



The California County Platform | Chapter 17 California Environmental Quality Act

Adopted by the CSAC Board of Directors November 2020

INTRODUCTION

The California Environmental Quality Act (CEQA), signed into law by Governor Ronald Reagan in 1970, establishes a process to incorporate scientific information and public input into the approval of development projects, both public and private. Viewed by many as California's landmark environmental law, CEQA has attracted controversy throughout its 43 years and its reform is a frequent subject of proposed legislation.

In order to respond to CEQA reform proposals, CSAC convened a working group of CEQA experts including, planning directors, county counsels, and public works directors to help draft policy principles to guide CSAC through ongoing reform debates. The following chapter sets forth the CEQA Working Group's principles and policy statements regarding CEQA reforms.

SECTION 1: ROLE OF CEQA

Counties acknowledge that CEQA provides essential environmental information to the local decision-making process. Its purpose is to ensure that governmental decisions take full account of environmental impacts, including reducing or avoiding significant environmental impacts wherever feasible, as well as fostering transparency in the decision making process.

The protection of our environment is a responsibility that counties take very seriously. Likewise, counties know that local governments must balance environmental protection and the need to complete necessary infrastructure projects and ensure the economic vitality of our communities. This balancing role is explicitly recognized in the CEQA statute and its Guidelines, which provide that CEQA must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development or advancement. However, the CEQA process remains wrought with uncertainty, costly litigation, and project delays.

Counties believe there are several opportunities for enhancing key areas of CEQA to improve its effectiveness and the efficiency of the environmental review process while ensuring that the law's environmental protection and public involvement purposes are fulfilled. As lead agencies with responsibility for a wide range of environmental resources, counties have a unique ability to provide meaningful input into the process.

CSAC's focus is to identify improvements that will streamline our delivery of public works and other public projects and make our development review processes more efficient by enhancing

CEQA in ways that apply our increasingly scarce resources to actions that actually protect the environment.

The following general principles and policy statements are CSAC's foundation for representing counties and the citizens they serve at both the administrative and legislative level.

SECTION 2: GENERAL PRINCIPLES

- 1) Counties support the balance of sound environmental protection with the need to complete projects that promote economic prosperity and social equity. Any proposed CEQA revisions should seek to modernize, simplify and streamline the law, and not dismantle it or create new and equally complicated processes resulting in litigation.
- 2) Local government performs the dominant role in planning, development, conservation, and environmental procedures. Counties have and should retain the primary responsibility for land use decisions in unincorporated areas. In addition, counties should act as the lead agency where projects are proposed in unincorporated areas requiring discretionary action by the county and other jurisdictions.
- 3) The CEQA process should be integrated with the planning process wherever possible, including the preparation of programmatic or master environmental documents that allow the use of tiered environmental review (including negative declarations) to achieve a more streamlined CEQA process for subsequent development and infrastructure projects.
- 4) Counties support state funding to update and implement general plans, specific plans, sustainable communities strategies, and smart growth plans, including programmatic CEQA review of these plans.
- 5) CSAC encourages state and federal agencies to provide timely and complete review of local projects within the timelines set forth in CEQA so that issues relevant to those agencies' regulatory role can be addressed at the earliest possible time.
- 6) CSAC encourages local agencies to resolve CEQA disputes without costly litigation and in a way that buoys public confidence in local government. Examples of this include the use of non-binding mediation.
- 7) CSAC acknowledges its role in providing educational forums, informational resources and communication opportunities for counties in regards to CEQA practice and reform efforts.

SECTION 3: POLICY STATEMENTS

- 1) Counties support statutory changes that provide lead agencies with the ability to find that de minimis contributions to a significant impact are not cumulatively considerable.
- 2) Counties strongly support statutory changes to improve the defensibility of well-prepared mitigated negative declarations (MND), including but not limited to applying the substantial evidence standard of review to MNDs that meet certain criteria, such as those prepared for projects that are consistent with current zoning or an existing general plan.
- 3) CEQA currently allows for potential issues to be raised late in the decision-making process, giving rise to disruptive and counterproductive tactics known as “late hits” and “document dumps” to stall the project review process. Counties support limits on the submittal of late input into the process. In order to raise an issue in court, counties assert that the issue with an EIR or MND must have been raised during the Draft EIR or MND public comment period, unless the new issue was not known and could not have been raised earlier.
- 4) Counties support CEQA exemptions and streamlining for infill projects in both cities and existing urbanized areas in counties. Conditions for such exemptions and streamlining processes should be based on population densities that reflect reasonable infill densities in counties or other objective measures of urban development, rather than arbitrary jurisdictional boundaries.
- 5) Roadway infrastructure projects that protect the health and safety of the traveling public are subject to project delivery delays due to environmental review, even when a project replaces existing infrastructure. Counties support categorical and/or statutory exemptions and streamlining for road safety projects in the existing right-of-way. The maintenance or rehabilitation of existing public facilities, within existing public right-of-way, with previously approved environmental documents, should also be provided a streamlined process or be exempt from having to do another CEQA document.
- 6) Support measures to reduce or eliminate duplicative environmental review for public works projects that are subject to both NEPA and CEQA. This could include action at the federal level to allow use of the CEQA document in place of a NEPA document.
- 7) Counties support programmatic Environmental Impact Reports (EIRs) and standardized mitigation measures for the flood management system, levee maintenance and capital projects that fall under certain thresholds.
- 8) Counties support providing the courts with more practical discretion to sever offending parts of a large project that is subject to CEQA litigation and allow the beneficial parts of a project to proceed when they are not relevant to the court’s CEQA decision.

- 9) Counties support transparency in the preparation and distribution of environmental documents. To accomplish this, CSAC supports state funding and assistance for the electronic filing of documents. Further, counties believe they are in the best position to decide how to make governmental information available to non-English speaking communities within their jurisdictions. Counties do not support state-mandated translation of CEQA documents.
- 10) Counties believe that in some circumstances existing environmental laws and regulations can be used to streamline the CEQA process and help avoid unnecessary duplication. However, counties also believe that any such standards or thresholds must be found by the lead agency to be specifically applicable to the project where they are applied. If the use of existing environmental laws is intended to exempt a project from further CEQA review, it should be focused on specific impacts and limited to “qualified standards” that the lead agency reasonably expects will avoid significant impacts in the area addressed by the standard.
- 11) Challenges to the contents of the administrative record have become a common way to create litigation delays and increased costs. Counties support a statutory clarification that the contents of an administrative record only include all documents that were submitted to the relevant decision making body before the challenged decision. Counties further support a statutory clarification allowing public agencies to certify both accuracy and completeness of an administrative record prepared by a petitioner. Counties support statutory clarification that resolution of disputes regarding preparation and certification of the administrative record should occur through motions to supplement which run parallel to briefing on the merits, not prior.
- 12) Counties support statutory revisions that increase the transparency by limiting the standing of parties filing CEQA lawsuits and actions to persons or entities with an environmental concern rather than economic interest in the project.
- 13) Counties support statutory revisions to the private attorney general statute governing awards of attorneys’ fees, which are available to petitioners but not defendants. This low-risk, high-return imbalance in favor of petitioners is one of the primary drivers for CEQA litigation.
- 14) Counties support the use of the substantial evidence standard for challenges to a categorical exemption.