

TECHNICAL MEMORANDUM

Date: June 17, 2004
To: Communities That Adopt a Local Hazard Mitigation Plan
From: Terry Roberts and Scott Morgan, State Clearinghouse
Subject: Applicability of CEQA to Adoption of Local Hazard Mitigation Plans

This technical advisory responds to questions and concerns raised by local governments regarding the applicability of the California Environmental Quality Act (CEQA) to adoption of local hazard mitigation plans, as required by the federal Disaster Mitigation Act of 2000 (DMA 2000).¹

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, are currently preparing LHMPs in accordance with the DMA 2000 to remain eligible for these FEMA mitigation project grants as well as to reduce damages, loss of life and costs following a disaster. These LHMPs will be reviewed by the Governor's Office of Emergency Services (OES), adopted by the local community's governing body, and forwarded to FEMA for final approval.

This technical memorandum generally describes how a local community should determine whether CEQA applies to the adoption of 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.

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. CEQA only applies to "projects", which are defined in the Public Resources Code section 21065 and CEQA Guidelines sections 15060 and 15378:

Project means an 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.

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

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

The local governing body that is responsible for adopting the LHMP must determine whether that adoption constitutes a project. If it does constitute a project, it 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.”

The adoption of a LHMP by a public agency would constitute a project, as defined, if that adoption is a discretionary action that could directly or indirectly cause an adverse effect on the environment. When considering whether the adoption of the LHMP constitutes a project, the lead agency should consider whether the adoption of the LHMP involves the approval of land use policies, development regulations, and/or development activities that could lead to direct or indirect effects on the environment. If any part of the LHMP constitutes a project under CEQA, then CEQA applies and the lead agency must evaluate the environmental effects in a CEQA document prior to approving the LHMP.

Lead agencies may have to perform additional environmental reviews of subsequent revisions to the LHMP, if those subsequent revisions involve proposals for new policies or development activities that were not envisioned in the original LHMP.

Preparing the CEQA Document

If a public agency determines that the adoption of 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. The first step that the lead agency must take is to determine whether the project qualifies for either a statutory or categorical exemption under CEQA. If exempt, the project does not need to undergo any further environmental evaluation or documentation.

If the project is not exempt from CEQA, the lead agency must perform an initial study which will determine whether the project’s impacts could be significant. If the initial study demonstrates that the project’s potential impacts would be less than significant, the lead agency may prepare a proposed Negative Declaration. If the project’s potential impacts are deemed to be significant based on the initial study, the lead agency must prepare a draft Environmental Impact Report (EIR).

Local Review

The lead agency is responsible for circulating the CEQA document for local review. The lead agency must consider any comments received on the CEQA document. After the public review period is complete and the lead agency has considered all comments, the lead agency may adopt the Negative Declaration or certify the EIR as complete. If the project is approved, the lead agency must file a Notice of Determination with the County Clerk to document that approval.

This concludes the CEQA review process, after which the lead agency may take action to adopt the LHMP.

State Clearinghouse Review

CEQA requires certain proposed Negative Declarations and draft EIRs to be submitted to the State Clearinghouse for state level review, in addition to local public review. Sections 15205 and 15206 of the CEQA Guidelines contain the criteria for determining whether state level review through the State Clearinghouse is required. If the proposed 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.
- (2) The project is identified in Section 15206 of the CEQA Guidelines as being of statewide, regional, or areawide significance.

Each lead agency should carefully assess the potential for the involvement of a state responsible or trustee agency for approval of 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 necessitate other state agency entitlements 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 or draft EIR must be submitted to the State Clearinghouse. Since OES does not have final approval authority over the LHMP or funding authority, OES has determined that they are not a responsible agency.

The State Clearinghouse will establish the public (state and local) review period for the CEQA document and circulate it to appropriate state agencies, boards, departments and commissions. When State Clearinghouse review is involved, the typical review period is 30 days for a Negative Declaration and 45 days for a draft EIR.

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

For Additional CEQA Assistance

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

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