

CEQA Gospel

Reprinted below are prescient California Environmental Quality Act process remarks by Shaelyn Strattan, Siting Project Manager/California Energy Commission, Former Planner III/Calaveras County Planning Department and currently an Independent Environmental Planning Consultant/Project Manager. This missive presents information the average Californian participating in local planning discussions needs to know:

Commenting Effectively on an Environmental Document

By Shaelyn Strattan to thepinetree.net

Letter to The Editor...."Over the last few months, there have been, and still are, a number of important projects proposed for Calaveras County - such as the Trinitas Golf Resort, County Jail, and developments on Lake Tulloch. All have offered the Draft Environment Impact Report (DEIR) to the public for review and comment. There is a great deal of interest and concern regarding these projects and people want to get involved. However, there are a lot of...misunderstandings about the California Environmental Quality Act (CEQA) and the documents that developers and the County produce to comply with its requirements. I would like to offer this information to help those who want to make their thoughts and concerns known in a way that can really make a difference.

First of all, what CEQA is NOT. CEQA is not all-powerful. It cannot, by itself, stop a project from being approved. That power, in this county, belongs to the Planning Commission and Board of Supervisors. It can, however, provide the information needed for those representatives to deny approval or require substantial changes to the project that would protect our community's interests. The primary purpose of CEQA is to let the decisionmakers and the public know what impacts the project will have on the environment, how much of an impact may occur, and what can be done to reduce those impacts.

It also isn't just for "treehuggers". Environment, as defined under CEQA, deals with physical changes that can affect an area. This includes effects of the project on traffic conditions; noise; the availability of sewer, water, and other utilities; air quality; fire and police protection; and how the proposed use may affect the use of surrounding properties. An environmental document should look at both direct and indirect impacts. Loss of water in a stream might not cause a problem at the project site, but could kill fish or interfere with irrigation several miles downstream. It must also look at cumulative impacts. How will the impacts of this project, combined with other projects in progress or planned for the foreseeable future, affect the community. A good CEQA document should look at all these concerns and should back up its conclusions with facts. A conclusion that isn't supported is only an opinion.

CEQA also establishes a duty for public agencies to avoid or minimize environmental damage, with an emphasis on prevention. The Planning Commission or Board of Supervisors should not approve a project as proposed if there are feasible alternatives or ways available to substantially reduce potential impacts. However, it is also the responsibility of the Commission or Board to balance public needs, such as a decent home and satisfying living environment, with possible impacts to other parts of the environment. This is called "overriding consideration" and this can be used when, as Spock would say, "the needs of the many outweigh the needs of the one".

Public participation is an essential part of the CEQA process. Review of environmental documents offer interested governmental agencies, private individuals, and organizations an opportunity to consider a proposed project and share expertise; evaluate agency analyses; check

for completeness and accuracy; identify areas of concern; and present alternative or additional options for consideration. (California Code of Regulations § 15200). A draft Mitigated Negative Declaration (MND) or DEIR should not be considered a final document. In many cases, it is the first time interested parties have a chance to look at the project as a whole and should be seriously evaluated for any lack of evidence or consideration of alternative opportunities.

To comment effectively on an environmental document, it is not enough to say you don't like the project. You're entitled to your opinion, but that isn't what CEQA is about. If you seriously want something in the project to change, you must be specific and back up your recommendations with facts. This is called a "fair argument" and, especially with MNDs, must be given serious consideration for the document to be considered adequate.

To comment effectively on an environmental document, consider the following points:

1. Objectively evaluate the project.

Consider the activities proposed as part of the project and determine if these actions will result in a direct or indirect impact or change to the physical environment. Would it be a negative impact? How? Why?

A project can include many elements over an extended period of time, such as demolition of existing buildings prior to the start of construction; or activities to close a mine or industrial site after many years of operation, including removal of structures and cleanup of any toxics in the soil or water. It can (or should) also include actions by others that are necessary because of the project, such as road repairs or culvert work, extension of water or sewer lines, etc. Make sure the project description takes all of these related activities into consideration.

Consider immediate and future impacts, and temporary and long-term impacts. These are generally associated with both construction and operation of the proposed projects. Short-term or temporary does not necessarily mean insignificant and the indirect impacts of a project, such as increased growth in an area or higher light levels at night may not be evident during construction or initial development.

If an impact will occur, will it be substantial or "significant"? Significance is determined by the difference between what currently exists and what will exist during or following completion of the project.

If you conclude there would be a significant adverse effect, does the document agree with that assessment? If not, why not or does it simply fail to discuss it at all?

If the impact is potentially significant, are there mitigations (ways to reduce the severity of the impact) included in the document? Will they reduce the impact to a less than significant level? For an MND, mitigations must reduce all potentially significant impacts to a less than significant level. For an EIR, impacts must be reduced to the extent feasible. All mitigations for MNDs and EIRs must be feasible and enforceable.

If a potential significant impact has not, in your opinion, been adequately identified; if no mitigation has been proposed for a potentially significant impact; or if the mitigation proposed does not appear to be sufficient or appropriate, you should:

Identify the specific impact in question;
Explain why you believe the impact would occur;
Explain why you believe the effect would be significant; and, if applicable,
Explain what additional mitigation measure(s) or changes in proposed mitigations or to the project you would recommend.

Explain why you would recommend any changes and support your recommendations. Your reasons cannot simply be a subjective dislike for the project. You will need to objectively identify the deficiencies and explain the basis for your recommendations.

If you cannot support the project as a whole, be sure to identify why you oppose it in as much detail as you can. Explain why it doesn't work in your community or neighborhood. For example, if there are water or sewer issues, point out current problems and how this project will make them worse. Quantify your objections whenever possible. Don't just complain. Include suggestions for making it better.

Economic issues are usually not addressed under CEQA. However, they are considered by decisionmakers. If your comments address potential economic impacts, send a copy of your concerns to the Planning Commissioners and Supervisors, the project planner, and the Planning Director.

3. Explain the basis for your comments and recommendations (facts, reasonable assumptions based on facts, or expert opinion supported by facts) and, whenever possible, submit specific data and/or references supporting your conclusions.

4. Make sure comments are submitted before the deadline. Comments postmarked after the close of the public review period may not be accepted or acted on. If necessary, fax your comments on or before the close of the review period and follow up by regular mail. Comments must be submitted in writing and must include your name and a valid address. Comments may also be sent by email, but must include your name and physical address; email addresses alone are not sufficient.

5. Reviewing agencies or organizations should include the name of a contact person, who would be available for questions or consultation, along with their comments.

6. The comments and recommendations by the Planning Department in its Staff Report on the project also carry a great deal of weight and can address issues that are not included in the CEQA document. Because this is prepared after the closing date for the CEQA document, it is important to review it as well, prior to the hearing before the Planning Commission or Board of Supervisors. Comments on the Staff Report should be sent directly to the Commissioners or Supervisors before the hearing or presented in person at the hearing, with a copy to the planner in charge of the project and the Director of the Planning Department. Send your comments as early as possible, so they have time to consider your concerns.

REMEMBER - A CEQA document does NOT approve or deny a project. It only provides the approving authority (Planning Commission and/or Board of Supervisors) with the information to make that decision. A suit brought under CEQA will only require a re-evaluation of the project. It will not stop it. It is then the responsibility of the Commission or Supervisors to approve it with adequate conditions to protect our community or deny it outright. Your input will help them make an informed decision."