

***CEQA AND NOTICING
BEST PRACTICES FOR
COMPLYING WITH CEQA,
THE BROWN ACT AND
OTHER PUBLIC NOTICING
REQUIREMENTS***

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League of California Cities

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BROUGHT TO YOU BY . . .

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TOPICS WE'LL COVER

- Identifying Types of CEQA Notices
- Rules for Different Types of CEQA Notices
- General Procedures and Best Practices for Making CEQA Notices Available
- Integrating Brown Act Notices
- Integrating Planning and Zoning Law Notices

TYPES OF CEQA NOTICES

- Notice of Exemption (NOE)
- Notice of Intent (NOI) to adopt an ND/MND
- Notice of Preparation (NOP) of an EIR
- Notice of Availability (NOA) of an EIR
- Notice of Completion (NOC) of an EIR (or ND/MND)
- Notice of Determination (NOD) – after ND/MND/EIR or previously assessed

WHAT DOES THIS ALL MEAN????



WHAT NOTICE WHEN?

**Project
Start**



Finish

Exempt Projects



**Notice of Exemption
(after project
approval)**

Projects subject to CEQA

Initial Study

**Mitigated/Negative
Declaration**

**Environmental
Impact Report**

Notice of Intent

**Notice of Preparation
(Scoping Meeting)**



Notice of Completion

Notice of Completion

Notice of Availability

**Notice of Determination
(after project approval)**

NOTICE OF EXEMPTION

Optional

- Public Resources Code § 21151
- State CEQA Guidelines § 15062
- Appendix E of the State CEQA Guidelines
- Used for:
 - Exemptions (Categorical, Statutory, Special)
 - “Not a Project” (??)
- Filed with County Clerk
- After discretionary application is approved
- Encouraged to publish electronically on website
- Not mandatory, but recommend filing - Shortens challenge period from 180 days to 35 days
- Special situations – NOEs for specific plan streamlining

NOTICE OF EXEMPTION

Optional

■ Content

- Project Description
- Project Location
- Lead Agency's/Applicant's name and contact information
- Finding of exemption – cite Categorical Exemption section or statute
- Reasons to support the finding
 - (“It is a Class 1” is not a reason.)
 - Good example: This project qualifies as a Class 11 categorical exemption in accordance with CEQA in that it consists of two on-premise signs.

NOTICE OF INTENT

- Public Resources Code § 21092
- State CEQA Guidelines § 15072
- Resembles public hearing notice; format flexible; content mandatory
- Purpose:
 - Negative Declaration (ND) or Mitigated ND (MND)
- Sent to anyone who has requested notice AND one (1) or more of the following:
 - Published in a newspaper
 - Mailed to owners and occupants contiguous* to project site
 - Posting on- or off-site near the area
- Filed with the County Clerk (posted within 24 hours)
- Posted prior to public review period
- Practice tip – use jurisdiction’s mailing radius

NOTICE OF INTENT

■ Content

- Full title = “Notice of Intent to Adopt a [Mitigated] Negative Declaration”
- Project Description
- Project Location
- Public Hearing information, if known
- Where [Mitigated] Negative Declaration can be found for review
- Whether the site is located on any list of places containing hazardous materials

NOTICE OF PREPARATION

- Public Resources Code § 21083.9
- State CEQA Guidelines § 15082
- Appendix I of State CEQA Guidelines
- Purpose:
 - Preparation of Environmental Impact Report (EIR)
 - Scoping Meeting (if applicable)
- NOP is sent to OPR and responsible/trustee agencies
- IF holding scoping meeting, send notices to:
 - County or city that borders project site
 - Responsible agencies
 - Anyone who has filed a written request
- 30-day response period (from date of receipt, not postage date)
- Practice Tip – use jurisdiction’s mailing radius

NOTICE OF PREPARATION

■ Content

- Project Description
- Project Location
- Probable Environmental Effects
- Reference presence of Initial Study (or web link)
- Send via traceable method (certified, etc.)
- IF applicable, scoping meeting information (date, time, location)

NOTICE OF COMPLETION

- Public Resources Code § 21161
- State CEQA Guidelines § 15085
- Appendix L of the State CEQA Guidelines
- Available as fillable form from State Clearinghouse (SCH)
- Purpose:
 - Informs the SCH to circulate a Draft Environmental Impact Report
- Transmitted to SCH with the EIR
- Public review period begins when SCH distributes to agencies (up to 3 days)

NOTICE OF AVAILABILITY

- Public Resources Code § 21092
- State CEQA Guidelines § 15087
- Resembles public hearing notice
- Purpose:
 - Draft Environmental Impact Report available
 - Recirculation of EIRs due to new information
- Sent to anyone who has requested notice AND one (1) or more of the following:
 - Published in a general circulation newspaper
 - Mailed to owners and occupants contiguous* to project site
 - Posting on- or off-site near the area
- Practice Tip – use your jurisdiction’s mailing radius

NOTICE OF AVAILABILITY

■ Content

- Full title = “Notice of Availability of Environmental Impact Report”
- Project Description
- Project Location
- Public Review Period Dates
- Public Hearing information, if known
- List of significant effects
- Where Draft Environmental Impact Report can be found for review
- Whether the site is located on any list of places containing hazardous materials

NOTICE OF DETERMINATION

- Public Resources Code § 21152
- State CEQA Guidelines § 15075
- Appendix D of the State CEQA Guidelines
- Purpose:
 - Announces that the lead agency approves a project
- File within 5 working days of approval
- California Fish and Wildlife Fees
- Post at County Clerk office
- Starts a 30-day legal challenge period for CEQA issues (180 days if not filed and posted)

NOTICE OF DETERMINATION

■ Content

- Project Title (match ND/MND or EIR title)
- Project Description, including SCH number
- Lead Agency name and information
- Applicant name and information
- Whether project has significant effects
- Whether mitigation measures were adopted
- Whether an MMRP was adopted
- Whether findings were made
- Whether a statement of overriding considerations was adopted (for an EIR)
- Where ND/MND or EIR can be reviewed
- Date of approval

NOTICE OF DETERMINATION

■ NODs for Subsequent Projects

- Addenda, Subsequent EIRs, Previously-Assessed under another CEQA document
- May have to customize an NOD form for previously-assessed or addendum
- Use same State Clearinghouse number for subsequent discretionary actions that are part of the same “project” if you don’t plan on paying California Fish and Wildlife fee again!
- Attach previous NOD and previous CFDW receipt (as opposed to County Clerk receipt)

ADDENDUM NOTICING

■ Addenda

- Approval of addenda to previous CEQA documents take place at the same time as the project approval, without separate notice or public review
- Lead agencies are not precluded from conducting a voluntary circulation/public review period
- Potential risks or constraints with voluntary circulation of addendums
 - What would a challenge look like?

TIMING BEST PRACTICES

Lead times for public review periods

- Think about lead times for all different types of notices.
- Time for CEQA documents to be delivered (using overnight services can make it more predictable)
- State Clearinghouse has 3 days to distribute
- County Clerk has 24 hours to post
- Newspaper lead times

COUNTY CLERK FILING BEST PRACTICES

- Fees, method of payment (different for each County)
- OK to combine CDFW fee with county clerk fee in one check?
- Original required? Or is duplicate acceptable?
- Where is the building? Which office/window?
- Familiarize yourself with differences of County Clerk procedures!

SPECIAL NOTICES

- Low-level flight path
- Military impact zone
- Adjacent to airports
- Tribal consultation
- Water District (supply verification)

NOTICES OF PLANNING AND ZONING HEARINGS

Government Code § 65090

Government Code § 65091

GOVERNMENT CODE § 65090 NOTICE

- Notice shall be published in at least one newspaper of general circulation at least 10 days prior to the hearing, or if there is no such newspaper of general circulation, the notice shall be posted at least 10 days prior to the hearing in at least three public places.
- In addition, a local agency may give notice of the hearing in any other manner it deems necessary or desirable.
- Whenever a local agency considers the adoption or amendment of policies or ordinances affecting drive-through facilities, the local agency shall incorporate, where necessary, notice procedures to the blind, aged, and disabled communities in order to facilitate their participation.

GOVERNMENT CODE § 65091 NOTICE

- **Follow 65090 and mail or deliver notice of the hearing at least 10 days prior to the hearing to:**
 - The owner of the subject real property, the owner's agent (if any), and to the project applicant (Note – Special rule for mineral rights when Subdivision Map Act involved)
 - Each local agency expected to provide water, sewage, streets, roads, schools, or other essential facilities or services to the project, whose ability to provide those facilities and services may be significantly affected.
 - All owners of real property within 300 feet of the real property that is the subject of the hearing.
 - If >1000 owners, a local agency may provide notice by placing a 1/8 page ad in a newspaper of general circulation within the local agency at least 10 days prior to the hearing.

CONTENTS OF 65090 AND 65091 NOTICES

- **Notice must include:**
 - **Date, time, and place of public hearing**
 - **Identity of hearing body or officer**
 - **General description of matter**
 - **Description or location of property (in text or by diagram) subject to hearing**
- (Gov. Code, § 65094.)**

PUBLIC REQUESTS

- Regardless of whether notice is under Section 65090 or 65091, the notice shall also be mailed or delivered at least 10 days prior to the hearing to any person who has filed a written request for notice

OTHER ZONING MATTERS REQUIRING SPECIFIC HEARINGS AND NOTICE

- **General Plans and Amendments**
 - At Commission (GC 65353)
 - At Council (GC 65355)
- **Development Agreements (At Commission and Council)**
- **Variances, CUPs, development permits (including revocation and modification)**

SUBDIVISION MAP ACT NOTICE

- Public hearings should follow 65090 and 65091 for noticing
- There are special rules for certain fees
- Condo conversion projects

CEQA AND PUBLIC NOTICING

Dual noticing for NDs/MNDs and required project public hearing

- CEQA Review Period minimum 20/30 days
- Public Hearing Period, minimum 10 days
- Potential pitfall
 - Keeping CEQA comments and project comments separate
 - Potentially receiving CEQA comments that delay public hearing; would require re-noticing if item has to be delayed or continued.
- Conservative approach – Separate notices

DEFEND OUR WATERFRONT V. STATE LANDS COMMISSION (2015) 240 CAL.APP.4TH 570

- Proposed land exchange agreement between the San Francisco and the State Lands Commission for a 23,000 square-foot parcel.
- SLC found the agreement **statutorily exempt** under Pub. Resources Code § 21080.11.
- Court found the meeting notice was defective:
 - Even though it was posted in a timely manner (10 days under Gov't. Code § 11125(a)), it failed to mention CEQA and failed to disclose that SLC would consider invoking a statutory exemption;
 - Staff report for the meeting did not cure defect because: (1) it didn't disclose that staff recommended a CEQA exemption; and (2) was posted 1 week before the meeting (i.e., untimely).
- Petitioners' actual notice did not cure these defects.

BROWN ACT NOTICING

AGENDA AND NOTICING REQUIREMENTS

■ Overview

- Regular meetings
- Special meetings
- Emergency meetings
- Adjourned and continued meetings
- Teleconferenced meetings
- Closed sessions

REGULAR MEETINGS

Regular meetings of the legislative body, excluding advisory committees and standing committees, must be held at the time and place set by ordinance, resolution, or bylaws.

Government Code § 54954(a)

REGULAR MEETINGS

Notice Requirements

- Meeting must be noticed through the posting of an agenda at least 72 hours before the meeting.
 - Notice are posted on Friday for a Wednesday meeting
- The agenda must be posted on the website

Government Code §§ 54954.2(a) & 54956

AGENDA REQUIREMENTS

- A written agenda must be prepared for each regular or adjourned regular meeting of each legislative body.
- Each item of business to be "***transacted or discussed***," including items to be discussed in closed session, must be stated on the agenda with a "***brief general description***" which generally need not exceed 20 words.

Government Code § 54954.2(a)(1)

SAN JOAQUIN RAPTOR RESCUE CTR. V. COUNTY OF MERCED (2013) 216 CAL.APP.4TH 1167

- Merced County Planning Commission posted an agenda disclosing the potential approval of a subdivision application, but failed to mention that an MND would also be considered.
- Brown Act mandates that agendas contain a brief general description of each item of business to be discussed or transacted at the meeting.
- The Court found that the adoption of the MND was a distinct item of business, not a mere component of Project approval, because it involved a separate action and concerned discrete significant issues of CEQA compliance and environmental impacts.

CEQA AND THE BROWN ACT

- Integration of CEQA onto agendas
 - Must be included on agenda
 - If recommending approval, CEQA action must be listed before the action on project
 - Decision-making body must take action on CEQA before the action on project
 - Decision-making body can certify CEQA without approving the project (use caution!)
 - What happens if decision-making body does not approve CEQA document but approves project?

THANK YOU!

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