

ENVIRONMENTAL IMPACT REVIEW PROCESS**6850**

(New 5/98)

PWB requires satisfaction of environmental concerns in accordance with the California Environmental Quality Act (CEQA) before it will approve preliminary plans for a project and generally prior to approval of site selection as well. Legal statutes and related regulations covering CEQA can be found in Public Resource Code Section 21000 et seq. and its accompanying regulations, California Code of Regulations (CCR) 15000 et seq. Many actions brought before PWB for consideration and approval are “projects” within the definition of CEQA. These statutes and regulations set out the environmental review requirements for such projects.

Key definitions: For assistance on understanding the documents and notices required by CEQA, see the *Guidelines for California Environmental Quality Act*, Section 15000–15387, CCR, Title 14, Chapter 3. The guidelines provide an explanation of the environmental process and the definition of many common terms. The following summarizes a few frequently used terms and describes what CEQA documents include:

1. **Project per CEQA:** The term *project* per CEQA is defined in CCR Section 15378(a) (3) as an activity involving a lease, permit, or license issued to a person or entity.
2. **Environmental impact report:** An *environmental impact report (EIR)* is one of the three basic types of environmental documents that may be prepared by a lead agency to disclose the potential environmental consequences of an action. An EIR consists of draft and final documents. There are several types of EIR (focused, supplemental, program, etc.). An EIR “...is an informational document which will inform public agency decision-makers and the public generally of the significant environmental effect of a project, identify possible ways to minimize significant effects, and describe reasonable alternatives to the project” (Section 15121, Title 13, Chapter 3 of the CCR). An EIR is required when a project will have one or more significant environmental effects that cannot be either avoided or reduced to a level of insignificance through the use of mitigation measures or changes to the project.
3. **Negative declaration/initial study:** A second type of environmental document is a *negative declaration*. A negative declaration may be used if the project is not expected to have one or more significant effects on the environment. A negative declaration typically is supported by an initial study or initial study checklist.
4. **Categorical exemption:** A *categorical exemption* is an exemption from CEQA based on one or more classes of actions/projects established in regulation. Each class of projects has been determined to not have a significant effect on the environment.

Related notices include:

1. **Notice of determination:** A *notice of determination* is a brief notice filed by the lead or responsible agency after it approves or determines to carry out a project or action that was subject to CEQA. For state projects, the notice is filed with the State Clearinghouse, Office of Planning and Research. Filing of this notice starts a 30-day litigation period. See Sections 15075 and 15094 of CCR, Title 14, for the contents of this notice. A notice of determination is used for both EIRs and negative declarations.
2. **Notice of exemption:** A *notice of exemption* is a brief notice that may be filed by the lead agency after it approves or determines to carry out a project or action that was exempt from CEQA because the project was *ministerial*, *categorically exempt*, etc. For state projects, the notice is filed with the State Clearinghouse. Filing of this notice starts a 35-day litigation period.

Client department’s role: Environmental review is typically required for construction projects, projects funded through multi-year capital programs, land acquisitions, and land transfers. Other PWB actions may also be subject to the CEQA environmental review process. The lead agency in each case has the responsibility for determining whether the project is subject to CEQA.

The client department is responsible for meeting the requirements of CEQA. Departments must certify to the PWB that CEQA requirements have been met, including successful completion of the litigation period on each respective project approval, and must provide corroborating evidence (such as a date-stamped notice of determination or categorical exemption). In addition, departments must notify DOF of any developments, subsequent to completion of CEQA, that may indicate environmental contamination or other environmental issues that may require additional activities and/or costs.

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Changes in the project: The client department as lead agency ensures that there have been no changes in the project, site conditions, or other factors that may make it necessary to prepare additional environmental documentation. The need for additional documentation could arise for a variety of reasons, especially if there has been a substantial period between completion of the environmental review process and project submittal to the board. For example, if information becomes available that there is an unexpected problem of soil contamination within the project site, the lead agency may need to revise the previously approved environmental document. Other examples include the adoption of new regulatory standards that impose constraints on the project, changes in the setting of the project site such as the reduced availability of on-site utilities (water supplies, sewer service, etc.), increased traffic congestion, or the development of adjacent land uses that conflict with the project.

The client department must also ensure that all projects remain in compliance with the environmental document prepared and adopted for each respective action. In some cases, it may be necessary to provide additional documentation to support the finding that the original environmental process remains valid. Both state and federal environmental review processes provide guidance on when supplemental or revised environmental documentation may be needed subsequent to the approval of a project.

PWB practices: Because resolution of CEQA concerns should generally precede PWB's approval of state funds for a project, PWB follows these practices:

1. **When processes should be completed:** Departments must provide PWB with evidence that the state's environmental review process has been completed by the lead agency (the public agency with primary authority for carrying out the action) *prior* to the required PWB action.
 - a. For construction projects, this means prior to approval of preliminary plans; and
 - b. For acquisition projects, this means prior to approval of site selection and acquisition.
2. **Notice of determination, categorical exemption:** In most cases, completion involves filing of the applicable project approval notice by the lead agency—either a *notice of determination* or a *categorical exemption*, as required by state regulation.
3. **Litigation period:** The litigation period (described in the preceding text) on the notice must have expired without a valid challenge *before* PWB will consider the item. The litigation period for a notice of determination is 30 calendar days; the litigation period for a categorical exemption is 35 calendar days. Consult the regulations for litigation periods for other types of notices.

Evidence of the completion of this process assures the board that it has minimized risk in committing state funds to a particular project or undertaking.

CEQA compliance outside the PWB process: CEQA requirements are not limited to projects reviewed by PWB. Actions not reviewed by PWB, such as minor capital outlay projects, may nonetheless constitute "projects" within the definition of CEQA and its accompanying regulations. Again, in each case the lead agency is responsible for determining the application of CEQA to each project and fulfilling the relevant requirements.

Sections 6849 and 6851 describe how CEQA compliance should be presented in the PWB agenda package.