



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

AGENDA

DATE/TIME: MONDAY, October 20, 2003 – 7:00 P.M.

LOCATION: Police Department Auditorium
870 Santa Barbara Drive

Roll Call

1. Minutes of September 15, 2003 (*Draft Minutes Attachment*)*
2. Report from Airport Issues Subcommittee on NOP for John Wayne Airport Expansion
3. Review of CEQA Procedures (*Attachment*)
4. New Projects
 - a. Environmental documents for Irvine Business Complex office and residential development
 - b. Draft EIR for Pacific City, Huntington Beach
 - c. Supplemental Draft EIR for Centerline
5. Report from EQAC Representative to GPUC
6. Report from EQAC Members on GPAC
7. Report on LCP process
8. Council Member Reports
9. Report from staff on current projects
10. Public Comments
11. Future Agenda Items

NEXT MEETING DATE: November 17, 2003
LOCATION: Police Dept Auditorium

*Attachments can be found on the City's website <http://www.city.newport-beach.ca.us>. Click on City Council and then click on Agendas and Minutes. The Attachments are also available in the City of Newport Beach Planning Department, 3300 Newport Boulevard, Building C, and 2nd Floor



CITY OF NEWPORT BEACH ENVIRONMENTAL QUALITY AFFAIRS COMMITTEE

DRAFT Minutes 09-15-03

Minutes of the Environmental Quality Affairs Citizens Advisory Committee held at the City Council Chambers, 3300 Newport Boulevard, on September 15, 2003.

Members Present

Richard Nichols, Council Member
arrived at 7:45 p.m.
Robert Hawkins, Chairperson
Cris Trapp, Vice Chairman
Barry Allen
Brent Cooper
Laura Dietz – arrived at 8:10 p.m.
Maggie Fitzgerald

Tom Hyans

Elaine Linhoff
Jim Miller – arrived at 7:45 p.m.
Dolores Otting
Christopher Welsh
Jennifer Winn

Staff Representatives

Sharon Wood, Assistant City Manager
Niki Kallikounis, Planning Department Assistant

Members Not Present

Steve Bromberg, Mayor
Gary Borquez
Gus Chabre
Thomas Eastmond
Ray Halowski
Carol Hoffman

Phillip Lugar
Marge Pantzar
Nancy Raney
Richard Rivett
Louis Von Dyl

Others Present

Phillip Bettencourt, Bettencourt & Associates
Jill Kanzler, Gladstone International
Scott Barnard

The meeting was called to order at 7:15 p.m.

A quorum was not present. Chairman Hawkins reordered the agenda to begin with the discussion items.

3. Discussion of Subcommittee Procedures and Participation

Chairman Hawkins informed the committee that there has been a decline in member participation in the subcommittees. This problem developed in agenda

item no. 2, the report from the St. Andrew's subcommittee. Chairman Hawkins said that they needed to enhance the participation.

Chairman Hawkins asked if there were any comments or ideas. Several members offered suggestions. Discussion ensued. Jennifer Winn noted that, in the past, a chairperson was appointed to the subcommittee at the time it was formed and that they go back to that method.

A review was made of some of the current subcommittees and it was noted that the Airport Issues Subcommittee did not have a chairperson. Maggie Fitzgerald volunteered to serve on the Airport Issues Subcommittee.

4. Report from EQAC Representative to GPUC

None.

5. Report from EQAC Members on GPAC

Tom Hyans reported that GPAC discussed the Hazards Assessments.

Sharon Wood reported that GPAC has had four resignations and that she is working with the City Council Members of GPUC to work on replacements.

6. Report on LCP Process

Sharon Wood reported that the LCP Certification Committee met twice to discuss the comments received from the California Coastal Commission staff and the comments received from all the City review and committees such as GPAC, Harbor Commission, etc. The LCP committee gave staff direction on some revisions to the Land Use Plan. Ms. Wood said that they have not as yet received comments from the Coastal Commission's technical and legal staff.

7. Council Member Reports

None.

8. Report from Staff on Current Projects

Sharon Wood reported on the following:

- South Coast Shipyard
- Regent Newport Beach
- The New Superior Group
- Birch Bay View Plaza II

Jim Miller and Council Member Dick Nichols arrived. There is now a quorum.

2. Report from the St. Andrews Subcommittee on the Notice of Preparation (NOP)
Phillip Bettencourt passed handouts to the members and described the project and the progress and various studies, such as traffic and EIR, made to date. Questions were asked and discussion ensued.

Laura Dietz arrived.

There was a review of the subcommittee report comments and typos and format changes were made. There was discussion regarding the parking and the concern of the committee about the character of use of the gym/classroom building. Changes were made in the report.

Laura Dietz **moved** to accept the report as corrected. Council Member Dick Nichols seconded the **motion**. **Motion** passed unanimously.

1. Minutes of August 18, 2003

Chris Welsh **moved** to approve the minutes. Tom Hyans seconded the **motion**. **Motion** passed unanimously.

9. Public Comments

None.

10. Future Agenda Items

- Bio Diesel Presentation to be arranged by Ray Halowski
- Regent Newport Beach NOP in October or November
- St. Mark Presbyterian Church NOP

Chairman Hawkins adjourned the meeting at 8:55 p.m.

Governor's Office of Planning and Research

INTRODUCTION**Overview of the California Environmental Review and Permit Approval Process**

The California Environmental Quality Act (CEQA) was enacted in 1970 as a system of checks and balances for land-use development and management decisions in California.

Environmental review is characterized by an Environmental Impact Report (EIR). The EIR records the scope of the applicant's proposal and analyzes all its known environmental effects. Project information is used by state and local permitting agencies in their evaluation of the proposed project

In 1977, the California Legislature passed the **California Permit Streamlining Act (PSA)** and established the **Office of Permit Assistance (OPA)**. The creation of both OPA and PSA sought to remedy a complicated and often unresponsive permitting processes. The Permit Streamlining Act addressed some of CEQA's shortcomings: namely, that it lacked a calendar by which applicants and the public could expect the prompt review of a given project. The PSA added time-lines and deadlines to expedite government review of proposals. While this did not guarantee the approval of projects or their favorable review, it did give applicants and the public an orderly, standardized process for filing reports and actions.

California's environmental review is rigorous by anyone's standards. In most cases it extends beyond federal statutes established under the National Environmental Policy Act (NEPA).

- **Cities and counties regulate land use by way of planning, zoning, and subdivision controls.** There are currently 58 counties and over 470 incorporated cities in California, each with the same authority for land use regulation. Local government authority is granted by State law. Cities and counties have legislative power to adopt local ordinances and rules consistent with state law.
- **State agencies regulate the private use of state land, resources and certain activities of statewide significance.** There are at least 21 state agencies which are or may be directly involved in the approval of development projects. The permitting authority of each state agency is established by statute, usually with additional administrative rules promulgated by the agency.
- **Federal agencies have permit authority over activities on federal lands and over certain resources** which have been the subject of congressional legislation: i.e., air and water quality, wildlife, and navigable waters. The U.S. Environmental Protection Agency generally oversees the federal agencies. In addition, the EPA regulates activities such as the disposal of toxic wastes and the use of pesticides. The responsibility for implementing some federal regulatory programs, such as those for air and water quality and toxics management, has been delegated to specific state agencies.

The Development Permit Process

In California, the development permit process is coordinated with the environmental review process under CEQA. Every development project which is not exempt from CEQA must be analyzed by the lead agency to determine the potential environmental effects of the project. This analysis is required by state law. It must be completed within specified time periods which are concurrent with the time periods in which an agency is required to approve or deny the project.

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Once the lead agency is identified, all other involved agencies, whether state or local, become responsible or trustee agencies. Responsible and trustee agencies *must* consider the environmental document prepared by the lead agency and *do not*, except in rare instances, prepare their own environmental documents. The procedure for issuing each particular development permit is governed by the particular law which establishes the permit authority and by the California Permit Streamlining Act.

Summary of the CEQA and Permit Application Process

There are three major phases in the development process as provided by CEQA and the PSA:

- *The Pre-Application Phase,*
- *The Application Phase, and*
- *The Review Phase.*

I. Pre-Application Phase:

The Pre-Application Phase begins when the developer/applicant has completed the conceptual and preliminary design work for a project and is ready to prepare a project proposal. At this point, enough information should be available to describe project activities and to identify the project's proposed location. The primary objective of this phase is to identify the appropriate permitting agencies and to collect as much relevant background information possible.

Many proposals (projects) will require special studies either before or during the formal processing of the application. All state and local agencies are required to list the type of information and the criteria they will use in evaluating a project application. Developer/Applicants may request preapplication conferences or "scoping" meetings with the permitting agencies to discuss how agencies' specific rules will apply to their proposed projects.

By the end of the preapplication phase, the developer-applicant should have a good understanding of the detailed project information required, a list of probable permitting agencies, and an indication of the degree of environmental analysis required by the agencies.

At this point, the applicant will learn which agency (if there will be more than one permitting agency) will be the "lead agency." The lead agency is the single agency responsible for determining the type of environmental analysis CEQA requires. In addition, the lead agency must prepare the environmental review document it calls for. The agency with the greatest authority over the project will usually assume the lead agency role. Criteria for determining the lead agency are provided in the CEQA Guidelines at Section 15051. In the event of a dispute over the lead agency status between or among agencies, the Office of Planning and Research may designate the lead. However, once the lead agency is identified, all other involved agencies, whether state or local, become responsible or trustee agencies.

II. The Application Phase:

The Application Phase begins with the filing of the necessary permit application forms along with a detailed project description. Supporting documents must also be filed, where CEQA requires, with the respective agencies. Unless otherwise specified, the sequence of filing applications is left up to the applicant. It must be noted, however, that the failure of some agencies to accept an application until certain other permit approvals have been granted does not in any way impact the time limits under which the agency must act.

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During this phase, each receiving agency must review the submitted application to determine if the individual filing is complete. The lead agency must make its determination in writing within 30 days. Should the agency fail to make its determination within 30 days, the application will be deemed accepted as complete by operation of law. If the application is determined to be incomplete, the agency *must* specify the deficiencies and the manner in which the deficiencies may be corrected. The developer-applicant may then refile the corrected application. Upon refile, the agency has another 30 days to review for completeness. If the application is again determined to be incomplete, the agency must provide a process for an appeal of the determination and reach a decision within 60 days. Further dispute may be adjudicated. This step is critical to the process. A permit may not be denied for failure to provide information not requested.

Once an application is accepted as complete, the lead agency has six months to approve or disapprove a project for which an Environmental Impact Report (EIR) has been certified. The time limit in all other cases is three months after a negative declaration is adopted or an exemption issued.

III. Review Phase:

The Review Process begins immediately with the completion of the specific application. In recognition of §65941 of Chapter 4.5 of the Permit Streamlining Act, the lead agency will simultaneously review the project under the applicable permit rules and conduct the necessary environmental analysis. Permit rules vary depending on the particular permit authority in question, but the process generally involves comparing the proposed project with existing statutes. The procedure usually results in a public hearing followed by a written decision by the agency or its designated officer. Typically, a project may be approved, denied, or approved subject to specified conditions.

The CEQA procedure involves a number of steps which produce an environmental document examining the lead agency's as well as the responsible and/or trustee agencies' permit decisions.

The first step in the CEQA process is to determine whether the proposed project is subject to CEQA. There are a number of statutory and categorical exemptions. If the proposal is not covered by CEQA, the lead agency may file a *Notice of Exemption*. If the project is covered by CEQA, the lead agency must prepare an *Initial Study* to determine whether the project may have a significant adverse impact on the environment. The initial study must be completed within 30 days after an application is accepted as complete.

If the Initial Study shows that the project will not have a significant effect on the environment, the lead agency must prepare and circulate a *Negative Declaration*. Where potential significant effects are shown, but the project is modified such that the effects are rendered insignificant, the lead agency must prepare and circulate a mitigated Negative Declaration. In either case, the Negative Declaration must be circulated for review for 30 days and must be ready for adoption by the lead agency within 105 days after a completed application is accepted.

If, on the other hand, the Initial Study shows that the project may have one or more significant effects, the lead agency must circulate a *Notice of Preparation (NOP)* in anticipation of preparing an environmental impact report (EIR) and must consult with responsible and trustee agencies as to the content of the environmental analysis. Responsible agencies must respond to the NOP within 30 days. If a responsible or trustee agency fails to respond, the lead agency may assume that the responsible agency has no response to make. Further, if a responsible agency fails to respond or responds incompletely, the responsible agency may not subsequently raise issues or objections regarding the adequacy of the environmental review.

At the close of this period, the lead agency must prepare and circulate a *Draft Environmental Impact Report (DEIR)*. All concerned agencies and the public may review the DEIR. All comments on the DEIR must be made within the 45 day review period.

At the close of the review and comment period, the lead agency must respond to the comments received. Comments from responsible or trustee agencies shall be limited to those project activities which are within the agency's area of expertise, are required to be carried out or approved by the agency, or will be subject to the exercise of powers by the agency.

The lead agency prepares and certifies a *Final Environmental Impact Report (FEIR)*. If the lead agency approves the project, it must find that each significant impact will be mitigated below the level of significance where feasible, and that overriding social or economic concerns merit the approval of the project in the face of unavoidable effects.

With the CEQA and permit review process completed, the lead agency must approve or deny the permit within 6 months of certifying the EIR or within 3 months of adopting the Negative Declaration and file a *Notice of Determination (NOD)*. Responsible agencies must then act within six months after the lead agency's action or, if the developer/applicant has not already filed an application with a responsible agency, within six months from the time the application is filed (except as modified under Health and Safety Code §25199.6).

Environmental documents for projects involving one or more state agencies or involving issues of areawide or statewide significance must be sent to the State Clearinghouse for distribution to interested state agencies. The State Clearinghouse will link the lead agency with the responsible state agencies.

Special Concerns in the CEQA/Permit Process

There are several key points that agencies, developer-applicants and the public must be aware of in order to avoid misunderstandings and delays:

- The time limits for completing the requirements of CEQA and acting on a permit are concurrent and not consecutive. The Permit Streamlining Act discourages a government agency from requiring a completed EIR before accepting a permit application.
- CEQA can help resolve public policy disputes relating to development projects. Technical issues that find their way into policy disputes, no matter how dependent on scientific considerations, are inherently value-laden. CEQA specifically addresses the potential for conflicting expert discussions and mandates that all sides of an issue are considered.
- Under the Permit Streamlining Act, if a public agency does not approve or deny a project within the statutory time limit, the project may be deemed approved. The proponent must give notice to invoke the Permit Streamlining Act.
- The Permit Streamlining Act time limits are not applicable to all permit applications. Time limits only apply to development projects as defined in the PSA. The Streamlining Act specifically excludes ministerial permits such as certain building permits. The time limits do not apply to legislative actions such as the adoption or amendment of zoning ordinances. The time limits do not operate where a federal law specifies a longer or shorter period for action and, *with* the consent of the developer-applicant, the lead agency may waive the time limit if a joint environmental document is being prepared with a federal permitting agency.
- Where a public agency (or series of agencies) will issue more than one permit for a project, the agency(ies) makes each approval separately, but must still act upon the entire project within the statutory time limit.

- All Permit Streamlining Act time limits are maximum. Public agencies should act in a shorter time whenever possible.
- Members of the public may challenge, in court, a wide variety of public agency action and inaction, but only if they first present those challenges to the agency itself within 30 to 180 days after the occurrence of the challenged action, depending upon whether an NOD was filed or not by the agency.

Assistance for Developer-Applicants

The permit and environmental review processes are complicated. There are often several agencies and many persons involved. Hundreds of laws and rules may apply to a particular project. Agencies are constantly revising their procedures and changing personnel. The Legislature and the Governor created the Office of Permit Assistance (OPA) within the Trade and Commerce Agency to help project applicants, localities and the public to understand CEQA and the permitting process. The primary mission of the Office of Permit Assistance is to provide assistance and information to parties interested in the permit process.

- A single point of contact for state agency permits is available at the Office of Permit Assistance. Any questions about the permit process will be answered promptly.
- All state or local permits required for any project can be identified. The Office can convene all state agencies at one time to identify and explain which permits are required for a project.
- Scoping meetings can be arranged through the Office. The Office convenes meetings of the environmental staff of state and local agencies who will be involved in the CEQA review of projects. These meetings provide developer-applicants and environmental consultants with a chance to discuss all environmental issues and concerns early in the process in order to avoid wasted effort and unwarranted surprises in the EIR process.
- The Office of Permit Assistance has authority to convene meetings to resolve questions or mediate disputes. When uncertainties or disagreements among agencies stall the permit process, the Office may be called upon to provide a forum for resolving the problem. Not every problem can be dealt with in this manner, but when appropriate, the process can be very useful.

The Office of Permit Assistance can be contacted by telephone at 916/322-4245 (ATSS 473-4245). Its FAX number is (916) 322-3524. The mailing address is 801 K Street, Suite 1700, Sacramento, CA 95814.