



# CEQA Portal Topic Paper

## Findings

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### What Are Findings?

When a lead agency adopts or certifies a CEQA document (e.g., negative declaration, mitigated negative declaration, or environmental impact report) and approves a project on the basis of that document, the agency is obligated to adopt findings that explain its conclusions as to the project's impacts on the environment. In the case of an ND or MND, the document itself constitutes the agency's findings. In the case of an EIR, the agency must adopt separate findings that describe the disposition of the significant effects identified in the EIR and identify the reasons why any alternatives examined in the EIR but not enacted in place of the project are infeasible.

If the EIR identifies significant and unavoidable impacts of the project, then the agency must adopt a separate statement of overriding considerations that identifies the project benefits that outweigh those unavoidable impacts. The findings and the statement of overriding considerations are two separate products (State CEQA Guidelines Sections 15091[f] and 15093[c]; *Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839 ["Although we agree that a statement of overriding considerations is similar to such findings, we are not persuaded they must be treated the same."]).

### Why Are Findings Important?

Findings explain the lead agency's conclusions regarding a project's environmental impacts, the reasons for incorporating (or not incorporating) mitigation measures, and the reasons for selecting the approved project. Findings are important for purposes of public disclosure. They are also important should the project's environmental document be litigated. Findings are part of the administrative record; their adequacy can be one of the issues raised by plaintiffs before the court.

### Governing Statutes and Standards of Review

#### Negative Declarations and Mitigated Negative Declarations

Once adopted, negative declarations and mitigated negative declarations are effectively their own findings. Public Resources Code Section 21064 states: "'Negative declaration' means a

written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.”

State CEQA Guidelines Section 15074(b) goes on to say:

Prior to approving a project, the decision-making body of the lead agency shall consider the proposed negative declaration or mitigated negative declaration together with any comments received during the public review process. The decision-making body shall adopt the proposed negative declaration or mitigated negative declaration only if it finds on the basis of the whole record before it (including the initial study and any comments received), that there is no substantial evidence that the project will have a significant effect on the environment and that the negative declaration or mitigated negative declaration reflects the lead agency’s independent judgment and analysis.

## EIR Findings

CEQA and the State CEQA Guidelines have specific and detailed requirements for the preparation of EIR findings. The findings and statement of overriding considerations (as well as the mitigation monitoring or reporting program) are separate from the final EIR. They are only adopted once the final EIR has been certified by the lead agency and the agency has approved the project.

State CEQA Guidelines Section 15091 discusses the required findings:<sup>1</sup>

- (a) No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects, accompanied by a brief explanation of the rationale for each finding. The possible findings are:

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<sup>1</sup> Public Resources Code Section 21081 is the basis for State CEQA Guidelines Section 15091:

...no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur if the project is approved or carried out unless both of the following occur:

- (a) The public agency makes one or more of the following findings with respect to each significant effect:
- (1) Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.
  - (2) Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
  - (3) Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report.
- (b) With respect to significant effects which were subject to a finding under paragraph (3) of subdivision (a), the public agency finds that specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment.

- (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 agency making the finding. 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.
- (b) The findings required by subdivision (a) shall be supported by substantial evidence in the record.
- (c) The finding in subdivision (a)(2) shall not be made if the agency making the finding has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives. The finding in subdivision (a)(3) shall describe the specific reasons for rejecting identified mitigation measures and project alternatives.

State CEQA Guidelines Section 15093 describes the requirements for the statement of overriding considerations as follows:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of 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, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) When the lead agency 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 agency 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 an agency 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.

## **Standard of Review**

A court reviewing the adequacy of findings or a statement of overriding considerations will review the substantial evidence supporting the findings or statement of overriding considerations. Findings or a statement of overriding considerations that lack supporting

substantial evidence will be invalidated. “Substantial evidence” means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached” (State CEQA Guidelines Section 15384[a]).

An essential part of preparing the findings or statement of overriding considerations is citing substantial evidence in the record to support the findings or statement of overriding considerations. This point highlights the importance of responding to comments on the draft EIR specifically and in full, with an eye toward ensuring there is substantial evidence to support the later findings and statement of overriding considerations. The agency’s responses in the final EIR should include additional studies to bolster the conclusions in the EIR or explanations of why new alternatives or mitigation measures proposed by commenters are not feasible. In any case, the evidence must be included in the final EIR and elsewhere in the administrative record.

## **Who Is Responsible for Preparing the Findings and the Statement of Overriding Considerations?**

CEQA and the State CEQA Guidelines are silent on who may draft the findings or statement of overriding considerations. However, the lead agency is responsible for the adequacy of the findings or statement of overriding considerations that it adopts. Not uncommonly, a lead agency delegates to its CEQA consultant the drafting of the findings or statement of overriding considerations. In that case, the lead agency will review and finalize the findings or statement of overriding considerations prior to adopting them.

## **What Should Be Included in the Findings?**

The CEQA findings must disclose the final disposition of each of the significant impacts identified in the final EIR. For purposes of the findings, “significant impacts” are the following:

- Impacts found to be less than significant as a result of mitigation measures
- Impacts found to be significant and unavoidable

The findings are not required to address project impacts that are less than significant or those effects that the EIR concludes have “no impact.”

There are three potential findings described in Section 15091 for each significant impact. Finding (a)(1) is used when the lead agency will apply one or more mitigation measures to the impact. Finding (a)(2) is used when a responsible agency is expected to apply the mitigation measure. Finding (a)(3) is used when a mitigation measure associated with the impact is infeasible. Finding (a)(3) is also used to address the alternatives examined in the EIR that were not adopted by the lead agency.

Depending on the impact determination, more than one finding may be appropriate. The specific Section 15091 finding or findings should be specifically identified under the discussion of each impact.

When would more than one finding be applied to an impact? There are several situations:

- The impact is less than significant with mitigation, with responsibility for implementing the mitigation divided between the lead agency and one or more other agencies. In this situation, both findings (a)(1) and (a)(2) are needed.
- The impact is significant and unavoidable, although mitigation will be implemented. In this situation, both findings (a)(1) and (a)(3) are needed.
- The impact is significant and unavoidable, although mitigation will be implemented by the lead and responsible agencies. In this situation, findings (a)(1), (a)(2), and (a)(3) are needed.

In addition to the disposition of impacts, the findings must explain why each of the alternatives examined in the EIR (including the no-project alternative) or suggested in the comments on the draft EIR is not feasible. Be sure to address the feasibility of alternatives suggested by draft EIR commenters (*The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603). The feasibility of alternatives is a crucially important aspect of the findings. “Feasible” is defined in State CEQA Guidelines Section 15364 as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”

The feasibility of alternatives arises at two distinct points in the CEQA process: the first in the EIR and the second after project approval. At the first point, the alternatives selected for examination in the draft EIR must be at least “potentially feasible” to warrant inclusion in the EIR. At the second point, when making findings under Section 15091(a)(3), the decision-makers will determine the ultimate feasibility of the alternatives (*California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957; see also *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490).

As set out in Section 15091(a)(3), there are several reasons why an alternative may be found infeasible. If the agency chooses to rely on economic reasons to find an alternative infeasible, the agency must present sufficient information about the relative costs of the project and its alternatives to show that the “marginal costs of the alternative as compared to the cost of the proposed project are so great that a reasonably prudent property owner would not proceed with the [project]” (*Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587). “The mere fact that an alternative might be less profitable does not itself render the alternative infeasible unless there is also evidence that the reduced profitability is ‘sufficiently severe as to render it impractical to proceed with the project’” (*Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167). An economic study of the project and its alternatives may be needed in order to document the cost differential (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656).

## Generic Findings Outline

Here's a generic outline for preparing CEQA findings.

### Section 1. Overview of State CEQA Guidelines Findings Requirements

Brief summary of the requirements of State CEQA Guidelines Section 15091.

### Section 2. Findings on Significant Impacts (apply this to each significant impact)

Description of the impact and its significance

Finding (a)(1), (a)(2), or (a)(3) (or a combination thereof), as applicable

If finding (a)(1): description of the mitigation measure(s) and how they reduce or avoid the impact

If finding (a)(2): description of the mitigation measure(s) that will be the responsibility of the responsible agency to require and why the responsible agency is expected to require it

If finding (a)(3): description of the specific considerations that make infeasible the mitigation measure, with supporting substantial evidence for infeasibility

### Section 3. Findings on Alternatives (for each alternative)

Brief summary of the alternative

Specific reasons why the alternative is infeasible, supported by substantial evidence (a conclusory finding that is not supported by substantial evidence is insufficient)

## Generic Statement of Overriding Considerations

Describe the project's specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, that warrant its approval. This is an overall statement on the project, and not on the individual significant unavoidable impacts. Cite the supporting evidence in the administrative record for each benefit.

## When Are the Findings and a Statement of Overriding Considerations Prepared?

The findings and the statement of overriding considerations are prepared in advance of approval of the project. No findings need be adopted if the project is denied (*Center for Biological Diversity v. California Dept. of Conservation, Division of Oil, Gas, and Geothermal Resources* (2019) 36 Cal.App.5th 210).

The findings and statement of overriding considerations will be adopted, along with the mitigation monitoring or reporting program, at such time as the project is given final approval (*Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941).

## Are There Differences Between the Findings for an ND, MND, or EIR?

No special findings are necessary when approving a project for which a negative declaration or mitigated negative declaration was adopted. The ND or MND is in itself a statement that the agency has found that the project will not result in any significant environmental impact or significant environmental impact that cannot be mitigated below the level of significance.

## Preparing the Findings in a Joint CEQA/NEPA Document

When a project requires approvals from a California public agency but will also be carried out, financed, or approved in part by a federal agency, the California and federal agencies may opt to prepare a joint EIR/EIS or ND/FONSI to meet the requirements of both CEQA and the National Environmental Policy Act (NEPA). The joint document will meet requirements of both CEQA and NEPA; however, the CEQA findings are limited to the CEQA portion of that document. Once a final joint document has been prepared, the California agency will adopt or certify the document. When the document is an EIR/EIS, the California agency will adopt findings and (if necessary) a statement of overriding considerations to satisfy CEQA. The federal agency is not a part of that process. It will adopt a “record of decision” upon approving the project that fulfills a similar role under NEPA.

## Important Cases

The following published cases involve issues related to findings:

- *Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609
- *Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839
- *San Diego Navy Broadway Complex Coalition v. California Coastal Commission* (2019) 40 Cal.App.5th 563
- *Center for Biological Diversity v. California Dept. of Conservation, Division of Oil, Gas, and Geothermal Resources* (2019) 36 Cal.App.5th 210
- *Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656

- *Los Angeles Conservancy v. City of West Hollywood* (2017) 18 Cal.App.5th 1031
- *Living Rivers Council v. State Water Resources Control Board* (2017) 15 Cal.App.5th 991
- *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941
- *South County Citizens for Smart Growth v. County of Nevada* (2013) 221 Cal.App.4th 316
- *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439
- *Save Panoche Valley v. San Benito County* (2013) 217 Cal.App.4th 503
- *The Flanders Foundation v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603
- *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316
- *California Oak Foundation v. The Regents of the University of California* (2010) 188 Cal.App.4th 227
- *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957
- *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587
- *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336
- *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490
- *San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656
- *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167

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## Sources

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Author. Year. *Title*. Month Day. Publisher, City, State. URL, if needed.

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