

CEQA

The California Environmental Quality Act

Title 14. California Code of Regulations
**Chapter 3. Guidelines for Implementation of the
California Environmental Quality Act**

Article 10. Considerations in Preparing EIRs and Negative Declarations

Sections 15140 to 15154

15140. Writing

EIRs shall be written in plain language and may use appropriate graphics so that decision-makers and the public can rapidly understand the documents.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003 and 21100, Public Resources Code.

Discussion: This section is intended to improve the clarity of EIRs. The section is also necessary to provide an interpretation resolving the question of who is the appropriate audience for the EIR.

15141. Page Limits

The text of draft EIRs should normally be less than 150 pages and for proposals of unusual scope or complexity should normally be less than 300 pages.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21100, Public Resources Code.

Discussion: The recommended page limits encourage agencies to reduce unneeded bulk in EIRs and to help the documents disclose the key environmental issues to the decision-makers and the public. Further, the page limits match the page limits under the federal system. Adopting the same limits as used in the federal system improves compatibility of the two systems.

15142. Interdisciplinary Approach

An EIR shall be prepared using an interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the consideration of qualitative as well as quantitative factors. The interdisciplinary analysis shall be conducted by competent individuals, but no single discipline shall be designated or required to undertake this evaluation.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference Sections 21000, 21001, and 21100, Public Resources Code.

Discussion: This section is necessary to show that an EIR must use many disciplines in order to find the interrelationships among the various factors in the environmental effects. The requirement for an interdisciplinary is also part of NEPA. Accordingly, this requirement comes from the legislative history of CEQA. This section also makes the essential point that an EIR must consider qualitative

factors as well as quantitative, economic, and technical factors.

15143. Emphasis

The EIR shall focus on the significant effects on the environment. The significant effects should be discussed with emphasis in proportion to their severity and probability of occurrence. Effects dismissed in an Initial Study as clearly insignificant and unlikely to occur need not be discussed further in the EIR unless the Lead Agency subsequently receives information inconsistent with the finding in the Initial Study. A copy of the Initial Study may be attached to the EIR to provide the basis for limiting the impacts discussed.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: This section provides an interpretation that the Initial Study can be used to show which effects were examined and found to be insignificant and, therefore, not worthy of further discussion.

15144. Forecasting

Drafting an EIR or preparing a Negative Declaration necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose all that it reasonably can.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: This section limits the requirement for forecasting to that which could be reasonably expected under the circumstances and is part of the effort to provide a general "rule of reason" for EIR contents.

In regard to forecasting, the *Laurel Heights* Court commented that an agency is required to forecast only to the extent that an activity could be reasonably expected under the circumstances. An agency cannot be expected to predict the future course of governmental regulation or exactly what information scientific advances may ultimately reveal. *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376.

15145. Speculation

If, after thorough investigation, a Lead Agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code; *Topanga Beach Renters Association v. Department of General Services*, (1976) 58 Cal. App. 3d 712.

Discussion: This section deals with a difficulty in forecasting where a thorough investigation is unable to resolve an issue and the answer remains purely speculative. This section is necessary to relieve the Lead Agency from a requirement to engage in idle speculation. Once an agency finds that a particular effect is too speculative for evaluation, discussion of that effect should be terminated. This section provides authority to do so.

In *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376, the court noted that where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences.

15146. Degree of Specificity

The degree of specificity required in an EIR will correspond to the degree of specificity involved in the underlying activity which is described in the EIR.

(a) An EIR on a construction project will necessarily be more detailed in the specific effects of the project than will be an EIR on the adoption of a local general plan or comprehensive zoning ordinance because the effects of the construction can be predicted with greater accuracy.

(b) An EIR on a project such as the adoption or amendment of a comprehensive zoning ordinance or a local general plan should focus on the secondary effects that can be expected to follow from the adoption or amendment, but the EIR need not be as detailed as an EIR on the specific construction projects that might follow.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code. Formerly Section 15147.

Discussion: This section is necessary to deal with the wide range of activities which are subject to the CEQA process. Some activities such as the adoption of local general plans may deal with issues on a level of broad generalities. At the other end of the scale, CEQA also applies to conditional use permits for specific development projects. While CEQA requirements cannot be avoided by chopping the proposed project into pieces to render its impacts insignificant the EIR need not engage in a speculative analysis of environmental consequences for future and unspecified development. (*Atherton v. Board of Supervisors of Orange County*, (1983) 146 Cal. 3d 346.)

As with the range of alternatives, the level of analysis provided in an EIR is subject to the rule of reason. The level of specificity for a given EIR depends upon the type of project. The analysis must be specific enough to permit informed decision making and public participation. The need for thorough discussion and analysis is not to be construed unreasonably, however, to serve as an easy way of defeating projects. What is required is the production of information sufficient to understand the environmental impacts of the proposed project and to permit a reasonable choice of alternatives so far as environmental aspects are concerned. See *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376. In *Antioch v. Pittsburg* (1986) 187 Cal. App. 3d 1325, the court held that EIR requirements must be sufficiently flexible to encompass vastly differing projects with varying levels of specificity. When the alternatives have been set forth in this manner, an EIR does not become vulnerable because it fails to consider in detail each and every conceivable variation of the alternatives stated.

15147. Technical Detail

The information contained in an EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and members of the public. Placement of highly technical and specialized analysis and data in the body of an EIR should be avoided through inclusion of supporting information and analyses as appendices to the main body of the EIR. Appendices to the EIR may be prepared in volumes separate from the basic EIR document, but shall be readily available for public examination and shall be submitted to all clearinghouses which assist in public review.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: This section is designed to achieve a balance between the technical accuracy of the EIR and the public information function of the document. Accuracy can be maintained by moving the technical details into appendices and summarizing the technical information in the body of the EIR itself. This approach may help reduce the cost of the EIR. The Lead Agency may reproduce fewer copies of the appendices than of the basic EIR. This section follows the federal NEPA regulations which already encourage placement of technical details in appendices.

15148. Citation

Preparation of EIRs is dependent upon information from many sources, including engineering project reports and many scientific documents relating to environmental features. These documents should be cited but not included in the EIR. The EIR shall cite all documents used in its preparation including, where possible, the page and section number of any technical reports which were used as the basis for any statements in the EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: This section recognizes source documents but discourages their inclusion in the EIR. Citations are required for accountability and to allow statements to be verifiable. This section is necessary to keep the size of the EIRs down to manageable levels and at the same time maintain the accuracy of the information in the document.

15149. Use of Registered Professionals in Preparing EIRs

(a) A number of statutes provide that certain professional services can be provided to the public only by individuals who have been registered by a registration board established under California law. Such statutory restrictions apply to a number of professions including but not limited to engineering, land surveying, forestry, geology, and geophysics.

(b) In its intended usage, an EIR is not a technical document that can be prepared only by a registered professional. The EIR serves as a public disclosure document explaining the effects of the proposed project on the environment, alternatives to the project, and ways to minimize adverse effects and to increase beneficial effects. As a result of information in the EIR, the Lead Agency should establish requirements or conditions on project design, construction, or operation in order to protect or enhance the environment. State statutes may provide that only registered professionals can prepare technical studies which will be used in or which will control the detailed design, construction, or operation of the proposed project and which will be prepared in support of an EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: This section is necessary for declaring that an EIR is not the kind of technical document which can be prepared only by a person registered under a professional registration law in California. The section recognizes that some technical background documents may be legally prepared only by registered professionals.

15150. Incorporation by Reference

(a) An EIR or Negative Declaration may incorporate by reference all or portions of another document which is a matter of public record or is generally available to the public. Where all or part of another document is incorporated by reference, the incorporated language shall be considered to be set forth in full as part of the text of the EIR or Negative Declaration.

(b) Where part of another document is incorporated by reference, such other document shall be made available to the public for inspection at a public place or public building. The EIR or Negative Declaration shall state where the incorporated documents will be available for inspection. At a minimum, the incorporated document shall be made available to the public in an office of the Lead Agency in the county where the project would be carried out or in one or more public buildings such as county offices or public libraries if the Lead Agency does not have an office in the county.

(c) Where an EIR or Negative Declaration uses incorporation by reference, the incorporated part of the referenced document shall be briefly summarized where possible or briefly described if the data or information cannot be summarized. The relationship between the incorporated part of the referenced document and the EIR shall be described.

(d) Where an agency incorporates information from an EIR that has previously been reviewed through the state review system, the state identification number of the incorporated document should be included in the summary or designation described in subsection (c).

(e) Examples of materials that may be incorporated by reference include but are not limited to:

- (1) A description of the environmental setting from another EIR.
- (2) A description of the air pollution problems prepared by an air pollution control agency concerning a process involved in the project.
- (3) A description of the city or county general plan that applies to the location of the project.

(f) Incorporation by reference is most appropriate for including long, descriptive, or technical materials that provide general background but do not contribute directly to the analysis of the problem at hand.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference Sections 21003, 21061, and 21100, Public Resources Code.

Discussion: Incorporation by reference is a necessary device for reducing the size of EIRs. This section authorizes use of incorporation by reference and provides guidance for using it in a manner consistent with the public involvement and full disclosure functions of CEQA.

15151. Standards for Adequacy of an EIR

An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. 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. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21061 and 21100, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584.

Discussion: This section is a codification of case law dealing with the standards for adequacy of an EIR.

In *Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Assoc.* (1986) 42 Cal. 3d 929, the court held that "the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions." In *Browning-Ferris Industries of California, Inc. v. San Jose* (1986) 181 Cal. App. 3d 852, the court reasserted that an EIR is a disclosure document and as such an agency may choose among differing expert opinions when those arguments are correctly identified in a responsive manner. Further, the state Supreme Court in its 1988 *Laurel Heights* decision held that the purpose of CEQA is to compel government at all levels to make decisions with environmental consequences in mind. CEQA does not, indeed cannot, guarantee that these decisions will always be those which favor environmental considerations, nor does it require absolute perfection in an EIR.

15152. Tiering

(a) "Tiering" refers to using the analysis of general matters contained in a broader EIR (such as one prepared for a general plan or policy statement) with later EIRs and negative declarations on narrower projects; incorporating by reference the general discussions from the broader EIR; and concentrating the later EIR or negative declaration solely on the issues specific to the later project.

(b) Agencies are encouraged to tier the environmental analyses which they prepare for separate but

related projects including general plans, zoning changes, and development projects. This approach can eliminate repetitive discussions of the same issues and focus the later EIR or negative declaration on the actual issues ripe for decision at each level of environmental review. Tiering is appropriate when the sequence of analysis is from an EIR prepared for a general plan, policy, or program to an EIR or negative declaration for another plan, policy, or program of lesser scope, or to a site-specific EIR or negative declaration. Tiering does not excuse the lead agency from adequately analyzing reasonably foreseeable significant environmental effects of the project and does not justify deferring such analysis to a later tier EIR or negative declaration. However, the level of detail contained in a first tier EIR need not be greater than that of the program, plan, policy, or ordinance being analyzed.

(c) Where a lead agency is using the tiering process in connection with an EIR for a large-scale planning approval, such as a general plan or component thereof (e.g., an area plan or community plan), the development of detailed, site-specific information may not be feasible but can be deferred, in many instances, until such time as the lead agency prepares a future environmental document in connection with a project of a more limited geographical scale, as long as deferral does not prevent adequate identification of significant effects of the planning approval at hand.

(d) Where an EIR has been prepared and certified for a program, plan, policy, or ordinance consistent with the requirements of this section, any lead agency for a later project pursuant to or consistent with the program, plan, policy, or ordinance should limit the EIR or negative declaration on the later project to effects which:

- (1) Were not examined as significant effects on the environment in the prior EIR; or
- (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

(e) Tiering under this section shall be limited to situations where the project is consistent with the general plan and zoning of the city or county in which the project is located, except that a project requiring a rezone to achieve or maintain conformity with a general plan may be subject to tiering.

(f) A later EIR shall be required when the initial study or other analysis finds that the later project may cause significant effects on the environment that were not adequately addressed in the prior EIR. A negative declaration shall be required when the provisions of Section 15070 are met.

(1) Where a lead agency determines that a cumulative effect has been adequately addressed in the prior EIR, that effect is not treated as significant for purposes of the later EIR or negative declaration, and need not be discussed in detail.

(2) When assessing whether there is a new significant cumulative effect, the lead agency shall consider whether the incremental effects of the project would be considerable when viewed in the context of past, present, and probable future projects. At this point, the question is not whether there is a significant cumulative impact, but whether the effects of the project are cumulatively considerable. For a discussion on how to assess whether project impacts are cumulatively considerable, see Section 15064(i).

(3) Significant environmental effects have been "adequately addressed" if the lead agency determines that:

(A) they have been mitigated or avoided as a result of the prior environmental impact report and findings adopted in connection with that prior environmental report;

(B) they have been examined at a sufficient level of detail in the prior environmental impact report to enable those effects to be mitigated or avoided by site specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project; or

(C) they cannot be mitigated to avoid or substantially lessen the significant impacts despite the project proponent's willingness to accept all feasible mitigation measures, and the only purpose of including analysis of such effects in another environmental impact report would be to put the agency in a position to adopt a statement of overriding considerations with respect to the effects.

(g) When tiering is used, the later EIRs or negative declarations shall refer to the prior EIR and state where a copy of the prior EIR may be examined. The later EIR or negative declaration should state that the lead agency is using the tiering concept and that it is being tiered with the earlier EIR.

(h) There are various types of EIRs that may be used in a tiering situation. These include, but are not limited to, the following:

- (1) General plan EIR (Section 15166).
- (2) Staged EIR (Section 15167).
- (3) Program EIR (Section 15168).
- (4) Master EIR (Section 15175).
- (5) Multiple-family residential development / residential and commercial or retail mixed-use development (Section 15179.5).
- (6) Redevelopment project (Section 15180).
- (7) Housing / neighborhood commercial facilities in an urbanized area (Section 15181).
- (8) Projects consistent with community plan, general plan, or zoning (Section 15183).

Note: Authority: Sections 21083 and 21087, Public Resources Code. Reference: Sections 21003, 21061, 21093, 21094, 21100, and 21151, Public Resources Code; *Stanislaus Natural Heritage Project, Sierra Club v. County of Stanislaus* (1996) 48 Cal.App.4th 182; *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App. 4th 729; and *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307.

Discussion: The tiering concept authorized in this section is designed to promote efficiency in the process and to improve the compatibility of the CEQA process with the NEPA process. This section recognizes that the approval of many projects will move through a series of separate public agency decisions, going from approval of a general plan, to approval of an intermediate plan or zoning, and finally to approval of a specific development proposal. Each of these approvals is subject to the CEQA process. Often, the EIR prepared for a particular approval re-examines all the environmental issues analyzed in the EIRs prepared for the earlier approvals. This approach involves unnecessary expense when a particular issue has been fully analyzed before. Tiering is an effort to focus environmental review on the environmental issues which are relevant to the approval being considered. At the same time, tiering requires the lead agency to analyze reasonably foreseeable significant effects and does not allow deferral of such analysis to a later tier document.

This section expands the guidance on use of tiering. This section follows the general approach taken in Public Resources Code Section 21083.3. That section authorizes tiering of EIRs for projects which were consistent with an adopted community plan for which an EIR was prepared. This section extends the tiering concept to all programs, plans, or policies for which an EIR was prepared. This section improves efficiency by encouraging the Lead Agency to limit the EIR or the Negative Declaration on a later project, which is pursuant to or consistent with the program, plan, or policy, to examining the significant effects which were not examined as significant effects in the prior EIR or are susceptible to substantial reduction or avoidance by specific revisions in the project. The section allows use of tiering even where the action on the prior project and EIR did not include mitigation for every significant effect.

This approach recognizes that not all effects can be mitigated at each step of the process. There will be some effects for which mitigation will not be feasible at an early step of approving a particular development project, and the section would allow a Lead Agency to defer mitigation of that kind of effect to a later step. Such effects may include site specific effects such as aesthetics or parking, depending on the circumstances. At the same time, this section makes clear that tiering does not excuse the Lead Agency from analyzing reasonably foreseeable significant effects, or justify deferring analysis to a later tier EIR or Negative Declaration.

Where tiering is used, the Lead Agency will need to determine whether, in the light of changing circumstances, the EIR prepared earlier in the process would still provide an adequate description of the broad effects considered at that stage. Tiering enables an agency to rely upon the analysis contained in a previous document when it adequately addresses a later project. Subdivision (e) describes what is meant by inadequately addressed in such a way as to ensure that prior mitigation measures will be applied to the later project.

To make the process understandable, any EIR or Negative Declaration using the tiering principle must refer to the prior EIR, state where a copy of that document may be examined, and state that tiering is being used.

15153. Use of an EIR from an Earlier Project

(a) The Lead Agency may employ a single EIR to describe more than one project, if such projects are essentially the same in terms of environmental impact. Further, the Lead Agency may use an earlier EIR prepared in connection with an earlier project to apply to a later project, if the circumstances of the projects are essentially the same.

(b) When a Lead Agency proposes to use an EIR from an earlier project as the EIR for a separate, later project, the Lead Agency shall use the following procedures:

(1) The Lead Agency shall review the proposed project with an Initial Study, using incorporation by reference if necessary, to determine whether the EIR would adequately describe:

(A) The general environmental setting of the project,

(B) The significant environmental impacts of the project, and

(C) Alternatives and mitigation measures related to each significant effect.

(2) If the Lead Agency believes that the EIR would meet the requirements of subsection (1), it shall provide public review as provided in Section 15087 stating that it plans to use the previously prepared EIR as the draft EIR for this project. The notice shall include as a minimum:

(A) An identification of the project with a brief description;

(B) A statement that the agency plans to use a certain EIR prepared for a previous project as the EIR for this project;

(C) A listing of places where copies of the EIR may be examined; and

(D) A statement that the key issues involving the EIR are whether the EIR should be used for this project and whether there are any additional, reasonable alternatives or mitigation measures that should be considered as ways of avoiding or reducing the significant effects of the project.

(3) The Lead Agency shall prepare responses to comments received during the review period.

(4) Before approving the project, the decision-maker in the Lead Agency shall:

(A) Consider the information in the EIR including comments received during the review period and responses to those comments,

(B) Decide either on its own or on a staff recommendation whether the EIR is adequate for the project at hand, and

(C) Make or require certification to be made as described in Section 15090.

(D) Make findings as provided in Sections 15091 and 15093 as necessary.

(5) After making a decision on the project, the Lead Agency shall file a Notice of Determination.

(c) An EIR prepared for an earlier project may also be used as part of an Initial Study to document a finding that a later project will not have a significant effect. In this situation a Negative Declaration will be prepared.

(d) An EIR prepared for an earlier project shall not be used as the EIR for a later project if any of the conditions described in Section 15162 would require preparation of a subsequent or supplemental EIR.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21100, 21151, and 21165, Public Resources Code.

Discussion: The purpose of this section is to grant Lead Agencies clear authority to use an EIR prepared for one project over again for a second project which has essentially the same impacts as the project for which the EIR was originally prepared. The section places necessary conditions on the use of a prior EIR to avoid abuse of this approach. Where two projects are essentially the same in terms of environmental impact, there is little reason to require preparation of a separate EIR for the second project.

Subsection (b) prescribes the procedures for an agency to use in implementing this authority. Use of a Negative Declaration is not appropriate. Although a Negative Declaration does state that an EIR will not be prepared, the reason for preparing a Negative Declaration is that the project will not have a significant effect. An EIR is needed if the project may have a significant effect although under some circumstances a previously prepared EIR may be used as the basis for review. The procedures prescribed in subsection (b) should reduce the confusion that has often been experienced in this situation.

This section is different from tiering in that this process does not involve a series of approvals moving from the general to the specific with EIRs omitting issues fully addressed at the earlier stages. The use of a previously prepared EIR is most appropriate where an EIR was prepared earlier for a project very similar to the one currently being examined by the Lead Agency.

15154. Projects Near Airports

(a) When a lead agency prepares an EIR for a project within the boundaries of a comprehensive airport land use plan or, if a comprehensive airport land use plan has not been adopted for a project within two nautical miles of a public airport or public use airport, the agency shall utilize the Airport Land Use Planning Handbook published by Caltrans' Division of Aeronautics to assist in the preparation of the EIR relative to potential airport-related safety hazards and noise problems.

(b) A lead agency shall not adopt a negative declaration or mitigated negative declaration for a project described in subsection (a) unless the lead agency considers whether the project will result in a safety hazard or noise problem for persons using the airport or for persons residing or working in the project area.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Section 21096, Public Resources Code.

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