

CEQA Summary

- CA Legislature passed CEQA in 1970; signed by Governor Reagan
- CEQA statutes are found in Public Resources Code sections 21000 et. seq
- The CA Resources Agency provides guidance on how agencies implement CEQA; this is known as the CEQA Guidelines
 - These are not statutory, but the courts give them great weight

CEQA

- Many consider CEQA to be CA's most powerful environmental law
- CEQA requires public agencies to examine the environmental impacts of projects
 - Public agencies must avoid or mitigate the significant adverse environmental impacts caused by their actions whenever feasible
- Most importantly, CEQA has significantly increased the ability of the public to participate in the planning processes

Is an Agency Action Subject to CEQA? Three Questions:

1. Is the action a Project?
2. Is the Project exempt?
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, and there is a possibility that the Project will cause significant environmental impacts, then it is an action subject to CEQA

Is the Action a Project?

- Under CEQA, a Project is an activity which may cause either a direct or indirect foreseeable physical change in the environment. Includes:
 - Public agency activities
 - Activities with public agency assistance (grants, loans, etc.)
 - Activities requiring a lease, permit, license from a public agency

Is the Project Exempt?

- If the action is a Project, it may be exempt
- Two types of exemptions under CEQA:
 1. Statutory Exemptions provided by the CA legislature
 1. Includes emergency actions, passenger rail
 2. Categorical Exemptions
 1. These are Projects that have no possibility to cause significant adverse environmental effects
 2. Includes minor alterations of existing structures, public gatherings, small wildlife restoration projects

Significant Environmental Impacts?

- Lead Agency conducts Initial Study; a preliminary environmental analysis
- Provides the agency with information to use as a basis for deciding whether to prepare a negative declaration, mitigated negative declaration, or an EIR
- This is the threshold determination
 - An EIR must be prepared if there is substantial evidence in the record supports a "fair argument" that a project may entail significant environmental impacts – low threshold

What is Substantial Evidence?

- Within the context of the fair argument standard, substantial evidence is, “a fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact.”
- It is not speculation, unsubstantiated opinion, argument, fears, concerns, desires, etc.

Why is it Important to Understand Fair Argument and Substantial Evidence?

- Whenever you submit public comments (written or oral) regarding a project’s potential significant adverse environmental impacts, provide as much factual background as you can
- This places the burden on the agency to respond
- This also provides a basis for a legal challenge if the agency does not respond or

Negative Declaration/Mitigated Negative Declaration

- If the Initial Study indicates there is no substantial evidence that the proposed project will have a significant effect on the environment, the lead agency may prepare a Neg Dec
- If the Initial Study indicates that one or more adverse significant environmental effects will occur, but they are able to mitigate these effects to levels of insignificance by making project revisions, a Mitigated Neg Dec may be prepared
- Challenges limited to 20-30 days

Environmental Impact Report

- EIR is a full report regarding the environmental impacts of Projects
- Environmental Impact Analysis areas are predetermined by statute
- CVSP DEIR

Environmental Impact Report Process

- CEQA’s Mandatory Findings
 - CEQA mandates that public agencies “avoid or minimize environmental damage where feasible” through project alterations, or
 - Economic, social, technological or other considerations make mitigation or alternatives infeasible
- Statement of Overriding Considerations
 - Must be based on substantial evidence and must provide reasons
 - Agency deference

Environmental Impact Report Process

- Notice of Preparation
- Scoping sessions?
- Preparation of the Draft EIR
- Notice of Completion
- Public notice
- Public comment period
- Public hearings?
- Final EIR
- FEIR Certification/Project Approval
- Notice of Determination