



# CEQA Portal Topic Paper

## Mitigation Measures

---

### What Are Mitigation Measures?

The California Environmental Quality Act (CEQA) requires public lead agencies to impose feasible mitigation measures as part of the approval of a “project” in order to substantially lessen or avoid the significant adverse effects of the project on the physical environment. California Code of Regulations, Title 14 (“CEQA Guidelines”), Section 15370 defines “mitigation” as:

- Avoiding the impact altogether,
- Minimizing the impact by limiting its degree or magnitude,
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environmental resource,
- Reducing or eliminating the impact over time, through actions that preserve or maintain the resource, and
- Compensating for the impact by replacing or providing substitute resources or environmental conditions, including through permanent protection of such resources in the form of conservation easements.

When imposing mitigation, lead agencies must ensure there is a “nexus” and “rough proportionality” between the measure and the significant impacts of the project. (CEQA Guidelines § 15126.4, subd. (a)(4)(A)–(B), citing *Nollan v. Ca. Coastal Commission* (1987) 483 U.S. 825, *Dolan v. City of Tigard* (1994) 512 U.S. 374.) All mitigation must be feasible and fully enforceable, and all feasible mitigation must be imposed by lead agencies. (CEQA Guidelines, § 15041.) But, if any suggested mitigation is found to be infeasible the lead agency must explain why and support that determination with substantial evidence, presented in their findings and a statement of overriding considerations. (CEQA Guidelines, §§ 15091 and 15093.) Mitigation measures may either be integrated into proposed projects or imposed as mitigation for identified significant environmental impacts (see “Can Mitigation Measures be Included as Part of Project Design?” below).

Note that this paper focuses on the drafting of mitigation measures and assumes that the environmental analysis has concluded that mitigation is necessary.

## Why Are Mitigation Measures Important?

Mitigation measures modify a project "...to substantially lessen or avoid significant effects on the environment..."<sup>1</sup> thus fulfilling a basic purpose of CEQA to:

"Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible." (State CEQA Guidelines § 15002(a)(3))

As a result, the ability to mitigate significant environmental impacts is a key focus of CEQA. Conversely, the inadequacy of mitigation measures is a frequently used claim in lawsuits challenging CEQA documents.

## Can I Apply a Mitigation Measure?

It is important to understand that CEQA is intended to be used in conjunction with agency's discretionary powers. CEQA does not grant an agency powers independent of the powers granted to the agency by other laws.<sup>2</sup> The practical implication of this is that some lead agencies do not have the authority to mitigate for some impacts because the impact will either occur outside of their powers or outside of their jurisdiction. An example might be a roadway improvement outside of a city limit or on state lands. In addition to counties and cities, there are numerous public agencies that are limited in powers (i.e. irrigation districts, fire districts, school districts, and local agency formation commissions) but may also be lead agencies. Be sure to understand the power(s) of the lead agency when preparing mitigation measures.

## Are Mitigation Measures Required in An Initial Study/Mitigated Negative Declaration?

Mitigation measures are required to be included in an initial study (IS) when the analysis identifies potentially significant or significant environmental impacts. When an IS identifies a significant environmental impact, a negative declaration (ND) or mitigated negative declaration (MND) may be prepared for the project only if the analysis in the IS:

- Shows that there is no substantial evidence, in light of the whole record before the agency, that the project may have a reasonably foreseeable significant effect on the environment (in which case a ND would be prepared), or
- Identifies potentially significant effects, but includes revisions or mitigation measures, prior to public review, that would clearly avoid or reduce the effects of the project to a less-than-significant level (in which case an MND would be prepared) (CEQA Guidelines, § 15070).

If the IS finds that there is no substantial evidence in the record to conclude that a significant

---

<sup>1</sup> CEQA Guidelines Section 15041(a).

<sup>2</sup> CEQA Guidelines Section 15040

environmental impact would result, the lead agency is not required to adopt any mitigation measures<sup>3</sup>. If mitigation is required and will reduce all impacts to a less-than-significant level, an MND can be adopted by the lead agency if “revisions in the project plans or proposals made by, or agreed to by the applicant before a proposed mitigated negative declaration 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 (CEQA Guidelines, § 15070). Mitigation measures must be included in an MND prior to public circulation. (CEQA Guidelines, § 15071). When the IS finds that there may be a significant impact and feasible measures are not available to reduce the impact to a less-than-significant level, the lead agency must prepare an environmental impact report (EIR) for the project.

## Are Mitigation Measures Required In An Environmental Impact Report?

An EIR must include, for significant impacts, all feasible mitigation measures that could avoid or reduce those impacts (CEQA Guidelines, § 15126.4). Unlike measures in an MND, mitigation measures in an EIR need not reduce a significant impact to a less-than-significant level. But, if a project’s significant impacts are not avoided or substantially lessened by feasible mitigation, then the lead agency must prepare and adopt findings and a statement of overriding considerations that justifies its decision to approve the project, despite the significant environmental impacts, supported by information in the EIR and other information in the record. (CEQA Guidelines, § 15093.)

## How Do I Create An Adequate Mitigation Measure?

When developing mitigation measures, the author should begin with a clear understanding of the specific impact to be mitigated, the goal of the mitigation measures, how the mitigation measures will be implemented, and who will be using them. Other agencies besides the lead agency (e.g., responsible agencies) may rely on the mitigation measures, and other parties, aside from lead agency staff (including, but not limited to, project planners, attorneys, engineers, and construction staff), may need to interpret and implement the mitigation measures.

Ultimately, the parties responsible for implementing the mitigation measures may be far removed from the drafters and may not have access to relevant project details. Clarity, completeness, and context are important concepts to keep in mind. Mitigation measures should be written clearly and provide all of the information necessary for successful implementation via a mitigation monitoring and/or reporting program (MMRP) (CEQA Guidelines, § 15097), even if the complete IS or EIR is not available. A complete mitigation measure will include details of what needs to be done, how it will be done, who is responsible for doing it, and when it needs to be done.

In practice the MMRP, or in some instances just the mitigation measures, are all the permitting

---

<sup>3</sup> While the adoption of mitigation measures is not required if significant impacts are not identified, it is not prohibited for the project proponent to voluntarily agree to measures such as Best Management Practices to further minimize a less-than-significant environmental effect.

agencies may have to work from in reviewing a project before approving a permit. They may not always have the time or access to the complete IS or EIR to help understand the intent of the mitigation measures.

The following are some rules and common best practices for writing mitigation measures:

### Rules

- Do not defer mitigation measures until a later time, except as provided in the CEQA Guidelines. (see further discussion below in “Deferred Mitigation”). (CEQA Guidelines, § 15126.4, subd. (a)(1)(B))
- Ensure that mitigation measures are fully enforceable through legally binding instruments. (CEQA Guidelines § 15126.4(a)(2))
- Ensure that mitigation measures are consistent with all applicable constitutional requirements such as having a nexus to a legitimate governmental interest and being roughly proportional to the impact. (CEQA Guidelines § 15126.4(a)(4))
- Mitigation measures can only be imposed to address a significant environmental impact identified in the analysis.
- For historic resources CEQA Guidelines § 15126.4(b) provides specific recommendations for mitigation measures.
- Mitigation measures can only address impacts associated with the proposed project and not preexisting environmental conditions.
- Remember that mitigation measures must be within the powers of the lead and responsible agencies to impose and enforce to ensure that they are carried out during project implementation. CEQA does not give an agency new power. (CEQA Guidelines § 15040(b))

### Best Practices

- Make sure that the mitigation measure is independently measurable. (i.e., set back x feet from the wetland)
- Avoid mitigation measures that are intended to solely ‘educate’ as in “Educating the backhoe driver on how to recognize fossils.”
- Avoid repeating federal, state, or local legal requirements. If there is already a law that addresses the impact, compliance with the law should be discussed in the analysis but does not need to be a mitigation measure. (i.e., Applicant must pay development impact fees.)
- Ensure that mitigation measures are site appropriate, accurate, and sufficiently detailed to be effective at the time they are applied to the project.
- Be sure to tailor recurring mitigation measures to the project<sup>4</sup>.

---

<sup>4</sup> Mitigation measures are frequently copied between documents and the failure to modify them to the specific project creates confusion during implementation. If the same mitigation measure occurs on multiple projects a better approach would be to adopt it as a standard and simply refer to compliance in the analysis.

- Be sure to use clear, straightforward language; assume that a layperson will be charged with implementing or explaining the mitigation measure.
- Avoiding impacts is the best mitigation. If the project design can avoid the environmental impact, start there as a discussion and explain why it cannot be avoided in the analysis.
- Avoid repeating mitigation measures in the same document. (i.e. if the dust control mitigation in the air quality analysis also addresses erosion concerns in geology and soils) A simple reference to the mitigation measure elsewhere in the document is sufficient. Repeating mitigation measures adds to confusion and increases the potential for errors if one of them gets changed and the others do not.
- Be sure to include the timing of implementation for each mitigation measure. Note that if the mitigation measure cannot be in place by the time needed per the environmental analysis you may have a significant and unavoidable impact. (see Timing of Mitigation below).
- Ensure that all steps necessary to implement the mitigation measure are laid out in sufficient detail to ensure proper implementation. The mitigation measures should include enough detail so that requirements are not misinterpreted.
- Mitigation measures should allow for some flexibility, where appropriate, or opportunities for modification if circumstances change following approval of the environmental document. Changes might include construction timing, phasing, or changes in site conditions. Flexibility may both allow for better protection of environmental resources and avoid problems with project implementation. However, flexibility should not reduce a mitigation measure's effectiveness or defer its implementation.

## **Can Mitigation Measures Be Included As Part Of Project Design?**

By definition, mitigation measures are not part of the original project design. Rather, mitigation measures are actions taken by the lead agency to reduce impacts to the environment resulting from the original project design. Mitigation measures are identified by the lead agency after the project has undergone environmental review and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts.

Some project proponents incorporate “avoidance and minimization measures” or “environmental commitments” into the project design as part of the project description, and the CEQA Guidelines also reference these features in Section 15064(f)(2) and 15126.4(a)(1)(A). Examples of project design features that may address environmental impacts include construction traffic management plans, use of energy efficient lighting, solar panels, construction lighting that will be shielded and directed away from neighboring properties, and building standards in excess of the requirements of Title 24 Building Code. These are not considered mitigation measures because they are part of the project that is undergoing environmental review. Nonetheless, in order to address an environmental impact, project design features that include impact avoidance and/or minimization measures must be described, and their effectiveness in reducing or avoiding potential impacts

specifically analyzed, in the environmental document.

Failure to evaluate the effect of these measures in the impact analysis violates the legal requirement to provide a logical argument, supported by substantial evidence, for each impact conclusion in an environmental document (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645). Therefore, concluding that an impact is less than significant without describing how avoidance and minimization measures of the project design prevent or minimize the impact, is not legally adequate.

While not “mitigation”, a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact.

## **Substituting Mitigation Measures Following Public Review Of An Environmental Document**

If a lead agency determines, following public review of an IS/MND or Draft EIR, that proposed mitigation measures are not feasible or would not reduce potential effects to a less-than-significant level, it may choose to remove those mitigation measures and substitute other measures. In an IS/MND, prior to making this substitution, however, the lead agency must:

- Hold a public hearing on the matter. If another public hearing for the environmental document is scheduled, this matter may be incorporated into that meeting. (CEQA Guidelines, § 15074.1, subd. (b)(1).)
- Adopt a written finding (supported by substantial evidence in the record) that the new measure is equally or more effective in mitigating the identified environmental impact and that the new measure will not itself create a significant environmental impact (CEQA Guidelines, § 15074.1, subd. (b)(2).).

If both of these conditions are met, recirculation of the document is not required; otherwise, recirculation may be required (CEQA Guidelines, § 15073.5).

Revisions to mitigation measures in Draft EIRs can be made in the Final EIR prior to certification by the lead agency, with an explanation for the revision, including why recirculation is not needed. Any substantive revisions to mitigation measures made after an EIR is approved and adopted by a lead agency generally requires public notice and adoption at a public hearing with an explanation as to why the revision(s) was required.

## Mitigation Measures That Are the Responsibility Of Other Parties To Implement.

CEQA operates under the principle of “one project, one document.” In other words, one environmental document should be prepared for a given project. When agencies other than the lead agency (such as responsible agencies) must comply with CEQA for the same project, the document prepared by the lead agency must be used by these other agencies to fulfill their CEQA obligations, with some limited exceptions.

The set of mitigation measures that are made a part of an MND or EIR must include not only the measures that are the responsibility of the lead agency, but also any measures that will be imposed by responsible agencies. Coordination with responsible agencies required by CEQA can be helpful in identifying such mitigation measures (see Lead Agency, Responsible Agencies, and Trustee Agencies Topic Paper).

## Mitigation Monitoring and Reporting Plans

When approving an environmental document containing mitigation measures, the lead agency must adopt a mitigation monitoring and reporting program (MMRP) to ensure the measures falling under its responsibility are implemented. (CEQA Guidelines, § 15097.) The lead agency is responsible for ensuring that mitigation measures are implemented in accordance with the program; however, this responsibility may be delegated to another party if that party agrees to take responsibility. As each responsible agency approves the environmental document, it will likewise adopt an MMRP for the measures falling under its responsibility.

The preparation of an MMRP is required only when a public agency has made findings related to an EIR or adopted an MND in conjunction with approving a project. (CEQA Guidelines, § 15097, subd. (a)) While there is no requirement to include the reporting/monitoring program in the draft EIR or MND, many agencies choose to do so.

## Timing of Mitigation

The environmental analysis should clearly state when the mitigation is needed to address the identified significant environmental impact. Typically, mitigation measures are applied in one of the following time periods for a construction project:

- **Prior to Ground Disturbance.** This would include mitigation like preconstruction biological surveys or changes to key design elements (i.e., storm water detention or roadways). Usually these types of mitigation measures are also linked to permits like grading.
- **During Ground Disturbance/Construction.** Mitigation measures here might include noise attenuation for construction or ongoing monitoring for tribal resources.
- **Prior to Occupancy.** These measures are often offsite such as construction of sidewalks, traffic signals, or extension of utilities.

- **Operation.** Mitigation after occupancy (completion of a project) is difficult to enforce, and more appropriately belongs in a condition of approval. Examples include limitations on hours of operation, or the number of special events that can be held.

Certainly, there are modifications to the above timing, such as specific dates/times for preconstruction biological surveys, or limitations on grading due to winter weather. If there is something unique about the timing of a mitigation measure it should be discussed in the analysis and incorporated into the mitigation measure. Also, if a measure must be in place by a specific time, that too should be supported by the environmental analysis and technical studies.

In addition to ensuring that the timing is referred to in a consistent and understandable fashion, it is important that the agency or department responsible for implementing the mitigation measure be consistently referenced. (i.e., public works, planning, public health) If implementation or monitoring requires special expertise or equipment (i.e. noise monitoring, light meter) be sure that the responsible agency or department has both the equipment and the expertise. If the expertise is not within the agency, there may be a need bring in outside technical assistance which should be identified in the analysis and MMRP.

## Deferred Mitigation

Deferred mitigation refers to the practice of putting off the precise determination of whether an impact is significant, or precisely defining required mitigation measures, until a future date. Over the years, the courts have addressed the issue of deferred mitigation numerous times to the point where patterns of appropriate and inappropriate CEQA behavior have emerged. Such certainty is not possible if the details of enforceable mitigation measures to avoid the impacts are deferred.

Deferral should only be considered when there is a legitimate reason why the agency cannot develop a specific mitigation measure at the time of the project environmental review. As discussed below, deferring mitigation does not mean deferring the inclusion of a mitigation measure in the environmental document or the implementation of that measure. It refers to deferring to a future time for the refinement or full definition of the adopted mitigation measure.

The essential rule for proper deferral of the specifics of mitigation was established in *Sacramento Old City Assoc. v. City Council of Sacramento* (1991) 229 Cal. App. 3d 1011. This case held that the City of Sacramento had correctly deferred the selection of specific mitigation measures to reduce the parking impacts from the expansion of its convention center. Under the reasoning established in this case and cited in many decisions since, in order to meet CEQA's requirements a mitigation measure must meet one of the following basic conditions:

- The agency must commit itself to the mitigation by identifying and adopting one or more mitigation measures for the identified significant effect. The mitigation measure must also set out clear performance standards for what the future mitigation must achieve.
- Alternatively, the agency must provide a menu of feasible mitigation options from which the applicant or agency staffs can choose in order to achieve the stated performance standards.



The courts have opined on deferred mitigation in reported cases many times since the *Sacramento Old City* decision, and three points stand out. First, each case is fact-specific. So, keeping a clear administrative record that contains substantial evidence supporting the deferred approach is crucial. Second, performance standards must be included in the mitigation measure; specific performance standards are needed in order to show that the final mitigation measure will be effective. Third, the lead agency must ensure that the future mitigation will be implemented—oftentimes done through a condition of approval for obtaining a development permit. Inherent in the commitment to mitigation and adoption of performance standards is a responsibility to ensure that the final mitigation is effective and is actually implemented.

“[W]hen a public agency has evaluated the potentially significant impacts of a project and has identified measures that will mitigate those impacts,’ and has committed to mitigating those impacts, the agency may defer precisely how mitigation will be achieved under the identified measures pending further study.” (*Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, citing *California Native Plant Society v. City of Rancho Cordova* (2010) 172 Cal.App.4th 603.)

## Impacts of Mitigation Measures

Occasionally a mitigation measure will cause an impact. CEQA requires that impacts of mitigation measures be evaluated in the environmental document, but can be “...in less detail than the significant effects of the project as proposed.” (CEQA Guidelines § 15126.4(a)(1)(d).) Examples of a mitigation measure causing an impact could include widening of a roadway, demolition of an existing building, extension of utilities. These impacts, and a method of addressing them, should be discussed in the analysis.

## Important Cases

The following published cases involve issues related to mitigation measures:

- *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296  
Mitigation measures must be feasible, and an MND cannot be adopted where there is a question that any mitigation measure is infeasible.
- *Sacramento Old City Assoc. v. City Council of Sacramento* (1991) 229 Cal. App. 3d 1011  
The details of mitigation may be deferred under certain circumstances.
- *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884  
Adopted building codes and standards can be assumed to minimize environmental impacts, and need not be included as mitigation measures, as long as the environmental benefits of the cited codes and sections are described.

## Related CEQA Portal Topics

- Lead Agency, Responsible Agencies, and Trustee Agencies
- Impact Analysis [in process]

- Overview of NEPA [in process]

## Mitigation Measures In CEQA Guidelines

The following CEQA Guidelines sections address mitigation measures:

- **Section 15041** – *Authority to Mitigate*. This section summarizes the authority of the lead agency and responsible agency to require avoidance, minimization, and mitigation measures, and prohibits reduction of housing units in housing projects as mitigation if there is another feasible mitigation option.
- **Section 15073.5** – *Recirculation of a Negative Declaration Prior to Adoption*. This section summarizes circumstances under which a Negative Declaration or Mitigated Negative Declaration would or would not need to be recirculated, including the substitution of mitigation measures.
- **Section 15074.1** – *Substitution of Mitigation Measures in a Proposed Mitigated Negative Declaration*. This section summarizes requirements for substituting equivalent or more effective mitigation measures following public circulation and prior to adoption of a Mitigated Negative Declaration.
- **Section 15097** – *Mitigation Monitoring or Reporting*. This section summarizes monitoring and reporting requirements to ensure that the mitigation measures and project revisions identified in an Environmental Impact Report or Negative Declaration are implemented.
- **Section 15126.4** – *Consideration and Discussion of Mitigation Measures Proposed to Minimize Significant Effects*. This section discusses the specific parameters of mitigation measures included in an Environmental Impact Report, including specific requirements for measures to mitigate impacts on historical impacts and greenhouse gas emissions.
- **Section 15370** – *Mitigation*. This section provides the definition of mitigation and summarizes what is considered mitigation.

## Authors

[AEP](#) CEQA Portal Committee

## Reviewers

Andee Leisy, Remy Moose & Manley LLP

**Date Updated: February 10, 2020**

## Legal Disclaimer:

*The AEP-sponsored CEQA Portal, this Topic Paper, and other Topic Papers and information provided as part of the CEQA Portal are not intended as legal advice. The information contained herein is being provided as a public service and has been obtained from sources believed reliable. However, its completeness cannot be guaranteed. Further, additional facts or future*

*developments may affect subjects contained herein. Seek the advice of an attorney before acting or relying upon any information provided herein.*