

Environmental Review

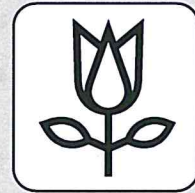
Requiring measures to protect the long-term health of the state's environment has become an integral element of land use planning and project approvals. The environmental protection law most frequently applied to land use decisions is the California Environmental Quality Act (CEQA).

The California Environmental Quality Act is a complex law with a simple purpose: to assure that decision-makers understand and account for the environmental consequences of a project.⁹⁶ A key purpose of the California Environmental Quality Act is informational, since it gives decision-makers information on what the environmental impacts of a project will be and how to minimize those impacts.

What gives the environmental review process its "teeth" is a prohibition against approving projects as proposed if there are feasible alternatives or mitigation measures that would substantially lessen significant environmental effects.⁹⁷ In other words,

► COMPONENTS OF PLANNING

- The General Plan
- Zoning
- Subdivisions
- Design Review
- ✓ **Environmental Review**
- Development Agreements
- Dedications and Fees



agencies are not required to eliminate all potential harm to the environment, but they must reduce the risk of harm whenever they determine it is feasible to do so. Thus, a project with significant environmental impacts may be approved if the local agency finds that all alternatives or mitigation measures are infeasible and discloses the reasons for its findings, or adopts a "statement of overriding considerations" that particular social or economic factors override the environmental concerns.⁹⁸



Determining the Level of Review

The environmental review process involves three possible levels of analysis:

- Negative declaration,
- Mitigated negative declaration, and
- Environmental impact report (often known by the acronym EIR).

In addition, some projects are exempt from review.⁹⁹ Other projects may be subject to more limited environmental

review because they are consistent with standards that were previously subjected to environmental review.¹⁰⁰

An example is a 2008 law designed to promote reductions in greenhouse gas emissions from vehicle trips. The law allows projects that are consistent with an adopted regional sustainable communities strategy or alternative planning strategy to undergo less rigorous environmental review than other projects.¹⁰¹

WHAT TYPE OF REVIEW IS APPROPRIATE?

- **Is the Action a “Project?”** Only “projects” are subject to environmental review. A project is any discretionary governmental action that could directly or indirectly result in a physical change in the environment, such as a general plan amendment, rezoning, public works project or development permit.
- **Does an Exemption Apply?** A project may be exempt from the California Environmental Quality Act under state law or regulations.
- **Initial Study.** For projects that are not exempt, an initial study is completed to determine whether the project may have a significant effect on the environment.
- **Negative Declaration.** If the initial study shows that the project will not have a significant effect on the environment, a negative declaration is prepared that describes why the project will not have a significant effect.
- **Mitigated Negative Declaration.** If the initial study shows that the project may cause significant environmental effects, a mitigated negative declaration may be prepared. A mitigated negative declaration is appropriate if revisions can be made to the project that would clearly avoid or mitigate the significant effects.
- **Environmental Impact Report.** If the initial study identifies potential significant environmental effects that cannot be eliminated through redesign or other mitigation measures, then an environmental impact report must be prepared.¹⁰²

The Environmental Impact Report

For projects not exempt from environmental review, the general rule is that an environmental impact report must be prepared if substantial evidence shows that there is a fair argument that a project may have a significant environmental effect.¹⁰³ This is the case even when there is an equal amount of evidence suggesting that an environmental impact report may not be necessary. This is called the “fair argument” standard.¹⁰⁴

After determining that an environmental impact report is required, the agency with primary authority to approve the project (known as the “lead agency”) must solicit the views of other agencies with some level of authority over the project (called “responsible agencies”) regarding the scope of the environmental analysis.¹⁰⁵ The lead agency should also consult with individuals and organizations that have an interest in the project.¹⁰⁶ This early consultation is called scoping.

The lead agency then directs the drafting of an environmental impact report based on this information and other data it has collected. When the draft environmental impact report is completed, the lead agency files a notice of completion with the appropriate state agency.¹⁰⁷

The draft environmental impact report is then made available for public review and comment for a minimum period of 30 to 45 days.¹⁰⁸ The lead agency must evaluate and respond in writing to all comments it receives during the review period.¹⁰⁹ If significant new information is added to the draft environmental impact report after it has been released for public review, the agency must re-circulate the report for additional public review and comment.¹¹⁰

Once the public review period ends, the lead agency prepares a final environmental impact report, usually consisting of the draft report together with responses to public comments received during the review period.¹¹¹ The lead agency then reviews the project in light of the environmental impact report and other applicable standards and policies.

A key goal of the California Environmental Quality Act is to ensure that the decisions made by local officials regarding environmental impacts are as well informed as possible. The environmental impact report must provide enough information to allow decision-makers to analyze the environmental consequences of a project. Thus, the adequacy of an environmental impact report is usually not judged on perfection or correct conclusions, rather on completeness and whether the level of analysis is reasonable and done in good faith.¹¹²

► BASIC ELEMENTS OF AN ENVIRONMENTAL IMPACT REPORT

Table of Contents and Summary. Required elements that assist in making environmental impact reports—which are sometimes hundreds of pages long—more accessible to the public.

Project Description. An accurate description of the project, including any reasonably foreseeable future phases of the project.

Environmental Setting. A description of the environment on the project site and in the vicinity of the project.

Evaluation of Impacts. An identification and analysis of each significant impact expected to result from the project. Any potential significant effect—such as incompatible land uses, air pollution, water quality, or traffic congestion—will have its own discussion.

Mitigation Measures. A detailed description of all feasible measures that could minimize significant adverse impacts. Any potential environmental consequences of the mitigation measures must also be addressed.

Cumulative Impacts. An evaluation of the incremental effects of the proposed project in connection with other past, current, and probable future projects.

Alternatives. A proposed range of reasonable project alternatives that could reduce or avoid significant impacts, including a “no project” alternative. This often involves reviewing the location or the intensity of the development, or both. The alternatives need not be exhaustive and should not be speculative.

Growth-Inducing Impacts. A description of the relationship of the project to the region’s growth and whether the project removes obstacles to growth.

Organizations and Persons Consulted. A list of groups and individuals contacted during the process, including during the scoping and public hearing phases.

Inconsistencies. A discussion of any inconsistencies between the proposed project and applicable general plans and regional plans.



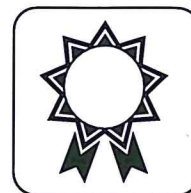
Certifying the Environmental Document

The first step in making a final determination on a project that has undergone environmental review is for the city council or board of supervisors to approve the negative declaration¹¹³ or certify the environmental impact report.¹¹⁴

The environmental review adds to the information decision-makers have about the pros and cons of a project. Just because a project has no significant unmitigated environmental effects does not mean the agency must approve the project. The local agency retains the discretion to reject the project or approve it in a manner that acknowledges any environmental consequences. The local

agency may also change the project, select an alternative project, impose conditions or fees, or take other actions (called “mitigation measures”) to avoid or minimize the environmental impacts of the project.¹¹⁵ When an agency adopts mitigation measures it must also adopt a program to monitor the implementation of the measures.¹¹⁶

In some cases, the environmental impacts of a project cannot be avoided. If decision-makers decide to approve a project with unavoidable significant adverse environmental effects, they must adopt a “statement of overriding considerations” explaining the specific social or economic factors that the agency considered in deciding to approve the project in spite of the environmental concerns.¹¹⁷



► UNDERSTANDING THE SCOPE AND APPLICATION OF ENVIRONMENTAL LAWS

For California Environmental Quality Act purposes, the term “environment” includes natural and man-made conditions that will be directly or indirectly affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.¹¹⁸

Note that other state and federal environmental laws may also apply to a given project. Examples include the Endangered Species Act,¹¹⁹ the Clean Water Act,¹²⁰ the Clean Air Act¹²¹ and those pertaining to surface mining, timber harvesting and other natural resource issues.

Findings

Before the local agency can approve a project for which an environmental impact report or other environmental document has been prepared, it must certify the legal adequacy of the document and its review process.¹²²

The findings must explain whether the project as approved would have significant impacts on the environment, whether mitigation measures are feasible, why other alternatives were rejected, and in some instances why the project's benefits outweigh its consequences (the statement of overriding considerations).¹²³ The public is entitled to comment on the adequacy of the final environmental impact report before it is certified by the governing body.¹²⁴

RESOURCES FOR FURTHER INFORMATION

Institute for Local Government

Land Use One-Pagers (2007)
(www.ca-ilg.org/onepagers):

About the Environmental Review Process

About Environmental Impact Reports

About Negative Declarations

Other Resources

State of California website on California Environmental Quality Act:
<http://ceres.ca.gov/ceqa/>

California Public Resources Code Sections 21000 and following
(accessible from
www.leginfo.ca.gov/calaw.html)

Solano Press (www.solano.com) has a number of land use-related publications, including the *Guide to CEQA*, available for purchase.

► PUBLIC INPUT INTO THE ENVIRONMENTAL REVIEW PROCESS

Even though the environmental review process draws on scientific information and policy analysis, the process also encourages the public to provide input into the analysis.¹²⁵

Public agencies must also explain their reasoning (typically through findings) when they make a decision on a project.¹²⁶

