

# **Chapter Eleven: California Environmental Quality Act Process & Procedures**

# CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

## NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

The NEPA was created in 1969 and establishes the rules for environmental documentation and noticing requirements of potential impacts from federal actions. Necessary documentation includes environmental analysis, environmental impact statement or a finding of no significant impact. NEPA states that all project alternatives must be addressed equally. The physical, social and economic impacts of the project must be addressed.

## CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The CEQA was established in 1971 in response to NEPA. CEQA has been legislative and judicial refined over the years. CEQA applies to all discretionary actions in California.

## PURPOSE OF CEQA

CEQA documents inform the public and decision-makers of proposed discretionary projects. They avoid or mitigate significant environmental effects. They require the implementation of feasible avoidance or mitigation measures and disclose to the public why an agency approved a project with significant effects.

## WHAT IS A PROJECT?

CEQA defines a project as the whole of an action that may result in physical changes to the environment, AND that is...

1. An activity directly undertaken by a public agency, private individual, or group,
2. An activity undertaken by a person which is supported through public agency assistance, or
3. An activity involving public agency issues of a lease, permit, certificate or other entitlement.

## CEQA PROCESS

The Lead Agency, as defined by CEQA, is the public agency that has the principal responsibility for conducting or approving a project. The Responsible Agency(ies) is the Lead Agency that has discretionary approval power over the project.

Discretionary actions (projects) are public agency decisions that require the exercise of judgment. Ministerial actions are governmental decisions that involve little or no personal judgment as to the wisdom or manner of carrying out the project; in such decisions the agency has only to determine whether the proposed action conforms to applicable statutes, ordinances and/or regulations. CEQA only applies to discretionary actions and not to ministerial actions.

1. The project is first reviewed to determine if it is a discretionary action. If it is not a discretionary action then it is not subject to the CEQA. An example of a non-discretionary action is a building permit on an existing parcel.
2. The project is reviewed to determine if a statutory or categorical exemption applies to the project. If the project qualifies for an exemption it is found to be consistent with the CEQA and no further review is required.
3. The project is reviewed to determine if previous environmental review has been completed. In such a case the CEQA (under Section 15162 through 15164) limits any subsequent environmental review to the following 3 items:
  - 1) Substantial changes are proposed in the project which will require major revisions of the previous environmental document,
  - 2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions the previous environmental document, or
  - 3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence shows that the project will have additional effects.

Unless one or more of these conditions are met then no additional review is required or allowed. An example of such an action would be a time extension for a parcel map. If the project remains the same, the project complies with all current ordinance and regulations, and no information of substantial importance is known then the CEQA does not allow the request for further environmental review.

4. For new discretionary projects without previous environmental review the following CEQA review is completed. An initial study is completed to determine if potential adverse impacts could result from the project. Extended initial studies (specific investigations to address issues) are requested as necessary to analyze potential impacts.

Once all issues are resolved or mitigated then the initial study and negative declaration is completed and sent out for public review. If no fair argument is made during public review then the negative declaration and initial study is finalized and taken to the hearing body.

If a fair argument is made, an EIR is prepared. The public is given an opportunity to review the project. Then the project is presented to a hearing body.

#### CEQA EXEMPTIONS:

There are two types of exemptions that can be used for processing permit requests. A Statutory Exemption is an exemption from CEQA established by the California Legislature for a specific project or class of projects. There are two types: Statutory Exemptions and Categorical Exemptions.

- A statutory exemption would be emergency projects to repair damage from a disaster. In such the Notice of Exemption would be the only environmental review required under CEQA.

- A Categorical Exemption is an exemption from CEQA for a class of projects based on a finding by the Secretary for Resources that a class of projects does not have a significant effect on the environment.

#### NEGATIVE DECLARATION VERSUS ENVIRONMENTAL IMPACT REPORT

The first step in the environmental processing of a permit application is to complete an Initial Study. This is when the determination is made as to whether there is substantial evidence that the project may have a significant environmental effect.

- If significant environmental impacts are evident an Environmental Impact Report is prepared. An Environmental Impact Report takes anywhere from 8 to 23 months or more to process.
- If the determination is made that no significant environmental effect is evident then a Negative Declaration is prepared. The Negative Declaration will include any mitigation measures needed to prevent significant impacts. A Negative Declaration typically takes anywhere from 6 to 12 months or more to process.

#### SUBSTANTIAL EVIDENCE AND FAIR ARGUMENT STANDARDS

The Courts hold CEQA documents to the substantial evidence and fair argument standards. "Substantial evidence" means that there is enough relevant information and reasonable inferences from this information that a "fair argument" can be made to support a given conclusion, even though other conclusions might also be reached.

A fair argument must be supported by substantial evidence that the project may have a significant impact on the environment. The fair argument must be based on the whole record before the lead agency.

Substantial evidence shall include facts, reasonable assumptions based on facts and expert opinion supported by facts. Substantial evidence does NOT include argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly erroneous or inaccurate, or evidence of social or economic impacts that do not contribute to or are not caused by physical impacts on the environment.

If a fair argument exists, "in light of the whole record", then an environmental impact report must be completed on the project.

The CEQA standard for an environmental impact report is substantial evidence and not fair argument.