

Just the Facts:
An Evidence-Based Look at CEQA Streamlining and CEQA's
Role in Development
Joint Informational Hearing
Senate Judiciary and Environmental Quality Committees



CEQA and Housing Production

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CEQA in 10 Minutes

Short History

The California Environmental Quality Act (CEQA) was enacted in 1970. It followed on the National Environmental Policy Act, although it is a distinct law applicable to California public agencies (does not apply to federal agencies or tribes). It is rooted in the “Ecology Movement” of the late 1960s and is intended to protect the environment from projects that would otherwise result in significant impacts.

CEQA pre-dates most of California’s environmental protection regulations (Endangered Species Act, Clean Air Act, etc.), and as a result it has a broader application than those regulations. Therefore, a project that is consistent with all regulations may still have a significant effect if the project would result in a substantial adverse change from existing conditions.

CEQA’s basic provisions:

- Disclose the potential significant adverse impacts of a project to the public and decision-makers
- Mitigate significant impacts when feasible
- Offer opportunities for the public and other agencies to become involved in the environmental review
- Require decision-makers to consider the balance between development and the environment

To avoid creating an oversight agency, the Legislature chose to enforce CEQA through litigation. There are approximately 25 reported CEQA decisions each year. The vast majority of projects are not litigated.

Application and Character

CEQA applies to discretionary actions by public agencies with the potential to result in adverse changes in the physical environment. It does not apply to “ministerial” actions where agencies simply apply standard requirements and have no discretion to deny a qualifying project or apply mitigation measures to avoid environmental impacts. Literally thousands of projects are subject to CEQA each year in California.

CEQA’s applicability to local projects depends on the city/county codes. Those projects that are discretionary under local code are subject to CEQA; those that are ministerial are not. There can be substantial variability between jurisdictions.

CEQA is a process for disclosing the potential impacts of a project before the public agency takes action to approve that project. It is not a permit. It is not regulatory. CEQA does not supplant regulations, and does not grant agencies any new powers to regulate. It does not require an agency to deny a project that may have significant effects on the environment.

Common CEQA Terms

- **Significant Impact:** a substantial adverse change in the physical environment resulting from a project either directly or indirectly (when reasonably foreseeable). CEQA requires that significant impacts be disclosed.
- **Mitigation:** a measure that will be implemented in conjunction with the project that will reduce, minimize, or otherwise avoid its significant impacts. Mitigation is only required to reduce the impact to a less-than-significant level.

- **Exemption:** a statutory or regulatory provision exempting certain minor projects from CEQA.
- **Initial Study (IS):** a preliminary analysis undertaken to determine whether a project may have a significant impact. An IS typically includes a checklist (Appendix G of the CEQA Guidelines) and supporting analysis and studies.
- **Negative Declaration/Mitigated Negative Declaration:** a finding, based on the IS and supporting studies, that there is no substantial evidence that the project may result in a significant impact.
- **Environmental Impact Report:** a comprehensive report on the project examining and disclosing its significant effects, analyzing alternatives that would avoid those effects, and identifying mitigation that would reduce those effects.

CEQA Applies in One of Three Ways

Exemptions:

Statutory exemptions are created by law and exempt qualifying projects from CEQA's requirements to the extent set out in the statute. They can be very broad (example: railroad grade separations) or rather narrow (example: affordable housing infill projects). The complex statutory exemptions for infill housing tend not to see much use.

Categorical exemptions are created by regulation as part of the State CEQA Guidelines. They are limited to classes of project that usually do not have the potential for significant effects (examples: repairs or maintenance to an existing residence, and construction of a new home). Unusual projects that would have an impact cannot use a categorical exemption.

In 2017, state agencies used 7,160 statutory or categorical exemptions for projects. There is no tally for regional and local agencies, but the number is undoubtedly much greater.

Negative Declaration and Mitigated Negative Declarations

These are documents, based on and including an IS and supporting studies, concluding that the project will either not have a significant impact or all significant impacts can be mitigated below a level of significance. A draft Neg Dec or Mitigated Neg Dec must be circulated for public review and comment before the agency can act on the project. The agency must consider all comments during its deliberations. The State Clearinghouse circulated 1,566 Neg Decs and Mitigated Neg Decs for review in 2017. An unknown number of local Neg Decs and Mitigated Neg Decs were circulated outside the State Clearinghouse.

Environmental Impact Report

An EIR is prepared whenever there is substantial evidence that a project may result in a significant effect. The agency must release a "notice of preparation" to let the public and other agencies know of the pending draft EIR. The draft EIR includes detailed analyses of potential impacts and alternatives and mitigation measures to reduce those impacts. Both the notice of preparation and the draft EIR require public review and comment. Comments received on the draft EIR are responded to in writing in the Final EIR. The agency considers the Final EIR in its deliberations over the project. An agency may approve a project with significant unavoidable impacts after it has adopted a Final EIR. In 2017, the State Clearinghouse circulated 354 EIRs. This is likely close to the statewide total for that year.

CEQA Streamlining Provisions

Contrary to popular conception, CEQA has a number of streamlining provisions. Here are the most common.

- **Exemptions:** qualifying projects can bypass the need for a Neg Dec, Mitigated Neg Dec, or EIR. There is no public review period for exemptions. The Class 32 categorical exemption for infill projects is widely used and has been successfully defended in court many times.
- **Ministerial exemption:** ministerial projects are not subject to CEQA at all. An agency that uses ministerial permits, rather than discretionary ones, avoids CEQA for those types of projects. Creating ministerial permits, with strict standards for development, is an effective way to reduce the need for CEQA review of individual projects.
- **One project, one document:** once a Neg Dec, Mitigated Neg Dec, or EIR has been adopted for a project, all other agencies with discretionary approvals are required to use that same document. This avoids duplication of effort and time.
- **Program EIR Tiering:** this type of EIR is usually prepared for a plan or regulation, or a multi-phase project. It is designed to simplify the review of later discretionary activities that are within the scope of the Program EIR. The subsequent review of later activities is limited to new or substantially more severe impacts resulting from the later activity. The original Program EIR is not re-opened. This review is subject to public review when a subsequent EIR or mitigated Neg Dec, or supplemental EIR is triggered. But that document focuses only on what's new. If there is nothing triggering a subsequent document, the Program EIR can be used for the later activity and no additional CEQA document is needed.
- **Project EIR Tiering:** once an EIR has been adopted, no subsequent EIR is required unless a later discretionary activity would result in a new or substantially more severe impact. The subsequent review is limited to the new or more severe impact; the original EIR is not reopened. This review is subject to public review when a subsequent EIR or mitigated Neg Dec, or supplemental EIR is triggered, and focuses on what's new. If there is nothing triggering a subsequent document, the project EIR can be used for the later activity and no additional CEQA document is needed.
- **Specific Plan EIR Tiering:** when a residential project is proposed that is consistent with a specific plan for which an EIR was previously approved, no subsequent EIR is required unless the residential project would result in a new or substantially more severe impact. This operates like project EIR tiering, as described above.

Over the past few years, the Legislature has created a number of CEQA streamlining or tiering mechanisms, including exemptions within transit priority areas, sustainable community environmental assessments, and other approaches applicable to development in transit priority areas. However, these tend to be more complex than standard exemptions, program EIR tiering, project EIR tiering, and specific plan EIR tiering, and have not come into widespread use. The Office of Planning and Research has written a technical advisory comparing these various approaches in addition to the exemptions, program EIR, and specific plan EIR approaches described above. A copy of *CEQA Review of Housing Projects Technical Advisory* is attached.

Housing and CEQA

The Association of Environmental Professionals (AEP) published in late 2018 *CEQA's Impact on Housing Production*, a survey of California's cities and counties. Of the 541 agencies contacted, 46 responded to the survey. These comprise 31% of California's population and 7/10 of the state's largest cities, including Los Angeles, San Jose, Long Beach, Sacramento, and San Francisco.

The survey compiled comprehensive data on all residential projects of 5 or more units under CEQA review between 2015 and 2017 in these jurisdictions. This included a total of 1,417 housing projects with 5+ units, which in turn contained a total of 144,111 housing units. Of these, 15,115 housing units (about 10% of the survey inventory) were considered affordable units.

General Findings:

- Streamlining/Exemptions was the predominant type of environmental review used for these projects (42% of projects), followed by Mitigated Negative Declarations (36% of projects). Only 6% of projects were reviewed by EIRs. The categorical infill exemption accounted for 26% of housing projects, tiering from Specific or Community Plan EIRs accounted for 14%, and the statutory exemptions for affordable housing and projects within transit priority areas were only rarely used.
- The average size of projects requiring EIRs was 426 units, compared to an average project size of 91 units for Mitigated Negative Declarations, 119 units for projects tiering off a Specific or Community Plan EIR, and 37 units for the infill exemption.
- Affordable units benefited from Streamlining/ Exemptions to a greater extent than market-rate units, and most were reviewed by tiering from Specific Plan EIRs or using the categorical infill exemption. Only 387 of the 15,115 affordable units in the sample were reviewed using the statutory affordable housing exemption.
- CEQA review utilizing full EIRs was proportionately more common in above-average housing production communities, despite the perception that EIRs discourage housing production compared to other CEQA review methods. Above-average production locations also appear to rely more heavily on Mitigated Negative Declarations than below-average locations, while the below-average production locations relied more heavily on streamlining.

Findings on CEQA as a Constraint:

- The perceived causal relationship between CEQA review and frequent project withdrawals may be significantly overstated. Some policy observers have cited withdrawal of projects during CEQA review as a signal that CEQA discourages project applicants to the point of ceasing the process of housing development. Survey respondents were asked about the number of projects and units withdrawn between 2015 and 2017 and reasons for withdrawal. In total, there were 51 project withdrawals covering 3,706 units, equivalent to withdrawal rate of 2.8 % of the total units in the survey sample. This suggests that the anecdotes about CEQA causing project withdrawal, while potentially accurate for a singular high-profile project, do not represent an overall discernable pattern.
- The top 3 factors affecting market-rate housing production cited by respondents were high development costs (e.g., land cost, impact fees), non-CEQA related neighborhood opposition, and lack of available sites. CEQA review was selected 4 times out of the 112 responses received.

- The most frequently cited factors affecting affordable housing production were lack of financing, high development costs, and loss of redevelopment agencies. For affordable housing, CEQA review was attributed 2 times out of 124 selections.
- Comments from 17 of the 30 responses to this item suggested that CEQA did not constrain housing in their jurisdiction. Four other respondents had mixed opinions, citing CEQA mixed with other development challenges and general political and resident concern. Nine respondents felt that CEQA constrained housing development in their community, with comments generally stating that CEQA added time and/or cost to the approval process. These opinions about CEQA and housing production did not seem to vary by the jurisdiction's housing Production Index rating. Eleven of the 17 respondents that felt that CEQA did not constrain housing production were in "below average production" jurisdictions, suggesting that other factors were impacting production in substantial ways.

Attachment