

## **CEQA – Fantasy vs. Reality**

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You have recently shown your Client the prime piece of real estate for his latest endeavor. The gleam in his eye says it all: signing the purchase papers, assembling the team, successfully permitting the project, finishing on-time, and obtaining a 95% occupancy rate by the time of ribbon cutting. However, you know better. The 95% occupancy is a piece of cake, compared to the CEQA process that lies ahead.

The goal of California Environmental Quality Act (CEQA) is “to develop and maintain a high-quality environment now and in the future, while the specific goals of CEQA are for public agencies to:

- 1) Identify the significant environmental effects of their actions; and, either
- 2) Avoid those significant environmental effects, where feasible; or
- 3) Mitigate those significant environmental effects, where feasible.”<sup>1</sup>

Local agencies typically apply CEQA to projects as one of three review processes:

- A categorical exemption,
- Approval of a mitigated negative declaration, or
- Preparation of an Environmental Impact Report (EIR).

The EIR’s purpose is to provide the State, local agencies and the general public with detailed information on the potentially significant environmental effects and define mitigation measures to reduce impacts to less than significant.<sup>2</sup>

The lay-person, staff and even elected officials often prefer the use of an EIR to disclose, evaluate and define mitigation to address environmental issues. In reality a mitigated negative declaration is a superior CEQA process to accomplish that goal. By definition, a mitigated negative declaration must identify mitigation measures that reduce impacts to less than significant. An EIR, however, allows elected officials to override significant impacts that are unavoidable, an authority not allowed with approval of a mitigated negative declaration.

It is crucial that your consultant be well versed with CEQA and the pros and cons of the three CEQA clearance processes. CEQA is both a dynamic and subjective document, undergoing constant change from legal interpretations and precedent-changing court rulings. Additionally we find, each and every jurisdiction will process the CEQA requirements for a project based upon their internal interpretation of CEQA guidelines and case decisions. Therefore the foundation on which a CEQA based environmental review is processed is constantly morphing by both legal and political climate influences. What was experienced on one project can be dramatically different for the next seemingly identical project.

The most critical component when undertaking a project is to understand the basis for how that specific jurisdiction interprets and implements CEQA requirements. The level of effort and the time/cost to battle through CEQA can vary significantly. The more sophisticated jurisdictions typically follow the letter of the law and have an understanding of the difference between design and environmental issues. They will also minimize environmental reviews by the simple application of codified/ordinance standards that mitigate impacts without need for review because they are already adopted and in place.

Less sophisticated jurisdictions may not have the same expertise in house or they may have, over time, interpreted CEQA and then apply it as a result of decisions and direction made over time by the jurisdiction’s elected officials. They deem their approach as being adequate when, in fact, the influence of previous project decisions have gradually steered them well off track from CEQA’s intent and legal application.

Knowing that the end result is what drives the developer, you should contract with a consultant that can maneuver through the CEQA process efficiently. To do so requires an understanding of CEQA and insight into the jurisdiction's perception/interpretation of CEQA. Your consultant needs to be both flexible and creative in dealing with CEQA and the wide variety of interpretations you will confront from jurisdiction to jurisdiction. TLA Engineering & Planning has historically provided its Clients the necessary adaptability to maneuver through the jurisdictional requirements, while being innovative to address the perceived requirements and balance them with the need to protect the Client and project from exposure related to a poor CEQA document.

*TLA Engineering & Planning, Inc. is a land planning and civil engineering firm dedicated to providing a full-range of services to private and public clients. Established in 1985, the firm specializes in planning, permitting, design and managing public and private projects that range from small to large, simple to complex. Experience earned over many years and across all varieties of projects provides the necessary foundation for a wide range of capabilities. Each project is undertaken with an eye toward providing solutions that allow plans and project to proceed smoothly. Contact Valerie Hoff at. (916) 786-0685 or [vhoff@tlowell.com](mailto:vhoff@tlowell.com).*

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<sup>1</sup> California Environmental Resources Evaluation System's website re: CEQA Summary & Overview: [http://www.ceres.ca.gov/topic/env\\_law/ceqa/summary.html](http://www.ceres.ca.gov/topic/env_law/ceqa/summary.html).

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