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A SHORT INTRODUCTION TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Selina Bendix*

INTRODUCTION

Private developers in California are more frequently turning to lawyers for help in guiding projects through the "maze" of bureaucratic regulation associated with project approval at state, county, and city levels. One of the most time-consuming aspects of this bureaucratic maze, and one which is frequently the most complex and unfamiliar to the lawyer, is the environmental clearance process required by the California Environmental Quality Act (CEQA or Act).¹

Project approval effected under CEQA is potentially subject to four sources of legal control: CEQA itself, the Guidelines for Implementation of the California Environmental Quality Act (Guidelines),² local law adopted pursuant to the first two,³ and case law.⁴ This article focuses on CEQA and the Guidelines as they apply to non-governmental projects. The analysis is neither comprehensive nor definitive; instead, it presents an overview of the environmental clearance process so that attorneys may expedite their clients' projects through that process.

The environmental review process may be explained in several phases. Initially, it must be determined whether CEQA applies to a given project and if so, whether the project is excluded from the Act or whether an Environmental Impact Report (EIR) is required. If a project will have significant environmental effects, so that an EIR must be filed, the authorship

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3. CAL. PUB. RES. CODE § 21082 (West 1977); CAL. ADMIN. CODE tit. 14, § 15050 (1978); e.g., SAN FRANCISCO, CAL., ADMIN. CODE ch. 31 (Supp. 1977).
4. For a review of case law under the Act, see California Office of Planning & Research, California Environmental Quality Act Litigation Study (1976) (on file at Santa Clara Law Review).

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and content of the Draft EIR must be examined. Finally, the EIR must be finalized according to law.

**Applicability of CEQA**

The coverage of the Act is expansive and it applies to "project" decisions made by most public agencies. A "project" is an activity directly undertaken by a public agency, an activity supported financially by a public agency, or an activity involving the issuance of a lease, permit, license, certificate, or other entitlement for use by a public agency. Practically all public and private construction projects are affected by CEQA because they involve public agencies in one or more of these activities. Private projects tend to fall under the Act because they require a permit, license, or other entitlement for use from a public agency.

"Public agency" is broadly defined to include any state, county, city, or regional agency, public district, or other political subdivision. The "lead agency" details and reviews the environmental impacts of the project and has the "principal responsibility for carrying out or approving a project." In the event of a dispute between two or more agencies over which should be the lead agency, the matter may be submitted to the Governor's Office of Planning and Research for resolution. A "responsible agency" carries out or approves a project for which the lead agency is preparing the environmental documents. With these definitions in mind, the project sponsor's first step is to investigate and discover whether the project is excluded or exempted from CEQA coverage.

**Projects Excluded or Exempted from CEQA**

*Ministerial and Discretionary Project Approval.* Only projects involving discretionary governmental actions are subject to CEQA. A discretionary act involves the exercise of judgment in the process of approving or disapproving a particular activity. Ministerial activities are those in which an agency

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6. Id. § 21063.
8. Id. § 15065.5.
9. Id. § 15039.
must act upon given facts without regard to personal judgment or opinion concerning the propriety or wisdom of the approval. Most California jurisdictions use the Uniform Building Code (UBC) either directly or as a basis for their local building code. There is a difference of opinion as to whether building permits issued pursuant to the UBC are discretionary. Litigation of this issue has been expected by some attorneys, but has not occurred. As local codes and practices vary, each jurisdiction must be scrutinized to ascertain whether building permits are discretionary. Under the Guidelines, the issuance of a business license is ministerial absent discretionary provisions in a local ordinance.

Excluded Activities. In addition to the ministerial exclusion, the statute excludes the following types of actions from CEQA coverage: emergency repairs or actions to mitigate an emergency, feasibility and planning studies, disapproved projects, and projects approved prior to the effective date of the Act.

Emergency exclusions cover repairs to public service facilities, actions to repair, replace, or demolish facilities in a disaster area, and actions to prevent or mitigate an emergency. An emergency is a "sudden, unexpected occurrence, involving a clear and imminent danger to life, health, property, or essential public services." It is not proper to request an emergency exclusion to counter a gradual process, such as wave erosion, which, if not checked, could lead to a future emergency. In the opinion of some lawyers, these emergency exclusions could have been used to exempt actions taken to cope with Proposition 13. The recent amendments to CEQA dealing with Proposition 13 were declarative of existing law.

Feasibility and planning studies cover possible future ac-

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12. Id. § 15032.
17. CAL. PUB. RES. CODE § 21080(b)(4) (West Supp. 1979); CAL. ADMIN. CODE tit. 14, § 15071(c) (1978).
18. The statute specifies fire, flood, earthquake, or other soil or geologic movements, as well as riot, accident, or sabotage. CAL. PUB. RES. CODE § 21060.3 (West 1977).
tions that have not yet been approved, adopted, or funded and are, therefore, excluded from CEQA provisions. However, a project subject to this exclusion cannot go to bid or have final construction drawings prepared without first complying with CEQA and the environmental review process.

Disapproved projects are logically excluded from the Act, allowing patently unacceptable proposals to be turned down without the delay and expense that an EIR would entail. This exclusion may also be applied to projects that would otherwise receive a declaration that no significant impacts would occur. An appellate body cannot reverse a project disapproval unless the appropriate environmental review is completed. The disapproved project exclusion may be invoked in any case where agency time limits are running out for a development application, thus depriving the time limits of real meaning in this situation.

In like manner, projects approved before CEQA became effective on November 23, 1970, are excluded from the Act's provisions. This exclusion is most likely to occur in connection with projects built pursuant to a redevelopment plan adopted before that date, because of the legal oddity of a CEQA provision that states: "[F]or all purposes of this division all public and private activities or undertakings pursuant to or in furtherance of a redevelopment plan shall be deemed a single project." This provision should be utilized with caution, as wherever it can be fairly argued that the circumstances surrounding the project have significantly changed, a redevelopment project pursuant to a plan adopted before the effective date of the Act becomes subject to environmental review.

Categorical Exemptions. In order to preclude the waste of administrative resources on environmental analysis of trivial discretionary actions, CEQA provides for the creation of a list of exempt classes of projects in the Guidelines. These Categorical Exemptions are predetermined not to have a significant

24. Id. § 21090.
25. See text accompanying note 61 infra.
effect on the environment and to be exempt from environmental analysis. They cover such activities as landscaping, interior remodeling, and construction of a single home.\textsuperscript{28} Certain types of Categorical Exemptions, however, may not be exempt where they might impact on “an environmental resource of hazardous or critical concerns” when the resource is so designated by a government agency pursuant to law.\textsuperscript{29}

When a small project does not fit one of the Categorical Exemptions and “it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment,” it may be possible to use the so-called “General Rule” to exclude the proposed project from review.\textsuperscript{30} If this is done, the contention that the project could not have a significant impact on the environment should be documented. The agency usually charges a fee for the staff time needed to prepare such documentation. Some jurisdictions have been reluctant to use the “General Rule” because of its perceived vagueness and questionable statutory origin. However, Santa Barbara County has used it for several years without challenge;\textsuperscript{31} San Francisco has used the rule since the passage of Proposition 13.\textsuperscript{32} Use of the “General Rule” should be regarded as a calculated risk.

\textbf{Notices of Exemption and Determination.} It is sometimes necessary or convenient to have proof of exemption or exclusion from CEQA requirements for lenders or government agencies other than the lead agency. A Notice of Exemption fills this need.\textsuperscript{33} Public agencies are not obliged to file such notices, but it is often in the project sponsor’s interest to obtain one. If the public agency does not file the Notice, it may be filed by the project sponsor.\textsuperscript{34} The same notice is used whether a project is

\begin{itemize}
\item \textsuperscript{28} Id. § 15100.2.
\item \textsuperscript{29} Id.
\item \textsuperscript{30} The requirements set forth in these Guidelines apply to projects that may have a significant effect on the environment and that involve discretionary governmental action. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not covered by the requirements set forth in CEQA, and these Guidelines concerning the evaluation of projects and the preparation and review of environmental documents do not apply. Id. § 15060.
\item \textsuperscript{31} Conversation with Albert F. Reynolds, Director, Dep’t of Environmental Resources, Santa Barbara County.
\item \textsuperscript{32} Unwritten Decision of Environmental Review Officer, San Francisco Dep’t of City Planning, with concurrence of San Francisco City Attorney (July 1, 1978).
\item \textsuperscript{33} Id. §§ 15035.5, 15074.
\item \textsuperscript{34} Id. § 15074(b).
\end{itemize}
excluded by statute or exempted by the Guidelines. This may cause some confusion in the minds of persons who assume that only Categorical Exemptions are covered by such notices.  

After approval of an excluded or exempted project, a Notice of Determination may be filed with the county clerk of the county or counties in which the project will be located. This action starts a thirty-five-day statute of limitations on any suit claiming that such an exemption or exclusion was improper. In the absence of such a notice, the statute of limitations is 180 days after the decision to approve or disapprove.

The Decision to Require an EIR

A project that is neither excluded nor categorically exempt must be evaluated by the lead agency to determine whether it could have a significant impact on the environment. It is important to note that significant is defined by statute as substantially adverse. Usually, an Initial Study will be conducted to obtain enough information to judge whether the project would have a significant effect on the environment (requiring an EIR) or would not have significant impact on the environment and is suitable for issuance of a Negative Declaration.

Negative Declarations. A Negative Declaration is first issued as a Preliminary Negative Declaration with public notice and provision for public review and comment on the appropriateness of the agency action. Project sponsors should be urged to be as cooperative as possible with public requests for additional information at this stage of the process. Lack of cooperation often gives rise to a demand for the more expensive and time-consuming EIR in order to get at the facts.

Where a project could have a clearly defined adverse impact that is mitigable, it may be possible to avoid an EIR
through correct use of the Initial Study process. For example, consider a project in an area where an endangered plant or animal may be found. As part of the Initial Study, an appropriate expert should be sent to survey the site. If the endangered species is not present, the problem is eliminated, and in the absence of some other potential significant impact, no EIR is needed. If the endangered species is found on the site and it is possible to redesign the project so that it will not have an impact on the endangered species habitat, the impact can be mitigated and no EIR is needed. In the case of endangered plants, if the endangered species is found mixed with escaped cultivated plants rather than in its natural plant association, experts may feel that it is not meaningful to preserve the organism on this site. If this is a consensus opinion, once again no EIR may be needed.

Where a single impact threatens to mandate an EIR for a small to medium-sized project, it is advisable to redesign the project to mitigate the impact. The potential cost of project redesign to achieve mitigation should be balanced against the inflation of project construction costs, debt service and property taxes during preparation, review and completion of an EIR. It is likely that, after the EIR has been prepared, mitigation will be required anyway as a condition of project approval.

Where mitigation of potential impacts allows the issuance of a Negative Declaration, a Conditional Negative Declaration may be issued, stating specific conditions to be met before the Negative Declaration is to be finalized. Some jurisdictions use bonding methods to insure compliance with those conditions. Conditions stated in a Conditional Negative Declaration may become part of a conditional use permit or may become deed restrictions. A Conditional Negative Declaration should not be issued unless the project sponsor supplies a written statement indicating that the project will be revised to incorporate the conditions.

If it can be clearly seen that an EIR will be required for a proposed project, time can often be saved by proceeding directly to an EIR without an Initial Study. The advantages of this procedure will vary from jurisdiction to jurisdiction, and should be discussed with lead agency staff.

After public review of the Preliminary Negative Declara-

42. Id. §§ 15080(b)(2), 15080(d)(2).
43. Id. § 15080(a).
tion, a Final Negative Declaration will usually be issued, and project approval may take place. A Notice of Determination may be filed with the county clerks of all affected counties after the decision to approve or disapprove the project is made.\footnote{44} This Notice of Determination triggers a thirty-day statute of limitations for suit alleging noncompliance with CEQA.\footnote{45} If such a notice is not filed, the statute of limitations runs 180 days from the date of the decision to approve the project.\footnote{46} If the project is controversial and there is any question of suit to require an EIR, it is in the project sponsor’s interest to have such a notice filed.

**Deadlines.** The deadlines set down by the Legislature in 1977 are intended to speed up the environmental review process by setting strict time limits for agency decision-making.\footnote{47} Unfortunately, this set of amendments to CEQA raises more issues than it settles.\footnote{48} It is rarely in the project sponsor’s interest to raise the issue of deadlines. For example, the law states that the decision to require an EIR must be made “within 45 days from the date on which an application for a project has been received and accepted as complete by the lead agency.”\footnote{49} Beyond the question of what constitutes “accepted as complete,” if negotiation of mitigation measures may obviate the need for an EIR, it is not wise to insist on a decision in forty-five days as negotiation may carry over beyond the forty-five day period. If the agency doubts that important mitigation measures will be incorporated into the project, the agency will probably require an EIR to protect itself unless the project sponsor makes it clear that the forty-five day deadline provision will not be invoked.

**Significant Impacts.** Certain environmental impacts are deemed by statute to be “significant” and to require the preparation of an EIR.\footnote{50} A finding of significance is mandatory if the proposed project (1) has the potential to degrade the environment, (2) has possible effects which are individually limited

\footnote{44}{CAL. PUB. RES. CODE § 21152(a) (West 1977); CAL. ADMIN. CODE tit. 14, § 15083(f)(5) (1978).} \footnote{45}{CAL. PUB. RES. CODE § 21167(b) (West Supp. 1979).} \footnote{46}{Id. § 21167(a).} \footnote{47}{CAL. GOV’T CODE §§ 65920-65967 (West Supp. Pamph. 1966-1978).} \footnote{48}{See Sahm, Project Approval Under the California Environmental Quality Act: It Always Takes Longer Than You Think, 19 SANTA CLARA L. REV. 579 (1979).} \footnote{49}{CAL. PUB. RES. CODE § 21080.2 (West Supp. 1979).} \footnote{50}{Id. § 21083 (West 1977).}
but cumulatively considerable, or (3) will cause substantial adverse effects on human beings.\textsuperscript{51}

Beyond this, the determination of whether a project has a significant effect on the environment calls for careful judgment, and an "ironclad definition" of significance is not possible given the vast array of variables.\textsuperscript{52} If there is a difference of opinion on whether a particular project will be adverse or beneficial, and the substantial weight of opinion considers the effect adverse, the lead agency should prepare an EIR to explore the environmental impacts.\textsuperscript{53} For example, an eight-story apartment building in a block of six- to ten-story apartment buildings would probably not have a significant effect, while the first eight-story apartment house on a block of single-family houses and duplexes could initiate a significant change in the character of a residential neighborhood.

\textit{Public Participation.} Public participation is an integral part of the environmental review process and creates a feedback mechanism to improve the quality of public decision-making. Agencies are required by the Guidelines to involve the public.\textsuperscript{54} Project sponsors, private and public, sometimes take the attitude that an uninformed public will not raise trivial issues and that early public involvement is undesirable; these sponsors hope that they will gain all necessary permits before the public is aroused. This attitude can seriously delay a project if project information is released by the sponsor at the last minute. Important revelations may require Draft EIR revisions or even formal EIR amendment if revealed after EIR certification. Sponsors should be as frank as possible. Arguments over the relevance of a particular information request only delay the approval process.

An EIR is required where there is "serious public controversy concerning the environmental effect of a project."\textsuperscript{55} Provision of adequate information to the public during the initial study process sometimes eliminates the need for an EIR when the public is mistaken in believing that harmful impacts will occur. A large, controversial project may be approvable only if its EIR contains enough information to answer all points of contention.

\begin{itemize}
  \item \textsuperscript{51} Id.
  \item \textsuperscript{53} Id.
  \item \textsuperscript{54} Id. § 15164.
  \item \textsuperscript{55} Id. § 15084(c).
\end{itemize}
EIR Timing. The EIR process is clearly intended to have an effect on the development of the project concept and is not a post hoc justification. Thus, the EIR must be begun at the earliest possible time in the project planning stage.56 There is no conflict between the early initiation of an EIR and simultaneous attempts to avert the necessity for one at all. Early evaluations of potential environmental impacts may lead to project redesign eliminating the need for an EIR.

Whenever a project is subject to both CEQA and the National Environmental Policy Act (NEPA),57 a single document may be prepared to satisfy the requirements of both laws, as long as there is complete interagency cooperation in document preparation.58 Some federal agencies are very cooperative in developing joint documents; others find reasons why they must do their own independent document, even though this wastes taxpayer money and agency resources. More joint documents can be expected in the future, as a result of the endorsement of cooperative efforts in the new Council on Environmental Quality Regulations for the implementation of the NEPA.59

A project with several portions to be constructed sequentially may not be reviewed one phase at a time but must be reviewed as a whole.60 Project sponsors often complain that they have decided only the details of the first phase, and want only that phase to be reviewed. However, the impacts of the total project must be evaluated before the first phase receives permits. It is in the economic interest of both agency and sponsor that a phased project not be interrupted in the middle of the sequence because the adverse impacts of later project elements were not considered at the beginning.

When a major project will be designed and constructed over a period of time and future events will influence detailed design decisions, a “tiered” environmental review may be used. Under this approach a master EIR is prepared as a general discussion of the predicted impacts and policy decisions involved in the total project. This master EIR is then followed by sequential EIR’s discussing individual implementation elements of the overall plan and indicating refinements of the

56. Id. § 15013.
58. CAL. PUB. RES. CODE §§ 21083.6, .7 (West Supp. 1979).
overall plan necessitated by new information or changed circumstances.61

THE DRAFT ENVIRONMENTAL IMPACT REPORT: AUTHORSHIP, CONTENT, AND REVIEW

EIR Authorship

Sponsors often feel that they and their consultants are the authors of the EIR as the sponsors both hire the consultants and often are charged for agency staff time required for environmental review of their projects pursuant to the Act.62 This leads to pressures on consultants to bias reports in favor of the proposed project through misrepresentation or omission of data that the sponsor fears would prejudice people against the project. These pressures are misplaced. The public agency "is responsible entirely for the adequacy and objectivity of the EIR."63 If the project sponsor supplies information to the agency in the form of a Draft EIR, "the lead agency may not use the document as its own without independent evaluation and analysis."64

Efforts by the project sponsor or his/her agents to bias an EIR or to omit relevant facts simply delay the process by creating more work for the consultant and agency staff. These efforts may also supply a basis for litigation. Project sponsors should know that every action, including permit denial, has both positive and negative aspects. A good project can stand on its merits; the facts will not hurt it. Moreover, in most, if not all, cases, potentially damaging information will eventually surface. In such instances, the credibility of the project sponsor and the EIR can be severely damaged.

EIR Content

An EIR must describe the significant environmental effects of the proposed project, possible mitigation measures, and impacts that cannot be mitigated.65 The EIR must also discuss growth-inducing impacts and alternatives to the proposed project, and must contain a summary.66 Discussion of irreversible

61. Id. § 15069.5.
62. Id. § 15053.
63. Id. § 15050(b).
64. Id. § 15061.
66. Id.; CAL ADMIN. CODE tit. 14, § 15140(b) (1978).
environmental changes that would occur and the relationship between short-term uses and long-term environmental goals need be included only in EIR's for certain public agency plans, local agency formation commission actions, or projects also subject to NEPA. In addition to legal requirements, as a practical reality, an EIR must deal with all disputed issues regarding a project to preclude delay of certification by arguments over matters of relevance.

The style of the EIR should be non-technical so that it is meaningful to decision-makers and the public. Elaborate detail should be eliminated from project descriptions. The Guidelines state that: "The description of the project . . . should not supply extensive detail beyond that needed for evaluation and review of the environmental impact."

*Significant Environmental Impacts.* Environmental impacts should be discussed "in proportion to their severity and probability of occurrence." The elimination of discussion of trivial impacts is one of the best ways to shorten EIR's and make them more useful. Significant impacts on historic or aesthetic resources must be discussed.

Inclusion of economic impacts in EIR's has been the subject of discussion for years. One of the legislative intent sections of CEQA states that it is the policy of the legislature to: "Create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations." The Guidelines state that "economic information may be included in an EIR or may be presented in whatever form the agency desires." The Legislature has considered bills expanding or detailing the requirement for economic information in EIR's during past sessions and has repeatedly failed to pass such legislation. In practice, it is prudent to include economic

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71. *Id.* § 15140(e).
73. *Id.* § 21001(e) (emphasis added).
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impacts where they can be shown to significantly influence the economic status of a community or where they are a subject of substantial controversy, so long as these impacts can be reasonably estimated.

The required discussion of growth-inducing impacts is often economic in nature and generally appears as a short chapter dangling at the end of an EIR. There is no requirement that this section be a separate chapter, so long as it is listed in the table of contents, but it is more logically placed as a section in the impacts chapter. Moreover, discussions of individual impacts in the impacts chapter may, by necessity, discuss growth-inducing impacts of the proposed project.

Mitigation of Impacts. According to CEQA, "[e]ach public agency shall mitigate or avoid the significant effects on the environment of projects it approves or carries out whenever it is feasible to do so." An agency will find this difficult if the discussion of mitigation measures in the EIR is not adequate. The discussion of mitigation measures should distinguish between the measures suggested by project sponsors to be included in the project and other measures that are not included but could reasonably be expected to reduce adverse impacts. When several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be explained. The discussion of mitigation measures must include "an identification of the acceptable levels" to which any significant impacts will be reduced. It is often difficult to define or quantify "acceptable levels," particularly when the impacts are primarily subjective. In such cases, a good faith effort should be made to give descriptive information so as to inform decision-makers and the public of the relevant impacts.

The mitigation section of an EIR should not be a wish list dreamed up by imaginative consultants or agency staff. It should clearly indicate which measures have been adopted by the project sponsor, which have not been adopted, and the reasons for these decisions. If a mitigation measure would produce impacts that could influence the approval decision, these

79. Id.
80. Id.
impacts should be presented in the mitigation discussion. Where the power to implement a mitigation measure lies with an agency other than the lead agency, this should be clearly indicated.

**Project Alternatives.** The Guidelines state that the alternatives section of an EIR shall "[d]escribe all reasonable alternatives to the project or to the location of the project, which could feasibly attain the basic objectives of the project, and why they were rejected in favor of the ultimate choice." The specific alternative of "no project" must always be evaluated, along with its impact.

The discussion of alternatives is to include those capable of substantially reducing or eliminating any significant environmental effect, even if the alternatives substantially impede the attainment of the project objectives and are more costly. The impacts of each alternative must be discussed in sufficient detail to allow meaningful comparison of all options. A two-page alternatives analysis is almost always inadequate and an invitation to the challenge that alternatives were not seriously considered. Project sponsors should be carefully informed of the requirements for the contents of this section. The sponsor will then not feel that agency staff is trying to force a major project change when questions are raised about various alternatives.

When a decision has not been made between one or more alternatives at the time a Draft EIR is published, the document may treat two or more alternatives in parallel and at substantially equal levels of detail, rather than presenting a proposed project and the alternatives thereto. This probably reflects the intent of the law that alternatives be real alternatives better than the usual proposed project and alternatives format, but it makes EIR length and cost more difficult to control. So long as the impacts are adequately analyzed, any alternative described in an EIR may be approved by the decision-making body. Where it seems probable that the desired project is not going to be approved, it is desirable to have a more acceptable "fall back" position analyzed in the EIR.

At the end of the EIR there should be a list of "Organizations and Persons Consulted," identifying all federal, state, or local agencies or other private organizations and

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81. *Id.* § 15143(d).
82. *Id.*
individuals consulted in preparing the EIR. Any firm or agency preparing the EIR, by contract or other authorization, must also be identified.

**EIR Length.** How much is enough? Because of the interconnected nature of environmental analysis, there is theoretically no limit to what is relevant to an EIR for a particular project. Some federal Environmental Impact Statements under NEPA are almost as long as the *Encyclopedia Britannica*. Encyclopedic length often serves only to obscure (deliberately or inadvertently) the significant impacts of a proposed project. “An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible . . . . The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.” The Guidelines also make clear that if, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, this conclusion should be noted and discussion of the impact terminated.

There is increasing pressure on public agencies to make EIR’s shorter and more intelligible, thus facilitating decision-making. One excellent way to produce a concise EIR focusing on the important issues is to hold an initial scoping meeting with agency staff, the consultant (if any), and the project sponsor, at which agreement is reached on the most important impacts to be studied. Preliminary investigation may reveal new impacts, but advance agreement on the initial depth of investigation of each impact saves time as well as EIR length.

EIR’s can be shortened by summarizing detailed sources of information presented elsewhere, as long as the original sources are reasonably available for public inspection. The reader cannot judge whether a document is quoted accurately or in context unless the entire document is available for review. Therefore, the project sponsor must decide whether to make reports, such as financial feasibility reports, public or eliminate citation of them in an EIR. A copy of a referenced study in the

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83. *Id.* § 15144.
84. *Id.*
85. *Id.* § 15150.
86. *Id.* § 15140(b).
lead agency case file, with an indication in the EIR that it is available for public review, is generally adequate.

Public Review

When all necessary material has been assembled and found satisfactory by the lead agency, the Draft EIR is published and distributed for public and agency review. At the same time, a Notice of Completion is sent to the Secretary of the Resources Agency. In order to provide sufficient time for public review, the review period for a Draft EIR should not be less than thirty days. If a project requires action by a state agency, the Draft EIR must be sent to the state clearinghouse, which then distributes it to state agencies for review. State clearinghouse review requires a minimum of forty-five days. In practice, the comment period, at least for state agencies, will remain open for forty-five to fifty days. This review period must be taken into consideration in project scheduling.

Public Hearings. Public hearings are not state-mandated for EIR’s, but are required by many jurisdictions. Project sponsors, their staff members, and consultants should be counselled not to consider the hearing as an adversary process. The purpose of a public hearing is to ensure that the EIR contains an unbiased discussion of facts relevant to project decision-making. Citizens who oppose a project often misunderstand the nature of an EIR hearing and oppose EIR certification under the misconception that it constitutes project approval.

Statements at the hearing should be brief, factual, and neutral in tone. Under no circumstances should the sponsor or counsel engage in direct, acrimonious dialogue with project opponents in the audience. All remarks should be directed to the chair. It is usually inappropriate to comment on the judgment of the hearing officer or certifying body. Laudatory statements sound ingratiating; disparaging comments invariably alienate decision-makers. It is highly unprofessional for a project sponsor to request a consultant to defend the project at a public hearing, and this behavior discredits the objectivity of the consultant’s work on the EIR. The consultant should be

90. Id.
91. Id. § 15165.
used to supply additional facts, explain methodology, or clarify portions of the EIR text.

**THE FINAL EIR**

The Final Environmental Impact Report consists of the Draft EIR or a further revision, comments on the Draft, a list of those making comments, and the responses of the lead agency to "significant environmental points raised in the review and consultation process." Once the Final EIR is assembled, the certifying body must review these comments and responses for adequacy before it can be certified.

There are still jurisdictions that uncritically accept all the work done by a consultant for the Draft and Final EIR, simply putting the agency’s name on the unchanged text. This practice does not comply with the requirement for an exercise of independent judgment by the lead agency, and jeopardizes the project by leaving the EIR open to suit. One who suspects that this is happening should request that agency staff provide records detailing evidence of the exercise of their independent judgment. After a review of this record, the sponsor may better judge its adequacy and suggest any necessary improvements. It is better to delay publication of a Draft EIR or certification of a Final EIR long enough to have an adequate record of compliance with the law than to risk litigation over a patently noncomplying EIR.

**Findings**

In addition to certification, the certifying body must decide, on the basis of the EIR, whether the proposed project would have a significant effect on the environment. If the certifying body determines that the project would have a significant effect, then no public agency may approve the project unless it makes one or more of three findings. The agency may approve a project with significant impacts if it finds that: (1) changes have been required in the project which mitigate or avoid the significant effects; (2) these changes are within the responsibility and jurisdiction of another public agency which can or should adopt them; or (3) specific economic, social, or

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92. Id. § 15146.
other considerations make the mitigation measures or project alternatives identified in the EIR infeasible.\textsuperscript{4} The law requires these findings to be "supported by substantial evidence in the record," which is the standard for appellate review as well.\textsuperscript{5}

Projects "may be approved in spite of one or more significant effects thereof."\textsuperscript{6} Where it is not feasible to reduce all impacts to the level of insignificance or if one or more significant effects are unavoidable, the lead agency may approve the project if it concludes that the benefits of the proposed project outweigh its unavoidable environmental risks. In such instances, the lead agency must adopt a "statement of overriding considerations."\textsuperscript{7} This statement must also be supported by the written record, in the EIR or elsewhere.

\textit{Statute of Limitations}

Once the project has been approved, a Notice of Determination can be filed.\textsuperscript{8} This filing initiates a thirty-day statute of limitations for court challenge of the adequacy of the EIR.\textsuperscript{9} For private projects, approval occurs upon the earliest commitment by a public agency to issue a discretionary contract, loan, or other form of financial assistance, lease, permit, license, or other entitlement for use of the project.\textsuperscript{10}

\textit{Subsequent EIR's}

Once an EIR has been certified, no subsequent EIR can be required for the project by any agency, unless there are substantial changes in the project or in the conditions under which the project is implemented, or substantial new information that could not have been known at the time of certification becomes available, thus requiring major EIR revisions.\textsuperscript{11} Local agencies should be encouraged to amplify these provisions with a more detailed plan for processing applications for the many projects that are affected by changed circumstances. A more

\begin{footnotes}
98. \textit{Id.} § 15085(h).
99. \textit{CAL. PUB. RES. CODE} § 21167(c) (West Supp. 1979). It is the filing of the notice, rather than the posting of the filed notice, which starts the clock.
\end{footnotes}
detailed plan has been effectively implemented in San Francisco. 102

CONCLUSION

From the initial decision on the applicability of CEQA, to the review of the EIR in its draft and final forms, the environmental clearance process is very time-consuming. If initiated at an early stage of the project, the process should not cause delay because it will proceed concurrently with the project’s other aspects, such as design or geotechnical investigations.

The best way to further expedite the EIR process is to appoint a project manager who is familiar with the local environmental review process or able to rely on someone with this familiarity. A working knowledge of the process results in full cooperation between the project sponsor’s staff and consultants, and lead agency staff. In addition, delay can be reduced by promptly providing full information at every stage. The need for time-consuming studies should be determined early in the process so that the Draft EIR is not delayed pending their completion.

One final caveat: do not believe that an evening spent reading CEQA will intimately acquaint one with the details of California environmental law. A public agency staff member, on the other hand, who has worked with CEQA for years is likely to know a great deal about the environmental review process. A cooperative approach that recognizes this experience is a very effective way to speed environmental review, particularly in the era of Proposition 13 staff limitations.
