

# **Part 6 ENVIRONMENTAL**

## **Chapter 1 General**

### **Article 1 – General**

#### **1.1 General**

The California Environmental Quality Act (“CEQA”) requires the District to consider the potential environmental impacts of a project before it is approved by the District. CEQA directs the Governor’s Office of Planning and Research to prepare regulations (“CEQA Guidelines”) describing how impacts are to be determined and considered by state and local agencies. CEQA and the CEQA Guidelines require the District to adopt objectives, criteria and specific procedures consistent with CEQA and the CEQA Guidelines for administering its responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents (“local guidelines”). This part contains the local guidelines of the District, which are meant to supplement CEQA and the CEQA Guidelines. In the event that any portion of these local guidelines are inconsistent with either CEQA or the CEQA Guidelines, the provisions of CEQA and the CEQA Guidelines shall control.

#### **1.2 Purpose**

- (a) The regulations contained in this Part implement requirements of the State CEQA Guidelines for local agencies.
- (b) This Part applies where the District has discretion over approval or an activity and:
  - (1) The activity is directly undertaken by the District;
  - (2) The activity is financed in whole or in part by the District; or
  - (3) A private activity requires an approval or discretionary permit from the District.

#### **1.3 Scope**

- (a) Environmental documents shall be prepared by a lead agency and considered by responsible agencies before a decision is made to proceed with a project that may have a significant impact on the environment. The District will sometimes act as the lead agency and sometimes as a responsible agency when considering whether or not a project will have a significant impact on the environment and whether or not to approve or otherwise authorize a project.
- (b) These guidelines set forth the process for determining:

- (1) Whether the District is the lead agency or a responsible agency;
- (2) If the District is the lead agency, what the District's duties as the lead agency are;
- (3) Alternately, if the District is a responsible agency, what the District's duties as a responsible agency are; and
- (4) Whether there are measures that would mitigate a project's adverse environmental effects that are both feasible and can be implemented.

#### **1.4 Delegation of Responsibilities**

(a) The General Manager or the General Manager's designee shall:

- (1) Determine whether the District is the lead agency or a responsible agency;
- (2) Determine whether an activity is a project as defined by CEQA and the CEQA Guidelines and subject to review under this Part;
- (3) Determine whether an activity is exempt from environmental review under either CEQA or the CEQA Guidelines and therefore not subject to review under this Part;
- (4) Conduct an initial study to determine whether an Environmental Impact Report (EIR), negative declaration (ND), or mitigated negative declaration (MND) is appropriate for the project;
- (5) Prepare or cause an EIR, ND, or MND to be prepared;
- (6) Respond to public comments made on the CEQA documentation;
- (7) Provide all of the notices required by CEQA and the CEQA Guidelines; and
- (8) Respond to requests for consultation by lead agencies where the District is a responsible agency.

(b) The Board shall:

- (1) Consider, review, certify, and either approve or disapprove the ND, MND, or draft and final EIRs before making a decision on whether or not to approve a project.
- (2) Make findings as required by CEQA, the CEQA Guidelines, and this Part.

## **Chapter 2      Role of District as Responsible Agency**

### **Article 1 – Lead Agency**

#### **1.1      Lead Agency Concept**

The lead agency shall prepare the ND, MND, or EIR for a project carried out or approved by more than one public agency. The determination of the lead agency shall be made only after consultation in accordance with criteria set forth in the CEQA Guidelines.

#### **1.2      Consultation with Lead Agency**

- (a) When the District acts as a responsible agency, the General Manager shall respond to the lead agency's requests for consultation and shall assist the lead agency in preparing adequate environmental documents.
- (b) As soon as possible, but not longer than 45 days after receiving a notice of preparation from the lead agency, the General Manager shall send a written reply by certified mail. The reply shall specify the scope and content of the environmental information relevant to the District's statutory responsibilities in connection with the proposed project.
- (c) Prior to the close of the public review period for an MND or draft EIR, the General Manager shall submit complete and detailed comments on the lead agency's environmental document, including objectives for mitigation measures which would address the significant environmental effects identified by the General Manager, or refer the lead agency to appropriate readily available guidelines or reference documents.

#### **1.3      Challenge to Lead Agency**

- (a) When the District is a responsible agency, it shall assume the role of the lead agency only when conditions set forth in CEQA Guidelines sections 15052 and 15096 subdivision (e) are found to exist.
- (b) If the General Manager believes the ND, MND or final EIR is not adequate for the District to rely on in granting a discretionary approval, the District must:
  - (1) File suit in the proper superior court challenging the lead agency's determination within the time limit provided by Public Resources Code section 21167 and CEQA Guidelines section 15112;
  - (2) Take no action within the time limits provided by Public Resources Code section 21167 and be deemed to have waived any objection to the adequacy of the ND, MND or final EIR; or

- (3) Prepare a subsequent environmental impact report if one is required by CEQA Guidelines section 15162.

#### **1.4 Use of Environmental Documents**

- (a) Prior to reaching a decision on whether or not to grant a discretionary approval for the project, the Board must consider the environmental effects of the project as shown in the lead agency's ND, MND or EIR.
- (b) When an EIR has been prepared for a project, the District shall not grant a discretionary approval to the project as proposed if the District finds any feasible alternative or feasible mitigation measures within its powers would substantially lessen any significant impact the project would have on the environment. When considering alternatives and mitigation measures, the District, as a responsible agency, is more limited than a lead agency. The District has responsibility for mitigating or avoiding only the environmental effects of those activities which it decides to carry out, finance, or approve, and those over which it has jurisdiction.
- (c) The District shall make the findings required by CEQA Guidelines sections 15096 and 15091 for each significant effect of the project.
- (d) The District shall file a notice of determination in the same manner as a lead agency, as provided in CEQA Guidelines section 15096 subdivision (i), except the District does not need to state that the ND, MND or EIR complies with CEQA. The District shall state it considered the ND, MND or EIR as prepared by the lead agency.

## **Chapter 3 – Role of District as Lead Agency**

### **Article 1 – Exemptions**

#### **1.1 Identifying when the District is the Lead Agency**

The District is a lead agency when a project is approved or carried out only by the District or when the District fulfills the criteria for identifying the lead agency provided in CEQA Guidelines section 15050. This Chapter describes the process that the District shall use when acting as a lead agency.

## **1.2 Review for Exemption**

- (a) The General Manager shall first determine whether the activity is exempt from environmental review under the CEQA.
- (b) Possible exemptions from CEQA environmental review may include, but are not limited to:
  - (1) The activity does not fall within the definition of a “project” provided by CEQA section 21065 and CEQA Guidelines section 15378.
  - (2) The project is “ministerial”; that is, the District has no discretion with respect to the activity other than to determine whether facts exist requiring action. (See CEQA Guidelines, § 15268.)
  - (3) The project is an emergency. (See CEQA Guidelines, § 15269.)
  - (4) The project is otherwise statutorily exempt from the provisions of CEQA. (See CEQA Guidelines, §§ 15260-15285 [descriptions of statutory exemptions].)
  - (5) The project is categorically exempt from the provisions of CEQA. (See CEQA Guidelines, §§ 15300-15333 [descriptions of categorical exemptions].)
- (c) The District shall prepare a list of categorically exempt projects frequently handled by the District. This listing shall be used in preliminary review of whether or not the project is exempt from CEQA. (See CEQA Guidelines, § 15022, subd. (a)(1)(C).)
- (d) The District shall prepare a list of projects which are ministerial in nature that are frequently handled by the District. This list shall be used during the preliminary review of the project to determine whether or not the project is exempt from CEQA. (See CEQA Guidelines, § 15022, subd. (a)(1)(B).)

## **1.3 Ministerial Projects**

- (a) The following activities are activities over which the District has only ministerial authority:
  - (1) Issuance of building permits.
  - (2) Issuance of business licenses.
  - (3) Approval of final subdivision maps.

- (4) Approval of individual utility service connections and disconnections.
  - (5) Leasing of District property where the use of the premises is not significantly changed.
  - (6) A project of less than one mile in length within a public street or highway or any other public right-of-way for the installation of a new pipeline or the maintenance, repair, restoration, reconditioning, relocation, replacement, removal or demolition of an existing pipeline or appurtenances.
- (b) Where a project involves an approval containing elements of both a ministerial action and a discretionary action, the project is discretionary and subject to the requirements of CEQA.

#### **1.4 Emergency Projects**

- (a) The following projects are emergency projects that are exempt from environmental review under CEQA:
- (1) Projects to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster stricken area in which a state of emergency has been proclaimed by the Governor pursuant to the California Emergency Services Act, commencing with Government Code Section 8550.
  - (2) Emergency repairs to public service facilities necessary to maintain service as essential to the public health, safety, or welfare.
  - (3) Specific actions necessary to prevent or mitigate an emergency in the short-term.

#### **1.5 Rates, Tolls, Fares and Charges**

- (a) Rate increases to fund capital projects for the expansion of a system are subject to the provisions of CEQA.
- (b) As provided by CEQA Guidelines section 15273, CEQA does not apply to the establishment, modification, structuring, restructuring, or approval of rates, tolls, fares, or other charges by the District which the District finds are for the purpose of:
- (1) Meeting operating expenses, including employee wage rates and fringe benefits;
  - (2) Purchasing or leasing supplies, equipment or materials;

- (3) Meeting financial reserve needs and requirements; or
  - (4) Obtaining funds for capital projects, necessary to maintain service within existing service areas.
- (c) If the District claims this exemption for a project, the District shall incorporate written findings in the record of any proceeding regarding that project setting forth with specificity the basis for the claim of exemption.

## **1.6 Categorical Exemption**

- (a) The classes of projects listed in this section usually do not have a significant effect on the environment. These projects are categorically exempt from compliance with CEQA.
- (1) Class 1: Operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing structures, facilities, mechanical equipment, or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. (CEQA Guidelines, § 15301.)
  - (2) Class 2: Replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced. (CEQA Guidelines, § 15302.)
  - (3) Class 3: Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment or facilities in small structures; and conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure. (CEQA Guidelines, § 15303.)
  - (4) Class 4: Minor alterations in the condition of land, water, or vegetation which do not involve the removal of healthy, mature, scenic trees except for forestry and agricultural purposes. (CEQA Guidelines, § 15304.)
  - (5) Class 5: Minor alterations in land use limitations in areas with an average slope of less than 20 percent, not resulting in any changes in land use or density. (CEQA Guidelines, § 15305.)
  - (6) Class 6: Basic data collection, research, experimental management, and resource evaluation activities not resulting in a serious or major disturbance to an environmental resource. These may be strictly for information gathering purposes, or as part of a study leading to an action which the public agency has not yet approved, adopted, or funded. (CEQA Guidelines, § 15306.)

- (7) Class 9: Activities limited entirely to inspection to check for performance of an operation, or quality, health, or safety of a project, including related activities such as inspection for possible mislabeling, misrepresentation, or adulteration of products. (CEQA Guidelines, § 15309.)
- (8) Class 11: Construction or placement of minor structures accessory to (appurtenant to) existing commercial, industrial, or institution facilities. (CEQA Guidelines, § 15311.)
- (9) Class 12: Sales of surplus government property except for parcels of land located in an area of statewide, regional, or area wide concern identified in CEQA Guidelines section 15206(b)(4). However, even if the surplus property to be sold is located in any of those areas, its sale is exempt if:
  - a. The property does not have significant values for wildlife habitat or other environmental purposes; and
  - b. Any of the following conditions exist:
    - 1. The property is of such size, shape, or inaccessibility that it is incapable of independent development or use; or
    - 2. The property to be sold would qualify for an exemption under any other exception in the CEQA Guidelines; or
    - 3. The use of the property and adjacent property has not changed since the time of purchase by the District. (CEQA Guidelines, § 15312.)
- (10) Class 13: Acquisition of lands for fish and wildlife conservation purposes including (a) preservation of fish and wildlife habitat, (b) establishing ecological preserves under Fish and Game Code Section 1580, and (c) preserving access to public lands and waters where the purpose of the acquisition is to preserve the land in its natural condition. (CEQA Guidelines, § 15313.)
- (11) Class 15: Division of property in urbanized areas zoned for residential, commercial, or industrial use into four or fewer parcels when: the division is in conformance with the General Plan and zoning; no variances or exceptions are required; all services and access to the proposed parcels to local standards are available; the parcel was not involved in a division of a larger parcel within the previous two years; and the parcel does not have an average slope greater than 20 percent. (CEQA Guidelines, § 15315.)

- (12) Class 16: Acquisition, sale, or other transfer of land in order to establish a park where the land is in a natural condition or contains historical or archaeological resources and either:
1. The management plan for the park has not been prepared, or
  2. The management plan proposes to keep the area in a natural condition or preserve the historic or archaeological resources. CEQA will apply when a management plan is proposed that will change the area from its natural condition or cause substantial adverse change in the significance of the historic or archaeological resource. (CEQA Guidelines, § 15316.)
- (13) Class 19: Annexations to the District of areas containing existing public or private structures developed to the density allowed by the current zoning or pre-zoning of either the annexing or detaching governmental agency, whichever is more restrictive. However, the extension of utility services to the existing facilities must have a capacity to serve only the existing facilities. Annexations of individual small parcels of the minimum size for facilities exempted by CEQA Guidelines section 15303 regarding new construction or conversion of small structures. (CEQA Guidelines, § 15319.)
- (14) Class 20: Changes in the organization or reorganization of local agencies where the changes do not change the geographical area in which previously existing powers are exercised. (CEQA Guidelines, § 15320.)
- (15) Class 23: Normal operations of existing facilities for public gatherings for which the facilities were designed where there is past history of the facility being used for the same or similar kind of purpose. (CEQA Guidelines, § 15323.)
- (16) Class 25: Transfers of ownership of interests in land in order to preserve open space, habitat, or historical resources. (CEQA Guidelines, § 15325.)
- (17) Class 27: Leasing of newly constructed or previously unoccupied privately owned facility by a local or state agency where the governing authority determines that the building was exempt from CEQA. To be exempt under this section, the proposed use of the facility:
1. Shall be in conformance with existing state plans and policies and with general, community, and specific plans for which an ND or EIR has been prepared;
  2. Shall be substantially the same as that originally proposed at the time the building permit was issued;

3. Shall not result in a traffic increase of greater than 10% of front access road capacity; and
4. Shall include the provision of adequate employee and visitor parking facilities.

Examples of Class 27 include, but are not limited to:

1. Leasing of administrative offices in newly constructed office space;
2. Leasing of client service offices in newly constructed retail space; and
3. Leasing of administrative and/or client service offices in newly constructed industrial parks. (CEQA Guidelines, § 15327.)

(18) Class 30: Minor cleanup actions taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance which are small or medium removal actions costing \$1 million or less. All actions must be consistent with applicable state and local environmental permitting requirements including, but not limited to, off-site disposal, air quality rules such as those governing volatile organic compounds and water quality standards, and approved by the regulatory body with jurisdiction over the site. This exemption shall not apply where the activity involves or requires the use of an on-site hazardous waste incinerator or thermal treatment unit. (CEQA Guidelines, § 15330.)

(b) Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located. A project ordinarily insignificant in its impact on the environment may be significant in a particularly sensitive environment. These classes apply except where the project may impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies. (CEQA Guidelines, § 15300.2, subd. (a).)

(c) Categorical exemptions are inapplicable when:

- (1) Cumulative impact of successive projects of the same type in the same place, over time is significant;
- (2) There is a reasonable possibility the activity will have a significant effect on the environment due to unusual circumstances;

- (3) The project may result in damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources within a highway officially designated as a state scenic highway;
- (4) When the project is located on a site which is included on any list compiled pursuant to Section 65962.5 of the Government Code; and
- (5) When the project may cause a substantial adverse change in the significance of a historic resource. (CEQA Guidelines, § 15300.2, subds. (b)-(f).)

## **1.7 Notice of Exemption**

- (a) When the General Manager decides a project is exempt from CEQA and the General Manager approves or determines to carry out the project, the General Manager shall file a notice of exemption with the County Clerk.
- (b) The notice shall be filed after approval of the project. Such a notice shall include:
  - (1) A brief description of the project, including the location of the project;
  - (2) A finding that the project is exempt, including a citation to the CEQA Guidelines section under which it is found to be exempt; and
  - (3) A brief statement of reasons to support the finding; and
  - (4) The applicant's name (if any). (CEQA Guidelines, § 15062.)

## **Article 2 – Nonexempt Projects**

### **2.1 General**

This Article describes the procedures for preparing and processing a ND, MND, or EIR when the District is the lead agency.

### **2.2 Review of Application for Completeness**

The General Manager shall determine whether an application for a permit or other entitlement for use is complete within 30 days of receipt of the application. If no written determination of the completeness of the application is made within that period, the application will be deemed complete on the 30<sup>th</sup> day. (CEQA Guidelines, § 15101.)

## 2.3 Initial Study

- (a) When a project does not qualify for an exemption, the General Manager shall conduct an initial study to determine if the project may have a significant effect on the environment. If an environmental impact report will clearly be required for the project, an initial study is not required but may still be desirable. (CEQA Guidelines, § 15063, subd. (a).)
- (b) The Initial Study shall include consideration of all phases of project planning, implementation and operation of the project. An environmental assessment or similar analysis prepared pursuant to the National Environmental Policy Act may be used to meet the requirements of an initial study. (CEQA Guidelines, § 15063, subds. (a)(1), (a)(2).)
- (c) The initial study shall contain in brief form:
  - (1) A description of the project including the location of the project.
  - (2) An identification of the environmental setting.
  - (3) An identification of environmental effects by use of a checklist, matrix or other method; providing brief explanations indicating there is some evidence to support the entries. Brief explanation may be either through a narrative or a reference to another information source.
  - (4) A discussion of ways to mitigate the significant effects identified, if any.
  - (5) An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls.
  - (6) The name of the person or persons who prepared or participated in the initial study. (CEQA Guidelines, § 15063, subd. (d).)
- (e) The purposes of an initial study are to:
  - (1) Provide the Lead Agency with information to use as the basis for deciding whether to prepare a ND, MND, or EIR;
  - (2) Enable an applicant or Lead Agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a ND or MND;
  - (3) Assist the preparation of an EIR if one is required, by:
    - a. Focusing the EIR on the effects determined to be significant,

- b. Identifying the effects determined not to be significant,
  - c. Explaining the reasons for determining that potentially significant effects would not be significant, and
  - d. Identifying whether a program EIR, tiering, or another appropriate process can be used for analysis of the project's environmental effects.
- (4) Facilitate environmental assessment early in the design of a project;
  - (5) Provide documentation of the factual basis for the finding in a ND that a project will not have a significant effect on the environment;
  - (6) Eliminate unnecessary EIRs; and
  - (7) Determine whether a previously prepared EIR could be used with the project. (CEQA Guidelines, § 15063, subd. (c).)
- (f) If the project is to be carried out by a private person or private organization, the person or organization carrying out the project shall submit data and information to the District to enable the General Manager to prepare the initial study. (CEQA Guidelines, § 15063, subd. (e).)
  - (g) As soon as the General Manager determines an initial study will be required for the project, the General Manager shall consult informally with all responsible agencies and all trustee agencies responsible for resources affected by the project to obtain the recommendations of those agencies as to whether a ND, MND, or EIR should be prepared. (CEQA Guidelines, § 15063, subd. (g).)
  - (h) When the District acts as the lead agency, the District shall determine within 30 days after accepting an application as complete, whether it intends to prepare a ND, MND, or EIR. This period may be extended by an additional 15 days upon the consent of the District and the applicant. (CEQA Guidelines, § 15102.)

## **2.4 Negative Declaration or Mitigated Negative Declaration**

- (a) A ND shall be prepared when the initial study shows there is no substantial evidence that the project may have a significant effect on the environment. (CEQA Guidelines, § 15070, subd. (a).)
- (b) A MND shall be prepared when the initial study identifies potentially significant effects on the environment, but:
  - (1) Revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed MND and initial study are released for public

review would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and

- (2) There is no substantial evidence, in light of the whole record before the agency, that the project as revised may have a significant effect on the environment.
- (c) An enforceable mitigation monitoring and reporting program shall be adopted as part of the MND. (CEQA Guidelines, § 15097.)
- (d) The draft ND or MND circulated for public review shall include:
  - (1) A brief description of the project, including a commonly used name for the project, if any;
  - (2) The location of the project and the name of the project proponent;
  - (3) A proposed finding that the project will not have a significant effect on the environment;
  - (4) An attached copy of the initial study documenting reasons to support the finding; and
  - (5) Mitigation measures, if any, included in the project to avoid potentially significant effects. (CEQA Guidelines, § 15071.)
- (e) The District shall provide a public review period of the proposed ND or MND of not less than 20 days. When a proposed ND or MND and initial study are submitted to the State Clearinghouse for review by State agencies, the public review period shall be not less than 30 days, unless a shorter period is approved by the State Clearinghouse. (CEQA Guidelines, § 15073, subd. (a).)
- (f) The District shall mail a notice of intent to adopt a ND or MND to the last known name and address of all organizations and individuals who have previously requested such notice in writing and shall also give notice in one or more of the following ways as determined by the General Manager:
  - (1) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
  - (2) Posting by the District on and off site in the area where the project is to be located.

- (3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll. (CEQA Guidelines, § 15072, subd. (b).)
- (g) At the time and place stated in the notice of intent to adopt a ND or MND and prior to approving the project, the Board shall consider the ND or MND and comments received during the public review process. The Board may approve the ND or MND if it finds on the basis of the initial study and any comments received there is no substantial evidence the project will have a significant effect on the environment. (CEQA Guidelines, § 15074, subd. (b).)
- (h) With a private project, the ND or MND must be completed and approved within 180 days from the date when the District accepted the application as complete. (CEQA Guidelines, § 15107.)
- (i) The General Manager shall file a notice of determination within 5 working days after the Board decides to carry out or approve a project for which a ND or MND has been approved. (CEQA Guidelines, § 15075, subd. (a).)
- (j) The notice of determination shall include:
- (1) An identification of the project including the project title as identified on the proposed ND or MND, the State Clearinghouse identification number (if any), and its location.
  - (2) A brief description of the project.
  - (3) The agency's name and the applicant's name (if any).
  - (4) The date the Board approved the project.
  - (5) The determination of the Board that the project will not have a significant effect on the environment.
  - (6) A statement that a ND or MND was adopted pursuant to CEQA.
  - (7) The address where a copy of the ND or MND may be examined.
  - (8) A statement indicating whether mitigation measures were made a condition of approval of the project, and whether a mitigation monitoring plan/program was adopted. (CEQA Guidelines, § 15075, subd. (b).)
- (k) The notice of determination shall be filed with the county clerk of the county or counties in which the project will be located within five working days of the project's approval. If the project requires discretionary approval of any State agency, the notice of determination shall also be filed with the Office of

Planning and Research within five working days of the project's approval. (CEQA Guidelines, § 15075, subd. (d).)

## **2.5 Environmental Impact Report**

- (a) If the General Manager determines there is substantial evidence the project may have a significant effect on the environment, the General Manager shall prepare or cause an EIR to be prepared. (CEQA Guidelines, § 15081.)
- (b) Upon determining an EIR is required, the District shall prepare a notice of preparation for distribution to the county clerk, any individuals and organizations who have requested such notice, responsible agencies, trustee agencies, and other applicable State and federal agencies. The District shall also provide a copy of the notice of preparation to the Office of Planning and Research. The identification number issued by the Office of Planning and Research (State Clearinghouse) shall be the identification number used for subsequent environmental documents on the project. (CEQA Guidelines, § 15082, subd. (a).)
- (c) The notice of preparation shall provide responsible and trustee agencies with sufficient information describing the project and the environmental effects to enable the responsible and trustee agencies to make a meaningful response. At a minimum, the notice of preparation shall include:
  - (1) Description of the project;
  - (2) Location of the project indicated on an attached map (preferably a copy of a U.S.G.S. 15-inch or 7½-inch topographical map identified by quadrangle name, or by a street address and cross street in an urbanized area); and
  - (3) Probable environmental effects of the project. (CEQA Guidelines, § 15082, subd. (a)(1).)
- (d) The General Manager shall send the notice of preparation by certified mail or any other method of transmittal which provides it with a record that the notice was received. (CEQA Guidelines, § 15082, subd. (a)(3).)
- (e) Prior to completing the draft EIR, the General Manager may consult with any person or organization concerned with the environmental effects of the project. This early consultation is called scoping. Scoping is mandatory when preparing an EIR/environmental impact statement jointly with a federal agency. (CEQA Guidelines, § 15083.)
- (f) Any person, including an applicant, may submit information or comments to the General Manager to assist in the preparation of the draft EIR. The submittal may be presented in any format, including the form of a draft EIR. The General

Manager must consider information and comments received. The information and comments may be included in the draft EIR in whole or in part. (CEQA Guidelines, § 15084, subd. (c).)

- (g) The General Manager may choose one of the following arrangements or a combination of them for preparing a draft EIR.
  - (1) Preparing the draft EIR directly with District staff.
  - (2) Contracting with another entity, public or private, to prepare the draft EIR.
  - (3) Accepting a draft EIR prepared by another entity, either the applicant, a consultant retained by the applicant, or by any other person's independent review and analysis.
  - (4) Using a previously prepared EIR. (CEQA Guidelines, § 15084, subd. (d).)
- (i) The draft EIR sent out for public review must reflect the independent judgment of the General Manager. The General Manager is responsible for the adequacy and objectivity of the draft EIR. (CEQA Guidelines, § 15084, subd. (e).)
- (j) Each draft EIR shall contain the following:
  - (1) Table of contents or index.
  - (2) Executive summary identifying:
    - a. Each significant effect with proposed mitigation measures and alternatives that would reduce or avoid that effect;
    - b. Areas of controversy known to the lead agency including issues raised by agencies and the public; and
    - c. Issues to be resolved including the choice among alternatives and whether or how to mitigate the significant effects.
  - (3) Project description.
  - (4) Description of the environmental setting in the vicinity of the project as it exists at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective.
  - (5) Environmental impacts including all phases of the project: planning, acquisition, development and operation. The subjects listed below shall be considered:

- a. Significant environmental effects of the proposed project.
  - b. Significant environmental effects which cannot be avoided if the proposed project is implemented.
  - c. Significant irreversible environmental changes which would be included in the proposed project should it be implemented. This topic only needs to be included in EIRs prepared in connection with the following activities, where an irretrievable commitment of nonrenewable resources is involved:
    - 1. The adoption, amendment, or enactment of a plan, policy, or ordinance of a public agency;
    - 2. The adoption by a Local Agency Formation Commission of a resolution making determinations; or
    - 3. A project which will be the subject of the requirement for preparing an environmental impact statement pursuant to the provisions of the National Environmental Policy Act of 1969.
  - d. Growth-inducing impact of the proposed project.
  - e. The mitigation measures proposed to minimize the significant effects.
  - f. Alternatives to the proposed project.
- (6) Cumulative impacts.
- (7) Organizations and persons consulted.
- (8) Report authors and contributors.
- (9) References. (CEQA Guidelines, §§ 15122-15131.)
- (j) When the draft EIR is completed, a notice of completion must be filed with the State Clearinghouse. The notice of completion shall include:
- (1) A brief description of the project.
  - (2) The proposed location of the project either by street address and cross street, for a project in an urbanized area, or by attaching a specific map, preferably a copy of a U.S.G.S. 15-inch or 7½-inch topographical map identified by quadrangle name.

- (3) An address where copies of the draft EIR is available.
- (4) The review period during which comments will be received on the draft EIR. (CEQA Guidelines, § 15085, subd. (b).)
- (k) When the EIR report will be reviewed through the state review process handled by the State Clearinghouse, the notice of completion cover form required by the State Clearinghouse will serve as the notice of completion. (CEQA Guidelines, § 15085, subd. (d).)
- (l) The District shall provide notice of the availability of a draft EIR at the same time as it sends a notice of completion to the State Clearinghouse. A notice of availability of a draft environmental impact report shall be mailed to the last known name and address of all organizations and individuals who have previously requested such notice in writing, and shall also be given by at least one of the following:
- (1) Publication at least one time in a newspaper of general circulation in the area affected by the proposed project. If more than one area is affected the notice shall be published in the newspaper of largest circulation from among the newspapers of general circulation in those areas.
  - (2) Posting by the District on and off site where the project is to be located.
  - (3) Direct mailing to the owners and occupants of contiguous property shown on the latest equalized assessment roll. (CEQA Guidelines, § 15087, subd. (a).)
- (m) The District shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The District shall provide a written proposed response to a public agency on comments made by that agency at least 10 days prior to certifying the EIR. (CEQA Guidelines, § 15088, subds. (a), (b).)
- (n) The written response shall describe the disposition of significant environmental issues raised (e.g., revisions in the proposed project to mitigate anticipated impacts or objections). In particular, the major environmental issues when the District's position is at variance with recommendations and objections raised in the comments must be addressed in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice. (CEQA Guidelines, § 15088, subd. (c).)
- (o) The response to comments may take the form of a revision to the draft EIR or may be a separate section of the final EIR. (CEQA Guidelines, § 15088, subd. (d).)

- (p) The final EIR shall include:
- (1) The draft EIR or a revision of the draft EIR.
  - (2) Comments and recommendations received on the draft EIR either verbatim or in summary.
  - (3) A list of persons, organizations and public agencies commenting on the draft EIR.
  - (4) The responses of the lead agency to significant environmental points raised in the review and consultation process.
  - (5) Any other information added by the lead agency. (CEQA Guidelines, § 15132.)
- (q) If the final EIR contains one or more significant environmental effects, the District must make written findings that indicate how the effects have been dealt with and, if necessary, adopt a statement of overriding considerations in the form of a resolution. A mitigation monitoring and reporting program shall be completed and approved by the Board and shall incorporate the mitigation measures included in the EIR. The purpose of the mitigation monitoring and reporting program is to ensure the actions identified in the EIR are carried out by assigning specific responsibility for their completion to various individuals and organizations. (CEQA Guidelines, § 15091.)
- (r) Prior to approving a project, the District shall certify that:
- (1) The final EIR has been completed in compliance with CEQA.
  - (2) The final EIR was presented to the decision-making body of the District, and that the decision-making body reviewed and considered the information contained in the final EIR prior to approving the project;
  - (3) The final EIR reflects the District's independent judgment and analysis. (CEQA Guidelines, § 15090.)
- (s) The General Manager shall file a notice of determination five working days following each project approval for which an EIR was considered. The notice of determination shall include:
- (1) An identification of the project including the project title as identified on the draft EIR, and the location of the project (either by street address and cross street for a project in an urbanized area or by attaching a specific map, preferably a copy of a U.S.G.S. 15-inch or 7½-inch topographical map

identified by quadrangle name). If the notice of determination is filed with the State Clearinghouse, the State Clearinghouse identification number for the draft EIR shall be provided.

- (2) A brief description of the project.
- (3) The District's name, the applicant's name, if any, and the date on which the District approved the project. If a responsible agency files the notice of determination pursuant to Section 15096(i) of the CEQA Guidelines, the responsible agency's name, the applicant's name, if any, and date of approval shall also be identified.
- (4) The determination of the District whether the project in its approved form will have a significant effect on the environment.
- (5) A statement that an EIR was prepared and certified pursuant to the provisions of CEQA.
- (6) Whether mitigation measures were made a condition of approval of the project, and whether a mitigation monitoring and reporting program was adopted.
- (7) Whether findings were made pursuant to Section 15091 of the CEQA Guidelines.
- (8) Whether a statement of overriding considerations was adopted for the project.
- (9) The address where a copy of the final EIR and the record of the project approval may be examined. (CEQA Guidelines, § 15094.)

## **Chapter 4      Use of Environmental Documents**

### **Article 1 – General**

#### **1.1      General**

The District shall not decide to approve or carry out a project for which an EIR was prepared unless either:

- (a) The project as approved will not have a significant effect on the environment,  
or
- (b) The District has:

- (1) Eliminated or substantially lessened all significant effects on the environment where feasible as shown in findings made pursuant to Section 15091 of the CEQA Guidelines, and
- (2) Determined that any remaining significant effects on the environment found to be unavoidable pursuant to Section 15091 of the CEQA Guidelines are acceptable due to overriding overriding considerations described in findings made pursuant to CEQA Guidelines section 15093.

## **1.2 Findings**

- (a) The possible findings that must be made for each significant environmental effect of a project that the District has decided to approve or carry out are:
  - (1) Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effect as identified in the final EIR.
  - (2) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the District. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR. (CEQA Guidelines, § 15091.)

## **1.3 Statement of Overriding Considerations**

- (a) The District shall balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, or a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, or a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable”.
- (b) When the District approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the District shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

- (c) If the District makes a statement of overriding considerations, the statement should be included in the record of the project approval and should be mentioned in the notice of determination. This statement does not substitute for, and shall be in addition to, findings required pursuant to Section 15091 of the CEQA Guidelines. (CEQA Guidelines, § 15093.)

#### **1.4 Mitigation Monitoring or Reporting**

In order to ensure that the mitigation measures and project revisions identified in a MND or EIR are implemented, the District shall adopt a program for monitoring or reporting on the revisions it has required in the project and the measures it has imposed to mitigate or avoid significant environmental effects. The District may delegate reporting or monitoring responsibilities to another public agency or to a private entity which accepts the delegation; however, until mitigation measures have been completed, the District remains responsible for ensuring that implementation of the mitigation measures occurs in accordance with the program. (CEQA Guidelines, § 15097.)

#### **1.5 Subsequent EIR's and NDs**

When an EIR has been certified or a ND or MND has been adopted for a project, no subsequent EIR shall be prepared for that project unless the District determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

- (a) Subsequent changes are proposed in the project which will require major revisions of the previous EIR, ND, or MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (b) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR, ND, or MND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;  
or
- (c) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the ND or MND was adopted, shows any of the following:
  - (1) The project will have one or more significant effects not discussed in the previous EIR, ND, or MND;
  - (2) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

- (3) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
  - (4) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.
- (d) If changes to a project or its circumstances occur or new information becomes available after adoption of a ND or MND, the District shall prepare a subsequent EIR if required by subdivision (c) above. Otherwise the District shall determine whether to prepare a subsequent ND, MND, an addendum, or no further documentation.
- (e) Once a project has been approved, the District's role in project approval is completed, unless further discretionary approval on that project is required. Information appearing after an approval does not require reopening of that approval. If after the project is approved, any of the conditions described in subdivision (c) occurs, a subsequent EIR, ND, or MND shall only be prepared by the public agency which grants the next discretionary approval for the project, if any. In this situation, no other responsible agency shall grant an approval for the project until the subsequent EIR has been certified or the subsequent ND or MND has been adopted.
- (f) A subsequent EIR, ND, or MND shall be given the same notice and public review as required under Section 15087 or Section 15072 of the CEQA Guidelines. A subsequent EIR, ND, or MND shall state where the previous document is available and can be reviewed. (CEQA Guidelines, § 15162.)

## **1.6 Supplement to an Environmental Impact Report**

- (a) The District or responsible agency may choose to prepare a supplement to an EIR rather than a subsequent EIR if:
- (1) Any of the conditions described in Section 15162 of the CEQA Guidelines would require the preparation of a subsequent EIR, and
  - (2) Only minor additions or changes would be necessary to make the previous EIR apply to the project in the changed situation.
- (b) The supplement to the EIR need only contain the information necessary to make the previous EIR adequate for project as revised.

- (c) A supplement to an EIR shall be given the same kind of notice and public review as is given to a draft EIR under Section 15087 of the CEQA Guidelines.
- (d) A supplement to an EIR may be circulated by itself without recirculating the previous draft or final EIR.
- (e) When the District decides whether to approve the project, the Board shall consider the previous EIR as revised by the supplemental EIR. A finding pursuant to Section 15091 of the CEQA Guidelines shall be made for each significant effect shown in the previous EIR as revised. (CEQA Guidelines, § 15163.)

#### **1.6 Addendum to an EIR, ND, or MND**

- (a) The District or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 of the CEQA Guidelines have occurred.
- (b) An addendum to an adopted ND or MND may be prepared if only minor technical changes or additions are necessary or none of the conditions described in Section 15162 of the CEQA Guidelines calling for the preparation of a subsequent EIR, ND, or MND have occurred.
- (c) An addendum need not be circulated for public review but can be included in or attached to the final EIR or adopted ND or MND.
- (d) The District shall consider the addendum with the final EIR or adopted ND or MND prior to making a decision on the project.
- (e) A brief explanation of the decision not to prepare a subsequent EIR pursuant to Section 15162 of the CEQA Guidelines should be included in the addendum to an EIR, the District's findings on the project, or elsewhere in the record. The explanation must be supported by substantial evidence. (CEQA Guidelines, § 15164.)