

Notice of Intent

Sunday, July 1, 2018 11:37 AM

Vani Moodley

Key	Term	Source
NOI	Notice of Intent	CEQA
MND	Mitigated Negative Declaration	CEQA
TIS	Traffic Impact Study	
LA	Lead Agency	
IS	Initial Study	

Issue	Legal Requirement	Comments								
NOI to adopt MND did not provide the required review period	<p>The Department must mail the NOI to the last known name and address of all organizations and individuals who have previously requested such notice in writing and must also provide an NOI through at least one of the following procedures to allow the public a 30 calendar day review period:</p> <p>Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected, the notice must be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.</p> <p>Posting of notice on and off site in the area where the project is to be located.</p> <p>Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll.</p>	NOI was issued on 4/4/18 and provided for a comment period which began on 4/9/18 and ended on 4/30/18. Thus, the required 30 calendar review period was not provided.								
Content of NOI	<table border="1"> <thead> <tr> <th>Requirement</th> <th>Met(Y/N)</th> </tr> </thead> <tbody> <tr> <td> <ul style="list-style-type: none"> A brief description of the proposed project and its location. <p>From <http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm></p> </td> <td>Y</td> </tr> <tr> <td> <ul style="list-style-type: none"> The starting and ending dates for the review period during which the Lead Agency will receive comments on the proposed ND or MND, including starting and ending dates for the review period. <p>From <http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm></p> </td> <td>Y, but comment period is too short</td> </tr> <tr> <td> <ul style="list-style-type: none"> The date, time, and place of any scheduled public meetings or hearings to be held by the </td> <td>N</td> </tr> </tbody> </table>	Requirement	Met(Y/N)	<ul style="list-style-type: none"> A brief description of the proposed project and its location. <p>From <http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm></p>	Y	<ul style="list-style-type: none"> The starting and ending dates for the review period during which the Lead Agency will receive comments on the proposed ND or MND, including starting and ending dates for the review period. <p>From <http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm></p>	Y, but comment period is too short	<ul style="list-style-type: none"> The date, time, and place of any scheduled public meetings or hearings to be held by the 	N	
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Lead Agency on the proposed project, when known at the time of notice.

From

<<http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm>>

- The address or addresses where copies of the proposed ND or MND and all documents referenced in the proposed ND or MND are available for review. This location or locations must be readily accessible to the public during the lead agency's normal working hours.

Y

From

<<http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm>>

- A description of how the ND or MND shall be provided in electronic format. (Added by AB 209, Statutes of 2011, which expanded Public Resources Code Section 21092(b)(1) to include this requirement.)

From

<<http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm>>

- The presence of the site on any list of hazardous waste facilities, land designated as hazardous waste property, and hazardous waste disposal sites, and the information in the Hazardous Waste and Substances Statement required under Government Code, Section 65962.5 (f).

From

<<http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm>>

- Other information specifically required by statute or regulation for a particular project or type of project.

From

<<http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm>>

OPPORTUNITY FOR PUBLIC HEARING OR PUBLIC HEARING

From <<http://www.dot.ca.g>

Public hearings are encouraged, but not required as an element of the IS/ND process. However, the Project Development Procedures Manual (PDPM) requires a public hearing for any projects that:

1. Require significant right of way
2. Require substantial changes to the layout, or to the function of connecting roadways, or facility being improved,
3. Have a significant adverse impact on abutting real

Argue 3 and 4

[ov/ser/vol1/sec5/ch35nd/chap35.htm](http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm)>

- 3. Have a significant adverse impact on adjoining real property, or
- 4. Have a **significant environmental, economic, social, or other effect.**

A "Notice of Opportunity" for a public hearing may be used to satisfy the requirement for a hearing if the project is non-controversial and a hearing request is unlikely. This can be determined by analysis of comments received from the public or local agencies or through prior contacts and information meetings.

From <<http://www.dot.ca.gov/ser/vol1/sec5/ch35nd/chap35.htm>>

Transportation/Traffic (Part 1)

Thursday, September 6, 2018 3:09 PM

Traffic Impact Study (TIS) analysis requires consideration of a number of key variables used to project future operations after a proposed project is implemented. Examples of variables include

forecasted trip generation, trip distribution, future traffic conditions, and capacity and performance of roadway improvements. The assumptions made about key variables may affect the implementation of land use and transportation plans, positively or negatively.

When impacts are not accurately projected through the traffic analysis process, the best decisions may not be made. Poor decisions can result in traffic congestion, safety issues, or unnecessary improvements.

Credible and accurate TISs are important for community development and livability.

Organizational issues or conflicts of interest that may or may not affect the analysis outcomes are best discussed during scoping and managed accordingly by the relevant parties in advance of conducting the analysis.

Issue	Ranch Community Response	
The TIS is fundamentally flawed	Details	Comments
	The TIS does not use the latest <i>ITE Trip Generation</i> edition	The 9th edition is used whereas the latest edition (10th) should have been used
	The TIS is based on the wrong land use code	<p>The estimated amount of traffic associated with a proposed development is a critical factor. This estimate is based on the land uses of the development. Where a travel demand model is available, the use of this model should be considered and discussed during the scoping meeting to predict trip generation.</p> <p>When a travel demand model is unavailable, the most commonly accepted data source is ITE's Trip Generation, an informational report of estimated trip generation by land use codes. Exhibit 5 identifies the elements of a sample Trip Generation page.</p> <p>A trip generation prediction should be developed using the following sequential process:</p> <ul style="list-style-type: none"> • Land Use Code Selection: Because there are more than 150 land use categories in Trip Generation, the appropriate code must be identified. In many cases, there is more than one potential applicable code. • Independent Variable Selection: There is more than one independent variable for many of the land use codes, so a decision must be made about the appropriate variable. • Independent Variable Application: For most land use codes, an average rate or fitted curve can be used.
	The TIS is based on project site activity provided by the project applicant	<p>There is a conflict of interest here because the project applicant would be foolish to provide anything other than project site activity that would minimize the impact of traffic.</p> <p>Moreover, the ITS trip generation method is utilized trip yields trip rates that are based on a Land Use Code and a site square footage. Project site activity metrics provided by the project applicant should not be used.</p>
The TIS is focused on automotive traffic only and fails to consider bicycle and pedestrian access	<p>The TIS is based on project site activity for an assisted living facility whereas the actual use is for a convalescent hospital</p>	<p>Traffic would be higher for a convalescent hospital than for an assisted living facility because of greater visits for friends and family, generally convalescent hospitals have more staff and require more service providers</p>
	Concerns	Comments
	<p>Are pedestrian and bicycle needs safely accommodated?</p> <ul style="list-style-type: none"> • Will the proposed development maintain 	<p>To determine adverse effects on pedestrian and bicycle facilities, the following criteria should be evaluated:</p> <ul style="list-style-type: none"> • Road width • Road design

or improve safety for pedestrians and bicyclists?

- Will the proposed development's access points increase potential conflicts with pedestrians and bicycles?
- Will site-generated traffic adversely affect pedestrians and bicycles?
- Will site-generated traffic adversely affect existing and planned pedestrian and bicycle facilities?
- How will proposed mitigation affect pedestrians and bicyclists?

- Acceptable grade
- Alignment where sidewalk crosses driveway
- Driveway widths
- Connection of street sidewalk and parking areas to building entrances
- Connections between adjacent developments/uses
- Access to adjacent and nearby pedestrian and bicycle facilities
- Traffic speed
- Traffic control operation and timing favorable to safe pedestrian crossing
- Whether right-turns-on-red should be prohibited to protect bikes and pedestrians
- Other items: sight lines, lighting, pavement condition, signing, curb extensions and pedestrian refuge medians

At a minimum, the TIS should indicate that the proposed project will maintain or improve existing conditions for pedestrians and bicyclists. The TIS should identify any existing and planned bicycle or pedestrian facilities that are in the project area and identify facilities that would be modified or adversely affected by the proposed development.

An adverse pedestrian or bicycle effect would occur if the project were to result in unsafe conditions for pedestrians, including unsafe increases in pedestrian and bicycle or bicycle and motor vehicle conflicts. The TIS should document all analysis of bicycle and pedestrian needs, including adverse effect and proposed mitigation. Consultation with ODOT and other relevant parties during TIS preparation will be useful in assessing adverse effect.

Other relevant parties could include the local school district, local bicycle or pedestrian coordinator, local transportation planner, or bicycle and pedestrian committees.

Transportation/Traffic (Part 2)

Thursday, September 6, 2018 4:03 PM

Issue	Ranch Community Response	
The TIS is outdated.	<p>Details</p> <p>The TIS is dated April 22, 2015 and indicates that it was revised in March 2018</p>	<p>Comments</p> <p>The TIS fails to indicate the nature of the revision. The latest version of the <i>ITE Trip General Manual (10 ed.)</i> was released in September 2017. Since the TIS is based on the <i>ITE Trip Generation Manual</i> any revision should include the use of the 10th ed trip rated. But, this was not done.</p>
The TIS does take into account seasonal variations in traffic use.	<p>Details</p> <p>Variations in traffic use and seasonal effects should be taken into account when compiling traffic volumes from manual counts. Seasonal factors developed from permanent counters called automatic traffic recorders (ATRs), ATR characteristic tables, or seasonal trend tables should be applied to manual traffic counts to more accurately reflect traffic conditions.</p>	<p>Comments</p> <p>The TIS is based on field observations made in March 2015. Given that we are in September 2018, this data is woefully out of date. Moreover, the data appears to have been collected with a single 24 hour period. Thus, the data does not consider variations due to seasons and due to changes in the school calendar. Finally, observations were of vehicular traffic only and ignores pedestrian and bicycle traffic.</p> <p>An important point to consider is the Hassler Pky and Dove Rd. are heavily used by cyclists. Hassler Pky in particular is preferred by cyclists because it is almost the only hill route in the San Jose Area and therefore give competitive cyclists much needed practice in hill climbing. Because access to Hassler Pky is via Dove Rd, the latter also sees significant bicycle traffic. Since Dove Rd. lacks both a shoulder and a bicycle lane there is already a risk of injury to cyclists through collisions with vehicular traffic which will no doubt be exacerbated if the project is approved.</p>
The TIS uses incorrect data	<p>Details</p> <p>The project will have 522 Employees. 271 Full-Time Employees and 251 Part Time Employees. Total Number of hours per week is 14,592.</p>	<p>Comments</p> <p>The TIS is based on a peak of 55 employees</p>

Aesthetics

Thursday, September 6, 2018 12:01 PM

Issue	Ranch Community Response		
<p>The project would have a substantial adverse effect on a scenic vista.</p>	<p>Relevant Policy</p> <p>CD-10.3 Require that development visible from freeways (including US 101) be designed to preserve and enhance attractive natural and man-made vistas.</p> <p>LU-17 seeks to preserve the valuable natural resources of the hillsides and protect their aesthetic and habitat amenities to enhance the rural character of these areas.</p> <p>LU-17.4 lists guidelines for development in hillside and rural residential areas in order to preserve and enhance the scenic and aesthetic qualities of the natural terrain and states that, "dwelling unit sites should take advantage of scenic views but should be located below hilltops to protect the aesthetics and ridgeline silhouette viewed from below, from public places, and from the valley floor."</p>	<p>Excerpt from IS</p> <p>Housing, roadway infrastructure, and facilities characteristic of a suburban setting are present in the surrounding project area; however, the immediate project site is visually defined by undeveloped hillsides and open space. The overall character and quality of the project area can be described as rural-suburban.</p> <p>While the project would modify views of the hillside, the new buildings would have a maximum height of 65 feet, and the upper portions of the 230 foot tall undeveloped hillside (located behind the development footprint) would continue to be visible from both the park and from vehicles passing by the site on US 101.</p> <p>The project would obscure or modify views of the lower hillside from public vantage points including views from US 101 and Hellyer County Park; as described previously, however, an existing soundwall would block views of the lower floors of the project. The quality of views from Hellyer County Park would be generally similar to existing conditions, with the development footprint occurring within the existing developed footprint of the site, surrounded by 18 acres of undeveloped hillside open space, and the buildings occupying only the bottom of the slope, below the ridgeline.</p>	<p>Comments</p> <p>If the IS admits that the project site is visually defined by undeveloped hillsides and open space</p> <p>The LA has admitted that the project would modify the views of the hillside. The project does not protect the aesthetic and habitat amenities and does not enhance the rural character of the hillside. The Lead Agency is asked to recognize the hillside question is one of the few, if not the only grassy hillsides immediately adjacent to 101 and provides a unique rustic and charming vista. Any development on said hillside would destroy the scenic vista.</p> <p>Hellyer County Park Golf nearby. Sirens, traffic, Coyote Creek Trail</p> <p>Aesthetic qualities are more than just visual. They include sound. A CH would have constant traffic including emergency vehicles with blaring sirens</p>
<p>The project would substantially degrade the existing visual character or quality of the site and its surroundings?</p>	<p>Relevant Policy</p>	<p>Excerpt from IS</p>	<p>Comments</p> <p>That this is indeed the case...</p>
<p>The project would create a new source of substantial light or glare which will adversely affect day or nighttime views in the area?</p>	<p>Relevant Policy</p>	<p>Excerpt from IS</p>	<p>Comments</p> <p>A project of this magnitude will have substantial lighting</p>
<p>Light and Glare Impacts</p>			

Air Quality

Thursday, September 6, 2018 1:35 PM

Issue	Ranch Community Response					
<p>The mitigations proposed to minimize the exposure of the site occupants to TAC emissions and to avoid significant health risks to health and safety are inadequate</p>	<table border="1"> <thead> <tr> <th data-bbox="646 380 1068 432">Excerpt from IS</th> <th data-bbox="1068 380 1396 432">Comments</th> </tr> </thead> <tbody> <tr> <td data-bbox="646 432 1068 1944"> <p>Conditions of Approval: The project shall include the following safeguards to minimize exposure site occupants to long-term TAC and annual PM2.5 emissions:</p> <ul style="list-style-type: none"> • Air filtration devices shall be installed as part of the heating, ventilation, and air conditioning (HVAC) system. Air filtration devices shall be rated MERV13 or higher. Alternately, at the approval of the City of San Jose, equivalent control technology may be used if it is shown by a qualified air • An ongoing maintenance plan for the buildings' HVAC air filtration system shall be prepared and submitted to the Director of the Department of Planning, Building and Code Enforcement for review and approval. The maintenance plan shall (1) specify provisions for the cleaning, maintenance, and monitoring of affected buildings for air flow leaks; (2) include assurance that owners/tenants are provided information on the ventilation system; and • Conditions of approval shall be printed on all approved construction contracts, plans, and similar </td> <td data-bbox="1068 432 1396 1944"> <p>The conditions of approval all require indoor use. This means that unless patients remain indoors they will expose themselves to the TAC emissions and attendant health risk. This restriction to indoor living poses health problems caused by lack of exposure to sunlight. Such mental health problems could include mental health problems such as depression etc. Mental health and stress reduction requires regular outdoor exposure. One can make the argument</p> </td> </tr> </tbody> </table>	Excerpt from IS	Comments	<p>Conditions of Approval: The project shall include the following safeguards to minimize exposure site occupants to long-term TAC and annual PM2.5 emissions:</p> <ul style="list-style-type: none"> • Air filtration devices shall be installed as part of the heating, ventilation, and air conditioning (HVAC) system. Air filtration devices shall be rated MERV13 or higher. Alternately, at the approval of the City of San Jose, equivalent control technology may be used if it is shown by a qualified air • An ongoing maintenance plan for the buildings' HVAC air filtration system shall be prepared and submitted to the Director of the Department of Planning, Building and Code Enforcement for review and approval. The maintenance plan shall (1) specify provisions for the cleaning, maintenance, and monitoring of affected buildings for air flow leaks; (2) include assurance that owners/tenants are provided information on the ventilation system; and • Conditions of approval shall be printed on all approved construction contracts, plans, and similar 	<p>The conditions of approval all require indoor use. This means that unless patients remain indoors they will expose themselves to the TAC emissions and attendant health risk. This restriction to indoor living poses health problems caused by lack of exposure to sunlight. Such mental health problems could include mental health problems such as depression etc. Mental health and stress reduction requires regular outdoor exposure. One can make the argument</p>	
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Agricultural and Forestry Resources

Thursday, September 6, 2018 12:14 PM

Issue	Ranch Community Response	
<p>The project would conflict with existing zoning for agricultural use</p>	<p>Excerpt from IS</p> <p>The project site is surrounded by rural/suburban development and is occupied by single-family residences or is undeveloped open space; therefore, its development would not</p>	<p>Comments</p> <p>The is factually wrong.</p>
	<p>The project site has a Public/Quasi-Public General Plan designation and is planned for suburban uses. The site is zoned Agriculture (A) on the City's Zoning Map. While the site was once occupied by an orchard, it site is not used for cultivation of crops. The is currently grazed by horses and livestock, a practice which would continue following implementation of the proposed project. The site is not used for forest or timberland purposes. With approval of the proposed rezoning of three acres of the site from Agriculture (A) to Planned Development (PD), the project would The project site is not part of a Williamson Act contract and is designated as Grazing Land in the Santa Clara County Important Farmland, the potential loss of which is not</p>	<p>This is a conclusory statement. What studies support this conclusion? The admitted loss of grazing land will be an actual loss and not merely a potential one. On the contrary we can assert that the loss is a significant one. Surely mere assertion of a conclusion cannot be the standard envisaged by CEQA. The point that the LA has failed to substantiate the bald allegation that the loss is not considered significant and is thereby making a mockery of</p> <p>Moreover, the loss of grazing land is a significant issue because the project has not been demonstrated to fill a need. More particularly, the project is not supported by any data showing a need for a convalescent home in the area. Such being the case, why valuable grazing land and an esthetically pleasing hillside vista to allow the construction of a facility in respect of which there is no data showing a need. In this regard usage data</p>