CEQA Portal Topic Paper

Subsequent and Supplemental EIRs and Streamlining

What Are Subsequent and Supplemental EIRs and Streamlining?

Subsequent environmental review and streamlining are complex topics that could each be the subject of its own paper. For purposes of this topic paper, we focus on the relationship between the subsequent review provisions in Public Resources Code Section 21166 and CEQA Guidelines[1] Section 15162, and the tiering provisions for program EIRs in Public Resources Code (PRC) Sections 21093 and 21094 and CEQA Guidelines Sections 15152 and 15168.

Streamlining Generally

Streamlining under CEQA is a process by which an agency can rely on previously adopted environmental review to approve a future discretionary action. Prior to conducting a new environmental analysis for a project, an agency should consider whether the project is covered by a previous environmental review (CEQA Guidelines Section 15153). CEQA provides several opportunities for agencies to streamline environmental review, which practitioners should review intermittently for general knowledge. For example, CEQA and the CEQA Guidelines allow for "staged" EIRs, which an agency may prepare for "complex or phased projects" where the agency does not know specific project details at the time of the first discretionary approval. The agency can then rely on the overarching analysis in the staged EIR and evaluate only project-level details in a later review (CEQA Guidelines Section 15167[a]). Similarly, CEQA allows for "master" EIRs, which can be prepared for classes of projects in order to allow for future streamlining (subject to review five years after certification) (PRC Sections 21157, 21157.1, 21157.5, 21157.6; CEQA Guidelines Sections 15175, 15176, 15177, 15178, 15179).

The California State Legislature has also created specific provisions to promote streamlining environmental review for certain types of projects, including infill development (PRC Section 21094.5; CEQA Guidelines Section 15183.3) and some housing projects (PRC Sections 21159.21, 21159.22, 21159.23, 21159.24, 21159.25, 21159.28). CEQA and the Guidelines also provide streamlined review for projects consistent with zoning, a community plan or a general plan for which an EIR was certified (PRC Section 21083.3, CEQA Guidelines Section 15183).

The statute and the CEQA Guidelines provide a framework for agencies to tier from a "program" EIR prepared for a program, plan, policy, or ordinance (PRC Sections 21093, 21094; CEQA

[1] The CEQA Guidelines are located at Title 14, Division 6, Chapter 3 of the California Code of Regulations.

Guidelines Sections 15168, 15152). The program EIR will cover "general matters and environmental effects" for the overarching program, plan, policy, or ordinance, and the agency will prepare "narrower or site-specific [EIRs] which incorporate by reference the discussion" in the program EIR (PRC Section 21068.5).

To determine whether a project can tier from a certified program EIR, a lead agency should consider whether the later project (PRC Section 21094[b]):

(1) is consistent with the program, plan, policy, or ordinance for which the original EIR was prepared and certified.

(2) is consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located; and

(3) would not trigger the need for a subsequent or supplemental EIR (discussed in more detail below).

If a project meets these requirements, the lead agency should prepare a tiered EIR that analyzes the later project's significant effects, except for the environmental effects that were mitigated or avoided as part of the program EIR (PRC Section 21094[a]). The tiered EIR is not required to consider impacts that were analyzed "at a sufficient level of detail … to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project" (PRC Section 21094[a]).

In addition, when an agency has prepared a program EIR and a later action is "within the scope" of the program EIR and does not trigger the requirements for subsequent review pursuant to PRC Section 21166 and CEQA Guidelines Section 15162, CEQA does not require preparation of any further environmental review (PRC Section 21094[a] and [b]; *Center for Sierra Nevada Conservation v. County of El Dorado* [2012] 202 Cal.App.4th 1156, 1172). It is important to include a discussion of potential future projects in the program EIR and provide the substantial evidence needed to demonstrate that the proposed project was covered by the program EIR. (*CREED v. San Diego Redevelopment Agency* [2005] 134 Cal.App.4th 598, 610.) Benefits of Streamlining Environmental Review

Reliance on a program EIR can simplify preparation of later EIRs, which saves time and resources and prevents redundancy. The program EIR can "[p]rovide the basis in an initial study

for determining whether the later activity may have any significant effects" (CEQA Guidelines Section 15168[d][1]). The agency can also incorporate the program EIR by reference into the later EIR, in order "to deal with regional influences, secondary effects, broad alternatives, and other factors that apply to the program as a whole" (CEQA Guidelines Section 15168[d][2]). Subsequent review can focus on a specific later activity "to permit discussion solely of new effects which had not been considered before" (CEQA Guidelines Section 15168[d][3]).

Preparing a program EIR can also streamline an agency's compliance with regulatory procedures, avoid repetitive and duplicative analysis of environmental effects that an agency has already examined, and allow the agency to focus later analysis on effects that may be mitigated or avoided in connection with a later project (PRC Section 21093[a]). Program EIRs can assist an agency with thoroughly evaluating cumulative impacts that might otherwise be difficult to analyze in a project-level document (CEQA Guidelines Section 15168[b]). Agencies can also avoid duplicative reconsideration of basic policy considerations, which can be addressed comprehensively in a program EIR (CEQA Guidelines Section 15168[b]).

When Is a Program EIR Appropriate?

An agency may prepare a program EIR for "a series of actions that can be characterized as one large program" that are related either: (1) geographically; (2) as part of a single chain of action; (3) in connection with governance of a continuing program; or (4) as individual entities that are allowable under the same statute or regulation with "generally similar" environmental effects and mitigation (CEQA Guidelines Section 15168[a]). Agencies most commonly prepare program EIRs when they adopt a general plan.

CEQA does not specify the level of detail that must be included in a program EIR. Rather, the level of analysis required depends on the nature of the project and is subject to the "rule of reason" (*San Franciscans for Livable Neighborhoods v. City and County of San Francisco* [2018] 26 Cal.App.5th 596, 608). The analysis must disclose what the agency reasonably knows at the time the program EIR is prepared, and it cannot defer analysis of mitigation measures to a later date (*Cleveland National Forest Foundation v. San Diego Association of Governments* [2017] 17 Cal.App.5th 413, 441, 443; CEQA Guidelines Section 15126.4[a][1][B]).

Caution is advised when processing a development project under a general plan–level program EIR. Often the mitigation measures used in a general plan EIR are at a very high level and state policies in the plan that are advisory rather than required. The measures can refer to procedures used to evaluate an environmental impact rather than project-specific measures appropriate to a project-level EIR. As always it is important to complete the analysis consistent with the level of detail of the project. Similarly, project-level mitigation should address the specific impacts that might not be addressed in a general plan–level EIR.

It is important to keep in mind that, when considering the adequacy of an EIR, courts look to the substance rather than the title. "Courts strive to avoid attaching too much significance to titles in ascertaining whether a legally adequate EIR has been prepared for a particular project" (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* [2014] 227 Cal.App.4th 1036, 1048). In some cases, an EIR may include both program-level and project-level analyses. One example is an EIR for a specific plan, which is generally a program-level analysis, that also includes a project-level analysis for the first phase of development.

Subsequent and Supplemental EIRs

Subsequent environmental review is environmental analysis prepared for a later discretionary approval after an agency has certified a prior EIR or adopted a ND[2] (PRC Section 21166; CEQA Guidelines Section 15162). Prior to approving a later project based on a program EIR, an agency must first determine whether the project is "within the scope" of the program EIR and whether it triggers the requirements for subsequent environmental review. Both determinations must be supported by substantial evidence. If the agency is required to conduct subsequent environmental review after a program EIR, the later analysis may rely on the program EIR for some portion of the subsequent review (CEQA Guidelines Sections 15168[c][1], 15152).

When Is a Supplemental or Subsequent EIR Required?

When an agency has prepared a program EIR and a further discretionary approval is necessary, a subsequent or supplemental EIR is required only where the later activity, which is within the scope of the program EIR, would have effects that were not examined in the program EIR (CEQA Guidelines Section 15168[c][1]). The requirements for subsequent and supplemental review are limited in order to balance "CEQA's central purpose of promoting consideration of the environmental consequences of public decisions with interests in finality and efficiency" (*Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* [2016] 1 Cal.5th 937, 949).

The agency must first determine, based on substantial evidence, whether the previous EIR retains some informational value (*Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* [2016] 1 Cal.5th 937, 949). If so, the agency may prepare an initial study to determine whether the project triggers the requirements for subsequent review (PRC Section 21094[c]).

When a program EIR or project-level EIR has been certified, a subsequent EIR is not required *unless* (PRC Section 21166; CEQA Guidelines Section 15162):

(1) "Substantial changes are proposed in the project which will require major revisions" to the EIR "due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects";

(2) "Substantial changes occur with respect to the circumstances," and those changes will require "major revisions" to the EIR "due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects"; or

(3) "New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time" of preparation of the

[2] This paper focuses on subsequent and supplemental review after certification of an EIR, but agencies can also rely on the subsequent and supplemental review provisions after adoption of an ND. When an agency considers whether to conduct subsequent environmental review after an ND, courts apply the fair argument standard of review (*Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 959). An agency therefore is required to conduct subsequent review if a proposed modification *may* produce a significant environmental effect that was not studied in the previous ND.

> EIR, becomes available. Such information must show either: the project will have one or more significant effects not discussed in the previous EIR; significant effects previously examined will be substantially more severe; mitigation measures or alternatives previously found to be infeasible 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 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.

If the conditions in either section (1), (2), or (3), above, are triggered, an agency must prepare a subsequent environmental document. It is important to note that although triggering any one of the sections alone would require further review, there are also multiple components within each section. For example, where substantial changes to a project are proposed, the agency is only required to prepare a subsequent EIR if those changes require *major* revisions to the EIR and those changes are due to new significant effects or a substantial increase in the severity of effects identified in the prior EIR. If each of the components in a section is not met, a subsequent or supplemental EIR is not required. Under those circumstances, it may be appropriate to prepare an addendum to the prior EIR instead to consider the project changes and to document the evidence supporting the agency's conclusion that the changes do not result in new or substantially more severe significant effects (CEQA Guidelines Section 15164).[3]

A subsequent EIR could come about if an agency were attempting to use a certified EIR for a phase of a project that was not sufficiently defined when the EIR was prepared. Many agencies will designate an area in their general plan as "specific plan," assigning an amount of housing, office, commercial, or industrial uses as a lump sum for the area and leaving the physical design until later. A development project within the specific plan designation would then be required to prepare a specific plan that would include the project-level detail that could not be known at the time of EIR certification. If that project-level detail resulted in new significant impacts, then a subsequent EIR could be effective. The subsequent EIR would allow the agency to narrowly focus the subsequent analysis on the environmental impacts based on the newly available project detail.

If the requirements for a subsequent EIR are triggered, but "[o]nly minor additions or changes would be necessary to make the previous EIR adequately apply to the project in the changed situation," an agency may decide to prepare a supplemental EIR rather than a subsequent EIR (CEQA Guidelines Section 15163[a]).[4] Either type of EIR may conclude that there will be new significant unavoidable impacts, in which case the lead agency must adopt a statement of overriding considerations.

---

[3] Where some changes are necessary but the triggers in PRC Section 21166 and CEQA Guidelines Section 15162 are not met, "the lead agency shall determine whether to prepare a subsequent negative declaration, an addendum, or no further documentation" (CEQA Guidelines Section 15162[b]).

[4] A supplemental EIR need only contain "the information necessary to make the previous EIR adequate for the project as revised" (CEQA Guidelines Section 15163[b]). Agencies may limit consideration in a supplemental EIR to effects "not considered in connection with the earlier project" (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523).

An example would be if a project for which a certified EIR was prepared allowed for 50,000 square feet of office space and 15,000 square feet of commercial space and instead wanted to convert the 50,000 square feet of office space to 100 apartments. Using CEQA Guidelines Section 15162, an analysis would be needed that compared the physical changes associated with dwelling units versus office space impacts as reported in the EIR. Instrumental to the discussion would be the findings of fact from the EIR that highlighted the significant impacts and any impacts that were considered significant and unavoidable. Impacts such as those related to parkland, recreation, and public services that may have been dismissed with an entirely nonresidential project may result in a new significant impact because of the new design. If new impacts are significant, then a supplemental or subsequent EIR should be prepared to address the new impact. If the impacts were previously identified, then the analysis would need to determine if the addition of the apartments would result in a "substantial increase" in the severity of the impact. The term "substantial increase" is not defined in CEQA; therefore, each agency must interpret the term and support its interpretation with substantial evidence.

Determining in a particular situation whether it is appropriate to prepare a subsequent or supplemental EIR is a project-specific consideration, based on many factors. If an agency is required under PRC Section 21166 and CEQA Guidelines Section 15162 to conduct subsequent environmental review under a program EIR, the agency should proceed pursuant to PRC Section 21094 and CEQA Guidelines Section 15168 or 15152. The agency must prepare an initial study to consider whether the later project may cause significant effects that were not examined in the program EIR (PRC Section 21093[c]). The later report does not need to consider effects that were mitigated or avoided in the program EIR, or effects that were analyzed at a sufficient level of detail in the program EIR to enable those effects to be mitigated or avoided by site-specific revisions, the imposition of conditions, or by other means in connection with the approval of the later project (PRC Section 21093[b]; CEQA Guidelines Section 15152[d]).

As noted above, the court does not place importance on the title of the EIR, but rather focuses on whether the level of analysis is commensurate with the detail of the project. The subsequent EIR and the supplemental EIR are identical in processing in that both require public circulation of the draft document, response to comments, etc. Where they differ is in the magnitude of change between the project evaluated in the certified EIR and the one being proposed. If major changes to the original project description are required that would create more of an impact on the environment, then a subsequent EIR is appropriate. If new information is all that is needed to allow the newly proposed project to use the existing certified EIR, then a supplement to the original document would suffice. These determinations are necessarily specific to the project and the lead agency.

What If a Subsequent or Supplemental EIR Is Not Required?

When a later project is within the scope of the program EIR and does not meet the requirements in PRC Section 21166 and CEQA Guidelines Section 15162, further environmental review is not required (CEQA Guidelines Section 15168[c][2]; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* [2017] 17 Cal.App.5th 413, 425–426). This situation might arise when, for example, an agency implements changes to its zoning code that were previously

contemplated in its general plan and analyzed in the associated program EIR. When considering whether a later activity is within the scope of the program EIR, the agency may consider, among other factors, "consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure as described in the program EIR" (CEQA Guidelines Section 15168[c][2]; *Latinos Unidos de Napa v. City of Napa* [2013] 221 Cal.App.4th 192, 204). An agency's determination that a later project is within the scope of its program EIR is a factual question, which means courts should defer to the agency's decision, provided it is supported by substantial evidence (CEQA Guidelines Section 15168[c][2]). It is therefore important that agencies document in the record the reasons and evidence for the agency's determination.

An agency may prepare an addendum under CEQA Guidelines Section 15164 when a certified EIR has been prepared and some changes or revisions to the project are proposed, or the circumstances surrounding the project have changed, but none of the changes or revisions would result in significant new or substantially more severe environmental impacts. An addendum is not subject to the same notice and public review requirements as a subsequent or supplemental EIR, but the lead agency may elect to provide notices and a public review period.

In Closing

Both subsequent and supplemental EIRs must comply with the same requirements for notice and public review as for a draft EIR (CEQA Guidelines Sections 15162[d], 15163[c]). Response to public comments and a new final EIR, findings of fact, and if necessary a statement of overriding considerations would be required. Therefore, the amount of time saved by preparing a subsequent or supplemental EIR as compared to a project EIR may not be significant.

Important Cases

The following represent some of the published cases that relate to subsequent review and streamlining:

- *Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156: General plan program EIR did not provide sufficient detail to cover proposed management plan and mitigation fee program; agency was therefore required to prepare a tiered EIR.
- *Citizens Against Airport Pollution v. City of San Jose* (2017) 17 Cal.App.5th 413, 425–426: Substantial evidence in the record supported agency's determination that an eighth addendum to an airport master plan would not result in any new significant environmental impacts that substantially differed from those identified in an earlier EIR.
- *Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036: The title of a CEQA document is not dispositive. EIR for redevelopment of a former naval station provided decision-makers with sufficient analysis to intelligently consider the environmental consequences of the project.

- *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413: Agency failed to disclose known impacts and improperly deferred mitigation in program EIR.
- *Committee for Re-Evaluation of the T-Line Loop v. San Francisco Municipal Transportation Agency* (2019) 6 Cal.App.5th 1237: Substantial evidence supported agency's determinations that initial EIR retained some relevance to the decision-making process and that supplemental review was not required.
- *Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937: When there is a change in plans, circumstances, or available information after an agency initially approves a project, the agency must determine, based on substantial evidence, whether the original environmental document retains some informational value. Where it does, CEQA's subsequent review provisions apply. Where an agency relies on a prior EIR, the substantial evidence standard of review applies to the agency's determination not to conduct further review. Where an agency relies on a prior ND, the fair argument standard of review applies.
- *In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143: Program EIR for a long-term plan to address ecosystem and water supply problems in Bay-Delta region was not required to identify specific sources of water to carry out the program, which would take place over a 30-year time span.
- *Latinos Unidos de Napa v. City of Napa* (2013) 221 Cal.App.4th 192: Proposed amendments to housing and land use elements in general plan, and minor amendments to zoning ordinances, were within the scope of the prior program EIR. No additional review was required.
- *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152: Agency failed to provide substantial evidence to show that its climate action plan and significance guidelines were within the scope of its general plan program EIR.
- *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412: EIR failed to identify long-term water source for community plan; "[a]n EIR evaluating a planned land use project must assume that all phases of the project will eventually be built and will need water, and must analyze, to the extent reasonably possible, the impacts of providing water to the entire proposed project."
- *Health First v. March Joint Powers Authority* (2009) 174 Cal.App.4th 1135: In a case involving a reuse plan for a former military base, approval by the developing authority of a design plan for a grocer's warehouse distribution facility was exempt from environmental review because the decision was ministerial. Substantial evidence supported an administrative decision that traffic mitigation measures in a specific plan for a business center were made applicable to the design plan application, as contemplated by PRC Section 21083.3. *Citizens for Responsible Equitable Environmental Development [CREED] v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App. 4th 598: The fair argument standard does not apply to judicial review of an agency's determination that a project is within the scope of a previously completed EIR. Once an agency has prepared an EIR, its decision not to prepare a supplemental or

subsequent EIR for a later project is reviewed under the deferential substantial evidence standard.

Authors

Elizabeth Pollock, Remy Moose Manley, LLP

Cori Resha, Ascent Environmental

Reviewers

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.

Date Updated: July 23, 2021