

Tribal Engagement with the
California Environmental
Quality Act (CEQA)
and the
National Environmental
Policy Act (NEPA)

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Agenda

- CEQA Overview
- NEPA Overview
- How and When Are They Combined?
- When Are Tribes or Tribal Organizations Involved?



What is CEQA?

CEQA requires government agencies to consider the environmental consequences of their actions before approving plans and policies or committing to a course of action on a project.

Key CEQA Terms

"Project"

A discretionary activity by a public agency, a private activity that receives any public funding, or activities that involve a public agency's issuance of a discretionary approval and that is not statutorily or categorically exempt from CEQA.

"Lead Agency"

A singular public agency that has the primary responsibility for carrying out or approving a project.

"Responsible" and "Trustee" Agencies

Trustee Agencies focus on ensuring that Lead and Responsible Agencies take into consideration those natural resources under their jurisdiction, and which are held in trust for the people of the state.

Purpose of CEQA

INFORM

government decisionmakers and the public about the potential environmental effects of proposed activities.

IDENTIFY

ways that environmental damage can be avoided or significantly reduced.

PREVENT

significant, avoidable environmental damage by requiring changes in projects, either by the adoption of alternatives or imposition of mitigation measures.

DISCLOSE

to the public why a project was approved if that project has significant environmental impacts that cannot be mitigated to a less than significant level.

Levels of Environmental Review

Not a Project

Will not cause a direct or reasonably foreseeable indirect physical change in the environment

CEQA Exemptions

- Statutory Exemption
- Categorical Exemption

Initial Study

- Negative Declaration
- Mitigated Negative Declaration
- Decision to Prepare an EIR

Environmental Impact Report (EIR)

- Project- or Program-based
- Supplemental
- Subsequent

CEQA Addendum

EIR process

- Notice of Preparation/Scoping meeting.
- Draft EIR preparation and filing Notice of Availability with State Clearinghouse once complete.
- Public Comment period and preparation of Final EIR with Responses to Comments.
- 10-day notice period to public agencies that Final EIR is available.
- Lead Agency decision/EIR certification.
- Notice of Determination filed with State Clearinghouse within 5 days of project approval.
- 30 day legal challenge period.



What is NEPA?

NEPA was the first major environmental law in the United States. NEPA requires Federal agencies to assess the environmental effects of proposed major Federal actions prior to making decisions.

Key NEPA Terms



"Action"

Adoption of official policy, formal plan, program, or a specific project, including actions approved by permit or other regulatory decisions as well as Federal and federally-assisted activities. and is not excluded from NEPA compliance.

"Lead Agency"

Can have multiple public agencies with responsibility for carrying out or approving a project.

"Cooperating Agency"

Any Federal agency (and a State, Tribal, or local agency with agreement of the lead agency) other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal for Federal action that may significantly affect the quality of the human environment.

Purpose of NEPA

"Use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans."

(NEPA Section 104)



Levels of Environmental Review

Categorical Exclusion

Environmental Assessment

- Finding of No Significant Impact (FONSI)
- Mitigated FONSI
- Decision to prepare an EIS
- Decision to not proceed with the project

Environmental Impact Statement
(EIS)

- Supplemental EIS

EIS process

- Publish Notice of Intent to begin the EIS process.
- Prepare Draft EIS and release for review and comment.
- Prepare Final EIS.
- Agency decision on project, file NOA with the EPA, and publish in the Federal Register.
- 30-day review period.
- Record Notice of Decision.

When and How do CEQA and NEPA Overlap?

●

Determining
Significance of an
Environmental
Impact is different

●

Some topics are
addressed under
CEQA, but not
NEPA

Some topics are
studied in more
detail under
NEPA than CEQA

●

Mitigation
requirements
are different

●

Pros and cons of
publishing a joint
document



Determining Significance of an Environmental Impact

- **CEQA:** EIR required if substantial evidence supports a fair argument that the project may have a significant impact.
- **NEPA:** Deference is given to the agency's determination of whether an EIS is required based on its assessment of the context and intensity of the potential impacts.
- **Combined process:** Best if the level of review is the same (but not required). A joint document should explain why one agency has identified a potential significant impact while the other has not.



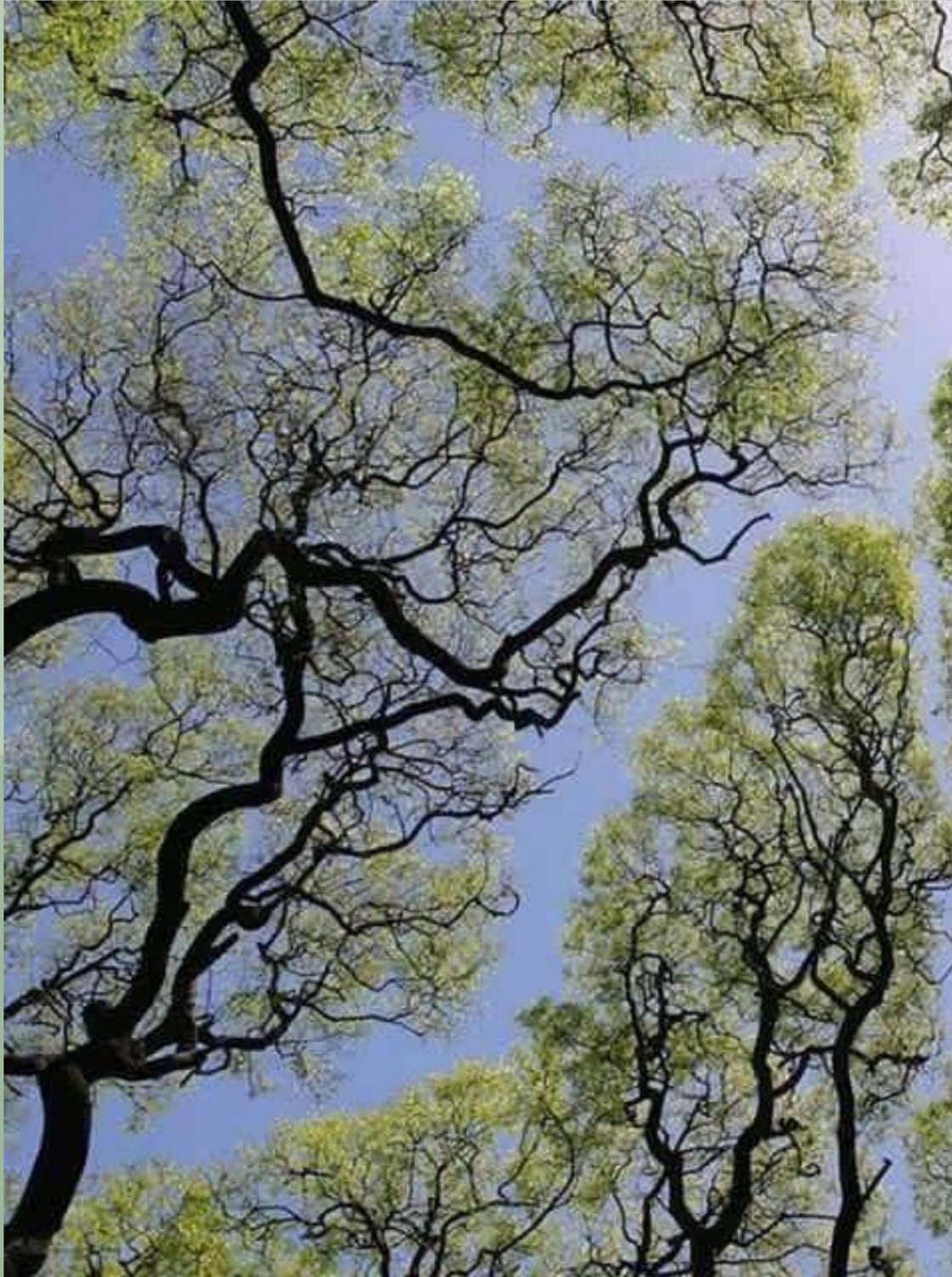
Topics specific to CEQA

- Greenhouse Gas Emissions
- Growth-Inducing Impacts
- Tribal Cultural Resources under AB 52



Topics specific to NEPA

- Cumulative Impact Analysis level of detail is more robust.
- Environmental Justice



Mitigation requirements are different

CEQA requires that any feasible mitigation measures that can reduce a significant impact be adopted, while **NEPA** does not (as long as the agency justifies its decision not to adopt feasible measures).



Joint CEQA/NEPA documentation

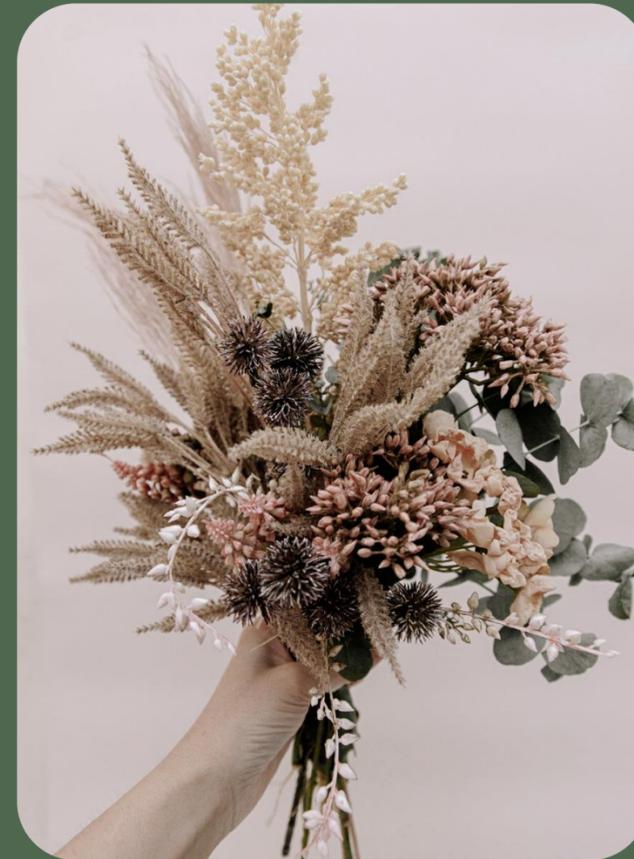
- Joint EIR/EIS or Joint EA/IS
- A Memorandum of Understanding (MOU) is advisable to make sure that the requirements of both processes are met.
- MOU also addresses shared goals, roles and responsibilities, issues of mutual concern, identifies shared data sets, identifies schedule.
- Joint effort not required

Tribal engagement in the CEQA and/or NEPA process



Applicant

Tribal project being undertaken



Interested Party

Providing comments on an environmental document



Tribal Representative

CEQA: Trustee Agency over resources affected by the project
NEPA: Cooperating Agency providing expertise for the NEPA analysis

Tribal Role(s) in Engaging with Agencies



As a Trustee and/or
Cooperating Agency



As a Party to a MOU

Other role(s)?

Q & A

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