Environmental

Procedures Manual

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I. INTRODUCTION

The following Environmental Procedures Manual (Manual) is adopted by the San Bernardino County Transportation Authority (SBCTA) and the San Bernardino Council of Governments (SBCOG) in accordance with SBCTA Policy No. 50100 and the requirements of the California Environmental Quality Act (CEQA), Public Resources Code 21000–21189.91, and related regulations in California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000–15387 (CEQA Guidelines). California public agencies, both state and local, are required to adopt implementing procedures and guidelines for administering their responsibilities under CEQA, including the orderly evaluation of projects and preparation of environmental documents.[1] The purpose of this Manual is to guide SBCTA/SBCOG staff in carrying out the requirements of CEQA and to assure the public that environmental impacts related to SBCTA/SBCOG actions are thoroughly and consistently addressed. This Manual achieves this purpose by providing objectives, criteria, and procedures for the orderly evaluation of projects and the preparation of CEQA documents pursuant to CEQA and its implementing State CEQA Guidelines. This Manual is intended to supplement the State CEQA Guidelines for practical application to specific projects approved or undertaken by SBCTA/SBCOG. The following procedures, therefore, do not replace or supplant the State CEQA Guidelines, but are to be used in conjunction with them. All definitions and requirements of the State CEQA Guidelines are included and made part of these procedures by this reference. If the application of any procedure contained in this Manual conflicts with any provision of the State CEQA Guidelines, the provision of the State CEQA Guidelines shall govern. This Manual will be updated when there are changes to CEQA, or as otherwise deemed beneficial, in accordance with SBCTA Policy No. 50100; however, such changes to CEQA statutes and guidelines shall prevail over this Manual. The latest CEQA statutes and guidelines may be found on the California Governor's Office of Land Use and Climate Innovation (LCI) website at lci.ca.gov. Any reference to specific laws, guidelines, or other applicable regulations in this Manual are to be interpreted to include any such subsequent and effective changes thereto, if applicable to SBCTA/SBCOG. Any comments on this Manual should be directed to igr@gosbcta.com.

II. BACKGROUND

CEQA is California's law designed to most comprehensively address environmental impacts. It was originally adopted by the California Legislature in 1970. Since adoption, CEQA has been amended on many occasions. The laws and rules governing the CEQA process are found in the CEQA statutes (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.), published court decisions interpreting CEQA, and locally adopted CEQA procedures.

CEQA is intended to prevent or minimize environmental damage from activities undertaken by public agencies; activities undertaken by private individuals or businesses that require a permit, funding, or other approval by a public agency; and any projects that have the potential to adversely affect the environment. This is accomplished by requiring public agencies to analyze the potential for adverse environmental effects generated by a project in their jurisdiction prior to approval, and, if significant adverse impacts are identified, to mitigate or avoid these environmental impacts to the greatest extent feasible. CEQA is also a public disclosure statute. It is intended to require public disclosure of the environmental impacts of proposed projects to foster informed public comment and public agency decision-making about whether and under what circumstances to approve such projects.

[1] Pub. Res. Code § 21082; 14 C.C.R. § 15022

CEQA applies to any discretionary project that may have a significant effect on the environment. This includes public projects and private projects requiring public agency discretion and approval. A discretionary project is defined as "a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations."[2] A project means "the whole of an action, which has the potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment…"[3] and includes:

1. Activities directly undertaken by a public agency (public works projects, regulations, planning documents);

2. Activities by private entities that are assisted by a public agency (contracts, grants, loans); or

3. Activities by private entities where one or more public agencies issue an entitlement (lease, permit, license, etc.).[4]

SBCTA and SBCOG are responsible for the development, funding, and/or approval of various projects ranging from roadway and commuter rail construction, management of right-of-way, and implementation of transportation planning and air quality management strategies. SBCTA and SBCOG are public agencies subject to the requirements of CEQA. As part of public agency responsibilities under CEQA, SBCTA and SBCOG should prepare the following:

1. Procedures for evaluating a proposed activity to determine whether there is any possibility that the activity may have a significant effect on the environment;

2. A list of activities or permits over which SBCTA/SBCOG has only ministerial authority;

3. A list of specific activities which SBCTA/SBCOG has found to be within the categorical exemptions established by CEQA; and

4. Procedures for the preparation of Environmental Impact Reports, Mitigated Negative Declarations[5], and Negative Declarations.

III. ROLES AND RESPONSIBILITIES

Terms with ◊ are key definitions under CEQA

SBCTA/SBCOG can have any one of three primary roles under CEQA, depending on the project's nature and relationship to SBCTA/SBCOG, each with their own unique responsibilities:

1. ◊ Lead Agency is the public agency that has the primary responsibility for approving a project that may have a significant effect upon the environment[6]. CEQA requires an assignment of a Lead Agency to each Project. The Lead Agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole. If a project involves discretionary actions by more than one agency, one should be selected as the Lead Agency and the others would be responsible agencies. For projects requiring SBCTA/SBCOG discretionary approval, a determination must be made on whether SBCTA or SBCOG is the Lead Agency or a Responsible Agency. The decision on which agency should be CEQA Lead

[2] 14 C.C.R. § 15357.
[3] 14 C.C.R. § 15378.
[4] 14 C.C.R. § 15378.
[5] Unless otherwise specified, "Negative Declaration" shall mean either a Negative Declaration or Mitigated Negative Declaration throughout this Manual.
[6] Pub. Res. Code § 21067

Agency can be facilitated by dialogue with project partners and must be made in accordance with the criteria in CEQA Guidelines Section 15051 and resolved in accordance with CEQA Guidelines Section 15053 if a dispute arises. If a dispute arises with another agency or agencies over which should be the Lead Agency, staff should discuss the next steps with the Department Director and General Counsel.

SBCTA's/SBCOG's basic responsibilities as a Lead Agency are listed below. Generally, these functions will be performed by the SBCTA Project Delivery and Express Lanes, Transit and Rail Programs, Planning and Regional Programs, and SBCOG teams, depending on the type of project. For example, when a project is awarded and administered by SBCTA and there are no other public agencies taking the Lead Agency role through a cooperative agreement, Project Delivery will generally take the lead on freeway/highway construction projects and Transit and Rail Programs will generally take the lead on rail and bus rapid transit construction projects. Also, outside consultants may be used to assist with some of these responsibilities, such as the development of Initial Studies, Negative Declarations, and Environmental Impact Reports (EIR), at the direction of the lead SBCTA/SBCOG staff and in accordance with applicable SBCTA/SBCOG policies.

- Conduct preliminary reviews to determine if projects are subject to CEQA.[7]
- Conduct review to determine if a project is exempt from CEQA.[8]
- Prepare Initial Studies for projects that may have significant environmental impacts.[9]
- Determine the significance of the environmental effects caused by the project.[10]
- Prepare, or contract for preparation of, Negative Declarations for projects with no significant environmental impacts.[11]
- Prepare, or contract for preparation of, EIRs for projects with significant environmental impacts.[12]
- Adopt reporting or monitoring programs for the changes made to projects or conditions of project approval to mitigate or avoid significant effects on the environment.[13]
- Comply with CEQA noticing and filing requirements.

2. ◊ **Responsible Agency** is any public agency, other than the Lead Agency, that has the responsibility for approving or carrying out the project where more than one public agency is involved and for which the Lead Agency is preparing or has prepared an EIR or Negative Declaration[14]. If SBCTA/SBCOG does not have any discretionary approval authority over the project or any portion of the project, then it is not a Responsible Agency under CEQA (*i.e.*, if the project requires SBCTA/SBCOG discretionary approval for the project to proceed, then SBCTA/SBCOG is a Responsible Agency)[15]. Lead agencies must consult informally with responsible agencies at the Initial Study stage to obtain recommendations on whether to prepare an EIR or a Negative Declaration.[16] Lead agencies must also request comments from responsible agencies on

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[7] 14 C.C.R. § 15060.
[8] 14 C.C.R. § 15061.
[9] 14 C.C.R. § 15063.
[10] 14 C.C.R. § 15064.
[11] 14 C.C.R. § 15070.
[12] 14 C.C.R. § 15081.
[13] Pub. Res. Code § 21081.6; 14 C.C.R. § 15097.
[14] Pub. Res. Code § 21069; 14 C.C.R. § 15381.
[15] 14 C.C.R. § 15381.
[16] 14 C.C.R. § 15063(g).

draft EIRs and Negative Declarations.[17] SBCTA/SBCOG must consider the adequacy of an environmental document prepared by the Lead Agency prior to approving the project.[18]
SBCTA/SBCOG most often acts as a Responsible Agency when it has discretionary permitting authority for a "Grant of Right of Use" in accordance with SBCTA Policy No. 31602 that is being evaluated as part of a larger project by another public agency, such as the California Department of Transportation. SBCTA's/SBCOG's responsibilities as a Responsible Agency include participation in the Lead Agency's consultation process and may include providing comments on the evaluation of transportation and air quality impacts. Specifically, SBCTA/SBCOG must, as a Responsible Agency, do the following:

- Respond to notices of preparation received from lead agencies within 30 days[19] as appropriate based on potential transportation-related and air quality-related impacts.[20]
- Participate in or request the Lead Agency to call a scoping meeting as appropriate based on potential transportation-related and air quality-related impacts.[21]
- Decide on the adequacy of the EIR or Negative Declaration for use by SBCTA/SBCOG.[22]
- Consider the environmental effects of the project as shown in the EIR or Negative Declaration.[23]
- Adopt feasible alternatives or mitigations for the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve.[24]
- Prepare and submit mitigation monitoring and reporting programs where appropriate.[25]
- Make appropriate findings.[26]
- File appropriate notices.[27]

3. **Commenting Agency**: SBCTA/SBCOG may comment on the transportation-related and air quality-related impacts of projects, or any project impacts that affect SBCTA's/SBCOG's policies, programs, goals, or objectives, where another public agency is the Lead Agency, but for which SBCTA/SBCOG has no discretionary authority, in accordance with SBCTA Policy No. 50100. When a project qualifies as one of statewide, regional, or areawide significance under CEQA Guidelines Section 15206, the Lead Agency must consult with and request comments on a draft EIR from SBCTA when SBCTA has transportation facilities within San Bernardino County that could be affected by the project.[28] "Transportation facilities" includes major local arterials and public transit within five miles of the project site and freeways, highways, and rail transit service within ten miles of the project site.[29] Any transportation information generated by a required monitoring or reporting program from such projects shall be submitted to SBCTA's Director of Planning and Regional Programs at igr@gosbcta.com if the project is located in San Bernardino County.[30]

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17 14 C.C.R. §§ 15072(a), 15086.
18 14 C.C.R. § 15096(f).
19 All references to "days" in this Manual shall mean calendar days, unless otherwise specified.
20 14 C.C.R. § 15082(b).
21 14 C.C.R. § 15082(c).
22 14 C.C.R. § 15096(e).
23 14 C.C.R. § 15096(f).
24 14 C.C.R. § 15096(g).
25 Pub. Res. Code § 21081.6; 14 C.C.R. § 15097.
26 14 C.C.R. § 15096(h).
27 14 C.C.R. § 15096(i).
28 14 C.C.R. §15086(a)(5)
29 14 C.C.R. §15086(a)(5)
30 14 C.C.R. §15097(g)

IV. DELEGATION OF TASKS

CEQA Guidelines Section 15025 allows public agencies to delegate certain actions to staff but also prohibits delegation of other responsibilities, unless the individual has been granted authority to perform such responsibilities as a "decision-making body" as defined by CEQA Guidelines Section 15356.

A. Tasks that cannot be delegated to SBCTA/SBCOG staff (since they are not authorized to serve as the decision-making body under CEQA): SBCTA's/SBCOG's Board of Directors ("Board"), as the decision-making body in accordance with SBCTA Policy No. 50100, may not delegate the following functions[31]:

- Adoption of a Negative Declaration;
- Review and certification of an EIR;
- Making findings as the Lead Agency in accordance with CEQA Guidelines Section 15091 relating to avoiding or lessening significant environmental effects for a project in which an EIR has been certified;
- Adoption of a Mitigation Monitoring and Reporting Program as the Lead Agency; and
- Making findings as the Lead Agency in accordance with CEQA Guidelines Section 15093 relating to a Statement of Overriding Considerations for a project in which an EIR has been certified.

These tasks must be presented to the Board with a staff report providing the background, history, analysis, and staff recommendation during a Board meeting in compliance with the Brown Act. Related documents and pertinent correspondence that would be used as basis for approval by the Board shall be attached to the staff report or clearly referenced. A link to access electronic copies of the documents or reference to where hard copies are available for review by the members of the Board may be included in the staff report. Where a SBCTA/SBCOG Policy Committee is first reviewing and recommending the project decision to the Board, the Policy Committee must also review and consider the EIR or Negative Declaration[32].

B. Tasks that can and have been delegated to staff under SBCTA Policy No. 50100: In accordance with SBCTA Policy No. 50100, the following approvals required under CEQA are delegated to staff. In all circumstances, the Executive Director is authorized to approve and sign any listed documents. In the event of any conflict, Policy No. 50100 always supersedes any information in this manual. Always consult with the policy in conjunction with using this manual.

[31] 14 C.C.R. § 15025(b).
[32] 14 C.C.R. § 15025(c).

Documents / Actions	Signature and/or Approval Authority
CEQA Exemption Determination (Form 201) [33]	Department Director or Designee
Notices: Notice of Exemption, Notice of Preparation of Draft EIR, Notice of Intent to Adopt a Negative Declaration or Mitigated Negative Declaration, Notice of Availability, Notice of Opportunity for a Public Hearing, Notice of Completion of Draft EIR, and Notice of Determination	Department Director or Designee
CEQA Responsible Agency Findings [34]	Department Director or Designee
Preparation of the Initial Study and Determination to Prepare Draft EIR or Negative Declaration	Department Director or Designee
Response to Notice of Preparation as to Contents of an Environmental Impact Report as Responsible Agency	Director of Planning and Regional Programs or Designee
Comments on Adequacy of Draft Environmental Impact Report or Negative Declaration as Responsible or Commenting Agency	Director of Planning and Regional Programs or Designee
Approval of updates or revisions to the Environmental Procedures Manual to comply with applicable law or other non-substantive changes to this Environmental Procedures Manual (Procedure 50100)[35,36]	Executive Director or Designee

V. INDEPENDENT JUDGMENT

SBCTA/SBCOG must exercise independent judgment in reviewing and approving environmental documents and considering environmental impacts. In accordance with CEQA,[37] SBCTA/SBCOG will do all of the following:

- Independently review and analyze any report or declaration required by CEQA;
- Circulate draft documents that reflect SBCTA's/SBCOG's independent judgment; and
- As part of the adoption of a Negative Declaration or certification of an EIR, find that the report or declaration reflects the independent judgment of SBCTA/SBCOG when it is the Lead Agency.

VI. CEQA Process as the Lead Agency

The first step in the CEQA process is determining whether the activity or the action is a "project", as defined earlier in this Manual, under CEQA. A project is subject to the rules and requirements promulgated by CEQA.

The following are not considered to be a "project" under CEQA:

[33] Must be approved as to form by SBCTA/SBCOG General Counsel or designee.
[34] Must be approved as to form by SBCTA/SBCOG General Counsel or designee.
[35] Must be approved as to form by SBCTA/SBCOG General Counsel or designee.
[36] The SBCTA/SBCOG Board shall approve any material updates or revisions to the Manual that are not exclusively to comply with applicable law.
[37] Pub. Res. Code § 21082.1(c).

- Continuing administrative or maintenance activities, such as purchases for supplies, personnel-related actions, and general policy and procedure making;
- The creation of government funding mechanisms or other government fiscal activities that do not involve any commitment to any specific project that may result in a potentially significant physical impact on the environment; and
- Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.
- ◊ **Ministerial Actions** are governmental decisions involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project[38]. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision. A ministerial decision involves only the use of fixed standards or objective measurements, and the public official cannot use personal, subjective judgment in deciding whether or how the project should be carried out. The determination of what is "ministerial" can most appropriately be made by the particular public agency involved based upon its analysis of its own laws[39]. Where a project involves an approval that contains elements of both a ministerial action and a discretionary action, the project will be deemed to be discretionary and will be subject to the requirements of CEQA.[40]

VII. Exempt Projects

The State Legislature recognized that certain types of projects will not have significant environmental impacts or may have overriding benefits such that the project should not have to undergo CEQA review. The following section provides an overview of the most common exemptions applicable to projects where SBCTA/SBCOG is the Lead Agency or a Responsible Agency. Attachments A and B to this Manual list commonly used statutory and categorical exemptions, respectively, used by SBCTA/SBCOG. Additional exemptions may be found in the CEQA Guidelines.

- ◊ **Statutory Exemption**: Projects for which the California Legislature has provided a blanket exemption from CEQA procedures and policies. These projects are exempt from CEQA regardless of potential impacts. CEQA Guidelines provides a list of activities that are statutorily exempt from CEQA.[41] For SBCTA/SBCOG Statutorily Exempt projects, approvals by the Department Director or designee in accordance with Policy 50100, must be indicated on Form 201, a copy of which is attached hereto as Attachment C. An explanation of how the action is Statutorily Exempt is required.
- ◊ **Categorical Exemption**: Projects that fall within a list of classes of activities determined by the California Resources Agency as projects that typically do not have a significant effect on the environment. CEQA Guidelines provides a list of classes of activities that are categorically exempt from CEQA[42]. Unlike Statutorily Exempt Projects, activities listed in a categorically exempt class may be excepted from the exemption under the following circumstances[43]:
  - If they are located in a "particularly sensitive environment";

[38] 14 C.C.R. § 15369.
[39] 14 C.C.R. § 15268(a).
[40] 14 C.C.R. § 15368(d).
[41] 14 C.C.R. §§ 15260-15282
[42] 14 C.C.R. §§ 15300-15333
[43] 14 C.C.R. § 15300.2

- Where the "cumulative impact of successive projects of the same type in the same place, over time is significant";
- "Where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances";
- Where a project "may result in damage to scenic resources . . . within a highway officially designated as a state scenic highway";
- Where the project is located on a hazardous waste site "included on any list compiled pursuant to Section 65962.5 of the Government Code"; and
- Where the project "may cause a substantial adverse change in the significance of a historical resource."

For SBCTA/SBCOG projects determined to be Categorically Exempt, approval by the Department Director or designee, in accordance with Policy 50100, must be indicated on Form 201. A brief explanation of how the project falls under a Categorically Exempt class is required, with good background information describing the proposed activity and a brief summary of the review of potential impacts. A list of impact minimization measures may also be included on Form 201 if appropriate.

- ◊ **General Rule Exemption**: Projects may be exempt from CEQA if it can be seen with certainty that there is no possibility of a significant effect on the environment.[44] The General Rule Exemption requires substantial evidence in the record that a hard analysis was performed on the proposed activity. For SBCTA/SBCOG projects found to fall under the General Rule Exemption, approval by the Department Director or designee in accordance with Policy 50100, must be indicated on Form 201. Depending on the circumstances, supplemental information can be provided with Form 201 describing the proposed activity and a detailed summary of the review of potential impacts. Completion of a CEQA checklist, titled "CEQA Appendix G", with an environmental practitioner is recommended to help with the analysis. A list of impact minimization measures should also be included on Form 201 if appropriate.

Administrative Appeal of Staff's CEQA Exemption Determination

If SBCTA/SBCOG staff has authority to approve a project and determines that a project is not subject to CEQA because it is exempt, that determination may be appealed to the Board with both the payment of the applicable filing fee and a written request filed with the SBCTA Clerk of the Board no later than ten (10) days from the earlier of the following dates: the date SBCTA posts the notice of exemption on the SBCTA website or the date that SBCTA/SBCOG physically posts the notice of exemption at 1170 W. 3rd Street, 1st Floor, San Bernardino, CA 92410.[45] The written request must state all grounds and issues for the CEQA appeal, specifying in detail why the appellant contends that the decision on the CEQA document does not comply with CEQA, and providing any supporting documentation. The Clerk of the Board shall schedule a public hearing before the Board no later than 60 days after receipt of a completed appeal request and publish notice of the hearing in a newspaper of general circulation at least ten (10) days before the hearing. The appeal hearing shall be limited to considerations of the environmental or procedural issues raised by the appellant in the written notice of appeal. The original decision shall be presumed correct, and the burden of proof shall be on the appellant to establish otherwise. The Board may uphold or reverse the environmental decision or remand the decision back to the original decisionmaker for reconsideration if substantial evidence of procedural error or significant new environmental issues are presented. The decision of the Board will be final. Any statute of limitations applicable to staff's exemption decision shall be suspended for the duration of the administrative appeal,

[44] 14 C.C.R. § 15061(b)(3)

[45] Pub. Res. Code § 21151(c).

which shall end at the earlier of any appeal withdrawal or the Board's decision. Such suspension shall only apply to the party that was specifically named as the appellant in the appeal.

Filing Notice of Exemption

After approval of Form 201 and the project in accordance with SBCTA/SBCOG policies, a Notice of Exemption (NOE) should be filed with the San Bernardino County Clerk of the Board and the State Clearinghouse in the Governor's Office of Land Use and Climate Innovation (LCI), formerly known as the Governor's Office of Planning and Research.[46, 47] It is strongly recommended that these filings occur within 24 hours of the approval. The NOE form can be found on the LCI website, which is linked in Section XIII – Helpful Links, of this Manual. The NOE may be signed and filed by the Department Director or designee, in accordance with Policy 50100, after approval of Form 201.

The San Bernardino County Clerk of the Board is located at 385 N. Arrowhead Avenue, San Bernardino, CA 92415, where a filing fee is required. Please visit the San Bernardino County Clerk of the Board website for the latest filing fee costs. The County Clerk shall post the NOE within 24 hours of receiving the filed NOE. The NOE shall remain posted for 30 days for public inspection. After the 30-day posting period, the County Clerk shall return the NOE (with a notation of the period it was posted) to SBCTA/SBCOG, which shall retain the NOE within its files related to the project for a minimum of 12 months, or longer if the project's applicable records retention period is greater than 12 months.[48] The posting of the NOE starts a 35-day statute of limitations period on legal challenges to the decision that the project is exempt from CEQA. When a NOE is not filed, the limitations period for legal challenges is 180 days from the date the project is approved.

SBCTA/SBCOG must also submit the NOE electronically through LCI's online submission platform, CEQA Submit, for publication to CEQAnet, which is the online searchable environmental database administered by the State Clearinghouse. Instructions for submitting notices through CEQA Submit are available online at the State Clearinghouse website (see Section XIII – Helpful Links, of this Manual).

VIII. Initial Study/ Negative Declaration

This section describes the requirements that might be applicable when a project is not exempt from CEQA. Appendix A of the CEQA guidelines has a process flow chart for an overview of all applicable requirements, which is included in this Manual on the following page.

◊ An **Initial Study (IS)** is a report that documents a preliminary analysis conducted to determine the potential environmental impacts associated with a proposed activity. The IS is designed to ascertain if a project will have potential significant adverse effects on the environment, thereby requiring the preparation of an Environmental Impact Report (EIR). It also functions as an evidentiary document containing information to support any conclusions that the project will *not* have a significant environmental impact or that the impacts can be mitigated to a "Less Than Significant" or "No Impact" level. Once it is determined to prepare an IS, SBCTA/SBCOG should consult with all responsible agencies and trustee agencies[49] responsible for resources potentially affected by the project.

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[46] Pub. Res. Code § 21152.
[47] Gov. Code § 65029.
[48] Pub. Res. Code § 21152(c)(1).
[49] "Trustee agencies", as used in this Manual, is defined in 14 C.C.R. § 15386.

◊ A **significant effect on the environment** means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project[50].

A. Preparation of an Initial Study

Although the CEQA Guidelines do not dictate the precise format required for an IS, certain information is required and is considered fundamental to analyzing the potential impacts associated with a proposed project. Appendix G of the CEQA Guidelines should be considered when preparing an IS. An IS must contain the following[51]:

- Information identifying the project's environmental effects, if any, by use of a checklist, matrix, or other method, provided that entries on a checklist or other form are briefly explained to indicate that there is some evidence to support the entries. The brief explanation may be either through a narrative or reference to another information source such as an attached map, photographs, or an earlier EIR or Negative Declaration;
- A discussion of the ways to mitigate the significant effects identified, if any;
- An examination of whether the project would be consistent with existing zoning, plans, and other applicable land use controls; and
- The name of the person or persons who prepared or participated in the preparation of the IS.

B. ◊ Negative Declaration

If there is no substantial evidence that the project may have a significant effect on the environment, SBCTA/SBCOG shall prepare a Negative Declaration.[52] If the IS identifies potentially significant effects, but (1) revisions in the project plans or proposals 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, then a Mitigated Negative Declaration shall be prepared.[53]

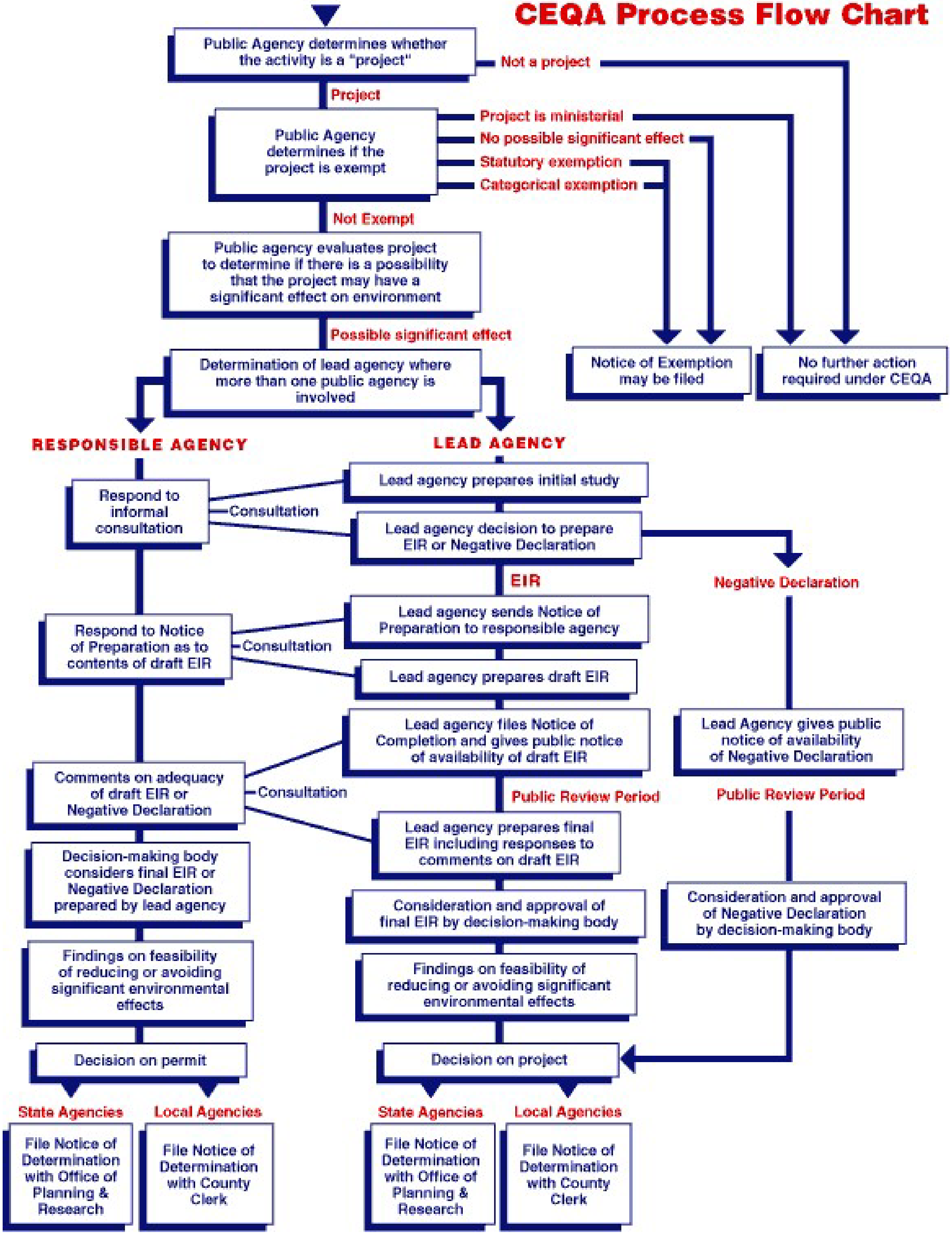
A Negative Declaration circulated for public review must include the following:

- A brief description of the project, including a commonly used name for the project, if any;
- The location of the project, preferably shown on a map, and the name of the project proponent;
- A proposed finding that the project will not have a significant effect on the environment;
- An attached copy of the IS documenting reasons to support the finding; and
- Mitigation measures, if any, are included in the project to avoid potentially significant effects.[54]

[50] Pub. Res. Code §§ 21068 and 21060.5
[51] 14 C.C.R. § 15063
[52] 14 C.C.R. § 15070.
[53] 14 C.C.R. § 15070.
[54] 14 C.C.R. § 15071.

APPENDIX A

CEQA Process Flow Chart



C. Public Review

After approval by the Department Director or designee in accordance with Policy 50100, from a recommendation for approval by the Project Manager, SBCTA/SBCOG must provide the public, responsible agencies, trustee agencies, and the State Clearinghouse notice of its intent to adopt a Negative Declaration in accordance with CEQA Guidelines Sections 15072-15073. The notice of intent must include the following:

- A brief description of the proposed project and its location;
- The starting and end dates for the review period during which SBCTA/SBCOG will receive comments on the proposed Negative Declaration. This shall include starting and ending dates for the review period. If the review period has been shortened pursuant to CEQA Guidelines Section 15105, the notice shall include a statement to that effect;
- The date, time, and place of any scheduled public meetings or hearings to be held by SBCTA/SBCOG on the proposed project, when known by SBCTA/SBCOG at the time of notice;
- The address or addresses where copies of the proposed Negative Declaration and all documents incorporated by reference in the proposed Negative Declaration are available for review. This location or locations shall be readily accessible to the public during SBCTA's/SBCOG's normal working hours;
- The presence of the site on any of the lists enumerated under Section 65962.5 of the Government Code including, but not limited to, lists of hazardous waste facilities; and
- Other information specifically required by statute or regulation for a particular project or type of project.

Such public notification must be provided in at least one of the following ways:

- Publication in a newspaper of general circulation in the area affected by the proposed project;
- Posting of notice on and off site in the area where the project is to be located; or
- Direct mailing to the owners and occupants of affected properties.

SBCTA/SBCOG must provide a review period of no less than twenty (20) days.[55] However, if SBCTA/SBCOG is required to submit the Negative Declaration to the State Clearinghouse for review by state agencies, then SBCTA/SBCOG must provide for a review period of no less than thirty (30) days in accordance with CEQA Guidelines Section 15073.[56] The Negative Declaration and all documents referenced therein shall be available at SBCTA's/SBCOG's front desk during the applicable public review period. The documents should also be reasonably made available in or near the affected project area.

[55] 14 C.C.R. § 15073.

[56] The following environmental documents must be submitted to the State Clearinghouse for review by state agencies: (1) Draft EIRs and Negative Declarations prepared by a state agency where such agency is the Lead Agency, (2) Draft EIRs and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project, (3) Draft EIRs and Negative Declarations on projects identified in CEQA Guidelines Section 15206 as being of statewide, regional, or areawide significance, and (4) Draft EISs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines.

D. Board Adoption of Negative Declaration/Mitigated Negative Declaration

A public hearing is not required as part of the IS and Negative Declaration Process. Prior to approving a project, the Board shall consider the IS, proposed Negative Declaration or Mitigated Negative Declaration, and any comments received during the public review process. The Board 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 IS 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 SBCTA's or SBCOG's independent judgment and analysis.

When adopting a Negative Declaration, the Board must specify that the Director, or their designee, of the SBCTA/SBCOG Department responsible for the project (*e.g.*, the Director of Project Delivery and Express Lanes for an Express Lanes project) is the custodian of the documents or other material which constitute the record of proceedings upon which its decision is based, and that these documents are available at SBCTA's/SBCOG's front desk.[57] When adopting a Mitigated Negative Declaration, the Board shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects.[58]

Filing Notice of Determination for Negative Declaration

After adoption of the Negative Declaration and approval of the project in accordance with SBCTA/SBCOG policies, a Notice of Determination (NOD) must be filed with the San Bernardino County Clerk of the Board, with payment of a filing fee, and the State Clearinghouse in the LCI, within five business days of the project's approval. The NOD form can be found on the LCI website, which is linked in Section XIII – Helpful Links, of this Manual. The NOD must be signed by the Executive Director, Department Director or designee in accordance with Policy 50100.

The County Clerk shall post the NOD within 24 hours of receiving the filed NOD. The NOD shall remain posted for 30 days for public inspection. After the 30-day posting period, the County Clerk shall return the NOD (with a notation of the period it was posted) to SBCTA/SBCOG, which shall retain the NOD within its files related to the project for a minimum of 12 months. The posting of the NOD starts a 30-day statute of limitations period on legal challenges to the project approval.

SBCTA/SBCOG must also submit the NOD electronically through LCI's online submission platform, CEQA Submit, for publication to CEQAnet, which is the online searchable environmental database administered by the State Clearinghouse.

The Director, or their designee, of the SBCTA/SBCOG Department responsible for the project (*e.g.*, the Director of Project Delivery and Express Lanes for an Express Lanes project) is responsible for appropriately filing documents with the County Clerk and LCI.

The NOD should be posted at the SBCTA/SBCOG lobby and on the SBCTA/SBCOG website for public review no less than a duration of 30 days after filing.

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[57] 14 C.C.R. § 15074.

[58] 14 C.C.R. § 15074.

IX. Environmental Impact Report (EIR)

◊ An **EIR** is a detailed statement prepared pursuant to CEQA that describes and analyze the significant environmental effects of a project and discusses ways to mitigate or avoid the effects.

An EIR must be prepared whenever there is substantial evidence, in light of the whole record, that a project may have a significant effect on the environment. When there is substantial evidence to indicate that a project may have a significant effect on the environment, a Mitigated Negative Declaration may be prepared in lieu of an EIR if avoidance or mitigation measures are included in the project to a point where clearly no significant effect on the environment would occur.

The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of SBCTA/SBCOG staff, technical experts, and the project development team, based to the extent possible on the results of field surveys and technical studies. Because the significance of an effect may vary depending on the environmental setting, set rules for determining significance in every case or project have not been established.

In accordance with CEQA, SBCTA/SBCOG must find that a project may have a significant effect on the environment and thereby require an EIR to be prepared for the project where any of the following conditions occur:

- The project has the potential to substantially degrade the quality of the environment; substantially reduce the habitat of a fish and wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare, or threatened species; or eliminate important examples of the major periods of California history or prehistory.
- The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.
- The project has possible environmental effects which are individually limited but cumulatively considerable. "Cumulatively considerable" means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.
- The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

According to the CEQA Guidelines, an economic or social change by itself is not to be considered a significant effect on the environment. However, if a social or economic change is related to a physical change, that social or economic change may be considered in determining whether the physical change is significant. Lastly, the existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence that the project may have a significant effect on the environment.

While the information in the EIR does not control SBCTA's/SBCOG's ultimate discretion on the project, SBCTA/SBCOG must respond to each significant effect identified in the EIR by making findings under Section 15091 and, if necessary, by making a Statement of Overriding Considerations under Section 15093.

A. Notice of Preparation

◊ **The Notice of Preparation (NOP)** is the first step in the EIR process. Under CEQA, once the decision is made to prepare an EIR, a NOP must be sent to the State Clearinghouse in the LCI, to responsible agencies, including federal agencies involved in approving or funding the project, and to each trustee agency responsible for natural resources affected by the project. The NOP must also be filed with the County Clerk.

For projects requiring action by the California Transportation Commission (CTC), a submittal package must be sent to the CTC. Include the CTC in the NOP or communicate with Caltrans or State Agency liaison to forward the package to the CTC. The NOP must contain a clear description of the project, location of the project indicated on a map, and probable environmental effects of the project. Staff must allow sufficient time, or a minimum of 30 days, to receive comments on the NOP from responsible and trustee agencies. Transmittal of the NOP shall be by email, certified mail, or other methods of transmittal that provide a record that the NOP was received. A link to the NOP form is provided in Section XIII - Helpful Links. Prepare a Summary Form or submit a summary when submitting the NOP.

When requested pursuant to CEQA Guidelines Section 15082(c), staff must hold a scoping meeting with responsible agencies and trustee agencies to receive early feedback on the proposed action, scope of the studies, evaluation of alternatives, and mitigation measures contemplated.

B. Preparation of a Draft EIR

Although the CEQA Guidelines do not dictate the precise format required for an EIR, certain elements must be covered in accordance with Title 14 CCR Sections 15122 through 15131. The following list provides the required content for EIRs.

Project Alternatives – An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project and evaluate the comparative merits of the alternatives[59]. The range of alternatives required in an EIR is governed by a "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. Of those alternatives, the EIR needs to examine in detail only the ones that could feasibly attain most of the basic objectives of the project. The range of feasible alternatives must be selected and discussed in a manner to foster meaningful public participation and informed decision-making. An EIR need not consider every alternative and need not include detailed discussion of all alternatives.

No Build (or No Project Alternative) – The EIR must include a discussion of the “no build” alternative and its impact. The discussion of the “no build” alternative allows the public and the decision-makers to assess the effects of approving the project versus the effects of not approving the project. The "no build" analysis must discuss the existing conditions at the time the NOP is published as well as what would be reasonably expected to occur in the foreseeable future if the project were not approved.

Discussion of Impacts – The format for discussing environmental impacts is not specified under CEQA; however, the EIR must discuss environmental impacts in context of the considerations listed below. Each may be discussed in paragraphs or in sections.

- Significant environmental effects of the proposed project;
- Significant environmental effects which cannot be avoided with the proposed project;
- Significant irreversible environmental changes which would be involved in implementing the proposed project;

[59] 14 C.C.R. § 15126.6

- Growth inducing impacts of the proposed project; and
- Mitigation measures proposed to minimize significant environmental effects.

C. Processing a Draft EIR

If a Draft EIR is prepared by any person or entity other than SBCTA/SBCOG staff, then the draft must be independently reviewed and analyzed by SBCTA/SBCOG staff in accordance with CEQA Guidelines Section 15084(e) prior to its release for public comment. It is highly recommended that SBCTA/SBCOG legal counsel review the Draft EIR for legal sufficiency prior to its release for public comment. After approval by the Department Director from a recommendation for approval by the Project Manager, the Draft EIR shall be circulated for public review for a minimum of thirty days. However, if SBCTA/SBCOG is required to submit the EIR to the State Clearinghouse for review by state agencies, then SBCTA/SBCOG must provide for a review period of no less than forty-five days in accordance with CEQA Guidelines Section 15105.[60] SBCTA/SBCOG must provide a Notice of Availability (NOA) of the Draft EIR and should provide an opportunity for a public meeting for early public consultation, if warranted. SBCTA/SBCOG must file a Notice of Completion (NOC) with the LCI at the same time that the NOA is provided to the public.[61] A link to the NOC form is provided in Section XIII - Helpful Links. Public notification of the NOA 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 methods:

- Publication in a newspaper of general circulation in the area affected by the proposed project
- Posting of notice in the area where the project is to be located; and/or
- Link to the SBCTA Project Website

A copy of the Draft EIR and select technical studies shall be available at the SBCTA/SBCOG front desk during the public review period. The Draft EIR and select technical studies should be reasonably made available in or near the affected area(s) and be posted on the SBCTA project website.

Public hearings are not required as part of the Draft EIR circulation; however, public meetings are highly encouraged for projects requiring an EIR. The Department Director may publish a separate notice of opportunity to provide comment at a public meeting or include it with the NOA. Public meeting notices should be advertised at the initiation of public review in order to provide sufficient time for public response.

A Draft EIR must be recirculated when significant new information is added to the EIR after public notice is given of the availability of the Draft EIR for public review but before the Final EIR is certified.

Significant new information requiring recirculation includes:

- A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.

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[60] The following environmental documents must be submitted to the State Clearinghouse for review by state agencies: (1) Draft EIRs and Negative Declarations prepared by a state agency where such agency is a Lead Agency, (2) Draft EIRs and Negative Declarations prepared by a public agency where a state agency is a Responsible Agency, Trustee Agency, or otherwise has jurisdiction by law with respect to the project, (3) Draft EIRs and Negative Declarations on projects identified in [CEQA Guidelines Section 15206] as being of statewide, regional, or areawide significance, and (4) Draft EISs, environmental assessments, and findings of no significant impact prepared pursuant to NEPA, the Federal Guidelines.

[61] 14 C.C.R. § 15087(a).

- A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the SBCTA/SBCOG declines to adopt it.
- The Draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.

If the revision is limited to a few chapters or portions of the EIR, the chapters or portions that have been modified may be recirculated independently. Ensure that sufficient information is available to provide the project background and context of the impacts. Recirculation of an EIR requires the same notice and consultation as the previous Draft EIR.

D. Preparing a Final EIR

The Final EIR must include the following:

- Contents of the Draft EIR with changes clearly demarcated.
- Compilation or summary of comments and recommendations received on the Draft EIR.
- Responses to comments received.
- A list of persons, organizations, and public agencies commenting on the Draft EIR.
- Summary and results of the Draft EIR review.
- Alternatives Analysis.
- Avoidance, minimization, and compensation measures (mitigation measures).

All comments received must be analyzed and a written response shall be prepared. Responses may be combined for similar comments. It is highly recommended that SBCTA/SBCOG's legal counsel review responses to comments made through the Draft EIR circulation. Responses to comments shall be included in the Final EIR. Written responses to agencies that commented on the Draft EIR are required. Although it is not required under CEQA, response letters may be sent to persons or organizations that provided the comments at the discretion of the SBCTA/SBCOG Project Manager. Responses must include good faith, reasoned analysis. Conclusory statements not supported by factual information will not suffice.

Where the response to comments makes important changes in the information contained in the text of the Draft EIR, either revise the text in the body of the EIR or include marginal notes showing that the information is revised in the response to comments.

E. Processing and Certifying the Final EIR

Prior to taking the Final EIR to the Board for certification, staff shall ensure that written responses or notice of intent to approve the Final EIR were sent to public agencies that provided comments on the Draft EIR.

Staff shall prepare a staff report recommending Board certification of the Final EIR. The staff report shall contain all of the following:

- Background of the project
- Summary of the Draft EIR circulation
- Summary of significant environmental issues raised
- Decisions made or recommended
- Summary of Environmental Impacts
- Findings of Fact of Reducing or Avoiding Significant Environmental Effects
- Statement of Overriding Considerations
- Mitigation Monitoring and Reporting Program (MMRP)

The staff recommendation must contain the following or similar language:

> That the Board, acting in its capacity as the San Bernardino County Transportation Authority (or the San Bernardino Council of Governments):
>
> A. Certify that, in accordance with Section 15090 of the State CEQA Guidelines, the Final Environmental Impact Report (Final EIR) for *[PROJECT]* has been completed in compliance with CEQA and the State CEQA Guidelines. The Final EIR reflects SBCTA's (or SBCOG's) independent judgment and analysis.
>
> B. Adopt the findings of fact that have been prepared for each of the significant environmental impact(s) identified in Attachment A (if applicable).
>
> C. Adopt the Statement of Overriding Considerations in Attachment B (if applicable).
>
> D. Adopt the Mitigation Monitoring and Reporting Program.
>
> E. Approve the *[PROJECT].*

◊ **Findings** - If the project will have one or more significant environmental effects (before mitigation), the Lead Agency must make findings on each effect. Findings list all potentially significant impacts that were evaluated in the EIR and describe the resolution of each impact. For each significant effect, the SBCTA/SBCOG Board, in accordance with SBCTA Policy No. 50100, must adopt the findings.

The findings shall be provided in a SBCTA/SBCOG Board staff report, or for complex projects or findings, the evidence can be prepared in a separate report or memorandum and shall be summarized in a Board staff report. Staff shall request the Board to review and adopt the findings. The findings should use the exact wording below, as appropriate, and must be supported by substantial evidence in the record.

- 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.
- 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 another agency or can and should be adopted by such other agency.
- 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.

SBCTA/SBCOG must not approve or carry out a project for which an EIR was prepared unless:

- The project as approved will not have a significant effect on the environment; or
- SBCTA/SBCOG has avoided or substantially minimized all significant effects on the environment where feasible as shown in the findings; or
- SBCTA/SBCOG has determined that any remaining unavoidable significant effects on the environment are acceptable due to overriding considerations.

When certifying an EIR, the Board must specify that the Director of the SBCTA/SBCOG Department responsible for the project, or their designee, is the custodian of the documents or other material which constitute the record of proceedings upon which its decision is based, and that these documents are available at SBCTA's/SBCOG's front desk.[62]

[62] 14 C.C.R. § 15091(e).

◊ **Statement of Overriding Considerations** – In the case where there are unavoidable and immitigable significant impacts on the environment, a Statement of Overriding Considerations must be approved by the Board, in accordance with SBCTA Policy No. 50100. The Statement of Overriding Considerations is a statement of the Lead Agency's views on the ultimate balancing of the merits of approving a project despite its environmental impacts. The Statement of Overriding Considerations shall be provided in a SBCTA/SBCOG Board staff report and shall be supported by substantial evidence in the record. The staff report should use the exact wording below.

- The following information is presented to comply with State CEQA Guidelines (Title 14 California Code of Regulations, Division 6, Chapter 3, Section 15093). Reference is made to the Final Environmental Impact Report (FEIR) for the project, which is the basic source of the information.
- The following impacts have been identified as significant and not fully mitigable: (list the relevant impacts)
- Overriding considerations that support approval of this recommended project are as follows: (explain the reasons to approve the project)

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 (NOD). This statement does not substitute for, and shall be in addition to, the findings required pursuant to CEQA Guidelines Section 15091.

◊ **Mitigation Monitoring and Reporting Program (MMRP)** - In order to ensure that the mitigation measures and project revisions identified in the EIR or Mitigated Negative Declaration are implemented, SBCTA/SBCOG, in the Lead Agency role, must adopt a program for monitoring or reporting on the revisions that have been required in the project and the measures that have been imposed to mitigate or avoid significant environmental effects.[63] SBCTA/SBCOG may delegate reporting or monitoring responsibilities to another public agency that accepts the delegation; however, until mitigation measures have been completed, SBCTA/SBCOG remains responsible for ensuring implementation of the mitigation measures. This is required to ensure that mitigation measures are actually accomplished and that they reduce impacts to the extent committed to in the environmental document. SBCTA/SBCOG must obtain or prepare a mitigation monitoring program for each mitigation measure required in an EIR or Mitigated Negative Declaration in accordance with CEQA Guidelines Section 15097. The programs should, at a minimum, contain the following information:

- A description of the mitigation measure containing adequate information to identify actions required;
- A listing of the public agency or agencies responsible for monitoring implementation of the mitigation measure;
- A list of the steps required to comply with the mitigation measure, including timing and enforcement mechanisms; and
- A description of any long-term monitoring or testing requirements and the funding source.

Filing Notice of Determination for EIR

After certification of the EIR, adoption of Findings/Statement of Overriding Considerations/MMRP, and approval of the project in accordance with SBCTA/SBCOG policies, a NOD must be filed with the San Bernardino County Clerk of the Board, with payment of a filing fee, and the State Clearinghouse in the LCI,

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[63] 14 C.C.R. § 15097.

within five (5) business days of the project's approval. The NOD form can be found on the LCI website, which is linked in Section XIII – Helpful Links, of this Manual. The NOD must be signed by the Department Director or designee in accordance with Policy 50100.

The County Clerk shall post the NOD within 24 hours of receiving the filed NOD. The NOD shall remain posted for 30 days for public inspection. After the 30-day posting period, the County Clerk shall return the NOD (with a notation of the period it was posted) to SBCTA/SBCOG, which shall retain the NOD within its files related to the project for a minimum of 12 months, or longer if the project's applicable records retention period is greater than 12 months. The posting of the NOD starts a 30-day statute of limitations period on legal challenges to the project approval.

SBCTA/SBCOG must also submit the NOD electronically through LCI's online submission platform, CEQA Submit, for publication to CEQAnet, which is the online searchable environmental database administered by the State Clearinghouse.

The Director, or their designee, of the SBCTA/SBCOG Department responsible for the project is responsible for filing documents with the County Clerk and LCI.

The NOD should be posted at the SBCTA/SBCOG lobby and on the SBCTA/SBCOG website for public review no less than a duration of 30 days after filing.

X. CEQA Process as a Responsible Agency

SBCTA/SBCOG as a Responsible Agency complies with CEQA by considering the Lead Agency's Environmental Impact Report (EIR) or Negative Declaration and by making its own determination on the project's potential impacts.

The Department Director, or designee, shall assign staff or other representatives to participate in all consultation stages between SBCTA/SBCOG, as a Responsible Agency, and the Lead Agency, for a project. Where SBCTA/SBCOG is a Responsible Agency, SBCTA/SBCOG staff shall participate in the development of the project, preparation of the CEQA environmental document, and environmental review of the project. Staff shall attend project meetings and perform periodic reviews of the project information. Staff should be informed as to all project changes and other pertinent updates. Written correspondence exchanged during the consultation process shall be transmitted by certified mail. All correspondence related to participation as a Responsible Agency must be kept in the project file.

SBCTA/SBCOG must consult informally with the Lead Agency who determines an Initial Study is required for a project and provide recommendations as to whether an EIR or Negative Declaration should be prepared.[64] SBCTA/SBCOG should recommend the preparation of an EIR or modifications to the project if it identifies significant environmental impacts.[65]

A. Project Participation at Draft Stage

If the Lead Agency decides to prepare an EIR or Negative Declaration, SBCTA/SBCOG shall only make substantive comments regarding those activities involved in the project that are within SBCTA's/SBCOG's expertise or which are required to be carried out or approved by SBCTA/SBCOG, and such comments must be supported by documentation.[66] Comments shall include whether the analysis is adequate, a list of additional measures or alternatives that could reduce impacts, or whether SBCTA/SBCOG agrees with the

[64] 14 C.C.R. § 15063(g).
[65] 14 C.C.R. § 15096(b)(1).
[66] 14 C.C.R. §§ 15072(a) and 15086(c).

study. After receipt of a Notice of Preparation (NOP) by the Lead Agency, SBCTA/SBCOG shall reply within 30 days specifying the scope and content of environmental information that should be included in an EIR.[67] Prior to the close of the public review period, SBCTA/SBCOG must advise the Lead Agency of any identified significant environmental effects and submit any performance criteria or guidelines for mitigation measures to address such effects.[68]

B. Project Approval as Responsible Agency

SBCTA/SBCOG, as a Responsible Agency, shall not approve a project unless it has reviewed the adequacy of the Lead Agency's environmental determination in accordance with CEQA Guidelines Section 15096. SBCTA/SBCOG, as a Responsible Agency, has the limited responsibility for mitigating or avoiding only the direct or indirect environmental effects of those parts of the project which it decides to carry out, finance, or approve. When an EIR has been prepared for a project by the Lead Agency, SBCTA/SBCOG shall not approve the project as proposed if SBCTA/SBCOG finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment.

Pursuant to SBCTA Policy No. 50100, the appropriate SBCTA/SBCOG decision-making body is required to make findings for each significant environmental effect, if any, in accordance with CEQA Guidelines Section 15091 and, if necessary, a Statement of Overriding Considerations in accordance with CEQA Guidelines Section 15093, prior to approving the project.[69] SBCTA/SBCOG should file a Notice of Determination (NOD) similar to the process as a Lead Agency, except SBCTA/SBCOG need not state that the EIR or Negative Declaration complies with CEQA.[70]

If SBCTA/SBCOG determines that the final EIR or Negative Declaration is not adequate for its use as a Responsible Agency, then SBCTA/SBCOG must either:

- Take the issue to court within 30 days after the Lead Agency files a Notice of Determination;
- Be deemed to have waived any objection to the adequacy of the EIR or Negative Declaration;
- Prepare a subsequent EIR if permissible under CEQA Guidelines Section 15162; or
- Assume the Lead Agency role as provided in CEQA Guidelines Section 15052(a).[71]

SBCTA/SBCOG staff should have sufficient documentation to support an inadequacy position. If the disagreement is unresolved, discuss the next steps with the Department Director and legal counsel.

XI. Senate Bill 743 – Transportation Impacts

A. Regulatory Setting

Senate Bill 743 (SB 743), signed into law in 2013, fundamentally changed how transportation impacts are evaluated under CEQA. SB 743 directs agencies to "more appropriately balance the needs of congestion management with statewide goals related to infill development, promotion of public health through active transportation, and reduction of greenhouse gas emissions." As a result, automobile delays and level of service (LOS) are no longer considered environmental impacts under CEQA. Instead, Vehicle Miles

[67] 14 C.C.R. § 15096
[68] 14 C.C.R. § 15086(d).
[69] 14 C.C.R. § 15096(h).
[70] 14 C.C.R. § 15096(i).
[71] 14 C.C.R. § 15096(e).

Traveled (VMT), the amount and distance of vehicle travel generated by a project, is the primary metric for determining transportation impacts.

Although SB 743 eliminated LOS as a CEQA significance metric, many jurisdictions in San Bernardino County retain LOS standards for General Plan consistency and infrastructure planning. Accordingly, a Transportation Impact Analysis (TIA) may still evaluate LOS for informational or policy compliance purposes outside of CEQA, even while CEQA findings rely solely on VMT. (Reference: SBCTA Traffic Impact Analysis Guidelines (2020),)

B. Countywide Implementation Framework

In December 2018, the California Natural Resources Agency certified updates to the CEQA Guidelines, adding Section 15064.3, which formally implements SB 743. Beginning July 1, 2020, all lead agencies statewide were required to evaluate transportation impacts based on VMT and establish locally appropriate significance thresholds, screening criteria, and mitigation procedures. Agencies must also consider induced travel effects for transportation capacity increasing projects on the State Highway System, consistent with Caltrans' Transportation Analysis Framework (TAF) and Transportation Analysis under CEQA (TAC).

For transportation projects within the purview of SBCTA member jurisdictions, SBCTA recommends applying three tiers of VMT screening: Transit Priority Area (TPA), Low-VMT Area, and Project Type Screening to identify projects that can be presumed to have less-than-significant VMT impacts. *(SBCTA VMT Screening Tool:* *https://www.arcgis.com/apps/webappviewer/index.html?id=779a71bc659041ad995cd48d9ef4052b)*

Projects not meeting screening criteria should use the SBTAM, a regional travel demand model, to estimate project VMT impacts relative to baseline and cumulative conditions

C. Alignment with Caltrans TAF/TAC (2024 Editions)

For projects on or affecting the State Highway System, SBCTA's countywide implementation framework was designed to remain compatible with the most recent Caltrans TAF and TAC, which establish standardized methods for evaluating induced travel, VMT forecasting, and mitigation documentation. https://dot.ca.gov/programs/sustainability/sb-743/resources

XII. Assembly Bill 52 – Native Americans: California Environmental Quality Act

In 2019, Assembly Bill 52 (AB 52) was signed into law and amended CEQA to address California Native American tribal concerns regarding how cultural resources of importance to tribes are treated with projects. With AB 52, a project that may cause a substantial adverse change in the significance of a tribal cultural resource, as defined in Public Resources Code Section 21074(a), is a project that may have a significant effect on the environment. When SBCTA/SBCOG is a Lead Agency under CEQA, SBCTA/SBCOG must conduct tribal consultation in accordance with Public Resources Code Sections 21080.3.1 and 21080.3.2, which involves contact with Native American tribes that are affiliated with the geographic area of a project.

Consultation under AB 52 is required prior to the release of a Negative Declaration or EIR (i.e., not for a CEQA exemption).[72] Within fourteen (14) days of determining that an application for a project is complete or of a decision by SBCTA/SBCOG to undertake a project, SBCTA/SBCOG must notify the appropriate Native American tribes about SBCTA's/SBCOG's plan to proceed with a project and inquire whether the

[72] Pub. Res. Code § 21080.3.1(b).

tribe(s) desires to be consulted under the AB 52 process.[73] SBCTA/SBCOG staff shall maintain a list of all Native American tribes that are traditionally and culturally affiliated with the San Bernardino County region. It is recommended that qualified cultural professionals, which can be consultants that act on behalf of SBCTA/SBCOG, participate in the consultation process as sensitive and confidential information may be exchanged by Native American representatives. Tribes have 30 days to respond to SBCTA/SBCOG in writing to confirm receipt of SBCTA's/SBCOG's notification and to confirm their desire to consult about a project[74]. SBCTA/SBCOG must then begin the formal consultation process within 30 days of receiving a Native American tribe's request for consultation[75].

In all cases, written correspondence with any Native American tribes on behalf of SBCTA/SBCOG shall be subject to any applicable confidentiality regulations.

As a part of the consultation, the parties may propose mitigation measures capable of avoiding or substantially lessening potential significant impacts to a tribal cultural resource or alternatives that would avoid significant impacts to a tribal cultural resource.[76] Consultation under AB 52 is considered concluded when the parties agree to measures to mitigate or avoid a significant effect to a tribal cultural resource or when a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached.[77] SBCTA/SBCOG shall maintain the confidentiality of the information exchanged with the tribes for the purposes of preventing any damage to tribal cultural resources and shall not disclose to a third party confidential information regarding tribal cultural resources.[78]

[73] Pub. Res. Code § 21080.3.1(d).
[74] Pub. Res. Code § 21080.3.1(d).
[75] Pub. Res. Code § 21080.3.1(e).
[76] Pub. Res. Code § 21080.3.2(a).
[77] Pub. Res. Code § 21080.3.2(b).
[78] Pub. Res. Code § 21080.3.2(c).

XIII. Helpful Links

- **CEQA Guidelines – California Governor's Office of Land Use and Climate Innovation**
  https://lci.ca.gov/ceqa/guidelines/

- **Notice of Exemption Form – California Governor's Office of Land Use and Climate Innovation**
  https://lci.ca.gov/docs/NOE.pdf

- **Notice of Preparation Form – California Governor's Office of Land Use and Climate Innovation**
  https://lci.ca.gov/sch/docs/20210820-NOP.pdf

- **Notice of Determination Form – California Governor's Office of Land Use and Climate Innovation**
  https://lci.ca.gov/sch/docs/20210820-NOD.pdf

- **Notice of Completion and Environmental Document Transmittal Form – California Governor's Office of Land Use and Climate Innovation**
  https:/lci.ca.gov/sch/docs/20210820-NOC.pdf

- **Appendix G of the CEQA Guidelines – California Association of Environmental Planners**
  http://califaep.org/docs/2019-Appendix_G_Checklist.pdf

Attachment A

Common Statutorily Exempt Projects

List of Common Statutorily Exempt Projects

Title 14, Division 6, Chapter 3, Article 18 (Statutory Exemptions)

Section	Description
15269	Emergency Projects
15273	Rates, Tolls, Fares, and Charges
15275	Specified Mass Transit Projects
15276	Transportation Improvement and Congestion Management Programs
15282	Other Statutory Exemptions. (Examples below but please follow link for full list)
	(g) any railroad grade separation project or reconstruct existing grade separation
	(j) a project for restriping streets or highways to relieve traffic congestion

*The list above provides commonly used statutory exemptions by SBCTA/SBCOG. For a full list, please follow this link: Statutory Exemptions

Attachment B
Common Categorical Exemption Classes

List of Common Categorical Exemption Classes

Title 14 CCR, Division 6, Chapter 3, Article 19 (Categorical Exemptions)

Classes	Section	Title
Class 1	15301	Existing Facilities
Class 2	15302	Replacement or Reconstruction
Class 3	15303	New Construction or Conversion of Small Structures
Class 6	15306	Information Collection
Class 9	15309	Inspections
Class 12	15312	Surplus Government Property Sales
Class 25	15325	Transfers of Ownership of Interest in Land to Preserve Existing Natural Conditions and Historical Resources
Class 30	15330	Minor Actions to Prevent, Minimize, Stabilize, Mitigate or Eliminate the Release or Threat of Release of Hazardous Waste or Hazardous Substances

*The list above provides commonly used exemption classes by SBCTA/SBCOG. For a full list, please follow this link: Categorical Exemptions

Attachment C
SBCTA/SBCOG Form 201

CEQA EXEMPTION DETERMINATION FORM

FORM 201

Project Title:	Click here to enter text.	**SBCTA** ☐	**SBCOG** ☐
Project Location:	Click here to enter text.		
Project Description:	Click here to enter text.		
Project Background:	Click here to enter text.		

SBCTA CEQA Determination

Based on an examination of the proposed action and supporting information, the Project is:

☐ **Exempt by Statute.** (PRC 21080[b]; 14 CCR 15260 et seq.)

☐ **Categorically Exempt. Class** Click here to enter text.. (PRC 21084; 14 CCR 15300 et seq.)

Based on an examination of this proposal and supporting information, the following statements are true and exceptions do not apply:

- If this project falls within exempt class 3, 4, 5, 6 or 11, it does not impact an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law.
- There will not be a significant cumulative effect by this project and successive projects of the same type in the same place, over time.
- There is not a reasonable possibility that the project will have a significant effect on the environment due to unusual circumstances.
- This project does not damage a scenic resource within an officially designated state scenic highway.
- This project is not located on a site included on any list compiled pursuant to Govt. Code § 65962.5 -Cortese List.
- This project does not cause a substantial adverse change in the significance of a historical resource.

☐ **Exempt by General Rule.** [This project does not fall within an exempt class, but it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment (14 CCR 15061[b][3].)

Approval

Recommended for Approval:		Approved by Department Director or Designee:	
[Insert Title]	Date	[Insert Title]	Date
Approval as to Form by General Counsel or Designee			
[Insert Title]	Date		

SBCTA Form 201 3-31-26 version