

APPENDIX 3

ENVIRONMENTAL REVIEW PROCESS

I. PURPOSE

This document details steps the applicants must take to comply with environmental review requirements for the 2008 NPS Implementation Grant Program administered by the State Water Resources Control Board (State Water Board), Division of Financial Assistance (Division).

Generally, the process is accomplished through compliance with the California Environmental Quality Act (CEQA). Detailed requirements are given in the CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3). For information on how to obtain a copy of CEQA and the CEQA Guidelines, contact the State Clearinghouse at (916) 445-0613.

This document is intended to supplement the CEQA Guidelines with specific requirements for environmental documents acceptable to the State Water Board when reviewing applications for funding; they are not intended to supersede or replace the CEQA Guidelines. The program also includes funds from 319 federal sources administered by the United States Environmental Protection Agency (USEPA) and is therefore subject to some federal environmental regulations. The federal requirements are clearly emphasized in this appendix.

Questions regarding environmental procedures and practices should be directed to the Division's Regional Programs Unit (RPU), at (916) 341-5686 or (916) 341-5667. Questions regarding cultural resources should be directed to the Division's Cultural Resources Officer (CRO) at (916) 341-5690.

Additional information is available at the web links listed under "Appendix C, Environmental Review Process" on the [CWA 319\(h\) Grant Solicitation](#) webpage.

A. CEQA REQUIREMENTS

As defined under CEQA, the applicant may be the *Lead Agency* and will be responsible for the preparation, circulation, and consideration of the environmental document prior to approving the project. The State Water Board and other agencies having jurisdiction over the proposed project are *Responsible Agencies* and are accountable for reviewing and considering the information in the environmental document prior to approving any portion of the project.

The applicant may use a Negative Declaration (ND), a Mitigated Negative Declaration (MND), or an Environmental Impact Report (EIR) to comply with CEQA requirements. The applicant may use a previously prepared document accompanied by a checklist to determine if the project is adequately covered. If the project is not adequately covered by an existing document, an updated or subsequent document should be prepared. Applicants should contact the Division before they decide to use an existing final document.

Public participation: For all projects, public participation and review are essential to the CEQA process (CEQA Guidelines, section 15087). An earnest public participation program can improve the planning process and reduce the chance of delays due to public controversy. Each public agency, consistent with its existing activities and procedures, should include formal and informal public involvement and receive and evaluate public reactions to environmental issues related to its project. Public comments or controversies not addressed during the planning of a proposed project could result in the need for a subsequent environmental document at a later stage or lead to legal

challenges, delaying the project and raising the cost significantly. For assistance in this area, the applicant should call the RPU.

B. EXEMPTIONS FROM CEQA

In many circumstances, the applicant's project may be approved under a statutory or categorical exemption from CEQA. Applicants should submit the exemption findings to the Division for these projects. After the Lead Agency approves the statutory or categorical exemption for the project, the Lead Agency should file a Notice of Exemption with the County Clerk and provide a copy of the Notice to the Division.

A Notice of Exemption should include:

- ❖ A brief description of the project;
- ❖ A finding that the project is exempt;
- ❖ References stating the applicable statutory or categorical exemption in the law or State guidelines; and
- ❖ A brief statement supporting the finding of exemption.

Categorical Exemptions cannot be used if the project is in an environmentally sensitive area. Compliance with applicable federal environmental regulations including consultation with federal authorities is required for some exempt projects.

II. DETAILED PROCEDURES

A. PREPARATION OF AN INITIAL STUDY (CEQA GUIDELINES, SECTION 15063)

An *Initial Study* is a preliminary analysis prepared by the Lead Agency to determine whether an EIR or a ND should be prepared. The Initial Study uses the fair argument standard to determine if a project may have a significant environmental effect that cannot be mitigated before public release of the environmental document. The criteria for "significance" of impacts (CEQA Guidelines, sections 15064 et seq.) must be based on substantial evidence in the record and includes:

- ❖ Direct effects;
- ❖ Reasonably foreseeable indirect effects;
- ❖ Expert disagreement;
- ❖ Considerable contribution to cumulative effects; and
- ❖ Special thresholds for historical and archaeological resources.

If an applicant can determine that an EIR will clearly be required for the project, an Initial Study is not required but may still be desirable to focus the analysis of impacts.

The Initial Study must include:

- ❖ A project description;
- ❖ An environmental setting;
- ❖ Potential environmental impacts;
- ❖ Mitigation measures for any significant effects;
- ❖ Consistency with plans and policies; and
- ❖ The names of preparers.

If a checklist is used, it must be supplemented with explanations for all applicable items, including the items that are checked "no impact." Checklists should follow the format used in [Appendix G](#) of the most recent revision (1999 or later) of the CEQA Guidelines.

If the project has no significant effect on the environment, the applicant should prepare a ND (or MND) and Initial Study (CEQA Guidelines, section 15371).

B. NEGATIVE DECLARATION

A *Negative Declaration* is a written statement, briefly explaining why a proposed project will not have a significant environmental effect. It must include:

- ❖ A project description;
- ❖ The project location;
- ❖ The identification of the project proponent;
- ❖ A proposed finding of no significant effect; and
- ❖ A copy of the Initial Study.

For MNDs, mitigation measures included in the project to avoid significant effects must be described.

The applicant must provide a notice of intent to adopt a ND (CEQA Guidelines, Section 15072) specifying:

- ❖ The review period;
- ❖ The time and location of any public meetings or hearings on the proposed project;
- ❖ A brief project description; and
- ❖ The location that copies of the proposed ND or MND is available for review.

A copy of the notice of intent and the proposed ND must be mailed to responsible and trustee agencies, agencies with jurisdiction, and all parties previously requesting notice. Since the State Water Board will be a Responsible Agency, the ND/Initial Study also needs to be circulated through the State Clearinghouse (CEQA Guidelines, sections 15072 and 15073). The notice of intent must be posted in the county clerk's office and sent to the State Clearinghouse with fifteen (15) copies of the ND.

After the review period ends, the applicant should review and address comments received. The applicant's decision-making body should make a finding that the project will have no significant effect on the environment based on the commitment to adequately mitigate significant effects disclosed in the Initial Study or the lack of significant effects, and the absence of significant comments received, and adopt the ND.

C. NOTICE OF COMPLETION

Draft environmental documents must be submitted to the State Clearinghouse for review by state agencies (CEQA Guidelines, section 15205). The applicant needs to send fifteen (15) copies of the ND to the State Clearinghouse, unless the State Clearinghouse approves a lower number in advance (Section 15205(e)).

The applicant may use the standard *Notice of Completion* included in the CEQA Guidelines (See [State Clearinghouse Handbook](#) website - Appendix C), or develop a similar form to be used when submitting the documents. The Notice of Completion must include:

- ❖ A brief project description;
- ❖ The project location;
- ❖ The address where the draft environmental document is available; and

❖ The public review period.

On the backside of the form, applicants should put a check on any of the "REVIEWING AGENCIES" that they would like draft documents to be sent to including "State Water Board – Financial Assistance," otherwise the State Clearinghouse will select the appropriate review agencies.

The applicant must also send a formal transmittal letter to the State Clearinghouse giving them the authority to distribute the copies of the document. If a consultant is preparing the draft environmental document, the consultant must obtain a formal transmittal letter from the applicant stating that they give permission to the consultant to send the copies of the document to the State Clearinghouse. The letter should include the State Clearinghouse number (SCH#).

If the applicant needs a shorter review period than the 30 or 45-day period required by the CEQA Guidelines, the applicant, not the consultant, must submit a written request. This formal request can be included in the transmittal letter stating the reasons for a shorter review period. Use the following address to send documents to the State Clearinghouse:

STATE CLEARINGHOUSE
OFFICE OF PERMIT ASSISTANCE
GOVERNOR'S OFFICE OF PLANNING AND RESEARCH
P.O. Box 3044
SACRAMENTO, CA 95812-3044

The focal point of the CEQA review is the State Clearinghouse. The review starts when the State Clearinghouse receives your ND/Initial Study or MND at which time it will assign a SCH# to the project. If a Notice of Preparation (NOP) was previously filed, the State Clearinghouse will use the SCH# assigned to the NOP. This ten-digit number (e.g. SCH# 2002061506) is very important and should be used on all documents, such as inquiry letters, supplemental drafts, final environmental documents, etc. The State Clearinghouse will send the applicant an *Acknowledgment of Receipt* card when the document is received. If applicants have questions about the State Clearinghouse procedures, they should call (916) 445-0613.

To ensure that responsible agencies, including the Division, will receive copies of the environmental document for review, the applicant should send them directly to the agencies. This submittal does not replace the requirement to submit environmental documents to the State Clearinghouse for distribution (CEQA Guidelines, section 15205(f)). The applicant is also responsible for sending copies of the environmental documents to any local or federal responsible agency with jurisdiction over any part of the proposed project.

After the review period ends, the State Clearinghouse should send the applicant a letter stating that the review process is closed and that they have complied with the review requirements. Any comments from state agencies will be forwarded with the letter. Lack of response from a state or federal agency does not necessarily imply concurrence.

When the comment period closes, the applicant should review all comments received during the review process, including any oral comments received at formal or informal public meetings. The applicant should then consider whether comments are significant enough to require a complete revision of the environmental document or the proposed project, or whether minor changes in the document or addition of mitigation measures could adequately address the issues raised.

Within five days after the applicant's decision making body has made a decision to proceed with the project, the applicant should prepare and file a *Notice of Determination* (NOD) with the Governor's Office of Planning and Research and the local County Clerk (see [Appendix D](#)), of the CEQA Guidelines).

D. NPS IMPLEMENTATION PROGRAM (CLEAN WATER ACT, SECTION 319[H]) FUNDING REQUIREMENTS

If the project proponent applies for NPS Implementation Program funding, the Division must ensure that federal agencies are afforded adequate review of environmental documents for projects that will be federally funded. The Division will send copies of the CEQA/National Environmental Policy Act (NEPA) document (draft or final) directly to federally designated agencies as part of the review process. To do this, the applicant will need to submit eight (8) copies of their draft or final environmental document, including any NEPA related documents discussed below, to the State Water Board.

All correspondence with the RPU regarding environmental documents should be addressed to:

STATE WATER RESOURCES CONTROL BOARD
DIVISION OF FINANCIAL ASSISTANCE
REGIONAL PROGRAMS UNIT
1001 I STREET, 16TH FLOOR
SACRAMENTO, CA 95814

Normally, one (1) copy will be used for the RPU's review, one (1) copy will be submitted to the CRO, and the other six (6) copies will be distributed to federally designated agencies.

The federally designated agencies must have at least thirty (30) calendar days to review a ND/Initial Study. Six (6) days mailing time is also added to the review period, which would then be thirty-six (36) calendar days from the date the environmental document was mailed to the reviewing agency.

If any of these agencies identify an issue of concern, the RPU will consult with the agency to determine the necessary and appropriate actions to resolve the issue. Ideally, the federal consultation review should be done concurrently with the CEQA review to allow all comments to be addressed at one time and prevent the need for supplemental documentation. However, federal consultation may also be initiated before or after CEQA review, but must be completed before a funding commitment can be approved by the State Water Board.

E. MITIGATION MONITORING & REPORTING PROGRAM

In a MND, when a potentially significant impact can be mitigated to avoid or substantially reduce the project's significant environmental effect, a Mitigation Monitoring Plan (MMP) should be adopted (CEQA Guidelines, section 15097). The MMP is implemented to ensure that mitigation measures and project revisions identified in the Final MND are implemented; in some cases, they are made a condition of project approval by a Responsible Agency. The MMP must include all changes in the proposed project that mitigate each significant environmental impact and ensure implementation of each mitigation measure. The MMP should also identify how the mitigation measure is to be monitored to determine if it is meeting the specified performance standard or measure of success. The MMP is often made part of the draft MND so that the Lead Agency can make revisions based on public comment.

Effective MMPs:

1. State the objective of the mitigation measure and why it is recommended;
2. Explain the specifics of the mitigation measure and how it will be implemented;
3. Identify measurable performance standards by which the success of the mitigation can be determined;
4. Provide for contingent mitigation if monitoring reveals that the success standards are not satisfied;
5. Identify who is responsible for implementing the mitigation measure;

6. Identify the specific location of the mitigation measure; and
7. Develop a schedule for implementation.

