

CEQA: Where to Start?

Because historical resources are considered a part of the environment, projects that “may cause a substantial adverse change in the significance of an historical resource” are subject to the California Environmental Quality Act (CEQA). For that reason the Office of Historic Preservation receives many phone calls and emails regarding how to start the CEQA process.¹ The main purpose of CEQA is, “The maintenance of a quality environment for the people of this state now and in the future.”² Another important CEQA purpose, as the California Supreme Court stated, is to protect “not only the environment but informed self-government” by providing a more transparent and informed decision making process.³ CEQA provides a process to evaluate whether a proposed project may have an adverse effect of the environment and, if so, if that effect can be reduced or eliminated by pursuing an alternative course of action through mitigation. And since CEQA applies to “all governmental agencies at all levels” in California local governments and other agencies can use CEQA’s analytical framework to achieve CEQA’s main purposes.⁴

Since many public agency actions could require a CEQA process the first step for any agency is to determine if their action is a “project” under CEQA. CEQA defines a project as “an activity which may cause either a direct physical change in the

¹ Public Resources Code §21084.1

² Public Resources Code §21000 (a)

³ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564 [Cal. Rptr. 410]

⁴ Public Resources Code §21001 (f) (g)

environment, or a reasonably foreseeable indirect physical change in the environment.”⁵

Although all levels of government and their actions are subject to CEQA only private actions requiring discretionary action by a government agency will trigger the process. If a private project requires only ministerial permits from the local government agency then CEQA is not triggered. If the agency determines that the action is not a project or is ministerial no further CEQA action is required.

However, if an agency determines that their action, or a private action, is a project for CEQA purposes the next step is to determine if the project is possibly exempt for the process. CEQA includes twenty-five statutory exemption categories with many subcategories. Statutory exemptions include a broad range of exemptions with categories such as, “Emergency Projects” and “Olympic Games.”⁶ CEQA also includes thirty-three categorical exemptions with many subcategories such as, “Small Hydroelectric Projects at Existing Facilities” and “Historical Resource Restoration/Rehabilitation in a Manner Consistent with the Secretary of the Interior’s Standards.”⁷ If an agency determines that a project is exempt or will not have a significant effect the local agency may file a Notice of Exemption (NOE) with the county clerk in which the project is located. State agencies must file NOEs with the Office of Planning and Research (OPR). If an NOE is filed with the appropriate county clerk or OPR the public has a thirty-five day statute of limitations within which to file a legal challenge. If the agency does not file the NOE the statute of limitations is then 180 days.⁸

⁵ Public Resources Code §21065

⁶ California Code of Regulations §15269, §15272

⁷ California Code of Regulations §15328, §15331

⁸ California Code of Regulations §15062 (d)

If a project is not exempt through a ministerial, statutory, or categorical exemption then the agency must determine if the project might have a significant effect on the environment. The agency will make this determination through the completion of an Initial Study (IS). The IS will determine whether the agency will issue a Negative Declaration (ND), Mitigated Negative Declaration (MND), or an Environmental Impact Report (EIR).

Although OHP does review a few NOEs we are usually not involved in these first steps. Normally OHP participates in the CEQA public review process after agencies have completed their IS and an ND, MND, and EIR has been issued. It is this second half of the CEQA process which will be the subject of next quarters “CEQA: Where do we go from here?”

Another good place to start the CEQA process is at our website where you can find links to a CEQA flowchart and FAQs.

www.ohp.parks.ca.gov/ceqa