CEQA 101: Introduction to the California Environmental Quality Act

May 30, 2015
Overview

- What is the purpose of CEQA?
- When does CEQA apply?
- What are a lead agency’s duties?
- What document(s) must the agency prepare?
- What are the main elements of an Environmental Impact Report?
- Are there tools for streamlining the process?
- How can/does the public participate?
Purpose of CEQA

• National Environmental Policy Act (NEPA) (1969)
• “Little NEPA” statutes – such as CEQA (1970)
• Purposes:
  • Prevent significant, avoidable damage to the environment
  • Foster informed public decision making
  • Ensure transparency in governmental decision making process
  • Encourage public participation
See CEQA §§ 21000-21006; Guidelines 15001-15003
CEQA Includes a Substantive Mandate

- NEPA has been described as purely procedural.
- CEQA contains a “substantive mandate” – public agencies must refrain from approving projects with significant environmental effects if “there are feasible alternatives or mitigation measures” that can substantially lessen or avoid those effects.

See *Mountain Lion Found. v. Fish and Game Comm’n*, 16 Cal.4th 105, 134 (1997); Pub. Res. Code § 21002
Lead Agency Duties

Agency determines that it is making a decision on a “project” ....

Now what?
Public Agency determines whether the activity is a “project”

Project

Public Agency determines if the project is exempt

Not Exempt

Public Agency evaluates project to determine if there is a possibility that the project may have a significant effect on the environment

Possible Significant Effect

Not a project

Project is ministerial

No possible significant effect

Statutory exemption

Categorical exemption

Notice of Exemption may be filed

No further action required under CEQA

Source:
http://ceres.ca.gov/ceqa/flowchart/
Types of CEQA documents

If the project is not exempt, agency must determine what type of document to prepare.

Agency prepares **initial study** to assist in determining if the physical change in the environment is potentially significant. (Guidelines § 15063; Appendix G).

Two types of documents:

- **Negative Declaration** (includes mitigated negative declaration) (Guidelines, § 15070, *et seq.*) or
- **Environmental Impact Report** (EIR) (§ 15080, *et seq.*)

If project may have “significant” environmental impact, EIR is required (§ 15064(a)(1), (f)(1)).
“Significant effect on the environment” is a substantial or potentially substantial adverse change in the physical conditions of the area.

(Pub. Resources Code §21068; Guidelines §§15002(g), 15382)

• Determination calls for agency judgment; “ironclad definition” not always possible

• Must consider context and setting

• Effects can be direct or indirect

• Effects can be incremental or cumulative

• Determination must be based on substantial evidence in the record – scientific and factual data

(Guidelines § 15064, et seq.; new section on GHGs, see § 15064.4 and Statement of Reasons.)
Significant or Not?

Significance “normally” measured against existing “physical environmental conditions” – that “will normally constitute the baseline.” (Guidelines § 15125(a).)
What is an EIR?

The Environmental Impact Report is the “heart of CEQA.”


Used by lead and responsible agencies (those with some discretionary authority to approve or carry out a portion of the project) to evaluate environmental impacts of their approvals.
What is an EIR?

Required elements of EIR include:

• Project description
• Discussion of [significant] environmental impacts
• Impacts to be measured against the baseline
• Alternatives to the project
• Mitigation measures
• Discussion of cumulative impacts (including GHG-related)

Guidelines § 15120, *et seq.*
“A public agency should not approve a project as proposed if there are **feasible alternatives or mitigation measures** available that would substantially lessen any significant effects that the project would have on the environment.”

– Guidelines § 15021(a)(2)
“Mitigation Measure” is an

- action or change to the project that reduces or avoids some impact on the environment (including actions that completely avoid an impact),
- actions that reduce or minimize an impact,
- actions that correct an impact, or
- actions that compensate for an impact by providing substantive resources.

(Pub. Res. Code § 21002, 21002.1(b), 21004; Guidelines §15370.)
“An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.”

– Guidelines § 15126.4(a)(1)
“An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”

– Guidelines §15126.6
Alternatives

In range of alternatives, lead agency must include:

• Only “feasible” alternatives (economic, practical, legal)
• Alternatives that would achieve most of the project’s basic objectives and fundamental goals
• Alternatives that would reduce at least one impact
• “No project” alternative (can be different from the baseline)

Range of alternatives governed by “rule of reason”
Streamlining

Subsequent change to the project does not necessarily require new EIR or Negative Declaration

Only if:

• A new significant impact is caused by a substantial change in the project or substantial changed circumstances that requires major revisions to EIR;

• New information not known at the time of project approval becomes available;

• Proposed change never analyzed in original EIR (Pub. Res. Code § 21166.)
Streamlining

Tiering means:

- Using **analysis of environmental impacts** contained in a previously certified EIR (e.g., for a general plan, regional wastewater project) on later projects;
- **Incorporating by reference** the general discussions from the previously certified EIR; and
- **Focusing** the later document solely on the issues specific to the later project

Guidelines § 15152

New section addressing tiering/streamlining analysis of GHGs (§ 15183.5)
Approving the Project

After circulating draft EIR, agency must:
• Evaluate and respond to comments (Guidelines, § 15088)
• Prepare final EIR (§ 15089)
• Certify final EIR (§ 15090)
• Make findings concerning significant impacts (§ 15091)
• Approve (or reject) the project (§ 15092)
• Impose a mitigation monitoring/reporting program (§ 15097)
• If necessary, issue a Statement of Overriding Considerations (Pub. Res. Code § 21081; § 15093)
Public Participation

• Opportunities for public participation at every stage of process.
• Commenters can provide recommendations and submit data/information, where available.
• Two main opportunities for comments; during comment period on environmental document and before the close of the hearing on project.
• Administrative appeal may be available (e.g., to Board of Supervisors).
• Exhaustion of administrative remedies prerequisite to lawsuit.
Resources


CEQA – Frequently Asked Questions ([http://ceres.ca.gov/ceqa/more/faq.html](http://ceres.ca.gov/ceqa/more/faq.html))


Recent Updates re CEQA and Climate Change (Senate Bill 97) ([http://ceres.ca.gov/ceqa/guidelines/](http://ceres.ca.gov/ceqa/guidelines/))
Questions?

http://gallery.usgs.gov/photos/03_02_2009_c2WJb44ay7_03_02_2009_2