

# An Introduction to CEQA and “Joint Documents”

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# Beginning Approach

Brief Overview of CEQA  
Combining NEPA & CEQA  
(Opportunities and Challenges)

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# Approach Pattern

- What is the “Governor’s Office of Planning and Research (OPR)?
- What is CEQA?
- Objectives of CEQA
- Who are the Players
- When Does CEQA Apply and to What?
- Process
- New Developments
- Joint Documents

# • • Overview of the Office of Planning and Research (OPR)

- Part of Governor's Office
- Statewide Land Use Agency (Planning)
- CEQA Implementation & Technical Assistance
- Single Point of Contact (Federal Grants)
- Review all Legislation dealing with CEQA and Planning Issues.
- Small Business Advocate
- Advisor for Military Affairs

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## What is CEQA?

The California Environmental Quality Act (CEQA) is California's most important environmental law. It requires state, local, and other agencies subject to the jurisdiction of California to evaluate the environmental implications of their actions.

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# Cynics View

“Consultants Equity Act”  
“Environmental Litigation ACT”  
“Not In My Back Yard Act”

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## Objectives of CEQA

- To inform decision makers and the public about the potential significant environmental effects of proposed activities.
- To identify ways to avoid or reduce environmental damage.
- To prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures.
- To foster interagency coordination in the review of projects.
- To enhance public participation in the planning process.

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# CEQA Foundations

- CEQA Statute
  - Public Resources Code 21000-21177
- CEQA Guidelines
  - CCR Title 14, § 15000 et seq.
- Case Law
  - Court decisions interpreting and applying statute and guidelines to specific cases
- Public Agency Implementation
- Attorney General  
Comments/Lawsuits/Settlements

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## When does CEQA Apply?

CEQA applies to all *discretionary* activities proposed to be carried out or approved by California public agencies, including state, regional, county, and local agencies, unless an exemption applies. CEQA applies to private activities that require discretionary government approvals.

P.R.C. § 21001.1, 21002, 21080; Guidelines § 15002(i)

“Discretionary”. Requires some exercise of judgment, not ministerial action, not a checklist situation.....

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## “Project”

- CEQA applies to activities that are considered/defined as “Projects”.
- Guidelines § 15378: “Project” means the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:

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## “Project” (continued)

(A) An activity directly undertaken by a public agency.

Examples include:

- Public works construction activities:
  - Clearing or Grading
  - Improvements to public facilities
- Planning Activities (Airport Master Plans)
  - Enactment and amendment of zoning ordinances
  - Adoption and amendment of local general plans

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## “Project” (continued)

- (B) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies.
- (C) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

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## Examples of Discretionary Actions/Projects

- Approval of Airport Master Plans, Local General Plans/Specific Plans
- Approval of Construction Projects at Airports
  - Airport Expansions (runway extensions/alignments/relocations)
  - Parking Structures/Terminals/roadway/etc.
- Approval of Off Airport Construction/Planning

Airport managers/pilots/advocates/agencies should be very aware and comment during the CEQA process when off airport projects may impact airport operations.

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## Non-Discretionary

- Building Permit\*
- Business License
- Final Subdivision Map
- Actions considered “ministerial approvals”

\*Project that has a combination of discretionary and non-discretionary approval is considered a discretionary action.

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## Who are the Players?

- Lead Agency
- Responsible Agencies
- Trustee Agencies
- Others

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## “Lead Agency”

“Lead Agency” means the public agency which has the principal responsibility of carrying out or approving a project. The Lead Agency will decide whether an EIR or a Negative Declaration will be required for the project and will cause the document to be prepared.

Guidelines § 15367

For Airports the Lead Agency most likely will be the airport owner/operator, City/County, Airport District.

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## Who is the Lead Agency?

- A public agency is the lead agency for its own projects.
- Private Projects Requiring Gov't Approval
  - Agency with the most overall discretionary approval is the lead agency. An agency with general government powers (city/county) prevails over an agency with a single or limited purpose.
  - Agreement: Agencies with substantial claim to be the lead agency may designate a lead by agreement
  - Cooperative lead agencies are possible
  - OPR Designation

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## “Responsible Agency”

- Public agency which proposes to carry out or approve a project for which a Lead Agency is preparing an EIR or Negative Declaration.
- Includes all state and local agencies other than the lead agency with discretionary approval power over the project. (For Airport Projects this may include Caltrans Aero(Airport/Heliport Permits) AQMD, Fish & Game, Coastal Commission, others)
- Defined in Guidelines § 15381
- Under NEPA defined as “Cooperating Agency”.

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## “Trustee Agency”

- State agency with jurisdiction over resources held in trust for the people of California.
- Trustee agencies listed in Guidelines § 15386 :
  - Fish and Game
  - State Lands Commission
  - Parks and Recreation
  - University of California
- Others (Conservancies)
- Trustee agency may not necessarily have discretionary approval power over a project.

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## Other “Players”

- Applicant/Developer
- Consultants
- Public
- Advocates, Community Groups, Sierra Club, Raptor Society, Baykeeper...
- Attorney General

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## When Does CEQA Process Begin?

As soon as the lead agency knows about a project

- When application is received
- When a prospective applicant approaches the lead agency
- Preliminary design (public project)
- Public Agency decision to move forward.

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# The Process under CEQA

- Preliminary Review
- Initial Study
  - Potential significant impact?
- EIR or Neg Dec
- Certify EIR or Adopt Neg Dec
  - Make necessary findings
- Approve/Disapprove Project

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## Preliminary Review

- Determine whether project is subject to CEQA.
- Review for Exemptions.

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# Exemptions

- Statutory (Legislative in origin)
- Categorical (Designated by Resources Agency)

– Under NEPA “Categorical Exclusion”

One difference between CEQA Cat Ex and NEPA Cat Ex is that there are 33 CEQA Cat Ex’s established in the Guidelines for use by all CEQA Lead Agencies, each NEPA Lead Agency has their own Cat Ex which they have developed.

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## Initial Study

- An Initial Study is a preliminary analysis prepared by the lead agency to determine whether an EIR, negative declaration, or mitigated negative declaration is required.
- If the lead agency can determine that an EIR will clearly be required for the project, an Initial Study is not required but may be desirable.
- Initial Study Checklist

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# Consultation

- Lead agency consults with responsible and trustee agencies prior to determining if a Negative Declaration or EIR is required.
- The lead agency must hold at least one scoping meeting for the following projects:
  - Projects of statewide, regional, or areawide significance, as defined by Guidelines § 15206 (Effective 1/1/2002, PRC § 21083.9)
  - Projects affecting state highways if requested by Caltrans

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## Determining Significance

- **Substantial Evidence:** If there is substantial evidence that a project may have a significant effect on the environment, the agency shall prepare an EIR (PRC § 21080).
- **Fair Argument Standard:** If there is a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR.
  - *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68
- **Thresholds of Significance:** Used in determining the significance of environmental effect. Agencies are encouraged to adopt thresholds of significance.

ONE of the Major Differences with NEPA

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## Conclusions of Initial Study

Lead agency prepares one of the following :

- Negative Declaration (ND)
- Mitigated Negative Declaration (MND)
- Environmental Impact Report (EIR)

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## Negative Declaration (ND)

**Negative Declaration:** A Negative Declaration is a written statement by the lead agency briefly explaining why a project will not have a significant effect on the environment and therefore does not require the preparation of an EIR.

(EA/FONSI would be the NEPA equivalent)

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## Mitigated Negative Declaration

**Mitigated Negative Declaration:** A Mitigated Negative Declaration may be prepared when there are potentially significant effects on the environment, but revisions to the project (mitigation) will avoid or clearly reduce the effects to a less than significant level.

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# Environmental Impact Report

- **Environmental Impact Report:** An EIR is a detailed informational document that analyzes a project's potential significant effects on the environment and identifies mitigation measures and reasonable alternatives to avoid significant effects.
- **Notice Of Preparation:** Helps determine the Scope of the EIR.
- The EIR is the “heart of CEQA.”

– *Inyo v. Yorty*

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## Types of EIRs

- Project EIR
- Tiered EIR
  - Master EIR (usually associated with “Airport Master Plans)
  - Program EIR
- **Joint EIR-EIS**  
Guidelines § 15160 - 15170

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## Public Review of the EIR/ND

- EIR
  - NOP: 30 days
  - EIR: 45 days (state review)
  - response to comments: 10 days to Public Agency who commented on Draft EIR.
- ND or MND
  - 30 days (state review)

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## Certification/Adoption

- Certification of EIRs and adoption of ND/MNDs must be conducted by the decision making body of the Lead Agency.
  - The person or persons with the authority to approve the project constitute the “decision-making body” (Guidelines § 15356)
  - Certification/adoption cannot be delegated to staff (Guidelines § 15025)
  - Lead Agency must make certain “findings”

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## Project Approval

- Lead Agency must approve or disapprove project after certification/adoption of the CEQA document.
- After project approval, Lead Agency shall file a Notice of Determination (NOD) with the county clerk, and in some cases with OPR, within 5 days of project approval. (Filing of the NOD reduces the statute of limitations to challenge a project)

## State Permits, Responsible Agencies

- After Certifying/Adopting the CEQA document and approving the project Responsible Agencies will act on permits.
- Responsible Agencies will need to rely on the CEQA/NEPA doc to approve permits.
  - Responsible Agencies should be included early in the process to make sure the environmental document meets their needs.

# Preparing Doc's & Use of Consultants

- An EIR or ND may be prepared by any of the following:
  - The lead agency
  - Another public or private entity
  - The applicant or applicant's consultant
  - An independent contractor under a third party contract
- For Airport Master Plans consultants should be proficient in both NEPA and CEQA document preparation.

# New Developments in CEQA

## CEQA and Green House Gas/Climate Change

- SB 97 (2007) OPR “shall prepare, develop, and transmit to the Resources Agency guidelines for the mitigation of greenhouse gas emissions or the effects of greenhouse gas emissions...” (PRC 21083.05)
- AG Comment Letters & Lawsuits
  - Ontario Airport Master Plan NOP comment letter.  
“Implementing the master plan invariably will result in increases in emissions of greenhouse gases that cause global warming.”

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# CEQA/NEPA

## Combining the Processes

Both CEQA and NEPA allow for the combining of documents and processes.

CEQA allows for/encourages streamlining the processes through cooperation with Federal Agencies and the development of joint CEQA/NEPA documents.

Article 14, Guideline Sections 15220-15229.

# CEQA/NEPA

CEQA Guidelines Section 15226: “State and local agencies should cooperate with federal agencies to the fullest extent possible to reduce duplication between the California Environmental Quality Act and the National Environmental Protection Act. Such cooperation should, to the fullest extent possible include:

- (a) Joint planning processes,
- (b) Joint environmental research and studies,
- (c) Joint public hearings,
- (d) Joint environmental documents.”

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## CEQA/NEPA... In a Perfect World....

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...a single environmental document should be prepared that complies with both the requirements of CEQA and NEPA. EIR/EIS, ND/EA/FONSI when feasible.

- Obstacles

- Timelines

- Legal Standards: “Fair Argument” (CEQA) v. “Arbitrary and Capricious” (NEPA)

- Different content/analysis requirements

- Alternative Analysis, Socioeconomic, etc.

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## Coordinating Efforts: Summary

- CEQA and NEPA both apply to the adoption of an Airport Master Plan and other actions on Airports.
- Lead Agency should try and combine the two process's into one to save time and money and avoid duplicate efforts when possible. Challenges do exist.
- State and Federal Agencies should be brought in early in the process to provide feedback/permit requirements to the Lead Agency.
- Consultants should be proficient in both NEPA and CEQA.
- The Attorney General is watching.....



# Contact Info

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