

The California Environmental Quality Act

Brief Overview

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What is CEQA?

- California Environmental Quality Act (CEQA): “A California law which sets forth a process for public agencies to make informed decisions on discretionary project approvals.
- The process aids decision makers to determine whether any environmental impacts are associated with a proposed project.”

(see, www.energy.ca.gov/lng/glossary.html)

Not Prohibitive Statute

- CEQA does not prohibit public agencies from approving projects that are bad for the environment.
- CEQA does require that the agencies: 1) study the environmental impacts associated with a project, 2) allow the public to comment on the environmental issues, and 3) reduce the impacts to the environment where feasible.

Approval of projects; feasible alternative or mitigation

Public agencies should not approve projects as proposed if there are **feasible alternatives** or **feasible mitigation measures** available which would substantially lessen the significant environmental effects of such projects...

(Public Resources Code section 21002)

Project Approval

That being said “...in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.”

Public Resources Code section 21002

The Activist Role in CEQA Process

- CEQA allows public participation in the environmental review process
- Notice of projects
- Identification of environmental impacts
- Public comments on projects
- Media



Definition Of Project

“Project” means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

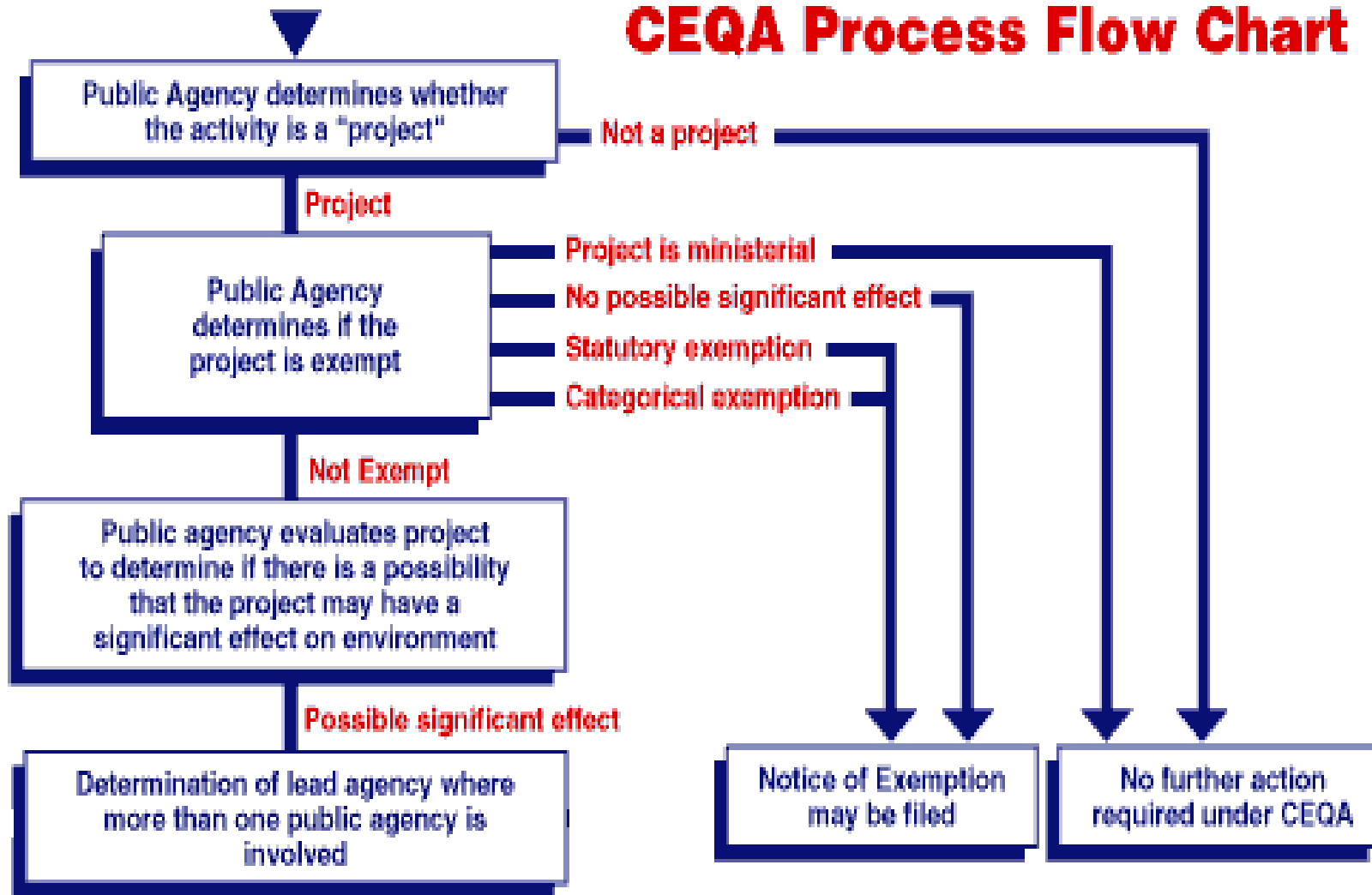
- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Public Resources Code section 21065.

Must Be a Discretionary Project

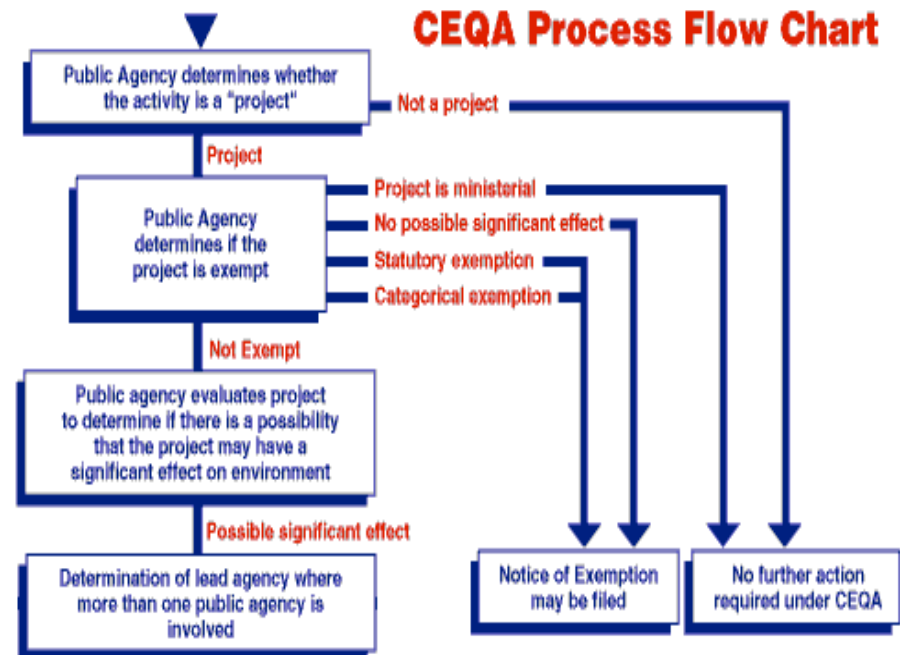
"Discretionary project" means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations. A timber harvesting plan submitted to the State Forester for approval under the requirements of the Z'berg-Nejedly Forest Practice Act of 1973 (Pub. Res. Code §§ 4511 et seq.) constitutes a discretionary project within the meaning of the California Environmental Quality Act section 21065(c). *See also* CEQA Guidelines 15357.

CEQA Process Flow Chart



Statutorily Exempt Projects

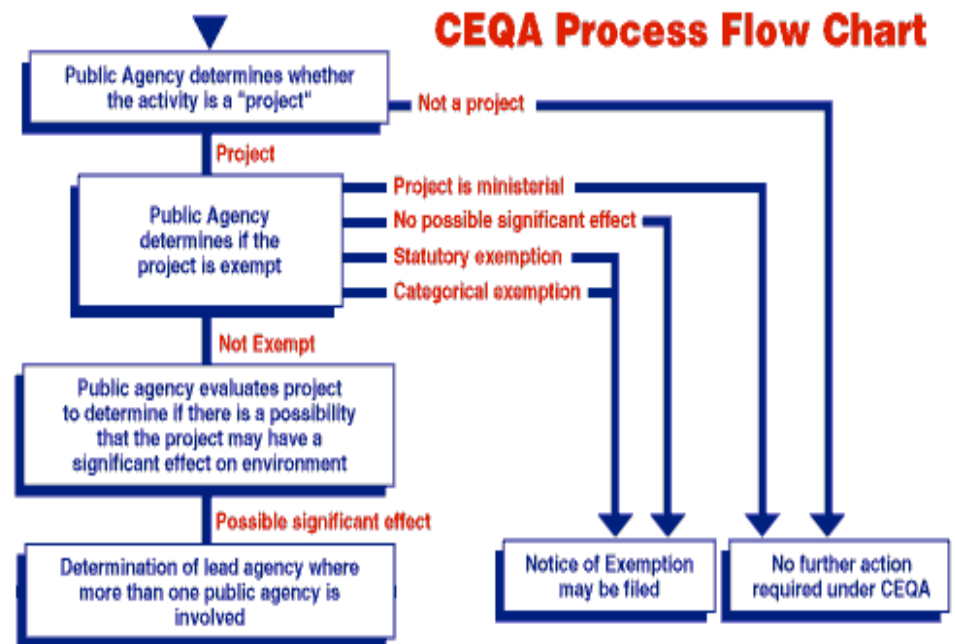
- Do not require environmental review
- Are created by California Legislature
- Found in various statutes
- **Example:** actions to prevent or mitigate an emergency.



Categorical Exemptions

- The CEQA Guidelines set forth numerous categorical exemptions.
- **Example:** “The operation, repair, maintenance, or minor alteration of existing public or private structures.”

See CEQA Guidelines section 15301.



Categorical Exemptions

New Construction or Conversion of Small Structures

Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

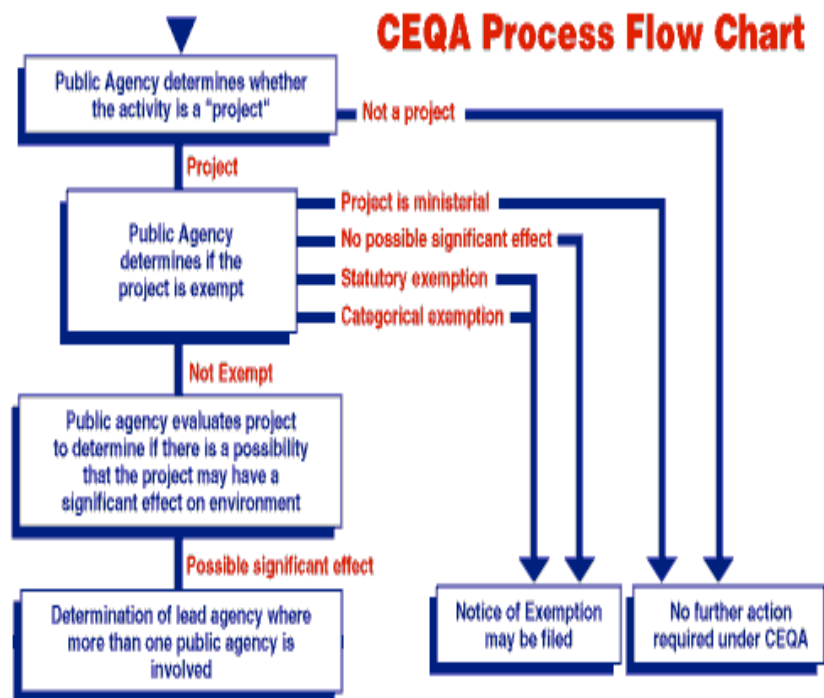
CEQA Guidelines section 15303.



Initial Study

Appendix G of CEQA Guidelines

- If the project is not exempt from CEQA, an agency will conduct an initial study.
- This is an evaluation which allows the agency to determine which action to take: negative declaration, mitigated negative declaration or EIR.



ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" as indicated by the checklist on the following pages.

<input type="checkbox"/>	Aesthetics	<input type="checkbox"/>	Geology/Soils	<input type="checkbox"/>	Population
<input type="checkbox"/>	Agriculture Resources	<input type="checkbox"/>	Greenhouse Gases	<input type="checkbox"/>	Public Services
<input type="checkbox"/>	Air Quality	<input type="checkbox"/>	Hazards	<input type="checkbox"/>	Recreation
<input type="checkbox"/>	Biological Resources	<input type="checkbox"/>	Land Use	<input type="checkbox"/>	Transportation
<input type="checkbox"/>	Cultural Resources	<input type="checkbox"/>	Mineral Resources	<input type="checkbox"/>	Utilities
<input type="checkbox"/>	Noise	<input type="checkbox"/>	Water		

1. If there are one or more “Potentially Significant Impacts” entries when the determination is made, an EIR is generally required.
2. If the entries are “No Impact” or “Less Than Significant Impact”, the lead agency may prepare a Negative Declaration.
3. Where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to “Less than Significant Impact,” the lead agency can prepare a Mitigated Negative Declaration.

This project had many but we will only discuss a few of them.

See, Appendix G of CEQA Guidelines

Fair Argument Standard

A lead agency is required to prepare an EIR when:

1. It can be fairly argued,
2. On the basis of substantial evidence,
3. In light of the whole record,
4. That a project may have a significant environmental impact.

CEQA Guidelines section 15064(a), *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.

Negative Declaration

If the lead agency determines that a proposed project, would not have a significant effect on the environment, the lead agency shall adopt a negative declaration to that effect. Public Resources Code section 21080(c).



Mitigated Negative Declaration

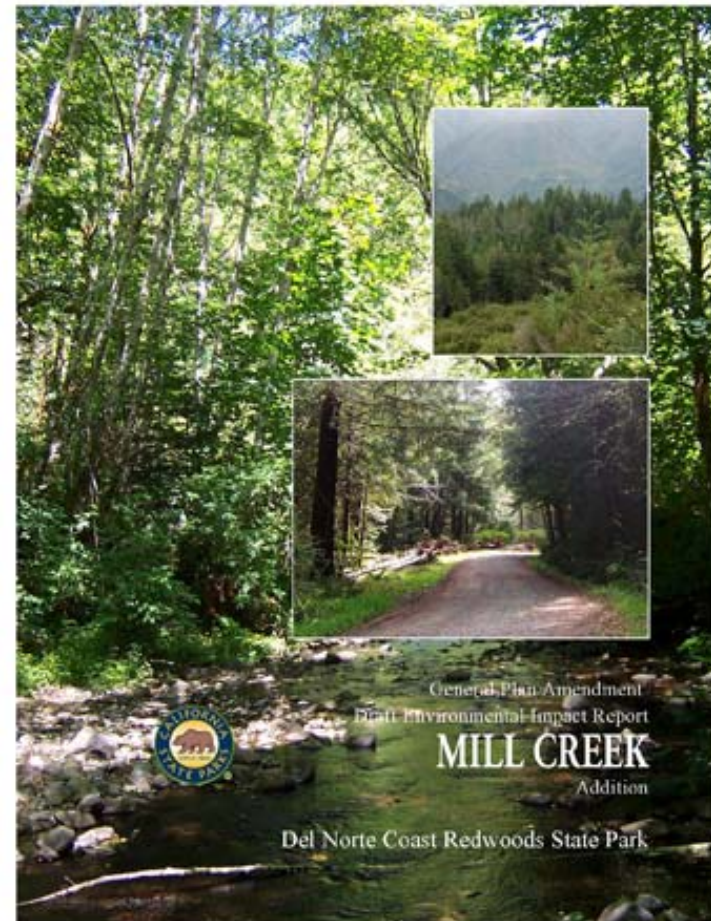
If initial study identifies potentially significant effects on the environment, but (A) revisions in the project plans, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would mitigate the effects to a point where clearly no significant effect on the environment would occur, and (B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

Public Resources Code section 21080(c)(2)

Environmental Impact Report (EIR)

EIR is a detailed statement describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects.

CEQA Guidelines section 15362



Partial List of Mandatory Contents of EIR

- Table of contents
- Brief summary of project
- Description of project
- Environmental setting
- Description of significant environmental impacts
- Mitigation measures
- Discussion of alternatives
- Growth inducing impacts
- Analysis of cumulative impacts

CEQA Guidelines sections 15120,
15122-15131.

EIR Steps-Defining Scope Study

- **Initial Study.** Already discussed (appendix G).
- **Notice of Preparation.** If a lead agency determines that an EIR is required for a project, the lead agency shall immediately send notice of that determination to each responsible agency, the Office of Planning and Research, and those public agencies having jurisdiction by law over natural resources affected by the project that are held in trust for the people of the State of California. Upon receipt of the notice, each responsible agency, shall specify to the lead agency the scope and content of the environmental information that is germane to the statutory responsibilities of that responsible agency. Public Resources Code section 21080.4.
- **Scoping Meeting.** A Lead Agency is required to hold at least one scoping meeting. Notice must be sent neighboring cities, counties and responsible agencies. Public Resources Code section 21083.9.
- **Consultation.**
- **Public Scoping Meetings.**

Significant Environmental Impact

CEQA defines a significant environmental impact as:
“a substantial, or potentially substantial, adverse change in the environment.”

Public Resources Code section
21068.



Significant Environmental Impact

Applies to adverse change in any of the physical conditions within the area affected by the project including: land, flora, air, fauna, water, noise, objects of historic significance.

CEQA Guidelines section 15382.

“Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.”

CEQA Guidelines section 15126.2.

Mitigation Measures

“An EIR shall describe feasible measures which could minimize significant adverse impacts...”

CEQA Guidelines section 15126.4(a).



Mitigation Measures

Mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
- (e) Compensating for the impact by replacing or providing substitute resources or environments.

CEQA Guidelines section 15370.

Project Alternatives

The Environmental Impact Report must include alternatives to the proposed project.

1. No project
2. EIR must identify which alternative is superior.

See, Public Resources Code section 21110 (b)(4), CEQA Guidelines section 15126.6.

Process

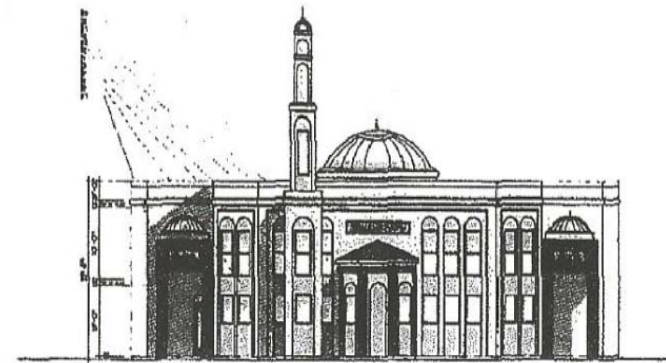
- Publish Draft EIR
- Public hearings not required but encouraged
- Response and comments
- Final EIR
- Certification
- Notice of determination



Case Study

Al-Nu Islamic Center

- Al-Nu Islamic Center submitted an application for CUP to develop a place of worship.
- Rural community.
- Save Our Uniquely Rural Community Environment (“S.O.U.R.C.E”) is a citizens group consisting mainly of people that live near the proposed project.

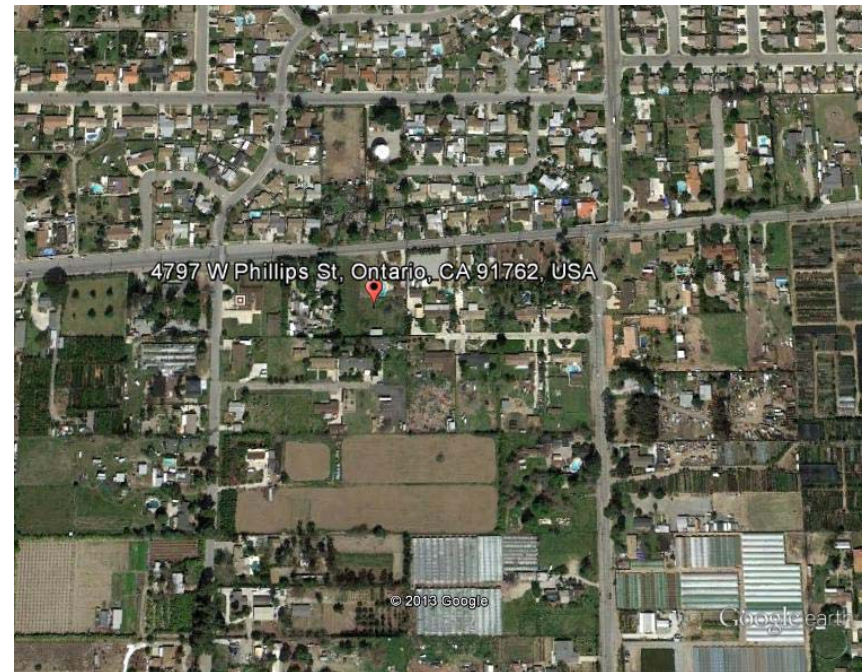


N-E ELEVATION
SCALE 1/8"=1'-0"

The Project


The Project is described in the Planning Commission Staff Report as follows:

The proposed Project is a Conditional Use Permit (CUP) application to establish a 7,512 square-foot religious center on 1.54 acres. The proposed facility includes a 1,836 square-foot prayer hall for a maximum occupancy of 262 persons. The site is currently developed with an existing single-family home that will be demolished as part of the proposal to accommodate the required parking.



Applicants Lobbying Efforts (Religious Land Use and Institutionalized Persons Act 2000)

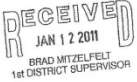
In the Name of Allah, The Beneficent & Merciful



Islamic Shura Council
OF SOUTHERN CALIFORNIA

January 3, 2012

Mr. Brad Mitzelfelt
Vice-Chairman
1st District Supervisor
San Bernardino County Government Center
385 N. Arrowhead Ave., Fifth Floor
San Bernardino, CA 92415-0110



Re: Al Nur Islamic Center -- 4797 W. Phillips Blvd., Ontario 91702

Dear Mr. Mitzelfelt:

Let me at the outset thank you for your leadership and service to the largest county of our country, in San Bernardino.

I am writing this regarding our member Mosque - Al Nur Islamic Center who were granted in December of 2011, the conditional use permit by the Planning Commission, to develop/use their new facility as a Mosque and community center.

I respect the right of those who appealed the decision, may they be residents of the City of Ontario or not, I however like you to make note of similar fear-based appeals in other cities, such as in Temecula Valley, that was eventually overturned.

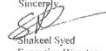
I do believe appeals must be heard but for their merit and not for some people's unknown and baseless fears. I am confident you will not allow the trampling of our constitutional rights to assemble and worship peacefully so long as an applicant meets the legal requirements, as we believe, Al Nur Islamic Center has.

Al Nur Islamic Center is not merely going to be a place of worship for Muslims but a service center for all members of their community, transcending faith, race and class.

Exercising litigation especially at a time when our communities face more important and urgent challenges, I believe, contradicts prudence. And therefore I urge you to simply uphold our laws and let sanity prevail.

Not by choice but few of our member Mosques were forced to face similar difficulties in other cities. With wisdom, patience and with the help of Allah, we think that, we were able to eventually resolve them.

As an umbrella organization of Mosques and Muslim organizations serving more than half a million Muslims in Southern California, I wish to offer our office as a resource that you are welcome to use as you deem fit. Together, we wish to resolve the case of Al Nur Islamic Center and allow them to carry on with their plans.

Sincerely,

 Shaukeel Syed
 Executive Director

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UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF VIRGINIA
 Richmond Division

JAN 12 2012

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 3:11-cv-585-HEH
)	
COUNTY OF HENRICO, VIRGINIA,)	
)	
Defendant.)	

COMPLAINT

The United States of America files this Complaint and alleges:

1. This is a civil action brought by the United States of America to enforce the Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. §§ 2000cc-2000cc-5.
2. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. § 2000cc-2(f).
3. Venue is proper under 28 U.S.C. § 1391(b) because the actions giving rise to this action occurred in the Eastern District of Virginia.
4. Defendant County of Henrico ("County" or "Defendant") is a county located in the Commonwealth of Virginia. The County has the authority to regulate and restrict the use of land and structures within its borders, including granting and denying requests for rezoning. It covers 244.06 square miles and has a population of approximately 307,000 persons. It has 213 houses of worship consisting of 209 Christian churches, two Hindu temples, one Buddhist temple, and one synagogue. The County has no mosque.
5. The County is governed by a Board of Supervisors composed of five members. The County's Department of Planning oversees the County's building and development

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Initial Study

The Initial Study found that there is a less than significant impact in regard to the questions whether the Project would (a) exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board and (b) require or result in the construction of new wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

Commenting Stage

S.O.U.R.C.E raised issues related to: septic system, traffic, drainage and air quality.

Importance of Administrative Record

Septic Issues

- The Project contemplated having 262 people using a septic system intended for use by a single-family residence.
- According to the MND, the County determined there will be no impact on the soils due to the use of the septic system as “[a]ll of the properties within the vicinity of the project are also on septic, and there is no indication that the project site could not support a septic system.” (AR 30-32).
- The Planning Commission reached this conclusion without conducting any testing (no soil percolation, drain field size, depth to GW)

Conditions of MND

- All that was required of the Applicant by the County was a letter from a certified professional stating that the existing system has the capacity for the proposed Project. (AR 6)
- Instead, the Applicant submitted a letter that it could purchase and install a 2000-gallon septic tank (the current tank is 1000 gallons (AR 398, line 26)) to meet the needs of 285 people.

Public Comments

- A letter was submitted on December 8, 2011 by Richard Roberts, a Septic System Specialist, stating that the present system would be “severely lacking” for the proposed Project. (AR 222).
- A letter was also submitted on February 27, 2012 by a Civil Engineer, Christopher Pierson, referencing Mr. Robert’s letter opining that “[w]ater percolation through the soil may or may not be adequate. Soil testing is needed to determine the capacity of the soil to drain water, especially as neighbors report poor water drainage in the area.” (AR 738-748 at 740).

Comments From RWQCB

- By letter dated January 26, 2012, the California Regional Water Quality Control Board opined “[t]he proposed project does not appear to comply with [its] minimum lot size requirements for the use of a septic tank subsurface disposal system” and that “the 262-seat center’s estimated flows are 1,310 gallons per day, in excess of the minimum lot size requirements.” (AR 250).
- Per the Board’s Frequently Asked Questions, the requirements were established in 1989 and are “intended to protect groundwater quality.” (AR 252).

Requirements of CUP

The CUP requirements differ from the MND as it specifically states that the Real Party is required to hook up to a sewer system, if possible, or if not, use an EHS approved onsite wastewater treatment system. (AR 72).

- County believed that the Applicant could not connect to the Chino sewer system.
- A day before the December 8, 2011 hearing, the County learned that the Applicant can in fact connect to the sewer in Chino. **A “Will Serve” had apparently been provided to the applicant in 2010 which the County was unaware of** (AR 317, lines 2-9; AR 666)
- MND never looked Environmental Impacts of connecting to Chino sewer system.
- Applicant stated that it had no intention to connect to sewer system despite requirements of CUP.

Planning Commission Approval

- Despite the conflicting requirements of the MND and the CUP regarding the septic issue; and
- Despite the lack of any studies in the record regarding the environmental impacts of septic; and
- Despite the Applicant's stated refusal to connect to the Chino sewer system, on December 8, 2011, the Planning Commission adopted the MND, adopted the findings for the CUP as contained in the staff report, and conditionally approved the CUP after a public hearing by a vote of 4 to 1. (AR 198–207, 379).

Project Appeal and Approval

On December 19, 2011, an appeal was filed by SOURCE members Carol Younan and Diane Schumann challenging the Planning Commission's December 8, 2011 approvals. (AR 208-247).

The appeal was heard by the Board of Supervisors on February 28, 2012 (AR 264-269, 380 -436). At the hearing, the Board adopted the MND, adopted the findings as recommended by the Planning Commission, and approved the filing of a Notice of Determination ("NOD").

CEQA ACTION

- *Save Our Unique Rural Community Environment vs. County of San Bernardino, et al.* was filed on March 29, 2012.
- On February 5, 2013 the court granted Plaintiff's petition for writ of mandate to overturn the approval of the MND and CUP on the grounds of failure to properly analyze the Al-Nur Islamic Center Projects impacts on the environment in the area of wastewater disposal.

Conclusion

- Administrative record
- Comment letters
- Comment at public hearing
- Writ of Mandamus
- Referendum