

Bay Area Air Quality Management District

Manual Of Procedures

Volume VII

Guidelines For Environmental Processes Under the California Environmental Quality Act (CEQA)

VOLUME VII
GUIDELINES FOR ENVIRONMENTAL PROCESSES UNDER THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

INDEX

- 1. Introduction**
- 2. Applicability**
 - 2.1 Permits
 - 2.2 Rules
 - 2.3 Plans
- 3. Definitions**
 - 3.1 Definitions in CEQA Law and Guidelines
 - 3.2 Additional Definitions
- 4. Preliminary Environmental Review**
 - 4.1 Permits
 - 4.2 Rules and Plans
 - 4.3 Notice of Exemption
- 5. Initial Study**
 - 5.1 Purpose
 - 5.2 Permits
 - 5.3 Rules and Plans
- 6. Negative Declaration**
 - 6.1 Purpose
 - 6.2 Decision to Prepare a Negative Declaration
 - 6.3 Preparation Time
 - 6.4 Contents
 - 6.5 Public Notice
 - 6.6 Public Review of Negative Declaration
 - 6.7 Consideration and Approval
 - 6.8 Filing Notice of Determination
- 7. Environmental Impact Report**
 - 7.1 Purpose
 - 7.2 Types of EIRs
 - 7.3 Decision to Prepare an EIR
 - 7.4 Preparation Time
 - 7.5 Determination of Scope of EIR
 - 7.6 Preparation of Draft EIR

- 7.7 Notice of Completion
 - 7.8 Public Review of Draft EIR
 - 7.9 Evaluation of and Response to Comments
 - 7.10 Preparation of the Final EIR
 - 7.11 Certification of the Final EIR
 - 7.12 Findings
 - 7.13 Approval
 - 7.14 Statement of Overriding Considerations
 - 7.15 Notice of Determination
 - 7.16 Disposition of Final EIR
- 8. Appeals**
- 9. District Actions as a Responsible Agency**
- 9.1 Comments on Environmental Documents
 - 9.2 Coordination of Authority to Construct With CEQA Action By Another Agency
- 10. Mitigation Monitoring**
- 10.1 District as Lead Agency
 - 10.2 District as Responsible Agency

VOLUME VII
GUIDELINES FOR ENVIRONMENTAL PROCESSES UNDER
THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)
(Adopted December 18, 1985)

1. INTRODUCTION

The Bay Area Air Quality Management District (District) adopts by reference as its CEQA Guidelines, the State of California CEQA Law (Public Resources Code Sec. 21000, *et seq.*) and CEQA Guidelines (California Code of Regulations, Title 14, Sec. 15000 *et seq.* and Appendices). Amendments to State CEQA Law and Guidelines (State Guidelines), as supplemented by these District Guidelines (Guidelines) and any amendments hereto, will be applicable to the District. Time limits set forth in the CEQA Law and State Guidelines will also apply, unless otherwise noted in the following sections.

CEQA requires environmental review for projects developed or approved by California state, regional, or local government. The primary intent of CEQA is to ensure that the public and the agency making the decision on a proposed activity have full knowledge of the environmental impacts of the activity before proceeding. The District must satisfy CEQA's procedural aspects by documenting the environmental analysis for a project. In addition, the District must comply with certain substantive rules, which may require the District to mitigate environmental impacts or adopt some alternative to the project.

2. APPLICABILITY

2.1 Permits

2.1.1 In the case of District approval of permit applications, the District will be a "Lead Agency" under CEQA only when all of the following conditions are present:

- a. There is no other "Lead Agency" under CEQA. "The Lead Agency will normally be the agency with general governmental powers, such as a city or county, rather than...an air pollution control district..." (State Guidelines Sec. 15051(b)(1));
- b. There is an application to the District for a permit; and
- c. The proposed new or modified source is not exempt from CEQA pursuant to Section 2-1-311 or 2-1-312 of the District's Rules and Regulations.

2.1.2 When there is an application to the District for a permit, and another public agency is acting as Lead Agency, the District will be a "Responsible Agency" under CEQA.

2.2 Rules

For rule development, the District will be the "Lead Agency" under CEQA.

2.3 Plans

In the implementation of CEQA for plans, the District will be the "Lead Agency," or, in some cases, a Co-Lead Agency with other regional agencies (e.g., the Association of Bay Area Governments (ABAG) and the Metropolitan Transportation Commission (MTC)).

3. DEFINITIONS

3.1 Definitions in CEQA Law and Guidelines

All definitions in the California CEQA Law and Guidelines apply.

3.2 Additional Definitions

The following definitions shall also apply:

3.2.1 Decision-Making Body. The term "decision-making body," as used in the State Guidelines and these District Guidelines, means the person or body with authority to approve or deny the proposed project at issue.

- a. Permits. For permits issued by the District, the "decision-making body" is the Air Pollution Control Officer (APCO).
- b. Rules and Plans. For rules and plans adopted by the District, the "decision-making body" is the District's Board of Directors.

3.2.2 District. The Bay Area Air Quality Management District, its Board of Directors, its Executive Director (the APCO), or its staff.

3.2.3 Lead Agency. The public agency which has the principal responsibility for carrying out or approving a project. The Lead Agency will decide whether an EIR, Negative Declaration, or other action under CEQA will be required for the proposed project and will cause the appropriate document to be prepared.

3.2.4 Project. The whole of an action, which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. Projects reviewed by the District under CEQA will be:

- a. A proposed activity for which an authority to construct is sought; or
- b. A proposed rule or plan.

3.2.5 Responsible Agency. A public agency which proposes to carry out or approve a proposed project, for which a Lead Agency is preparing or has prepared an EIR or Negative Declaration. For the purposes of CEQA, the term "Responsible Agency" includes all public agencies other than the Lead Agency, which have discretionary approval power over the project.

4. PRELIMINARY ENVIRONMENTAL REVIEW

4.1 Permits

4.1.1 Consultation With Applicants. When the District is the Lead Agency, the District shall, upon request of a potential applicant, provide for consultation prior to the filing of the application. This consultation may include discussion regarding the range of action, potential alternatives, mitigation measures, and any potential and significant effects on the environment of the proposed project.

4.1.2 Review of Application for Completeness. The District is allowed 30 days to review the completeness of applications. For a project which is not exempt from CEQA review and for which no other agency is acting as the Lead Agency, the applicant will be required to submit a Preliminary Environmental Study containing detailed environmental information with the permit application. (See Section 2-1-426 of the District's Rules and Regulations.) Such information will be used by District staff in preparing an Initial Study of the proposed project, and to determine whether an Environmental Impact Report (EIR) should be prepared, or whether a Negative Declaration is appropriate. When adequate environmental information for preparation of an Initial Study is lacking, the permit application shall not be accepted as complete. If the District does not provide the applicant with a written determination of the completeness of the application within that 30-day period, the application will be deemed complete on the 30th day. After accepting an application as complete and determining that the proposed project is subject to CEQA, the District staff shall begin the formal environmental evaluation of the proposed project. Accepting an application as complete does not limit the authority of the District to require the applicant to submit additional information needed for an adequate environmental evaluation of the proposed project.

4.1.3 Statutory and Categorical Exemptions. During the preliminary review of a proposed project, the District will determine whether the proposed project qualifies under any of the following exemptions.

- a. Ministerial Exemption. The State Guidelines, in Section 15268, define projects which will be ministerially exempt from CEQA. Section 2-1-311 of the District's Rules and Regulations sets forth the basis upon which the District will identify projects as being "ministerial" for purposes of CEQA.
- b. Title V Permit Exemption. Under Public Resources Code Section 21080.24, the issuance, modification, amendment, or renewal of any permit pursuant to Title V of the federal Clean Air Act or pursuant to a district Title V program is exempt from CEQA, unless the permit activity authorizes a physical or operational change.
- c. Categorical Exemption. The State Guidelines, in Article 19, define types of projects which will be categorically exempt from CEQA. Section 2-1-312 of the District's Rules and Regulations sets forth specific types of projects which have been determined by the District to be categorically exempt from CEQA. Section 2-1-313 states exceptions to the exemptions under 2-1-312.

4.2 Rules and Plans

During the preliminary review of a proposed rule or plan, the District will determine whether the rule or plan is exempt from CEQA. Section 15061 of the State Guidelines exempts the following activities:

- 4.2.1 Non-Projects. The activity is not a "project" within the meaning of CEQA.** CEQA only applies to "projects," as that term is defined in the statute and Guidelines. State Guidelines Section 15378 defines project in an extremely broad manner, and rules and plans will generally be "projects."
- 4.2.2 Statutory Exemptions. The activity falls within a statutory exemption in the CEQA law.** State Guidelines Section 15273 provides statutory exemption for the establishment, modification, structuring, restructuring, or approval of rates and other charges by public agencies. Among the charges that are statutorily exempt from CEQA are charges for meeting operating expenses, charges for purchasing or leasing supplies, equipment, or materials, and charges for meeting financial reserve needs and requirements. Thus, rulemaking activities related to fees will normally be statutorily exempt from CEQA.
- 4.2.3 Categorical Exemptions. The activity falls within a categorical exemption in the State Guidelines.** The categorical exemptions approved by the State's Resources Agency are listed in State Guidelines Sections 15301-15329. However, as a result

of court decisions, categorical exemptions shall not normally be used for rule development activities.

4.2.4 No Possible Effect. There is no possibility that the activity may have a significant effect on the environment. Pursuant to State Guidelines Section 15061, a rule is exempt from CEQA where it can be seen with certainty that there is no possibility that it may have a significant effect on the environment. This exemption shall only be used when a rule or amendment has purely administrative or economic effects as, for example, a reorganization of a rule, the imposition of monitoring or record keeping requirements, or the approval of calculation methodologies or test methods.

4.3 Notice of Exemption

4.3.1 Effect. When the District's decision-making body decides that a proposed project is exempt from CEQA, the District may file a Notice of Exemption. The filing of a Notice of Exemption starts a 35-day statute of limitation period on court challenges to the District's determination that the proposed project is exempt from CEQA. If a Notice of Exemption is not filed, a 180-day statute of limitations will apply.

4.3.2 Contents. Such a notice shall include:

- a. A brief description of the proposed project.
- b. A finding that the proposed project is exempt, including a citation to the State Guidelines section under which it is found to be exempt.
- c. A brief statement of reasons to support the finding.

4.3.3 Permits. A Notice of Exemption may be prepared prior to the issuance of the APCO's Preliminary Decision pursuant to Section 2-2-403 when applicable and may accompany the project application through the permit process. Any such notice shall be filed with the county clerk of the county in which the proposed project is located.

5. INITIAL STUDY

5.1 Purpose

The purpose of an Initial Study is to provide the District with information to use as the basis for deciding whether to prepare an EIR or Negative Declaration, or in some cases, whether to rely upon a previously prepared EIR or Negative Declaration. District staff shall consult informally with other state, regional and local agencies responsible for resources affected by the proposed project to obtain the recommendations of those

agencies as to whether an EIR or a Negative Declaration should be prepared. The Initial Study will provide documentation of the factual basis for the finding in a Negative Declaration that a proposed project will not have a significant effect on the environment. The Initial Study should assist in the preparation of an EIR by focusing on the potential environmental effects which are determined to be significant, identifying the effects determined not to be significant, and explaining the reasons for determining that potentially significant effects would not be significant.

5.2 Permits

Within 30 days of a permit application being deemed complete: (1) an Initial Study of the proposed project will be completed by the District's staff; (2) the District's staff shall recommend to the APCO whether a Negative Declaration is proper or whether an EIR should be prepared; and (3) the APCO will consider this staff recommendation, and will determine whether a Negative Declaration will be prepared or an EIR will be required. The Initial Study may enable an applicant to modify a proposed project, mitigating adverse impacts before an EIR is prepared, thereby enabling the proposed project to qualify for a Negative Declaration.

5.3 Rules and Plans

5.3.1 For a rule implementing a control measure in an adopted Clean Air Plan, an Initial Study may be used to determine whether the rule will have any impacts not addressed by the EIR for the Clean Air Plan. Where the EIR was a Master EIR, such an Initial Study must be performed. Where the EIR was a Program EIR, such an Initial Study is required only if the rule would have effects that were not examined in the Program EIR. For other rules that are determined not to be exempt from CEQA, an Initial Study shall be prepared. In connection with the proposed adoption of a rule requiring the installation of pollution control equipment, or a rule imposing a performance standard, an environmental analysis of the reasonably foreseeable methods of compliance shall be prepared and shall comply with the requirements of Public Resources Code Section 21159(a). For District rules, this analysis will normally appear in the Initial Study or the staff report prepared for the rule.

5.3.2 An Initial Study shall be prepared for a plan when:

- 1) A proposed plan has the potential to result in a significant effect on the environment;

- 2) Revisions or updates to a plan or changes in the circumstances under which a plan would be carried out could trigger a Supplemental or Subsequent EIR; or
- 3) Subsequent activities under a plan may have significant effects on the environment which were not examined in the program EIR or master EIR on that plan.

5.3.3 Where the rule or plan is covered by a Master EIR, the District must file a Notice of Determination (in the manner set forth in Section 7.15) after adoption of the rule or plan. Where the rule or plan is covered by a Program EIR, filing of the Notice of Determination is not mandatory, but filing the notice shortens the statutory period for legal challenges under CEQA.

6. NEGATIVE DECLARATION

6.1 Purpose

A Negative Declaration is a written statement by the District briefly describing reasons why a proposed project that is not exempt from CEQA will not have a significant effect on the environment and does not require the preparation of an EIR.

6.2 Decision to Prepare a Negative Declaration

A proposed Negative Declaration shall be prepared for a proposed project subject to CEQA when either: (1) the Initial Study shows that there is no substantial evidence, in light of the whole record before the District, that the proposed project may have a significant effect on the environment, or (2) the Initial Study identifies potentially significant effects on the environment, but:

- 1) Revisions in the proposed project (or, in the case of permitting activities, proposals made by or agreed to by the applicant) before the proposed Negative Declaration is released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur; and
- 2) There is no substantial evidence, in light of the whole record before the agency, that the proposed project, as revised, may have a significant effect on the environment.

6.3 Preparation Time

6.3.1 Permits.

- a. The draft Negative Declaration should be prepared within 60 days of the acceptance of a permit application as complete. The draft Negative Declaration will be circulated

for public review. Within 105 days from the acceptance of the permit application as complete, the Negative Declaration shall be completed and ready for approval by the APCO. The proposed project shall be approved or disapproved as expeditiously as possible and no later than 180 days after the permit application is accepted as complete, except as provided in Sections 2-1-408 and 2-2-403 of the District's Rules and Regulations.

- b. If a Negative Declaration is prepared under a contract with the District, the contract shall be executed within 45 days from the date on which the District determines that a Negative Declaration is required.

6.3.2 Rules and Plans. If the Initial Study for a rule or plan discloses no significant effects and a Negative Declaration will be proposed, the District must prepare and provide for public review of the document. Notice that the District intends to adopt a Negative Declaration will be made part of the public hearing notice, and the review period will then run during the period prior to the public hearing. As a consequence, the Initial Study and Negative Declaration should be prepared, at the latest, prior to the giving of public notice for the hearing on the rule or plan. Where possible, the Negative Declaration may be prepared in time for review at a public workshop for the rule or plan.

6.4 Contents

A Negative Declaration circulated for public review shall include:

- A brief description of the proposed project, including a commonly used name for the proposed project, if any;
- The location of the proposed project, preferably shown on a map, and the name of the applicant;
- A proposed finding that the proposed project will not have a significant effect on the environment;
- A copy of the Initial Study documenting reasons to support the finding; and
- Mitigation measures, if any, included in the proposed project to avoid potentially significant environmental effects.

6.5 Public Notice

6.5.1 Notice Requirement. Notice that the APCO proposes to adopt a Negative Declaration shall be provided to the public at least 20 days prior to the adoption by the District of the Negative Declaration. When a State agency is a Responsible Agency, the review period shall be at least 30 days.

6.5.2 Contents. The notice shall specify the period during which comments will be received on the Negative Declaration, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project and its location, and the address where copies of the Negative Declaration, and all documents referenced in the Negative Declaration, are available for review.

6.5.3 Manner of Notification. Public notice shall be given at least one time by the District in a newspaper of general circulation. Notice that the APCO intends to adopt a Negative Declaration shall also be given to all organizations and individuals who have previously requested such notice. The alternatives for providing notice specified in the State Guidelines shall not preclude the District from providing additional notice. In addition to the public notices required by the State Guidelines, notice shall also be sent to county clerks for posting as required by Public Resources Code Section 21092.3.

- a. Permits. For permit activities and when applicable, public notice of the APCO's intent to adopt a Negative Declaration shall be included as part of the regular 30-day public notice stating the preliminary decision of the APCO, issued in accordance with Section 2-2-404.
- b. Rules and Plans. For rules and plans, notice of the District's intent to adopt a Negative Declaration shall be included in the Public Hearing Notice required under Section 40725 of the Health and Safety Code.

6.6 Public Review of Negative Declaration

A copy of the notice of the public review period, together with the proposed Negative Declaration, shall be sent to every Responsible Agency known to be concerned with the proposed project, any other public agency known to have jurisdiction by law over resources affected by the proposed project, and, where one or more state agencies will be a Responsible Agency or Trustee Agency or will exercise jurisdiction by law over natural resources affected by the project, to the State Clearinghouse (10 copies) for distribution to the state agencies.

6.7 Consideration and Approval

Prior to approving the proposed project, the District's decision-making body shall consider the Negative Declaration together with any comments on it which were received during the public review process. The District's decision-making body shall approve the Negative Declaration if it determines on the basis of the Initial Study, of mitigation measures

included in the proposed project, and of any comments received, that there is no substantial evidence that the proposed project will have a significant effect on the environment.

6.8 Filing Notice of Determination

The District shall file a Notice of Determination (NOD) within five (5) working days of approval of a project for which the District, as Lead Agency, prepared or caused to be prepared a Negative Declaration. The NOD shall be filed with the Governor's Office of Planning and Research. The filing of the NOD starts a 30-day statute of limitations on court challenges under CEQA to the approval of the proposed project.

6.8.1 Permits. The NOD shall also be filed with the county clerk of the county in which the proposed project is located.

6.8.2 Rules and Plans. The NOD shall also be filed with the clerk of each of the nine counties regulated by the District.

7. ENVIRONMENTAL IMPACT REPORT

7.1 Purpose

An EIR is a detailed statement prepared under CEQA which describes and analyzes the significant environmental effects of a proposed project and discusses ways to mitigate or avoid such effects.

7.2 Types of EIRs

There are a number of different types of EIRs that may be prepared to satisfy environmental review requirements for approval of projects by the District.

7.2.1 Master EIR. A Master EIR may be prepared on a series of actions that can be characterized as one large project. Master EIRs are intended to substantially reduce, or eliminate, subsequent environmental review for the individual projects evaluated in the Master EIR. However, if an individual project is commenced more than five years after certification of the Master EIR which covered it, the Master EIR may not be used with that project except pursuant to Public Resources Code Section 21157.6. Master EIRs may be used by the District for the adoption of attainment plans. In such circumstances, subsequent EIRs will not normally be necessary for rule adoption activities pursuant to such plans. Where an EIR is necessary for an

individual rule identified in the Master EIR, a Focused EIR may be used in most cases.

- 7.2.2 Program EIR.** Like a Master EIR, a Program EIR may be prepared on a series of actions that can be characterized as one large project. There are no time restrictions on use of a Program EIR with subsequent projects, as there are for a Master EIR. Program EIRs may be used by the District for the adoption of attainment plans. In such circumstances, subsequent EIRs will not normally be necessary for rule adoption activities pursuant to such plans. Where an EIR is necessary for an individual rule identified in a Program EIR, a Subsequent or Supplemental EIR may be used.
- 7.2.3 Project EIR.** A Project EIR focuses on changes in the environment that would result from a single project. When the District is a Lead Agency, a Project EIR will normally be used to evaluate the environmental effects associated with a permit application to the District.
- 7.2.4 Focused EIR.** A Focused EIR may be used only (1) to review the impacts of a subsequent project identified in a Master EIR or (2) to review a proposed project which consists solely of the installation of pollution control equipment as required by a rule or regulation of the State Air Resources Board. Unlike a Subsequent or Supplemental EIR, a Focused EIR may not be used to update a Program EIR or Master EIR. The District may use a Focused EIR for a rule identified in an attainment plan for which a Master EIR was prepared.
- 7.2.5 Subsequent and Supplemental EIR.** A Subsequent or Supplemental EIR is used to address significant new impacts, a substantial increase in the severity of previously-identified impacts, or new mitigation measures for any project for which an EIR or Negative Declaration was completed. A Subsequent EIR is a new EIR or a revised version of a prior EIR. A Supplemental EIR includes only information necessary to update a prior EIR. Either might be used when the District has prepared a Negative Declaration or an EIR for a project, and the project is subsequently altered significantly. A Subsequent or Supplemental EIR may also be used to update a Program EIR or Master EIR or for a rule identified in an attainment plan for which a Program EIR was prepared.
- 7.2.6 Addendum to EIR.** An addendum to an EIR will normally be prepared if only minor technical changes or additions are necessary to bring a previously prepared EIR into full compliance with CEQA and if none of the conditions requiring a Subsequent or Supplemental EIR exist.

7.3 Decision to Prepare an EIR

The decision to prepare an EIR may be made (1) by the APCO if an EIR will clearly be required, or (2) when an Initial Study indicates a potential for a significant environmental effect.

7.3.1 Permits. The decision to prepare an EIR may also be made by the permit applicant. Except where the applicant has made this decision, the District shall have 30 days from the date of receipt of a complete application within which to determine whether an EIR should be prepared.

7.3.2 Rules and Plans. Preparation of the EIR should be coordinated with rule or plan development. EIR preparation should begin when the rule or plan is in a form that is not likely to change significantly. As a practical matter, this will not usually happen until after all workshops on the proposed rule or plan are completed. In some cases, however, the likely final form of a rule or plan may be clear at an earlier stage, and EIR preparation can begin at that point in time.

7.4 Preparation Time

7.4.1 Permits.

- a. The District shall complete and certify the Final EIR for a proposed project within one year of the acceptance of the permit application as complete. With the consent of the applicant, this one-year time limit may be extended once for a period of not more than 90 days.
- b. When the District is the Lead Agency and has determined that an EIR is required, the 60-day limit for making a preliminary decision on a permit as specified in Section 2-2-403 shall be suspended until a Draft EIR is ready for public review. The Draft EIR and the preliminary decision shall be circulated for public review concurrently.
- c. The 60-day limit for taking final action on a permit specified in Section 2-1-408 and the 180-day limit for taking final action on a permit specified in Section 2-2-406 shall be suspended until such time as the Final EIR is completed to the satisfaction of the District.

7.4.2 Rules and Plans. For rules and plans, there are no time restrictions comparable to those for permits. Preparation of the EIR may take as long as necessary to adequately address identified impacts. The major restriction on preparation time will be the District staff's schedule for bringing the matter before the Board.

7.5 Determination of Scope of EIR

- 7.5.1 Notice of Preparation.** Immediately after deciding that an EIR is required for a proposed project, the District shall send to each Responsible Agency a Notice of Preparation stating that an EIR will be prepared. This notice shall also be sent to every federal agency involved in approving or funding the proposed project, to each other public agency responsible for natural resources which may be affected by the proposed project, and to all organizations and individuals who have requested such notice with respect to that proposed project. Notice shall be sent to the State Clearinghouse (10 copies) if State agencies are involved. The District shall use either certified mail or any other method of transmittal which provides it with a record that the notice was received. Work may begin on the Draft EIR immediately without awaiting responses to the Notice of Preparation. The preliminary Draft EIR may need to be revised or expanded to conform to responses to the Notice of Preparation. The District shall not circulate a Draft EIR for public review before the time period for responses to the Notice of Preparation has expired, nor before the District is satisfied with the contents of the draft.
- 7.5.2 Response to Notice of Preparation.** Within thirty (30) days after receipt of the Notice of Preparation, each Responsible Agency shall provide the District with specific detail about the scope and content of the environmental information related to the Responsible Agency's area of statutory responsibility which must be included in the Draft EIR. Such responses should, at a minimum, identify the significant environmental issues and reasonable alternatives and mitigation measures which the Responsible Agency will need to have explored in the Draft EIR. If a Responsible Agency fails by the end of the 30-day period to provide the District with either a response to the notice or a well justified request for additional time, the District may presume that the Responsible Agency has no response to make.
- 7.5.3 Public Agency Consultations.** In order to expedite consultation, the District, a Responsible Agency, or, in the case of a permit, the project applicant may request one or more meetings between representatives of the agencies involved to assist the District in determining the scope and content of the environmental information which the Responsible Agency may require. Any such meeting shall be convened by the District as soon as possible, but no later than 30 days after the meetings were requested. On request, OPR will assist in convening meetings which involve state agencies.

7.5.4 Early Public Consultation. The District may consult directly with any person or organization it believes will be concerned with the environmental effects of the proposed project prior to completing the Draft EIR. Early consultation may solve potential problems that would arise in more serious forms later in the review process. This early consultation may be called scoping. Scoping will be necessary when preparing an EIR/EIS jointly with a federal agency.

7.6 Preparation of Draft EIR

7.6.1 Process. The District staff will assemble a set of instructions, called a Scope of Work, for completion of the preliminary Draft EIR in accordance with State Guidelines, Section 15120. A Draft EIR will be prepared through one or more of the ways identified in Section 7.6.2 below. The District staff shall review the Draft EIR for its completeness and accuracy, and shall be responsible for determining if it is acceptable for distribution.

7.6.2 Methods of Preparation. The District may choose one of the following arrangements, or a combination of them, for preparing a Draft EIR:

- a. Prepare the Draft EIR directly with its own staff.
- b. Contract with another entity, public or private, to prepare the Draft EIR.
- c. Use a previously prepared EIR.
- d. For permit applications, accept a draft prepared by the applicant, a consultant retained by the applicant, or any other person.
- e. For permit applications, execute a third party contract or memorandum of understanding with the applicant to govern the preparation of a Draft EIR by an independent contractor.

7.6.3 Preparer of EIR - Permits.

- a. Generally, preliminary Draft EIRs will be prepared by a consultant of the District's choice, who is also acceptable to the applicant. District staff shall notify the applicant of the actual or estimated consultant's fees and charges prior to the time the consultant's services are rendered. The applicant shall bear the costs of all consultant fees and charges as well as the normal costs associated with the preparation and processing of an EIR. In this regard, see Section 3-315 of the District Rules and Regulations.
- b. If an EIR is prepared under a contract to the District, the contract shall be executed within 45 days from the date on which the District determines that an EIR is required.

- 7.6.4 Responsibility.** Before using a draft prepared by another person or entity, the District shall subject the draft to its own review and analysis. The Draft EIR which is sent out for public review must reflect the independent judgment of the District based on its own analysis or on the analysis of outside consultants employed by the District. Modifications of the preliminary draft may be required until such time as a Draft EIR has been determined to be satisfactory by the District. The District is responsible for the adequacy and objectivity of the Draft EIR.
- 7.6.5 Suspension of 60-Day Limit for Issuance of Preliminary Decision - Permits.** It is reasonable to expect that, in those cases in which the APCO determines that a Draft EIR is required for a proposed project, the preparation of the Draft EIR will require longer than the 60 days which Section 2-2-403 specifies for the APCO to issue a preliminary decision on the permit application. In such cases, the 60-day requirement shall be suspended for as long a period of time as is necessary for the Draft EIR to be completed to the satisfaction of the District (see Section 7.4 regarding preparation time and extensions).

7.7 Notice of Completion

As soon as the Draft EIR is completed to the satisfaction of the District, a Notice of Completion must be filed with the California Secretary of Resources. Notices will also be mailed to interested parties and be published in a newspaper of general circulation. The Notice of Completion shall include: a brief description of the proposed project; the proposed location of the proposed project; an address where copies of the Draft EIR are available; and the period during which comments will be received on the Draft EIR.

Note: Notices of Completion are now filed with the Governor's Office of Planning and Research rather than with the Secretary of Resources.

7.8 Public Review of Draft EIR

- 7.8.1 Notice to Other Agencies.** The District shall provide copies of the Draft EIR, with notice of any public hearing date (if known), to all recipients of the Notice of Preparation, the State Clearinghouse (10 copies), ABAG (Association of Bay Area Governments), and other agencies which are known to exercise authority over or have knowledge of resources affected by the proposed project.
- 7.8.2 Contents.** The notice shall specify the period during which comments will be received on the Draft EIR, and shall include the date, time, and place of any public meetings or hearings on the proposed project, a brief description of the proposed project, the significant effects on the environment anticipated as a result of the proposed project, and the address where copies of the Draft EIR,

and all documents referenced in the Draft EIR, are available for review.

7.8.3 Notice to the Public. Notice of the availability of the Draft EIR shall also be given to all organizations and individuals who have previously requested such notice and by publication at least one time in a newspaper of general circulation. Notice shall be provided at least ten (10) days prior to any hearing and shall invite any interested party to examine the Draft EIR and to make comments on it. The review period for Draft EIRs issued by the District will normally be 45 days.

7.8.4 Permits. In the case of EIRs for permits, copies of the Draft EIR, with notice of any public hearing date, shall also be sent to the city in which the proposed project is located (or, in the case of a proposed project located in an unincorporated area, the county) and to libraries in the area of the proposed project. Notices for EIRs on permits will also include the location of the proposed project. The District shall provide public notice of the availability of the Draft EIR as part of the regular 30-day public notice stating the preliminary decision of the APCO which is issued in accordance with Section 2-2-404 of the District's Rules and Regulations. Public hearings may be conducted on the Draft EIR either separately or in conjunction with any scheduled hearings on the APCO's preliminary decision to grant or deny an Authority to Construct. Public hearings on Draft EIRs will normally be limited to major proposed projects of great controversy.

7.8.5 Rules and Plans. Public review of Draft EIRs on proposed rules and plans shall normally be coterminous with the statutorily mandated public review periods which take place prior to the adoption of such rules and plans. See Health and Safety Code Section 40725, *et seq.*

7.9 Evaluation of and Response to Comments

The comments from reviewers will be assembled and reviewed by District staff. In the case of an EIR on a permit, a copy of such comments will also be forwarded to the applicant (and anyone else who requests a copy). The District shall evaluate all substantive comments on the Draft EIR which it receives and shall prepare, or have prepared, a written response describing the disposition of any significant environmental issue that is raised by the commenters.

7.10 Preparation of the Final EIR

The District shall prepare, or have prepared, a Final EIR before approving a proposed project.

7.10.1 Contents. The Final EIR shall include:

- a. The Draft EIR or a revision of the draft.
- b. Comments and recommendations received on the Draft EIR either verbatim or in summary.
- c. A list of persons, organizations, and public agencies commenting on the Draft EIR.
- d. The responses of the District to significant environmental points raised in the review and consultation process.
- e. Any other information added by the District.

7.10.2 Distribution. The Final EIR shall be distributed to all parties who commented on the Draft EIR.**7.11 Certification of the Final EIR**

At such time as the Final EIR has been completed, it shall be presented to the District's decision-making body for certification. The decision-making body shall certify that the Final EIR has been completed in compliance with CEQA and that the information contained in that document has been reviewed and considered prior to approving the proposed project covered by the Final EIR.

7.12 Findings

The District's decision-making body shall not approve a proposed project for which an EIR has been completed which identifies one or more significant adverse environmental effects unless one or more written findings are made for each of those significant effects which have been identified, accompanied by a brief explanation of the rationale for each finding. The findings required shall be supported by substantial evidence in the record.

7.12.1 Possible Findings. The possible findings are:

- a. Changes or alterations have been required in, or incorporated into, the proposed project which avoid or substantially lessen the significant environmental effects as identified in the Final EIR. If the District has concurrent jurisdiction with another agency to deal with identified feasible mitigation measures or alternatives, the District will adopt necessary changes over which it has authority.
- b. Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the District. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

- c. Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or proposed project alternatives identified in the Final EIR.

7.12.2 Administrative Record. The findings shall also specify the location and custodian of the documents or other material which constitute the administrative record of proceedings upon which the District's decision is based.

7.13 Approval

When the District is Lead Agency, the District's decision-making body shall not approve a proposed project for which an EIR was prepared unless either:

- 1) The proposed project as approved will not have a significant effect on the environment, or
- 2) (i) All significant effects on the environment have been eliminated or substantially lessened where feasible as shown in the findings, and (ii) the District has determined that any remaining significant effects on the environment found to be unavoidable are acceptable due to overriding considerations.

7.14 Statement of Overriding Considerations

CEQA requires the decision-maker to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the proposed project. If the benefits of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered "acceptable." Where the District's decision-making body allows the occurrence of significant adverse environmental effects which are identified in the Final EIR but are not at least substantially mitigated, the decision-making body shall state in writing the specific reasons to support its action based on the Final EIR and/or other information in the record. If the decision-making body makes such a statement of overriding considerations, the statement should be included in the record of the proposed project approval and should be mentioned in the Notice of Determination.

7.15 Notice of Determination

7.15.1 When Required. The District shall file a Notice of Determination (NOD) within five (5) working days of project approval in

connection with which the District, as Lead Agency, prepared or caused to be prepared an EIR.

7.15.2 Where Filed. The NOD shall be filed with the Governor's Office of Planning and Research.

a. Permits. The NOD shall also be filed with the county clerk of the county in which the project is located.

b. Rules and Plans. The NOD shall also be filed with the clerk of each of the nine counties within the jurisdiction of the District.

7.15.3 Effect. The filing of the NOD starts a 30-day statute of limitations on court challenges under CEQA to the approval of the proposed project.

7.16 Disposition of a Final EIR

The District shall retain one or more copies of the Final EIR as public records for a reasonable period of time.

7.16.1 Permits. The District shall file a copy of the Final EIR with the appropriate planning agency of any city and/or county where the proposed project covered by the EIR will cause significant adverse effects on the environment. The applicant will be required to provide a copy of the certified Final EIR to each Responsible Agency.

7.16.2 Rules and Plans. The District shall file a copy of the Final EIR with the appropriate planning agencies of the nine counties within the jurisdiction of the District.

8. APPEALS

Public Resources Code Section 21167 provides a mechanism for any interested party to challenge District determinations under CEQA. To raise such a challenge, a party must present to the District, prior to project approval by the District's decision-making body, the grounds for the claim of noncompliance with CEQA. For permits, the manner in which the objections may be presented is set forth in state law and in District Rules and Regulations. Under Public Resources Code Section 21151(c), the APCO's decision to certify an EIR on a permit may be appealed to the District's Board of Directors. The APCO's decision on CEQA issues related to the issuance or denial of a permit may be appealed to the District's Hearing Board pursuant to Sections 2-1-410 and 2-2-407 of the District's Rules and Regulations.

9. DISTRICT ACTIONS AS A RESPONSIBLE AGENCY

9.1 Comments on Environmental Documents

The District may act as a Responsible Agency to carry out or approve a proposed project for which another public agency, acting as Lead Agency, is preparing or has prepared an EIR or Negative Declaration. Generally, the District will act as a Responsible Agency only in connection with its review of permit applications.

9.1.1 Review Procedure. Environmental documents prepared by other agencies which are received by the District for review should be referred to the Environmental Review Section, which will act as the clearinghouse for District review of environmental documents prepared by other agencies.

9.1.2 District Comments. Prior to the close of the public review period for a Draft EIR or mitigated Negative Declaration, the District acting as a Responsible Agency, shall either (a) submit to the lead agency complete and detailed performance objectives for mitigation measures which would address the significant effects on the environment identified by the District; or (b) refer the Lead Agency to appropriate, readily-available guidelines or reference documents.

- a. Any mitigation measures submitted to a Lead Agency by the District shall be limited to measures that mitigate impacts to resources which are subject to the statutory authority of the District.
- b. Compliance or noncompliance by the District with this requirement shall not limit the District's authority to approve, condition, or deny the proposed project.

9.2 Coordination of Authority to Construct With CEQA Actions By Another Agency

9.2.1 Grant of Authority to Construct After Final Action. No Authority to Construct shall be granted for an application which is subject to the District's CEQA requirements until the Lead Agency has taken final action under the CEQA Law and Guidelines. That final action may be a determination that the proposed project is exempt or ministerial, the approval of a Negative Declaration, or the certification of a Final EIR. When the final action of the Lead Agency is the certification of a Final EIR or the approval of a Negative Declaration, the Air Pollution Control Officer will consider the information contained in that document before granting the Authority to Construct. This limitation will apply wherever and

whenever governmental agency action by way of environmental impact assessment is required, whether the Lead Agency be an agency of local government or some other public body.

9.2.2 Review Prior to Final Action. The limitation of Section 9.2.1 need not prevent an applicant from filing for an Authority to Construct or prevent the District from reviewing permit-related information prior to any such final action. However, the District will not accept an application for an Authority to Construct as complete until appropriate environmental documentation is prepared and submitted to the District in accordance with Section 2-1-426 of the District's Rules and Regulations.

10. MITIGATION MONITORING

10.1 District as Lead Agency

When the District is a Lead Agency, it shall adopt a reporting or monitoring program for project changes or mitigation measures adopted to mitigate or avoid significant effects on the environment. Mitigation measures must be fully enforceable through permit conditions, agreements, or other measures. Where the project involves the adoption of a rule or plan, the mitigation measures may be incorporated into the rule or plan. The mitigation reporting or monitoring program shall be designed to ensure compliance during project implementation. For those changes which have been required or incorporated into the proposed project at the request of an agency having jurisdiction by law over natural resources affected by the project, that agency shall, if so requested by the District, prepare and submit a proposed reporting or monitoring program.

10.2 District as Responsible Agency

When the District is a Responsible Agency and the Lead Agency has adopted mitigation measures relating to matters within the jurisdiction of the District, the District shall require implementation of these mitigation measures as a condition of project approval.