

Disclaimer: This document is intended to serve as a guide and is not intended to be legal advice. Please seek professional help from a lawyer if you have legal questions or concerns.

The Importance of Substantive EIR Comments

Comments that simply reflect an opinion about the project will not be addressed. For example, a comment that states, “I don’t like the project,” or “I oppose the entire Crystal Geyser project on principle” typically result simply in a response of “Comment Noted.”

Substantive comments that are backed by factual support sometimes lead to changes in the EIR and in the project. The comments should be written in a manner that requires the lead agency to respond.

To have a significant impact on the EIR process, comments must point out errors, inconsistencies, omissions of data or analyses, conclusions not based on evidence, or failures to provide discussion required by CEQA.

The agency needs to respond adequately to such substantive comments prior to certification of the final EIR. Failure to do so would provide the basis for a legal challenge to a certified (approved) EIR, and if the court agreed with the challenge, the EIR would be found invalid.

Alternatives

The EIR describes the environmental impacts of the proposed project and those of a number of alternative plans. The alternative plans considered are intended to cover the full range of feasible alternatives. The Board of Supervisors of Siskiyou County makes the ultimate decision of the final alternative.

The potentially feasible alternatives must be discussed in “meaningful detail,” and provide sufficient “information to the public to enable it to understand, evaluate, and respond” to the agency’s conclusions. The discussion should “contain facts and analysis, not just the agency’s bare conclusions or opinions.”

Mitigations

When the proposed plan (the preferred alternative) has significant environmental impacts, the EIR must propose mitigations that would eliminate, minimize or repair the greater environmental impact of the preferred alternative.

In instances where mitigations are not feasible or the agency does not wish to adopt a feasible alternative that would avoid them, the EIR must describe the unavoidable environmental impacts and, in instances where it chose to accept them, the reasons why it made this choice.

CEQA Compels Description Not Choice

CEQA does not compel the agency to adopt the most environmentally desirable alternative, but only to describe feasible alternatives in meaningful detail and to adopt mitigation measures or to justify their non-adoption.

What should I consider when writing EIR comments:

It is perfectly OK to raise an issue under CEQA with no support. The burden of proof is on the Authority – not you. That said, if you have evidence or facts – even better. **Please don’t let your “lack of expertise” prevent you from trying to comment on the environmental impact concerns you have.**

With that in mind, here are a few tips:

1. Objectively evaluate the project and be VERY specific. Generalities can be dismissed with generalities.

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? Also consider your sources when providing evidence. Seek out recognized agencies or published data and reports whenever possible. Also, whenever possible, avoid sources that can be perceived as biased. *Again, you can simply raise an issue with no support – the burden of proof is on them – but if you have data – give it to them!*

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 construction of the new outbuildings. It can (or should) also

include actions by others that are necessary because of the project, such as a parking lot for heavy construction equipment, during the construction period, 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?

Generalities will be dismissed with generalities, so be specific!

Tip: Do NOT assume the Authority knows everything about your neighborhood! The value of having multiple citizens comment is the fact that each person knows details about a specific location, that when added to the public comments, can actually change an EIR. For example, perhaps you remember that years ago a property along the proposed project site was involved in abatement for an environmental contamination. This information may be very relevant since the contamination might be present in the area where the project will eventually be and/or it may be in the area that will be affected by construction affecting a broader geographical area.

2. Separate your concerns into clearly identifiable paragraphs or headings and keep a tight focus on each separate issue. Don't mix topics.

3. Consider ways to avoid impacts or enforceable ways to reduce the severity of impacts. Quantify your objections whenever possible.

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 example, if plant noise is an issue, a noise barrier wall that reduces the noise below a certain level is considered to be an effective mitigation measure.*

For an EIR, impacts must be reduced to the extent feasible. All mitigations must be feasible and enforceable.

If a potential significant impact has not been adequately identified; **or** if no mitigation has been proposed for a potentially significant impact; **or** if the mitigation proposed doesn't appear to be sufficient or appropriate, then:

- 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 entire plant project or a particular segment. 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 vibration and noise issues from operations, 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, decision-makers consider them. If your comments address potential economic impacts, send a copy of your concerns to your Mayor and City Council and the Board of Supervisors.

4. Whenever possible, present facts or expert opinions. If not, provide personal experience or your personal observations. Don't just complain.

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. If you simply write, “I don’t like this project”, your comment may be logged as “Comment Noted.”

5. Include suggestions for making it better or offer specific alternatives and describe how they meet the requirements of the project.

Your goal should be to write something that causes them to respond in a future document based on the evidence you have given.

6. Point out any inconsistencies in the document or the data. Point out outdated information or errors in logic. Focus on the sufficiency of the EIR in identifying and analyzing the possible impacts of the project on the environment.

7. Write a comment that includes a valid name, address and your segment name. Submit it before the deadline. KEEP A COPY OF YOUR COMMENTS. Send a copy to your city.

Comments postmarked after the close of the public review period may not be accepted or acted on, no matter how significant the issue. 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, a valid address. Comments may also be sent by email, but must include your name and physical address; email addresses alone are not sufficient.

KEEP A COPY OF YOUR COMMENTS. They can be misfiled, misclassified or lost and you want to ensure there is a record of your comments. **Consider sending a second copy to your city representatives.** Citizens can copy their cities so the cities are aware of the ideas put forth by their citizens. Some cities are considering posting these comments on their website in order to help people get ideas about what some of their fellow citizens are commenting. Encourage your city to do the same.

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

More Helpful Hints

• **Be specific:** The more specific your comments are, the more they will require the lead agency to consider and respond to them.

Don’t say: “this project will increase traffic”

Instead say: “this project will increase traffic during construction at the corner of 5th and Elm in the vicinity of an elementary school which already has traffic problems. The EIR should analyze the project’s impact on traffic circulation and safety, especially regarding school children near this site.”

• **Supply some evidence, if you can, even if it simply personal experience or observations:**

Don’t say: “I’m concerned about visual impacts of this project.”

Instead say: “I often view the project site when traveling on Ski Village Dr. and consider the site visually prominent in the community”

- Look for inconsistencies in the document: If they use one set of numbers for traffic counts in the traffic section and another in the noise section, the two sections must be made consistent.
- Look for errors in logic: If a proposed mitigation measure isn’t funded, doesn’t have an identified site, or for some other reason looks like a fig leaf rather than a serious effort to address a problem, say so.
- Look for stale data and point it out
- Focus on the sufficiency of the EIR in identifying and analyzing the possible impacts of the project on the environment.

For example: Is there a local public facility required to serve the new development that has not been identified as potentially having an impact? If you believe an area has been insufficiently analyzed, include that in your comment and request that it be analyzed.

Sample Comment: Traffic impact analysis is worthy of particular attention. The introduction of 300,000 square feet of additional commercial space and up to 3,600 residential units will compound existing traffic congestion in the project vicinity. Adequate analysis of project impacts on the local and regional traffic infrastructure must be a focus of the EIR. This can trigger questions regarding traffic flow, air quality, noise, and aesthetics.

- Identify which of the project’s significant effects might be avoided or mitigated. These are typically called “mitigation measures.” Does it appear that the mitigation measures will actually minimize project impacts? If not, don’t simply state that a mitigation measure is insufficient. A comment is taken more seriously when it suggests an alternative project or a mitigation measure that would provide better ways to avoid or mitigate the significant environmental effects of the project. For example, a comment such as the one below regarding open space could result in more certainty regarding open space preservation:

A mitigation measure clearly worded to require permanent preservation, and funding for management, of the open space on site is fundamental for this project to sustain the viability of the preserved open space. The open space should be dedicated in fee simple to a public park or conservation agency.

- Avoid starting comments with statements of support, followed by concerns. When you write, “I support this project, but I have a number of concerns...” your comment may be logged as a “Letter of Support” even though you may have written 10 pages on why you are not satisfied with the EIR. Your comment does not need to be “balanced” between the part of the project you favor and those that you concern you – simply state your concern
- Separate your concerns into clearly identifiable paragraphs / headings and keep a tight focus on each separate issue. Don’t mix topics.
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Where do I send my comments?

Please visit the Authority’s website for the most updated information on how to respond to the EIR. The Notice of Availability of the Draft EIR has the information on where to send comment. Find it at:

http://www.co.siskiyou.ca.us/sites/default/files/docs/PLN-20170112_NoticeOfAvailability-CrystalGeyserDEIR.pdf

The notice states:

Members of the public and other interested agencies and individuals are invited to provide written comments, which will be accepted through 5:00 p.m. on Monday, February 27, 2017. Please provide your written comments to:

**Analytical Environmental Services,
1801 7th Street Sacramento, CA 95811
Attention: Ryan Sawyer AICP.
(Email: crystalgeyser@analyticalcorp.com).**

IMPORTANT: If you make reference to ANY document in your EIR comments (a letter or notice you received, a law in your city, a copy of a presentation you saw – even if it was given by the Authority, etc.) you should include a full copy as part of your EIR comments. Think of your comments as testimony in a case. Any documents you are submitting in the future might be considered evidence. Do NOT assume the Authority has a copy of any document you are referencing.

***Keep a copy of your comments. Send a copy to your city as well so they have a record of what the citizens are asking for or are concerned about relating to the Crystal Geyser Project.**

This article was adapted from the Californians Advocating Responsible Rail Design web page on EIR comments:

<http://calhsr.com/environmental-review/how-to-write-an-eir-comment/>