

CEQA Basics

Introduction

The California Environmental Quality Act was passed by the California Legislature and signed into law by Governor Ronald Reagan in 1970. CEQA compels public agencies to examine and disclose the potential significant adverse environmental consequences of their actions, including the approval of private development projects.

Unlike its federal counterpart, the National Environmental Policy Act (NEPA), which *encourages* federal agencies to avoid environmental harm and is *limited to federal agency actions*, CEQA *requires* California public agencies to avoid or mitigate the significant adverse environmental impacts caused by their actions whenever feasible *before the agency approves* or carries out a project. Finally, CEQA provides individuals with the opportunity to participate effectively in all steps of the environmental review process.

Three Questions to Determine Whether CEQA Applies

In order to determine whether the agency action is subject to the CEQA process, always ask these three questions:

1. **Is the action a project?** Under CEQA, projects include any activities that may cause foreseeable physical changes in the environment. “Projects” include:
 - a. Public agency activities;
 - b. Activities with public agency assistance such as grants or loans; or
 - c. Activities that require a lease, permit, license, etc, from a public agency.
 - i. A private project is subject to CEQA if a public agency issues a discretionary permit or approval of a project. A “discretionary project” is a project requires public agency or body approval.
2. **Is the project exempt?** Even if the action is determined to be a project subject to the CEQA process, the project may be otherwise exempted. There are two types of exemptions under CEQA:
 - a. **Statutory Exemptions** occur when the legislature passes a bill to exempt particular activities. Examples include emergency actions, passenger rail, and seismic retrofit projects on existing bridges.
 - b. **Categorical Exemptions** apply when a project has no possibility to cause significant adverse environmental effects. Examples include minor alternations or replacement of existing structures, public gatherings, and small wildlife restoration projects.
3. **Is there any possibility that the project will cause significant environmental impacts?** If the action is a project and the project is not exempt, the next question is whether the project may cause significant environmental impacts. The CEQA Guidelines state that a lead agency shall find that a project may have a significant effect on the environment requiring the preparation of an EIR where the Project has the potential to substantially degrade the quality of the environment, or reduce the habitat available for wildlife.

- a. The **fair argument standard** is defined in the Public Resources Code and mandates the preparation of an EIR whenever it can be fairly argued on the basis of **substantial evidence** that a project will have a significant effect on the environment. This creates a low threshold requirement for initial preparation of an EIR and reflects a preference for resolving doubts in favor of environmental review when the question is whether any such review is warranted.
 - i. **Plain English Translation:** People advocating for the preparation of an EIR are not required to *prove* that the proposed project will have significant impacts, only that there is a *reasonable degree of uncertainty* on the question.

Lead and Responsible Agencies

The **lead agency** is the public agency with the principle responsibility for approving or carrying out a project. The lead agency defines the scope of the environmental review, and in ultimately recommending the most environmentally sound alternative and approving the project. On larger projects several agencies will often have jurisdiction to approve a project. In that case, the public agency with the greatest responsibility for supervising and approving the project is the lead agency. Those agencies that have project approval responsibilities but are not the designated lead agency are known as **responsible agencies**.

CEQA Process

1. Lead agency determines whether the activity; (1) is a project, and (2) whether it is exempt.
2. If the lead agency determines that the action is a project and the project is not exempt, then it generally conducts an **Initial Study**, which is a preliminary analysis of the environmental effects of the proposed project or action. The purpose of the Initial Study is to provide the lead agency with information to use as the basis for deciding whether to prepare an EIR.
 - a. An Initial Study provides the lead agency with the information needed to determine whether:
 - i. It must prepare an EIR before either approving or carrying out a project, or
 - ii. Whether a negative declaration or mitigated negative declaration will suffice.
 - b. This is typically done through the use of a checklist provided in the CEQA Guidelines (Appendix G).
 - i. If the response to each category in the checklist is “no impact” or “less than significant impact,” then the lead agency may prepare a negative declaration or “**Neg Dec**.”
 - ii. If one or more response is “potentially significant unless mitigation incorporated,” and mitigation measures are incorporated into the project, then the lead agency may prepare a “**Mitigated Neg Dec**”.

- iii. If one or more response is “potentially significant unless mitigation incorporated,” and mitigation measures are NOT incorporated into the project, then the lead agency must prepare an EIR.

EIR Process

1. The lead agency sends a **Notice of Preparation (NOP)** to the responsible agencies.
 - a. The NOP provides notice to the responsible agencies that the lead agency will prepare a Draft EIR (DEIR) regarding the proposed project.
 - b. Responsible agencies are given a chance to provide preliminary comments.
2. The lead agency prepares a DEIR.
 - a. Typically this activity is commissioned to a consulting firm, but the lead agency may prepare it.
3. The lead agency files a **Notice of Completion** and gives public notice of availability of the DEIR.
 - a. Public review period typically 30 to 45 days (may be longer).
 - b. This provides agencies and the public with an opportunity to comment on the DEIR.
4. After close of comment period, the lead agency considers and responds to each of the comments received.
 - a. These comments are incorporated into the Final EIR (FEIR).
 - b. The lead agency must provide written response to each of the comments.
5. The lead agency considers and approves (or certifies) the FEIR
6. The lead agency provides its final decision on the project.
 - a. The final **Notice of Determination** is filed with the Office of Planning and Research.

General Contents of an EIR

1. Brief summary of the proposed project and its consequences
2. Project description
3. Description of the environmental setting
 - a. These are the baseline environmental conditions for determining the project’s significant effects on the physical environment.
4. Description of the proposed project’s **significant adverse environmental effects** and **mitigation measures**.
 - a. “Significant effect on the environment” is defined in the CEQA Guidelines as a substantial adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic significance.
 - b. Mitigation measures are activities designed to minimize or eliminate one of the project’s significant adverse environmental impacts.
5. An analysis of the reasonable range of alternatives to the proposed project
 - a. These alternatives must achieve all or most of the goals of the proposed project while reducing or avoiding its significant environmental impacts.
 - b. Must consider a “No Project” alternative.

6. An analysis of the proposed project's growth-inducing impacts
 - a. This requires the lead agency to consider how the proposed project could foster economic or population growth or the construction of additional housing.
7. An analysis of the proposed project's cumulative impacts
 - a. These are impacts that can result from individually minor but collectively significant projects taking place over a period of time

Commenting on a DEIR

Any alleged grounds for noncompliance with CEQA must be presented to the public agency either during the required public comment period or prior to the close of the final public hearing on the proposed project. If possible, comments should be documented in writing.

Public comments should be as clear and definitive as possible and should include the factual information or legal theories upon which the comment is based. The reason that this level of comment is important is that this preserves the objection for later appeal to the lead agency. If the objection is not "preserved", then it may not be raised later in litigation.

Statement of Overriding Considerations

There are times when a significant environmental impact cannot be mitigated, but the lead agency determines that the project benefits outweigh the adverse environmental effects. In this case, the lead agency must provide a "**statement of overriding considerations.**"

This statement must be based on substantial evidence in the record and the agency must reveal its reasons for reaching this conclusion; conclusory statements are inadequate. Typical reasons include economic benefit, jobs, or other community advantage. Great deference is given to a public agency's rationale for adopting a statement of overriding considerations.

Legal Challenges

1. Statute of Limitations (S of L)
 - a. Filing of a Notice of Determination = 30 day S of L
 - b. Filing of a Notice of Exemption = 35 day S of L
 - c. If public agency files no notice = 180 day S of L
2. Standing
 - a. Courts have held that members of the public have standing to challenge an agency action under CEQA because agencies have a duty to comply with CEQA and the public has an interest in having the agency's public duty enforced.
 - b. The person or organization must have raised an objection to the project orally or in writing during the public comment period or prior to the close of the public hearing on the project in order to have standing.
3. Standard of Review
 - a. A court may overturn an agency decision only if the agency did not proceed as required by law or if the decision was not supported by substantial evidence.

- i. The court does not provide deference to the agency when determining whether the agency proceeded in a manner required by law.
 - 1. In other words, this is a legal question and the requirements of CEQA are strictly construed by the courts; the agency's decision will be overturned if they did not comply with the challenged CEQA requirements.
- ii. The court provides the agency with great deference when determining whether the decision is supported by substantial evidence.
 - 1. In other words, this is a factual question and the courts may not set aside an agency's decision on the basis that a different conclusion would have been more reasonable. Factual questions are almost always decided in favor of the agency since the reviewing court defers to the agency's judgment.
 - a. If the court determines that the agency had no credible evidence to support their decision, they will rule in favor of the challenger.