mandated guidelines for environmental impact reports set down all the basic criteria for an EIR analysis, it is still necessary for the local unit of government to implement those guidelines in the most feasible manner. In some of the larger cities of California, entire divisions of the planning department are devoted to the preparation, review, and analysis of environmental impact reports for public and private developments. Los Angeles County alone has in excess of 35 people assigned exclusively to EIR preparation and review. Smaller cities such as Tustin, which have limited staff to begin with, often lack the specialists in the environmental field to do the preparation and review work. In a city like Tustin, each member of the planning department, in effect, takes on the role of a jack-of-all-trades. Cities in the urbanized areas recognize, however, that they must make some provisions for meeting the requirements of CEQA and, therefore, it is quite common for cities to have adopted policies or ordinances requiring local developers to pay the cost of having the EIR prepared by a private consultant or another public agency. Typically, in the smaller communities, there are fewer EIR's to be reviewed, so many can be handled by the staff with assistance, from time to time, from an outside public or private consultant.

In the smaller rural communities in the mountain and desert areas of California, the EIR requirements are often handled by a laymen in the planning agency, and many times the EIR requirements for public or private projects may be ignored altogether. State enforcement of CEQA has been

most noticeable in the growing urbanized areas where a project of statewide impact has been involved. Overall, however, the implementation of the requirements for CEQA for environmental assessment have been largely accepted and are in use by most local units of government.

From other cities surveyed, Tustin's procedures for environmental impact reports and their contents are typical of those found in the urbanized areas of California. While the requirements for an EIR fall into various categories for public and private projects, the vast majority of projects requiring an EIR, in the case of a city like Tustin, fall into the following categories:

1. Private Developments - including residential, commercial, and industrial developments which require a rezoning, a planned unit development, or a change in density. (This type of development represents approximately 50% of the environmental assessments by the city). Tustin, as a fast growing community, has seen much vacant land being proposed for rezoning in order to increase the density or change land uses from residential to commercial (or vice versa). The environmental impact assessment has been used in those cases to ensure that the proposed land uses would be compatible and that such concerns as noise, traffic, and aesthetics are adequately addressed.

2. Public Works Projects - usually, the environmental impact requirements for public works projects are mandated by the states because

some form of state or federal assistance is involved. The contents of an EIR required for obtaining state financial assistance are rather uniform in nature, and most of the information which is contained in them is directed toward the basic concerns of noise, increased traffic flow, and impact on land patterns.

3. Annexations - in the case of Tustin, where annexations represent a large effort on a part of the city, an EIR for an annexation of inhabited or vacant land is prepared on an average of five to six times per year. (The majority of the Tustin EIR's for annexations are designated a "Negative Declaration." A negative declaration, in effect, is a statement that there is no adverse impact on the community as a result of the annexation because the land is already developed. In the case of a negative declaration, an initial study of the impact is still required).

Unlike EIR's at the state level where broader questions of species preservation or long-range air quality impact may need to be addressed, the EIR's for local units of government usually dwell on the design aspects of a project and what the direct or indirect impacts of that will be. The scale is usually limited to the confines of the city itself and usually just one neighborhood. Consequently, a city, such as Tustin, concentrates its time and effort in the assessment process looking at the design of the project, and the possible design alternatives, rather than dealing with a host of theoretical or philosophical issues which often are addressed on the state level.

It really comes down to a question of scale, unlike a major hydroelectric dam project which affects an entire watershed, ecological system or social and economic make-up of a region. Cities are often faced with the problem of whether an apartment complex or a shopping center is the best use of a piece of land; or on a smaller scale, where should the driveways be located on a development in order to minimize noise or traffic intrusion into a neighborhood.

Bringing environmental issues down to a local scale also means that local government must deal with those problems not outlined in the intent of state law, such as the political influence of developers or landowners, or the limitation of time and expertise facing public staff. It is an old, but very true saying, that "the feds have all the money, the state all the power, and the cities all the problems." And when it comes to environmental issues, it is just as true that the power (and responsibilities) handed down by the state to cities requires they have adequate means to exercise that power as it was intended to be used.

The role of the community development director in the EIR process is one of not only interpreting the EIR requirements as set forth by CEQA, but also in administering them in a manner which is within the physical and professional capabilities of the staff, as well as in a logical framework as to the scale of development being examined. Oftentimes the director will use his discretion in enforcing the requirements of CEQA. For example, if it is possible to identify the major issues of concern and deal with them before a development is designed, it may be possible to

eliminate the need for a costly and time-consuming environmental impact report. A common technique used in many cities where a project is believed to have limited adverse impact and the mitigating measures are known, is to have an initial study prepared and within that study identify various mitigating measures which will be incorporated. If the developer agrees to these, then a long and drawn out process could be avoided. This, of course, assumes that the staff is able to perceive accurately the potential adverse impacts and the most desirable mitigating measures. It also calls attention to the fact that the local units of government, through their staffs, have wide discretionary powers in the way they implement the environmental assessment procedures.

To a developer, time is money and if he can "negotiate" an environmental clearance with the staff, he is likely to save many months of public hearings, reviews, and other delays that could make the difference between a profitable project or no project. This leverage held by staff is a potent tool, if used widely. It underlines the importance of having well trained and experienced staff to regulate development. A planner who has "people skills" will be much more effective in accomplishing environmental goals than one who is knowledgeable of the law, but must continually use it as a club to obtain grudging compliance.

In theory, the environmental review process requires the disclosure of facts that will lead to intelligent decisions about how developments should or should not occur. In his book on environmental assesments, Joseph Rodgers, Jr. pointed out that an "EIR is an analysis of probable

consequences, a neutral findings of fact. The assumption is, full disclosure will change actions of public bodies."[6]

This is, of course, not always the case. Land use and environmental issues operate in a political field, which by the very word implies that different values and priorities are being set and influence the interpretation of an EIR's findings. This potential abuse of the intent appears in many decisions, but serves to emphasize the fact that the world is made of many parts and environmental issues cannot be set aside as a single issue when the concerns of social impact, economics and politics play such important roles.

This does not imply, however, that environmental issues can be ignored by a decision of the public body to disregard pertinent findings or conditions. The courts have already established at the federal level that environmental impact statements must be given due consideration.[7] Legal decisions in California support the notion that EIR's are to be given proper weight in the decision making process.

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6 - Rodgers, Joseph Jr. - Environmental Impact Assessment, Growth Management and the Comprehensive Plan, Ballinger Publishing Co., Cambridge, Mass. (1976) p. 66

7 - Mills, Edwin - The Economics of Environmental Quality, Princeton University, W. W. Norton and Company, Inc., New York (1978) p. 200.

CITY OF TUSTIN IMPLEMENTATION PROCEDURES FOR CEQA

The following procedures are used by the Community Development Director of Tustin in determining whether or not all the requirements of CEQA have been met. They are typical of those applied by most cities in California and reflect CEQA standards.

Pre-application Determination of Status

Before an application for a use permit, rezoning or other form of approval is granted, the director or his assigned staff person determines the status of the project, which usually falls into one of the following categories:

1. Not covered by CEQA;
2. Categorically exempt as determined by the State Resource Agency in its guidelines;
3. A ministerial project exempt from CEQA (i.e., building additions, repair or maintenance projects, etc.);
4. An initial study is required to determine status. (First step in filing for a Negative Declaration);
5. Project will clearly have a significant effect upon the environment, and EIR needs to be prepared.

While the community development director has some discretionary powers in interpreting local ordinances, a citizen has the right of appeal directly to the city council if he is dissatisfied with the director's determination in any area.

Negative Declaration Requirements

In the event the director determines that the project may be qualified for a Declaration of Negative Environmental Impact, an initial study is prepared.

This document contains a series of basic questions filled in by the applicant and is designed to identify key areas of concern.

After review of the initial study, the director may make any of the following determinations:

1. An EIR shall be required;
2. A Focused (or limited content) EIR only will be required;
3. Project qualifies for Negative Declaration;
4. A Negative Declaration may be granted upon the agreement of the applicant to mitigate certain measures related in the initial study or its analysis.

If a Negative Declaration is issued, each of the affected agencies is notified. Agencies usually affected include county, school district, and special districts for sanitation, water, utilities, etc.

Often, if an adverse condition exists which has not been mitigated, it is appealed at that point by that agency, thus assuring that the issue of concern is addressed in some form in an environmental document.

Environmental Impact Reports

When it has been determined that an EIR is required, the community development director sets the scope of the EIR. Usually it is purely an application of the state mandated guidelines discussed in the following sections. However, a focused EIR may be in order, if only one or two areas of concern exist, such as traffic and noise, aesthetics or housing density.

Requirements are usually discussed with the applicant, an EIR consultant (in the case of large projects), and the city staff. The use of a specialized consultant is preferred for two reasons:

1. The developer saves time because the consultants usually have the expertise to have the draft EIR prepared with minimal revisions since they usually know what the city staff is interested in reviewing.

2. The city benefits because the consultant is usually more attuned to city concerns and the consultant must be more objective or his credibility will suffer on future projects.

After the draft EIR is submitted and distributed to all affected local agencies and/or city departments, the EIR is set for a public hearing, which can be no less than 30 days nor more than 90 days from submission.

The 30 days is usually the accepted time for a public hearing. During

that 30 days each affected agency may respond to the draft EIR and raise questions or concerns which must be answered by the applicant. The public also has the right to have all written questions answered by the applicant. Once it has been determined that all significant areas of concerns have been addressed, the city council or planning agency may certify the EIR. Usually certification does not occur at the first public hearing, but may require a two to four week delay while all questions are answered by the applicant.

The environmental review process has become an ingrained part of the overall planning and review process, so that in nearly every report or communication to the planning agency or city council its CEQA status is identified as follows:

1. Project is categorically exempt from CEQA;
2. Negative Declaration has been issued;
3. Draft EIR is being required;
4. City is not the responsible agency so no EIR is necessary for the city to act;
5. An EIR previously prepared covers the project;
6. CEQA requirements have not been determined.

In general, most major projects receive their fullest scrutiny during the EIR review process. The staff and elected officials alike rely on the environmental process to identify problems and alternative means of dealing with problems.

CONTENTS OF ENVIRONMENTAL IMPACT REPORTS

The City of Tustin is typical of the way most California cities have implemented CEQA requirements. Based on a review of other EIR's which have been circulated to Tustin for comments, the author feels that Tustin is representative of most California municipalities in the way that it enforces the requirements of CEQA. Basically, all the requirements of an EIR are mandated by the state, so cities need only translate these state guidelines into a form compatible with the size of their city or the type of operation and staff they have. A city like Tustin, which has an average of 3-5 EIR's or initial studies to review each month, is more demanding in what it requires of an EIR. According to the adopted guidelines of the city, the EIR has to be prepared by a competent individual or consulting firm and the city may require a licensed specialist for such areas as soils analysis, traffic analysis, noise, air pollution, or economic assessment. The degree of specificity or scope of the project is reviewed by the community development director or his/her staff who, in turn, determines whether the project requires a focused EIR or a full scaled EIR. In most cases, a focused EIR is all that is required. For example, most local projects make only a small incremental increase in the total air pollution of the area. Rather than require an extensive air pollution analysis, the city often accepts a projection by the Air Pollution Control Board as to what impact the proposed development might have. The city's EIR requirements are nearly identical to those required in the state guidelines and, in most cases, are most specific. They are as follows:

1. Name of applicant, addresses, persons preparing EIR.

2. Abstract - Usually an "Executive Summary" type document is prepared covering the major areas of concern. On a practical basis, this is often the only portion of the EIR the planning commission, city council, or public ever reads.

3. Location and Character of Project

   A. Location

      1) Detailed location map;

      2) Identities of all owners;

      3) Description of all existing structures, uses and features of property under review.

   B. Statement of Objectives

      This provides the applicant the opportunity to explain the purpose of his project and any details not covered among the other requirements of the EIR.

   C. Statement of Project Characteristics

      This section serves as a broad overview of the function of the project as presented by the developer.

4. Existing Environment

   A. Description of Environmental Setting

      This is meant to provide an overview of the region or community the project will affect. Because of numerous EIR's reviewed, this has become almost a "boiler plate" item. An area map and brief explanation usually suffice.

B. Historical Background

This section usually only becomes relevant if some existing structure or feature is to be disturbed. For state certified projects, a letter of review and approval is required from the State Historical Office. To date, no Orange County cities have rejected a project on a purely historical preservation basis.

5. Physical Description of Proposed Project

A. Structures and Land Form

This section usually takes form of an air photo accompanied by a written explanation where needed. In the case of Tustin, most land being developed is agricultural in nature and therefore, generally flat with few distinguishing features.

B. Energy Matters

Energy consumption has become an increasingly critical area of concern and receives a greater degree of attention from the utility companies than was the case in past years.

6. Socio-Economic Characteristics of Project

Basically, those items covered would include the following:

A. Estimated population density and demographic make-up;

B. Recreation areas and services;

C. Open space provisions;

D. Compatibility with adjoining uses;

E. Landscaping and aesthetics of project;

F. Cost of project and improvements;

G. Economic effect on community;

H. Impact on Public Services (such as fire, police, recreation, etc.);

I. Impact on Tax Base;

J. Conformance with Zoning and General Plan of city.

7. Significant Environmental Effects of the Proposed Project

Usually the community development director determines what should be covered under this section. This also is the most amended section of the EIR since those agencies responding to the EIR usually take exception or request elaboration on some portion of this section.

The most frequently covered areas are: traffic, noise, demand on public services, compatibility with adjacent land uses. All of these are definite concerns of the city and public, but seldom were adequately addressed in comprehensive form under pre-CEQA planning processes.

8. Any Significant Environmental Effects which cannot be Avoided if the Proposed Use is Implemented

Basically self-explanatory, this section is meant to bring to light those adverse effects which will permanently change the existing environment.

9. Mitigation Measures Proposed to Minimize the Significant Effects

Mitigating measures constitute the area of greatest interest to the city since it is here that the opportunity exists to require the developer to address the question of whether or not his proposals are sufficient. For example, a large stand of trees which provide screening and visual beautification may be lost and the developer proposes to replace them with a more generous number of trees in his landscaping plan. Unfortunately, the replacement trees are usually of the 15-gallon size which will require decades of growth to achieve the same impact of the existing stand of trees.

The city, through this section, can require a more meaningful mitigation of the tree loss by requiring some specimen size trees as well as a more extensive landscaping plan.

10. Alternatives to the Proposed Action

Usually in private developments, the applicant will list three alternatives; (a) his development proposal; (b) a more intensive one; (c) no development at all. Except in cases where the compatibility of land uses or the city's overall land use plan is involved, this section is not usually a major item in the EIR process. This is due mainly to the overriding belief that the property owner does have certain property rights which are within his prerogative when it comes to development of land. His right to development is never questioned, but his type of usage is subject to review.

11. Relationship between Local Short-term Uses of the Environment and the Maintenance and Enhancement of Long-term Productivity

This section is meant to address the following concerns:

A. Description of cumulative effects over the long-term;

B. Sponsor's justification for development now versus exploring alternatives at a later date;

C. Short-term gains versus the long-term impacts.

This is a recently adopted section of the CEQA requirements and, to date, has not been fully developed or used at the local level.

12. Any Significant, Irreversible Environmental Changes

This section addresses changes in the environment and such areas as consumption of energy, raw materials, and land. It is often seen as a duplication of #8.

13. Growth Inducing Impact of Proposed Action

Many projects could have a triggering affect on an area. For example, a new shopping center on a previously vacant parcel could serve as a catalyst for additional residential and commercial growth. This has a corresponding effect on the city's ability to provide public services and capital needs for the area.

14. Water Quality Aspects

Normally the county's 208 Water Quality Office is asked to provide an appropriate evaluation of the project's needs and impact.

15. Effects Found Not to be Significant

Impacts believed to be inconsequential by the applicant or the community development director are listed here, but are subject to challenge if the public or another affected agency wishes to have them addressed.

16. Organizations and Persons Consulted

Any and all public agencies, consulting firms or private parties contacted in the data gathering or analysis process of preparing the EIR are listed here.

The above elements of an EIR, as required by the City of Tustin, closely reflect the requirements of the state guidelines in the actual preparation of an environmental impact report. The size of the EIR, whether it be a full scale environmental impact assessment or a focused EIR, may range in the size from 15 pages to over 300 pages. Normally, projects which are rather small in scope, but might have an adverse impact, can be handled through the initial study or negative declaration process. Under this process, mitigating measures can be worked out with the staff and incorporated into the negative declaration. In this process, it is not required that the negative declaration go to a public hearing, but it must be acted upon by the planning agency or city council in a public meeting. The advantage of the initial study or negative declaration process is that it allows the staff to exercise the full powers and strengths allowed for in CEQA without requiring lengthy and expensive documentation by the developer and analysis of the staff.

This is preferable to a long drawn out process that costs everyone time and money for issues that could be better resolved to everyone's benefit in a timely manner. In fact, the growing concern in the Orange County area is what role the CEQA requirements are playing in restricting housing opportunities and quality of life for everyone. EIR's that result in reduced burdens on the community as a whole may be doing so at the expense of the individual.[10]

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10 - Brooks, Mary E. Housing Equity and Environmental Protection: The Needless Conflict. American Institute of Planners, Washington, D.C. 1976

CITIZEN INVOLVEMENT IN THE PLANNING PROCESS UNDER CEQA

Before CEQA and its requirements for EIR's, it was unusual for the average citizen to have any meaningful input into the planning process. Often projects which were large in scale and had a significant impact on the environment did not require a public hearing or any other means of citizen review unless a public hearing was requested. It was unusual for the average citizen to know what was going on and how he might be affected, let alone have any significant impact on the final decision made by the planning agency or the city council. Even in those cases where a public hearing was required, the staff's report had usually been written and recommendations made. Unless the citizen had input into the process prior to the writing of the staff report, he was unaware of what those recommendations might be and had little opportunity to understand, much less affect change in the final recommendation.

In his book on environmental assessment, Larry Cantor pointed out that citizens are not likely to maintain long interest spans and their knowledge of the processes is weak.[11] In fact, just in terms of knowing what the statute of limitations on appealing decisions is can be confusing. Depending on the issue, the time period may vary from 30 to 180 days. If the average person was not aware of these requirements, he was left out in the cold on very fundamental rights of appeal.[12]

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11 - Cantor, Larry W. - Environmental Impact Assessment, University of Oklahoma, McGraw Hill Co., New York (1977) p. 222.

12 - Hofferman, Corwin, Ed. - Environmental Impact Assessment, Freeman Cooper and Co., New York (1975) p. 227.

The ability of the general public to participate in the planning process has improved greatly under CEQA. Those projects which require an EIR are required by law to be published no less than 30 days prior to the date of the public hearing, and a copy of the EIR must be available for public comment and review. This noticing and availability of data is far superior to state requirements for zone change notices. This ensures that all interested parties are able to review the EIR and make comments prior to coming before a public hearing. In this way, the citizen is no longer put in the difficult position of having to respond to a staff report seen at or shortly before the public meeting without sufficient time to review and react to the findings. The time factor alone has been an important means of ensuring the public has the opportunity to participate in the planning process. Since the document must be available for viewing for 30 days prior to the meeting, the citizen has time to formulate the questions and responses necessary to help ensure that issues have been adequately addressed or at least raised.

The key element of CEQA and the EIR guidelines is that the final EIR must address all of the questions and issues which have been raised during that 30 day review period by other agencies and the public. In this way, the most important issues cannot simply be brushed aside by an incomplete report or statement. For example, many draft EIR's will state that no increase in city services will be required by a particular type of development. Yet, when an actual review is made of what the impact a development might actually have, it is often found that the

impact will be significant on the city's ability to provide those services.

While in most cases the professional staff picks up on community concerns, the citizen's role is vital to influencing decisions. While most local involvement in any given issue is by those who have a purely self-interest in an issue, under CEQA the citizen has something of a role reversal. Instead of being the subjective individual purely looking out for himself, he is providing input into the EIR process and is a proponent of the environment. What once was viewed as an impediment to progress, has now become the community advocate in many cases.[13]

The sophistication of the citizen has also greatly increased in recent years, as environmental issues, concerns, and strategies have become better understood. On a practical basis, the average citizen's concerns are the same as they always have been. He is most concerned about what effect a new project will be on him, his home, and his neighborhood. He wants to know if property values will be enhanced or hurt, if traffic will be increased, if it will be hazardous for his children to walk to school, and if his now quiet neighborhood will not become noisy. These types of issues dominate the public's concern. These are the most common types of questions and the ones that most need to be addressed. Under the requirements of the environmental impact review process, the average citizen now has a forum to be sure that those concerns are addressed.

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13 - Rodgers, p. 70

Another major benefit to the public and community on the whole is the fact that the EIR process has ensured that the elected and appointed officials have the means of dealing with the public and the developer on a fair and equal basis. While political pressure still plays a large role in the decision-making process, under CEQA a new level of objectivity can be introduced. The EIR document helps ensure that the key issues are identified and are addressed on a factual basis. Prior to that time, it was often difficult for a city council or planning agency to approve a project based on what might be significant resistance from a neighborhood, even though it might be in the best interest of the total community. Under the EIR process, the planning agency or city council has the mechanism by which to identify the community-wide needs and ensure that they are considered along with the specific and subjective local needs of an area. The council or agency has a legal obligation which states that it must act in the best interest of the entire community as opposed to just the interests of a limited area of the city. This, of course, does not preclude the need for those bodies to be sensitive to the needs of the smaller scale neighborhood, which would be more directly impacted by the development. An example of the above would be a street widening where the local residents might resist it on the basis that it would increase the traffic and noise through their neighborhood, yet it may be necessary to relieve overall traffic congestion in the city. Through the EIR process, the planning agency or city council would outline and identify the local and community-wide needs and seek to alleviate any adverse impacts through a variety of mitigating measures.

The environmental impact review process is designed to ask the specific types of questions that need to be addressed. Through this process, the community and the individual citizen now has the most effective means of ensuring that their concerns will and can be addressed. The noticing of all EIR's, the requirement for a 30 day review period, and the requirement that all pertinent questions and comments be responded to before certification of the EIR means that a project can no longer ignore the concerns of the community.

The EIR process has been criticized justifiable in recent years as becoming primarily a tool of delay which is used to run up cost and, thereby, discourage any development at all or force a compromise. While some community groups have become effective in the use of the powers of CEQA for community betterment, too often CEQA is used as just another political tool to accomplish the aims of a special neighborhood group opposed to change.

One of the most important tools the citizen has is the legal standing it provides a community or neighborhood in challenging a decision of government when a project is approved. If that decision or the criteria for approval are not reasonable and sensitive to the environmental concerns as presented in the findings of fact in the EIR, then a strong legal basis for challenge is provided.

In a book of readings on Growth Management issues published by the Urban Land Institute in 1975, the work of the Stanford Law Society in

citizen's involvement in EIR's is examined.[14] Without a doubt, the more threat of a lawsuit and its cost in legal fees and time is often sufficient to urge a developer to modify his design. Court cases involving CEQA have reversed the burden of the neighborhood to engage in costly court battles and placed it on the developer. While citizen's costs can be significant ones that many cannot afford, the proportional costs are usually much greater for the developer.

Financial institutions also are placing a greater priority on making sure that CEQA and citizen involvement are properly handled to avoid future lawsuits that could jeopardize their involvement at some later date.

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14 - Stanford Law Society, "Citizen Tactics"; in Scott, R.W.: Management and Control of Growth - Urban Land Institute, Washington, D.C. 1975, pp 174-175

PACKERS' SQUARE PROJECT

In 1977, as all of Orange County continued to grow, commercial development was being actively pursued in Tustin. Because of its location in relation to the overall Orange County growth pattern, it has been and continued to be a prime location for office-retail development. One large, ten-acre parcel had remained undeveloped over the years because of its multiple ownership and the unwillingness or inability of the owners to get together to develop the property. The property was located near the intersections of Newport and Irvine Boulevards within the City of Tustin. These two streets constitute the main arterial routes through the community and intersect roughly in the geographical center of the city's commercial district.

Because of its proximity to the intersection of Newport and Irvine Boulevards, the property had a number of obvious problems and benefits. The biggest benefit to the site was its location on a heavily traversed main arterial street with good visibility. The size of the property also made it possible to develop a small shopping center or office complex. Perhaps the site's biggest drawback was also directly related to its obvious benefits. The fact that it was so close to the major intersection of Irvine and Newport Boulevards, meant that access to this site had to be limited. Left turn movements into the site were restricted and egress from the site was made difficult by traffic backed up from the Irvine-Newport intersection.

In the General Plan of the City of Tustin, the site was designated for commercial and/or office uses. In the late 1960's the city took an action to have the property designated as Planned Community Commercial District. This was done because of the many different owners involved in the property as well as the site development restrictions. It was recognized, at that time, that it was inappropriate to develop the site piecemeal in one or two acre strips, and that an overall land use plan would be required. For that reason, Planned Community Commercial District forced the property owners to collaborate in the development and ultimate use of the property.

In early discussions with real estate brokers and developers concerning the site, many different suggestions for development were outlined. Among uses considered for the site were:

1. Sub-regional shopping center;
2. Office complex;
3. Ice skating facility;
4. Multi-theater development;
5. High density residential types of uses.

In each of these cases various problems were encountered. Traffic circulation was of primary concern to the city as was compatibility of land uses with the adjacent single-family residential developments. On the southern boundary of the site, property was all zoned for multiple-family structures, and had been developed into apartment complexes. To the east is a single-family subdivision, which was to constitute the major source of opposition to the project's original development plan. To

the north was an existing shopping center complex which screened most of the site from Irvine Boulevard. From the developer's point of view, the major problem was not only access to the site, but the depth of the property. While the site had excellent visibility from Newport Boulevard on the front half, the back of the site was almost completely hidden from view. This made the back half less conducive to commercial or office development. Any use on the rear of the site could not be dependent on high visibility for its success. Uses such as real estate or insurance offices were therefore included.

Finally, after lengthy negotiations with representatives of the city's planning staff, the developer settled on a land use proposal which required a general plan amendment to allow residential uses on the back half of the site adjacent to the existing single-family units, and a combination of retail office uses on the front half of the site. After various refinements, the developer submitted for review a combination commercial-office complex, a high-rise senior citizen development, and a medium density apartment complex on the rear portion of the site.

In June 1977 the developer of the Packer's Square property submitted the site plan and an EIR for a phased, mixed use development. The first phase was to be a 4.5 acre development consisting of 40,000 square feet of retail and commercial uses, including a 5,000 square foot bank; a 5,000 square foot restaurant, and 24,400 square feet of shops, and 6,000 square feet of professional office space. The remaining six acres of the site, including a senior citizens' high-rise and several hundred units of multi-family apartments, were included in a separate EIR document.

Because the developer anticipated some community resistance to the residential portion of his proposed development, he decided to phase the project to first obtain approval for the commercial portion of the site. Since the property was already master-planned for commercial land use (P.D.-Planned Commercial Development), it was necessary to obtain a use permit prior to the preparation of working drawings and issuance of building permits.

The strategy of the developer was a sound one, since various political and economic forces made development of the property a complex undertaking. Since the property was ideally located on a busy intersection, in one of the fastest growing and most affluent areas of the state, commercial vacancies were less than one percent and there was a high demand for quality retail and office space. By phasing his project to build the shopping center complex first he accomplished the following:

1. Development would offset the enormous investment already made in the front-end cost of land assemblage, obtaining city environmental approvals, and taxes on the property.

2. Early development of the first phase would not only create immediate cash flow, but establish an identity for the site which would make it easier to obtain financing and market the residential portion of the site.

3. Since only an EIR and a use permit were involved, the commercial portion of the site could conceivably be under development in

six months, while the residential portion of the site would require:

a. Public hearing of EIR before planning agency;

b. General plan amendment before planning agency;

c. General plan amendment before the city council;

d. Rezoning hearing before planning agency;

e. Rezoning hearing before the city council;

f. Adoption of zone change ordinance before the city council;

g. Use permit public hearing before planning agency;

h. Possible appeal of use permit to city council.

Before CEQA was enacted, the property known as Packer's Square would not have been subjected to the same level of scrutiny that is currently required. The property would, however, have been required to be reviewed in a public hearing by the planning agency. This public hearing is for the purpose of granting a "use permit" which enumerates the conditions of the project's approval by the planning agency.

The use permit process requires that a public notice be published at least 10 days before the hearing. In addition, each property owner within 300 feet of the subject property receives a copy of the notice. In this case, as per city practices, a one paragraph notice was mailed out which indicated that the project was a planned commercial complex and would be reviewed by the planning agency on the specified date. If the property owners wished additional information, they were directed to contact the city staff.

In the case of the Packers' Square project, not only was a use permit required, but since the project resulted in a change in land use on the back half of the site, a general plan amendment and rezoning were required to allow residential uses there. Both general plan amendments and zone changes require the same 10 day notice in the paper and notification to each property owner within 300 feet.

The concept of a conditional use permit is probably the closest thing to an environmental review that the staff had prior to CEQA. Communities, at their discretion, adopted various standards for obtaining conditional approvals for developments which ranged from requirements almost as exacting as those spelled out in this document, to as simple as imposing conditions at a public hearing as problems were brought up by the public. This latter process was haphazard and often failed to identify an issue until it was too late.

In theory, communities could use the conditional use process to accomplish the same goals as outlined in CEQA, but the problem with a conditional use permit process as practiced by local government is that it reflects the personal preference and climate of a community's leaders; which often are the business leaders who are less likely to feel the need or desire to impose stringent review requirements. Most communities have used the conditional use procedure as a reasonable means of controlling uses which are acceptable, if properly regulated through imposition of certain conditions. These conditions could range from very specific

detailed requirements to general statements of performance leaving implementation to the discretion of the developer.

Because of the 10 day notice requirement, the local citizen does not really have a great deal of time before an action is scheduled by the planning agency. Most persons do not read legal notices and tend not to understand the significance of those notices received in the mail. In the absence of public input, the staff usually has to exercise a great deal of judgment on behalf of the local citizenry. For example, a project which, in the staff's opinion, is routine and should cause little controversy may result in a very brief public notice simply stating the type of action, its location, and the hearing date. A more complex project which might result in a considerable impact on the community would necessitate a more detailed public notice. In the case of Packer's Square, if the citizens had not received the notice of the EIR, they would have received a very brief narrative describing the project's major features.

As it was, a more in-depth description was sent with the EIR notice, which is required to be published thirty days before the initial hearing on the draft EIR. Since the notice of the draft EIR alerted local residents to possible neighborhood concerns, the use permit process was delayed for several months. Most of the problems and conflicts had been resolved by that time and relatively little attention was given to the use permit process.

The use permit process was not intended as a method of assessing environmental problems or looking at long-range problems. It was basically a site plan review that is conducted before the planning agency rather than left solely to the discretion of the staff's review. Because the commercial portion of this project was zoned as a planned commercial complex, certain design standards are flexible and open to broad interpretation. Therefore, planning agency review and public input serves as a broader base of scrutiny than the normal staff-developer review process. The requirements of a typical use permit are as follows:

1. Detailed Site Plan - showing the size and location of all buildings, their intended uses and types of construction.

2. Parking Arrangement - including the number of spaces, ratio of parking to square footage in buildings, location of compact spaces, and handicapped parking facilities.

3. Traffic circulation, including the size and location of all drive aisles, all traffic signals and markings, and the location of all adjoining public streets and private drives or access points. If necessary, the city engineer may require information on projected traffic counts to ensure that the proposed driveways and streets have adequate capacity and will not create conflicts with the existing circulation pattern.

4. Elevations of the projects showing height, architectural style, and the type of colors and materials to be used.

While the purpose of the use permit is to ensure harmonious design and minimize conflicts between adjacent land uses, it does not require the same in-depth analysis or degree of review as the EIR process. The developer is under no obligation by state or city statutes to provide evidence of what his project will do to air quality, long-term effects on city services, or impacts on the natural environment he may disturb in the development process.

Most importantly, the developer is not required to provide any alternatives to his proposed project. The planning agency can, of course, require modification in the design if it can demonstrate that the health or safety of the community would be affected. But, it is the governmental unit that must demonstrate a need for change, not the developer. Usually, planning agency changes constitute minor alterations in the overall concept presented. Assuming the site plan does not violate the height and setback requirements of the ordinance and no serious traffic safety issues exist, the planning agency often has little else to review unless other standards or policies are in effect. Other issues which can legitimately be required to be addressed under CEQA regulations, for the most part, are subjective under the use permit process.

Planning agencies were, of course, not impotent prior to CEQA. They often did, and still do, exercise considerable influence over the design of a project. The personal interests or bias of a planning agency could often be imposed upon a developer simply by holding the threat of denial or lengthy delays over his head. Public pressures were also employed

as citizen groups were formed to fight a project in an effort to change its character or design.

In each of the above cases, however, the reviewing agency had little legal basis to require plan modifications unless it had adopted specific design standards or other regulations upon which to base its decision. The less specific the legal framework, the more difficult it is for the public body to make a decision that will go unchallenged by the developer. Communities with highly defined development standards and assessment of impact standards were the exception, not the rule, before CEQA was enacted. For example, the planning agency could take an action to deny a project because of its belief of its overall public benefit. Prior to CEQA, the developer's most immediate argument was:

1. It is the responsibility of the government to provide those services necessary for urban growth.

2. The developer usually is only using his land in accordance with the land use plan of the city.

3. The developer can argue that the planning agency or staff was wrong and had not adequately proved his development to be an adverse impact on the community. The agency or staff had to prove its demands were valid.

While arguments 1 and 2 are still debatable today, even with CEQA, it is

argument number 3 that is the major problem that arose out of pre-CEQA planning practices. In order to deny a project, the governing body must prove that it will have unacceptable consequences; but to do that, it must conduct the necessary research into what the actual costs of services will be and the cost of other more acceptable alternatives. This can become a very burdensome process for a local community which is growing, since it must take the initiative in each case to prove the effect of each development in the city. Obviously, just one or two major projects in one year could result in a vast expenditure of staff time into true costs and suggested alternatives. The unfortunate result is that staffs were unable to perform the necessary analysis because of time or budget constraints. Rather than forecast the long-range impact on the environment or budget, it became easier to defer dealing with these issues until it became a problem that had to be addressed, perhaps many years later.

Consequently, even with the use permit process, the level of planning review and control was limited. It was only those communities with staffs of sufficient size and expertise that were able to take on the added responsibility of fully assessing a project beyond the requirements of the zoning ordinance.

In the case of the Packer's Square project, the legal requirements of CEQA for environmental analysis were so thoroughly handled that when the project was finally heard for its use permit, the major areas of concern or possible conflict and alternatives had already been identified by the

EIR process. If the use permit process only had been applied to this project, it is doubtful that the same degree of public scrutiny or staff analysis would have been as effectively applied.

Obviously, the EIR process was also a time consuming process for the staff, but not to the same degree it would have been had the developer not had the burden of proof placed on him.

CONCLUSIONS

As the discussion of the Packer's Square EIR illustrates, it is necessary for the developer to prepare a document which reflects a full range of environmental considerations. Not only must this document reflect changes in the physical environment, but it must also address the economic or social impacts that may occur.

Each of these elements -- physical, economic, and social -- is an important part of the analysis of a project. By combining the EIR process, staff analysis, and public comments, a document is produced which is intended to represent the full range of positive and negative aspects of a project. Through the EIR process, the public and decision-makers have the means, as well as the legal right, to have issues of concern adequately addressed. Most importantly, the EIR provides the means for systematic analysis of the impact of new growth. It is no longer a case of limiting a project's review to the compatibility of land uses. The EIR process has elevated and expanded the scope of concerns to the point where the planner has some legitimacy in asking, "What is this project going to cost the community?"

The State of California's mandate to address environmental issues means that planners now have the responsibility and tools to determine if the project is sound on its own and as part of the overall urban setting. The urban planner is able to react to a project in terms of how it fits into the urban environment.

As the planner has gained the ability to question the design and appropriateness of a project within an environmental context, it has also been necessary to re-examine whether or not the planner's own house is in order. That is, if a planner finds numerous adverse impacts of a proposed shopping center, then perhaps it would be advisable that the property in question not be shown on the General Plan of the city for commercial uses. If the General Plan shows the land designated for commercial uses, yet the planner finds that land use unacceptable environmentally, then the validity of that General Plan is in question.

By the same token, if the proponent of a General Plan Amendment cannot prove the logic or acceptability of his amendment through the EIR process, then the integrity of the General Plan is maintained. Overall, the planner and public have benefited from the EIR process by making available a process which requires that many of the basic concerns about land uses and development must be addressed and scrutinized before approval may be granted.

In the past, the planner had mainly to worry if a project were consistent with the General Plan, the Zoning Ordinance, or development standards of a community. In the case of rezonings, the planner needed only to determine if it were compatible with the General Plan and adjacent land uses. The environmental impact review process has not only greatly expanded the planner's area of responsibility, but has given him the legal framework within which to carry out this added responsibility.

CEQA has also given cities some highly important tools with which to carry out these responsibilities. Probably the most important tool the cities have is their ability to require the developer to prepare, or have prepared, the environmental impact documentation of a project. Unlike the planner's defense of a zoning ordinance or development standards where the planner must prove that a project was unsatisfactory, the EIR process requires that the developer must prove that his project will not have an adverse impact. This shifting of the burden of proof from the planner to the developer is caused by two factors. First, California cities typically did not have the ability or motivation to require more information of a developer than that necessary to insure compliance with the zoning requirements and land use. Second, under the requirements of the CEQA, the initiator of a project was responsible for providing the factual information needed to evaluate his project. This evaluation extends beyond land use matters to the large issues of the social and economic impact on the urban environment.

The developer of land, while forced to bear the burden of proof for his project, has not, of course, been left at the total mercy of the environmentalist. Out of obvious self-interest as well as a desire to make the EIR process work to his benefit, the developer today has turned the EIR document into part of his presentation in order to win approval of his project.

The development community, as the Packer's EIR shows, attempts to emphasize the environmental benefits or mitigating measures that will be

incorporated into a project. Most importantly, they emphasize the economic and social impacts of a project. Growth of the tax base is stressed. Creation of new jobs and the resultant increase in the standard of living is stressed. All of the advantages of urbanization are presented as mitigating factors.

In most communities, this is an effective argument. It gains support from the Chamber of Commerce and the construction-realty industry which view growth as good and necessary for a community's economic and social well-being. The developer often stresses those same issues that the planner does, by placing them in the context of the project's being in an urban environment. The developer concentrates on the fact that the project is designed to be part of that urban environment and, therefore, contributes to it by either providing housing services, or a place of employment. The fact that some air pollution or increased traffic flow may be created does not outweigh the fact that what the developer is providing is needed by the community for its own well-being. Vacant land is not productive, it does not add to the tax base or help to meet the community's needs.

The developer has a powerful argument and it is often heeded by the decision-makers of a community who usually agree that growth is necessary. The planner, in situations such as this, is left in the position of trying to insure that the project has minimized all of the potential adverse impacts and that the public and decision-makers are aware of what areas they should be concerned about. As the case study illustrates,

the alternative of "no project" is seldom considered. The real effort of the planner is expended in trying to make sure the design of the project provides all of the necessary mitigating measures.

Public participation in the process of environmental impact review, while greatly increased over the normal amount of public input into the public hearing process associated with zoning changes, represents an increase in the citizens' ability to know. The EIR process has not necessarily changed political practices. It is still the same actors who are involved in the decision-making process. They have the same prejudices, self-interests, and motivations they always had. What has changed significantly, however, is the public's right to know and participate in that decision-making process without necessarily having to exercise excessive political influence to do so. Under the requirements of CEQA, the decision-makers must give adequate notice of a project, a review and comment period, and most importantly, they must respond to all questions and comments raised about the project in the EIR. Although a final decision might be to accept an adverse impact as unavoidable, at least the public now has the right to know what that impact will be and know what, if anything, can or will be done to mitigate it.

An EIR, rather than being a bureaucratic product, is a process that expands the public's input and ability to make changes and shape its own environment. Unlike most public hearings where a staff report is released only a few days before the public hearing, or sometimes at the public hearing, the requirements of CEQA clearly state that the draft

EIR must be available for thirty days prior to the hearing date and all concerns must be addressed. With this type of requirement, the average citizen who wishes to take part in the proceedings now has the ability to review the data, ask questions, and at least come before the decision-makers with some degree of preparation as to what the issues of concern to him are.

Overall, the environmental impact review process, as it is practiced in California under CEQA, represents a major step forward in making the planning process more meaningful. It has created a mechanism whereby the planner has the data and the ability to evaluate the impact of a project on all aspects of the urban environment. And, the public has greatly increased its ability to participate in the decision-making process.

CEQA's success in Orange County especially draws attention to the fact that the environmental review process is indeed that - a process. Rather than being purely a technical requirement, EIR's can, and are being used to provide for adequate review of projects and allow for meaningful input by the concerned public. While additional costs are being incurred, and passed on to the consumer, the overall community benefit would appear to justify the incremental increase in the cost of development.

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