

# TECHNICAL ADVISORY

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## LOCAL HAZARD MITIGATION PLANS AND CEQA REVIEW



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## Local Hazard Mitigation Plans and CEQA Review

This technical advisory provides a high-level framework for analyzing whether the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.) applies to the adoption of or updates to local hazard mitigation plans (LHMPs). This technical advisory generally describes the analytical steps a local community should take to determine whether CEQA applies to the adoption of the LHMP or updates to the LHMP, and how to comply with the evaluation and public review procedures of CEQA, if it does apply. For more detailed information and assistance regarding the requirements of CEQA, please contact the [State Clearinghouse](#).

This technical advisory is one in a series of advisories provided by the Governor’s Office of Planning and Research (OPR) as a service to professional planners, land use officials, and CEQA practitioners. OPR provides technical assistance on issues that broadly affect the practice of land use planning and CEQA. (Gov. Code, § 65040, subds. (g), (l), (m).)

The purpose of this document is to provide general advice and recommendations, which agencies, the public, and other entities may use at their discretion. This document does not alter lead agency discretion in preparing environmental documents subject to CEQA. OPR is not enforcing or attempting to enforce any part of the recommendations contained herein. (Government Code [GC] § 65035 [“It is not the intent of the Legislature to vest in the Office of Planning and Research any direct operating or regulatory powers over land use, public works, or other state, regional, or local projects or programs.”].)

**This document provides guidance and should not be construed as legal advice.**

### **Background**

For disasters declared after November 1, 2004, a local community must have a Local Hazard Mitigation Plan (LHMP) approved by the Federal Emergency Management Agency (FEMA) in order to receive grants from the Pre-Disaster Mitigation or Post-Disaster Hazard Mitigation Grant Program. Local communities, including cities, counties, and special districts, must prepare LHMPs and update them at least every five years in accordance with the federal Disaster Mitigation Act of 2000<sup>1</sup> to remain eligible for these FEMA mitigation project grants, as well as to reduce damages, loss of life, and costs following a disaster. The Governor’s Office of Emergency

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<sup>1</sup> Public Law 106-390, known as the Disaster Mitigation Act of 2000, amended the Robert T. Stafford Disaster Relief and Emergency Services Act.

Services (CalOES) reviews the LHMPs adopted by the local community's governing body and then forwards the LHMPs to FEMA for final approval.

### **Does CEQA Apply?**

CEQA requires the evaluation of the potential effects of a public agency project on the physical environment before the project can be approved. Thus, an important initial question in determining whether CEQA applies to the adoption of or an update to a LHMP is whether the proposed activity is a "project" under CEQA. CEQA only applies to "projects," as defined by the Public Resources Code section 21065 and CEQA Guidelines sections 15060 and 15378:

Project means any activity which is undertaken by a public agency, which involves the exercise of discretionary powers, and which may result in direct or reasonably foreseeable indirect effects on the environment.

Project means the whole of an action, which may involve several discretionary approvals by a governmental agency. When the project may involve adoption of a regulation and one or more development proposals, the environmental analysis must also address the development proposal(s).

In determining whether the proposed LHMP is a project, the public agency should consider whether the adoption of or update to the LHMP is a discretionary action (as defined by CEQA Guidelines, § 15357), and whether the proposed activity "has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]" (Pub. Resources Code, § 2106 ; CEQA Guidelines, § 15378.)

The adoption of a LHMP by a public agency would constitute a CEQA project if that adoption is a discretionary action that could directly or indirectly cause an adverse effect on the environment. (See CEQA Guidelines, § 15357 [definition of "discretionary project"].) When considering whether the adoption of the LHMP constitutes a project, the public agency should consider whether the activities contained in the LHMP (or the update thereto) is focused on (e.g., building or upgrading infrastructure, public facilities, or other types of improvements, projects, or programs that mitigate flood hazards, wildfire hazards, debris flows/mudslides, etc.) could lead to direct or reasonably foreseeable indirect effects on the environment. (See Pub. Resources Code, § 21065 [definition of "project"], CEQA Guidelines, § 15378 [same].)

If the adoption of or update to the LHMP does constitute a project, the public agency must perform CEQA review of the environmental effects of adopting and implementing the LHMP. CEQA review must be completed before the LHMP can be adopted. The public agency that performs the CEQA review is the "lead agency." (Pub. Resources Code, § 21067.)

Lead agencies may have to perform additional environmental reviews of subsequent revisions or updates to the LHMP, if those subsequent revisions are tied to safety element or incorporated by reference into a general plan. (See Pub. Resources Code, § 21166.)

### **Preparing the CEQA Document**

If a public agency determines that the adoption of or an update to a LHMP constitutes a project, that public agency (the lead agency) becomes responsible for determining the appropriate level of CEQA review for the project and for preparing the CEQA document. From the outset, the lead agency should determine whether the project qualifies for either a statutory or categorical exemption under CEQA. (See, e.g., Pub. Resources Code, § 21080 et seq.; CEQA Guidelines, § 15300 et seq.) If exempt, the project does not need to undergo any further environmental evaluation or documentation.

If the project is not exempt from CEQA, and thus CEQA applies, the lead agency generally performs an initial study to determine whether the project may have a significant effect on the environment. (CEQA Guidelines, § 15063 (Initial Study).) CEQA defines “significant effect on the environment” as a “substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (Pub. Resources Code, § 21068; CEQA Guidelines, § 15382.)

If the initial study demonstrates that the project’s potential impacts would be less than significant on the environment, the lead agency may prepare a proposed Negative Declaration; or, in some cases, a Mitigated Negative Declaration if all potentially significant impacts can be reduced to a less-than-significant level with the application of mitigation measures to the project. If the initial study demonstrates that the project’s potential impacts may have a significant effect on the environment, the lead agency must prepare a draft Environmental Impact Report (EIR).

### **Public Review**

If the project is not exempt and requires preparation of a CEQA document, the lead agency is responsible for circulating the CEQA document for review and comment by other public agencies and members of the public. The lead agency must consider any comments received on the CEQA document during the public review period. After the public review period is complete and the lead agency has considered all comments, the lead agency may adopt the Negative Declaration or Mitigated Negative Declaration or certify the EIR as complete. If the project is approved, the lead agency should file a Notice of Determination with the relevant county clerk’s office to document that approval and begin the relevant statute of limitations period.

## **State Agency Review through the State Clearinghouse**

CEQA requires certain proposed Negative Declarations and draft EIRs be submitted to the State Clearinghouse for state agency level review, in addition to local public agency review. CEQA Guidelines sections 15205 and 15206 contain the criteria for determining whether state agency level review through the State Clearinghouse is required. If the proposed Negative Declaration, Mitigated Negative Declaration, or draft EIR meets either of the following tests, the document must be submitted to the State Clearinghouse:

- (1) A state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project (CEQA Guidelines, § 15205), or
- (2) The project is identified in Section 15206 of the CEQA Guidelines as being of statewide, regional, or areawide significance (CEQA Guidelines, § 15206).

Each lead agency should carefully assess whether a state responsible or trustee agency may need to be involved in the approval process for its LHMP before deciding whether to send its CEQA document to the State Clearinghouse. The lead agency should carefully consider whether the LHMP contains any policies, programs, or actions that may trigger other state agency permits or funding, or affect any natural resources that are held in trust by a state agency. If some component part of the LHMP involves a development proposal that requires a state agency approval or if it may affect natural resources held in trust by a state agency, the proposed Negative Declaration, Mitigated Negative Declaration, or draft EIR must be submitted to the State Clearinghouse. The typical review period is 30 days for a Negative Declaration and Mitigated Negative Declaration, and 45 days for a draft EIR. (Pub. Resources Code, § 21091.) Since CalOES does not have final approval authority over the LHMP or funding authority, CalOES has determined that they are not a responsible agency.

Note that review through the State Clearinghouse only applies to the CEQA document and not to the LHMP itself. There are no requirements for state agency level review of the plan, aside from the administrative review function performed by CalOES. CalOES's review and comment function does not constitute a state approval.

## **Relevance to Assembly Bill 2140**

Assembly Bill (AB) 2140 (codified in Government Code § 65302.6) allows jurisdictions to be eligible for consideration for state funding to cover the local match (6.25%) of public assistance costs for recovery activities after hazard events, if the local jurisdiction incorporates their LHMP into the safety element of their general plan. AB 2140 is relevant to the applicability of CEQA in the incorporation of LHMPs into the general plan safety element. This is because revisions to the safety element may constitute a project under CEQA and may be subject to environmental review.

## **Adoption into the General Plan Safety Element**

The general plan is a mandatory planning document that all cities and counties in California must adopt and periodically update. Additionally, AB 2140 is a non-mandatory state-level program. To become eligible for consideration for the state funding incentive under AB 2140, the city council, board of supervisors, planning commission, or other governing body of the local public agency must approve a resolution incorporating the LHMP by reference into the safety element. This can be done one of two ways:

- (1) In the public agency's resolution to adopt the LHMP, the lead agency can include language adopting or incorporating the LHMP by reference into the safety element. The lead agency's resolution should be approved after FEMA approves the LHMP pending the lead agency's adoption. In so doing, the lead agency can also adopt the LHMP for AB 2140 compliance in one resolution.
- (2) If the LHMP is already adopted and approved to meet FEMA requirements, the public agency can adopt or incorporate the LHMP by reference into the safety element for AB 2140 compliance on a separate resolution. This is beneficial when the LHMP has already been approved and now the public agency wants to adopt it for AB 2140 compliance.

Local agencies should also consider that LHMPs that are adopted or incorporated by reference into the safety element must be consistent with the safety element and other elements of the general plan, pursuant to the Government Code. (See Gov. Code, § 65302.) Because LHMPs are also required to be updated every five years pursuant to the federal Disaster Mitigation Act, local agencies may need to update and adopt resolutions that adopt or incorporate by reference the LHMP into the safety element to ensure that internal consistency is maintained. For further information regarding internal consistency requirements for the general plan elements, and for adopting or incorporating the LHMP by reference into the general plan, see OPR's [General Plan Guidelines](https://opr.ca.gov/planning/general-plan/guidelines.html) (available at: <https://opr.ca.gov/planning/general-plan/guidelines.html>).

### **For Additional CEQA Assistance**

Please contact the State Clearinghouse if you would like to discuss the advice in this technical advisory or to obtain more information about the CEQA review process.

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