

CEQA Document Types

Introduction

This Fact Sheet has been created to provide direction on determining the appropriate CEQA determination/document type for projects on the State Highway System (SHS) where Caltrans is the CEQA lead agency.

The California Environmental Quality Act (CEQA) was signed into legislation in 1970. It is considered the most far-reaching environmental law in California. CEQA requires California public agencies to conduct an environmental review process to identify significant environmental impacts of a “project” and to adopt feasible mitigation measures for those impacts before approving a project. CEQA is part of the California Public Resources Code (PRC), beginning with § 21000. The administrative regulations which have been adopted to help in the implementation of CEQA are contained at Title 14 of the California Code of Regulations, beginning with § 15000 and are known as the “CEQA Guidelines.”

CEQA applies to “projects.” A “project” is defined as any action that will result in a physical change to the environment. A project must require the exercise of discretion by the public agency. A ministerial action is one which does not require the exercise of discretion. Examples include the issuance of building permits and or the approval of final subdivision maps. CEQA does not apply to ministerial acts. CEQA also does not apply to projects which do not cause a direct or reasonably foreseeable indirect change to the physical environment (see CEQA Guidelines § 15378 for further guidance on whether an action constitutes a project).

Preliminary Review

The required CEQA review process can result in three different determination/document types—an exemption, an Initial Study with Negative Declaration or Mitigated Negative Declaration (IS/ND or IS/MND), or an Environmental Impact Report (EIR). The anticipated *significant* impacts (or lack thereof) associated with the project governs the “level” of determination or document to be prepared.

Statutory Exemptions

The Legislature has the ability to determine that certain types of projects are exempt from CEQA (or portions thereof). These are known as Statutory Exemptions and are generally specific in nature (CEQA Guidelines §§ 15260-15285). A specific example is the list of projects identified at PRC § 21080.42 which exempted a series of specified transportation projects. Projects subject to a statutory exemption do not require further analysis under CEQA.

Categorical Exemptions

The most common exemption under CEQA is the Categorical Exemption (CE). The CEQA Guidelines (§§ 15301-15333) list 33 categories (or classes) of projects that qualify for exemption. These classes are project types that are common and typically have no significant impacts associated with them. If a project fits within any of these classes, it can be considered categorically exempt and generally needs no further CEQA analysis.

Exceptions to the Categorical Exemptions

There are instances, however, where a project may not qualify for an exemption even if it fits into one of the 33 exempt classes. These are called exceptions to the categorical exemptions. These

CEQA Document Types

exceptions apply to projects that: are located in certain specified sensitive environments (applies only to Classes 3, 4, 5, 6, and 11); are located on a site included on any list compiled pursuant to California Government Code § 65962.5 (“Cortese List”); may damage scenic resources within an officially designated state scenic highway; may cause a substantial adverse change in the significance of a historical resource; may have a significant effect on the environment due to unusual circumstances, or may contribute to significant cumulative impacts (CEQA Guidelines § 15300.2).

Other Exemptions

The “General Rule” exemption (CEQA Guidelines § 15061(b)(3)) is often used if a project does not fit into one of the classes of categorical exemptions. The “General Rule” exemption means that CEQA only applies to projects which have the potential for causing a significant impact—if there is no possibility that the activity in question may have a significant impact, the activity is not covered by CEQA.

Please note that for all categorical and general rule exemptions, the question is whether or not the project has the potential to cause a *significant* impact. A project with impacts can be exempted from CEQA, so long as those impacts are not significant and will not require mitigation.

Notice of Exemption

When a project has been determined to be exempt from CEQA, and once the project has been approved, a lead agency may file a Notice of Exemption (NOE) with the California State Clearinghouse (see CEQA Guidelines §§ 15061 and 15062). NOTE: When Caltrans is the lead agency for projects on the SHS, it is Caltrans policy that an NOE must be filed with the State Clearinghouse (Moran, 2012). The filing of a valid NOE starts the applicable statute of limitations within which project opponents may file a legal challenge. For an NOE, the statute of limitations is 35 days. If a valid NOE is not filed, then the statute of limitations extends to 180 days from the point at which a reasonable person would have known about the approval of the project.

Initial Studies/Negative Declarations/Mitigated Negative Declarations

If the project does not qualify for an exemption or if the impacts of a project are not known, or any anticipated significant impacts of the project can be mitigated to “less-than-significant,” an IS will be prepared. Please note that an IS will sometimes be prepared at the request of a responsible agency under CEQA¹.

The IS examines impacts to individual resources. The CEQA checklist is commonly used as a first screening for potential impacts to individual resources. However, the CEQA checklist included in the ND/MND or EIR is always a “final” checklist and is meant to provide an overview of the significance determinations made for the project. After technical studies are performed, if it is

¹ A common example would be the California Department of Fish and Wildlife (CDFW). CDFW must comply with CEQA in order to issue a discretionary approval (permit) for the project. If CDFW staff at CDFW do not agree that CEQA compliance for their approval can be met with a CE, they will often ask Caltrans to prepare an IS (often referred to as a “checklist IS”) that can be “adopted” by CDFW as their CEQA document. The alternative would be to allow CDFW to prepare the needed IS, but that often cannot be completed quickly enough to keep a project on schedule. (See CEQA Guidelines § 15060 for a review of the preliminary review process.)

CEQA Document Types

shown that none of the impacts are significant, an ND is prepared for the project. If it is determined that there are potentially significant impacts, but these impacts can be mitigated to “less-than-significant,” an MND is prepared for the project. CEQA requires that the IS with proposed ND or MND be circulated to the public for a 30-day review (CEQA Guidelines § 15105(b)) and comment period prior to final adoption. If the IS identifies significant impacts from the project that cannot be mitigated to “less-than-significant,” an EIR must be prepared.

Environmental Impact Reports

The EIR is prepared for projects that will, or may, have significant impacts to any one resource area that cannot be mitigated to “less-than-significant.” An EIR can also be prepared for greater defensibility when there is known opposition to a project (see “Judicial Standards” below). The EIR differs from the IS as it contains all the analysis that the IS contains but also includes a range of reasonable alternatives, a cumulative impact analysis, a growth-related impact discussion, the significant effects of the proposed project, significant effects of the proposed project which cannot be avoided if the proposed project is implemented, significant irreversible environmental changes that would be involved if the proposed project is implemented, and the mitigation measures proposed to minimize the significant effects (CEQA Guidelines § 15126 et seq.). An EIR can be a stand-alone analysis or it can be “tiered” to reflect a series of decisions associated with more complex undertakings. Each “tier” relies on the earlier tier and takes a progressively narrower focus of analysis.

A draft EIR is circulated to the public for a 45-day review (CEQA Guidelines § 15105(a)) and comment period. Relevant comments received during the public review period (and responses to those comments) are incorporated into the Final Environmental Impact Report (FEIR). If the FEIR identifies impacts that cannot be mitigated to a level of “less-than-significant,” specific Findings (CEQA Guidelines § 15091) and a Statement of Overriding Considerations (SOC) are prepared (CEQA Guidelines § 15093). The Findings and the SOC are not included in the FEIR but are kept in the project file.

Notice of Determination

When a Negative Declaration, Mitigated Negative Declaration, or an EIR is prepared and the project is approved, a Notice of Determination (NOD) must be filed with the California State Clearinghouse. The NOD must be filed within five working days of project approval (which is typically when the Project Report or equivalent is approved by the District Director or designee). The NOD begins a 30-day statute of limitations within which a project opponent may file a legal challenge. If a valid NOD is not filed, the statute of limitations is extended to 180 days after which a reasonable person would know of the project’s approval.

Judicial Standards

CEQA documents, when challenged in court, are held to different standards of judicial review dependent upon the level of document utilized. For example, IS/NDs and IS/MNDs are held to the “fair argument” standard. The fair argument standard means that if a “fair argument” can be made that a project may have a significant effect on the environment, an EIR shall be prepared even though there may be other substantial evidence that the project will not have a significant effect (CEQA Guidelines § 15064(f)(1)). In these instances, the court can decide in favor of the petitioner and a higher-level CEQA document may be required. Substantial evidence means enough relevant

CEQA Document Types

information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached (CEQA Guidelines § 15384). Similarly, the CEQA Guidelines also state that an MND is to be prepared only when the environmental effects of the project can be avoided or mitigated to the point where clearly no *substantial evidence* in light of the whole record is presented that the project may have a significant effect (CEQA Guidelines § 15064(f)(2)).

As a practical matter, this is often why a decision may be made to prepare an EIR rather than an IS/MND in instances when there is known opposition to the project.

When reviewing the adequacy of an EIR, on the other hand, the courts use a more deferential standard of review when examining the lead agency's decisions in the EIR; this standard is often called the "substantial evidence standard of review." This means that the court focuses on whether there is substantial evidence in the "record" (see "Administrative Record" below) to support the lead agency's decisions. If there is substantial evidence in the record to support the decisions made in the EIR, the courts generally rule in favor of the lead agency even if there is also substantial evidence presented that a different decision could have been made.

Administrative Record

Reference to "the record" or "administrative record" means the documentary evidence obtained or created which relate to the project. Therefore, a systematic, careful, and complete compilation of all materials related to the project is necessary in order to defend the decision making associated with the project. Public Resources Code § 21167.6(e) provides a detailed list of what must be contained in an administrative record. Materials not contained in the administrative record cannot be relied upon in defending the agency's decision.