

CEQA Program Responsible Agency Review Standard Operating Procedure

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Introduction

This standard operating procedure (SOP) describes the protocol for conducting Responsible Agency (RA) reviews designed to ensure compliance with the California Environmental Quality Act (CEQA). The California Geologic Energy Management Division (CalGEM) CEQA Program conducts an RA review when (1) CalGEM is the RA for a proposed project and (2) there is an existing final and certified or adopted environmental impact report (EIR), mitigated negative declaration (MND), or negative declaration (ND) submitted with the proposed project. This SOP assists CEQA Program staff in reviewing the EIR, MND, or ND to determine if it covers the proposed project and if additional CEQA review is necessary. This SOP also addresses preparing findings when relying on an EIR. Finally, the SOP touches on filing a Notice of Determination (NOD) which is then addressed in more detail in the RA NOD SOP and NOD Template on SharePoint.

This SOP shall be used in conjunction with the **Responsible Agency CEQA Review Form** and CEQA statute, guidelines, and case law as well as other CalGEM CEQA Program SOPs. Other SOPs or guidance that this SOP may be used with include, but are not limited to: New Drill RA Review Procedures, CEQA Tool Box, intranet site, WellSTAR CEQA User Guide CalGEM, and CEQA webpage. These documents are all located in the Teams Program Procedures folder.¹ Prior to considering any deviation to this SOP, consult with the CEQA Program Senior assigned to the proposed project to discuss and obtain written approval. (PRC, § 21002.1, subd. (d).)

It is the responsibility of the operator to provide information to CalGEM that is accurate and complete, which includes but is not limited to providing a certified or adopted and valid EIR, MND, or ND as well as all supplemental or complementary documents that may cover the proposed project activities. Inaccurate or outdated CEQA information will delay the CEQA review process or may result in enforcement actions.

CalGEM CEQA Role

For discretionary actions, CalGEM may act as either the Lead Agency (LA)² or as an RA³ under CEQA. While the LA must consider all potential project impacts, an RA's review is limited to considering only those environmental effects of the proposed project activities which the RA would approve.

The RA Review documents CalGEM's compliance with its CEQA responsibilities as an RA. An RA complies with CEQA by considering the EIR, MND, or ND prepared by the LA and then concluding with a recommendation to the Oil and Gas Supervisor on whether and how to approve the proposed project before CalGEM. (14 CCR § 15096.) In some circumstances discussed in section "Intro to Additional Environmental Review," CalGEM may perform additional CEQA tasks. (See 14 CCR §§ 15162, 15163, and 15164.)

¹ CEQA Program/Documents/General.

² Pub. Resources Code (PRC), § 21067, Cal. Code of Regs. (CCR), tit. 14, §§ 15050, 15367.

³ PRC, § 21069, 14 CCR §§ 15096, 15381.

Consideration of the LA's Final EIR, MND, or ND

Considering the LA's Final EIR, MND, or ND involves completing the RA Review Form. The RA Review Form is used to consider or evaluate the EIR, MND, or ND certified or adopted by the LA. More specifically, the Form focuses on determining:

- Whether the proposed project that CalGEM would approve falls within the scope of the EIR, MND, or ND;
- Whether, where the proposed project falls within the scope of an EIR, there are any feasible project alternatives available or any feasible mitigation measures within CalGEM's powers that would substantially lessen or avoid any significant effect the proposed project would have on the environment; and
- Whether, where the proposed project falls within the scope of an EIR, MND, or ND, additional CEQA review may be required.

Legibility, format, or organization of the EIR, MND, or ND will only be considered if it invalidates or confuses the validity of the document's contents, likely allowing for a legal challenge that CalGEM did not fulfill its duties as the RA. The CalGEM CEQA Program will confer with its legal advisors before deciding that Legibility, format, or organization warrants not relying upon the environmental document.

The three issues that the RA Form address are discussed in sections "Intro to Additional Environmental Review" and "Environmental Document Analysis." Also discussed is the requirement for CalGEM to make certain findings, known as Findings of Significance, when it relies on an LA's EIR and the option for CalGEM to file a Notice of Determination (NOD).

Feasible Alternatives and Mitigation Measures

The RA shall not approve the proposed project as proposed if the RA finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the proposed project would have on the environment. (14 CCR § 15096(g).)

The alternatives analysis applies when the LA certified an EIR. Given the nature of oil, gas, and geothermal projects, it is unlikely that any feasible alternatives to the proposed project or its location would exist that would attain the proposed project objectives and avoid or substantially lessen any significant effects. Nevertheless, CEQA requires this consideration of the project description and objectives before CalGEM for approval, and the RA Form covers the analysis.

The analysis of mitigation measures applies when CalGEM considers an LA's EIR or MND, and the RA Form also covers this analysis. If CEQA Program staff finds that there are feasible mitigation measures not included in the EIR or MND, they should speak with a Senior to discuss how to proceed with the proposed project.

Introduction to Additional Environmental Review

Even where the proposed project falls within the scope of an EIR, MND, or ND, CEQA might require CalGEM to prepare a subsequent or supplemental environmental document or an addendum. When an EIR, MND, or ND covers a proposed project, CalGEM may not prepare a **subsequent EIR or MND** for that proposed project unless, based on substantial evidence, CalGEM determines:

1. Substantial changes are proposed in the project which will require major revisions of the previous EIR, MND, or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
2. Substantial changes occur with respect to the circumstances under which the proposed project is undertaken which will require major revisions of the previous EIR, MND, or ND due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
3. New information of substantial importance, which was not and could not have been known with the exercise of reasonable diligence when the EIR was certified or MND or ND was adopted, shows any of the following:
 - a. The proposed project will have one or more significant effects not discussed in the previous EIR, MND, or ND;
 - b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and substantially reduce one or more significant effects of the proposed project, but the proposed project proponents decline to adopt the mitigation measure or alternative; or
 - d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the proposed project proponents decline to adopt the mitigation measure or alternative. (See 14 CCR § 15162(a), (c).)

CalGEM may prepare a **supplement to an EIR** if the conditions described in bullet numbers 1, 2 and 3 (14 CCR § 15162(a)) are met and only minor additions or changes would be necessary to make the previous EIR adequately apply to the proposed project. (14 CCR § 15163(a).) The supplement need contain only the information necessary to make the previous EIR adequate for the proposed project. (14 CCR § 15163(b).)

CalGEM may prepare an **addendum** to an EIR if some changes or additions are necessary but none of the conditions in 14 CCR § 15162 occurred. (14 CCR § 15164(a).) CalGEM may prepare an addendum to an MND or ND only if minor technical changes or additions are necessary or none of the conditions described in 14 CCR § 15162 for a subsequent EIR or ND occurred. (14 CCR § 15164(b).)

CalGEM Program staff shall confer with the Senior and legal advisors before recommending that a supplemental or subsequent environmental document or addendum is required. For more information on Environmental document creation, see the LA CEQA Document Preparation SOP on the SharePoint.

Notice of Determination (NOD)

An NOD is a brief notice filed by an LA or RA for an ND, MND, or EIR after the agency approves or determines to carry out a project. (14 CCR §§ 15075, 15094, 15096.) The filing of an NOD by the RA is optional. CalGEM's policy is to file an NOD within five working days for all new drill projects or as directed by a Senior for other types of projects. Prior to drafting and filing an NOD, read and follow procedures in the RA NOD SOP and NOD Template on SharePoint.

RA Review Process

The following information is divided into two main sequential steps. The first step is to perform a simple review of the information submitted by the operator and determine if additional information is needed to process the application under CEQA. The second step is an analysis required to comply with CEQA as an RA by more fully considering the contents of the EIR, MND, or ND.

Step 1: Verify Project Information⁴

The purpose of this step is to verify that the operator submitted the basic overarching information and forms needed to conduct the CEQA review. In this step, complete the review on only the information provided by the operator.

1) Verify that:

- a) CEQA information in WellSTAR is filled out consistently with the documentation submitted and/or uploaded to WellSTAR. Initial points of the application and NOI to review are:
 - Project title
 - CEQA notice type
 - Project scope
 - Date EIR is Certified or ND/MND is adopted
 - State Clearinghouse Number (SCH #)
- b) Environmental document provided is the LA's adopted ND/MND, or certified EIR, by the LA.
 - The required contents of a Final EIR are described in 14 CCR § 15132.
 - The required contents of a ND/MND are described in 14 CCR § 15071.
- c) Environmental document is legible.
- d) CEQA Information Step and form is filled out correctly and captures the environmental document information e.g. LA vs. RA, county or city.

⁴ For information on implementing changes or reviewing information in WellSTAR, see the current New Drill Procedures.

- e) A copy of a permit from the LA. In jurisdictions that require CalGEM to approve a proposed project before they do, a permit or other approval from the LA is not required for the RA review.
 - f) Operator's project description and additional information provided as part of an NOI or proposed project application provide information and rationale to complete the analysis, and or steps in the RA Review Form and Findings (in the case of an EIR). The project description shall conform to the requirements of CEQA (14 CCR § 15124) and include:
 - The precise location and boundaries of the proposed project on a detailed map,
 - The location of the proposed project on a regional map,
 - A statement of objectives, and
 - A proposed project's technical, economic, and environmental characteristics, and
 - A statement briefly describing the intended uses and public agencies expected to use the Environmental document in decision making.
- 2) If inaccurate information is submitted, the WellSTAR form will be returned to the operator to correct, with a note in WellSTAR as to the reason for return.

If needed, CEQA Program staff may discuss CEQA compliance options with the operator before, during, or after the NOI or project application is submitted to CalGEM. Ask the operator to clarify any information and resubmit the NOI or project application, if needed.

Step 2: Environmental Document Analysis

LA Found the Project is Exempt

If another public agency approved a project based on a finding that the proposed project is exempt, CalGEM shall assume the LA role if the statute of limitations to challenge the other public agency's action has expired (35 days if NOE filed, 180 days from approval if not filed). (14 CCR §§ 15062(d), 15052(a)(1).) In that case, CalGEM is no longer the RA and assumes the LA role. Accordingly, the SOPs, forms, and guidance related to being an LA apply.

RA Analysis of LA Environmental Document⁵

- 1) Complete the RA Review Form.
- 2) Review and analyze the contents of the final EIR, MND, or ND as well as its attachments and the application materials.
 - a) Determine whether the environmental document covers the proposed project. A RA is responsible for considering only the effects of those activities

⁵ If the EIR, MND, or ND was adopted or certified with CalGEM or DOGGR as the LA, CalGEM retains the LA role when reviewing the proposed project.

involved in a proposed project which it is required by law to carry out or approve.

- i. When a proposed project is for a new well(s) determine that 1) the total number of wells of approved wells following completion of the project is covered by the environmental document and 2) the limit for each type of well in the environmental document is not exceeded., (e.g. the environmental document lists 50 new wells, 45 are oil and gas wells and 5 are UIC wells; confirm that neither the total 50 wells and the limit of 5 UIC wells is exceeded). (See Attachment 1 of RA Review Form for table to track wells limits and approvals.) If an environmental document does not state the number of wells, discuss this with the Senior assigned to the proposed project, as the lack of information may be an indicator that the document did not adequately analyze project impacts.

If the number of wells is identified in the environmental document, then staff will need to determine whether that upper limit is for the total amount of cumulative wells (regardless of status) or active wells (replacement theory). If the environmental document is not clear on this point, then staff should document their interpretation, based on evidence in the environmental document. Staff will also need to determine if the current number of wells drilled under the limit in the environmental document, when added with the number of wells in the proposed project is under or equal to the new well limit in the environmental document. If this number is less than or equal to the number in the environmental document, continue with the RA review of the proposed project. If the number exceeds the limit in the environmental document, discuss with the Senior before continuing with the RA review of the proposed project.

- b) Evaluate the completeness of the project description in the environmental document related to the proposed project that CalGEM is considering for potential permitting. Including the Environmental Setting requirements (14 CCR § 15125) and the definition and appropriateness of the baseline; and
 - i. Review Appendix G topics. Determine if any additional environmental impacts within CalGEM's permitting authority, relating to the proposed project and its effects, are addressed in the EIR, MND, or ND.⁶ These involve the following:
 - a. Additional impacts not covered in the Mitigation Monitoring Report Program (MMRP) or impacts that can be mitigated.
 - b. New versions of topics in the Appendix G, Environmental Checklist that are not included in the CEQA document but may apply to the

⁶ The only topics that need to be considered are those that should address the effects of oil, gas, or geothermal project activities that CalGEM is approving (e.g., some environmental documents may have a forestry section, but if the project is not located near or in a forested area, that topic would not need to be evaluated).

activities that CalGEM may permit (e.g., Greenhouse Gas Emissions).⁷

- c. Drilling equipment requirements and durations of use.
 - d. Geographical location and proximity to other activities within the field and sensitive receptors (rivers and streams, residential areas, etc.)
 - e. The significance determination of the impacts and whether they are supported by substantial evidence and technical analysis.
 - f. Appropriateness and effectiveness of mitigation measures and the MMRP.
 - g. Assess whether any conditions may have changed from the original approval of the environmental document and note if a potential environmental issue may be present.
 - h. Review of underground impacts of the proposed project when the project is for WST. If this information is not in the environmental document, the lack of information may be an indicator that the document did not adequately analyze project impacts.
- 3) For WST only, when WST is the only action being permitted by CalGEM, review the presence of Axial Dimensional Stimulation Area results.
 - 4) Review the UIC Permit Application prepared by the operator. (Submitted as additional technical information for the proposed project. Not the same as operator's project description.)
 - 5) Conclude whether CalGEM may rely on the LA's environmental document as it pertains to the proposed project activity or whether the LA's environmental document is insufficient for the purposes of CalGEM's CEQA review of the proposed project.

Findings of Significance (Only for Review of EIRs)

A RA is required to make findings under PRC § 21081, 14 CCR § 15091, when approving a proposed project relying on an LA's EIR. CEQA Program staff will make findings upon considering the EIR and the proposed project activities. Findings must be supported by substantial evidence in the record. (14 CCR § 15091(b).) Staff shall make one or more of the following findings in writing for each significant impact identified in the EIR that applies to the proposed project before CalGEM for approval.

- 1) Changes or alterations have been required in, or incorporated into, the proposed project that mitigate or avoid the significant effect on the environment.

⁷ Note: Recent case law reaffirms that changes in the CEQA Guidelines do not necessarily trigger the need for additional environmental review. (See *Olen Properties Corp. v. City of Newport Beach* (2023) 93 Cal.App.5th 270, 281.)

- 2) The changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency.
- 3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained works, make infeasible the mitigation measures or alternatives identified in the EIR. (14 CCR § 15091(a).)

CEQA Program staff will use one of three Findings of Significance (FOS) Forms for making FOS: Kern County, UIC Projects in Kern County, and Non-Kern County. The Kern County Forms are pre-filled with information using the Kern County SREIR and MMRP.⁸ The Non-Kern County Form is used for all other EIRs. Consult a CEQA Program Senior if a proposed project and EIR does not fit into one of the three forms.

Options If the LA Document is not Adequate

If there are additional impacts, and the EIR, MND, or ND does not disclose or mitigate all impacts associated with the proposed project that CalGEM is considering for permitting, complete the review documenting additional impacts in the RA Review Form. Depending on the significance of the impacts and other factors, the options to move forward are a subsequent or supplemental environmental document or an addendum as described in Section "Intro to Additional Environmental Review." CEQA Program staff may require additional information from the operator to determine the significance of the previously undisclosed environmental impacts as well as any other factors relevant to determining whether a subsequent or supplemental environmental document or addendum would be appropriate. That could take the form of something like a mini-Initial Study for the additional environmental impacts.

CalGEM Program staff shall consult with the Senior and legal advisors before recommending whether a subsequent or supplemental environmental document or addendum is appropriate.

Other Factors to Consider

Consider the following other factors when completing your analysis and review.

Additional Local Planning Documents and Information

A Habitat Conservation Plan or Natural Community Conservation Plan may cover threatened and endangered species, including (1) avoidance of any net loss of habitat and a net reduction in the number of the affected species and (2) requirements to preserve, restore, or enhance sufficient habitat to mitigate the reduction in habitat.

⁸ As of August 1, 2023, CalGEM's reliance on the Kern County EIR for RA reviews is on hold. If staff is uncertain if they may use the Kern County for RA reviews, staff should consult with a Senior in the CEQA Program.

The environmental document may discuss any inconsistencies between the proposed project and applicable general plan, specific plans, and regional plans. Such regional plans include but are not limited to:

- Applicable air quality attainment or maintenance plan or State Implementation Plan;
- Area-wide waste treatment and water quality control plans,
- Regional transportation plans;
- Regional housing allocation plans;
- Regional blueprint plans;
- Plans for the reduction of greenhouse gas emissions;
- Habitat conservation plans or natural community conservation plans; and
- Regional land use plans for the protection of the coastal zone, Lake Tahoe Basin, San Francisco Bay, and Santa Monica Mountains.

Environmental Document Evolution

When reviewing an EIR, it is important to keep in mind that the CEQA Guidelines allow for different types of EIRs. The LA selects the type of EIR that allows the LA to tailor the environmental review to the situation in which the EIR is prepared and the EIR's intended uses. (14 CCR § 15160.) A **Project EIR** is the most common type of EIR and examines the environmental impacts of a specific development project. A Project EIR should focus primarily on the changes in the environment that would result from the development project. The EIR must examine all phases of the proposed project, including planning, construction, and operation. (14 CCR § 15161.)

An LA may prepare a **subsequent or supplement to an EIR or MND** for a proposed project. (14 CCR §§ 15162, 15163.) See the "Additional Environmental Review" section of this SOP for more detail. An LA may prepare an **addendum** to an EIR, ND, or MND if changes or additions are necessary but none of the conditions described in 14 CCR § 15162 calling for preparation of a subsequent EIR have occurred. (14 CCR § 15164.)

An LA may prepare a **Staged EIR**, where a large capital project will require a number of discretionary approvals from government agencies and one of the approvals will occur more than two years before construction will begin. A Staged EIR covers the entire proposed project in a general form. (14 CCR § 15167(a).) When a Staged EIR has been prepared, a supplement to the EIR shall be prepared when a later approval is required for the proposed project, and the information available at the time of the later approval would permit consideration of additional environmental impacts, mitigation measures, or reasonable alternatives to the proposed project. (14 CCR § 15167(b).)

While it is sometimes difficult to determine if additional environmental documents have been prepared that cover the proposed project, remember that it is the operator's responsibility to provide all the documents necessary for CalGEM to complete its CEQA review. If the environmental document you are reviewing does not fully cover the proposed project, the onus is on the operator to provide additional adequate documentation.

An LA can prepare a **Program EIR** covering a series of actions that can be characterized as one large project and are related as described in 14 CCR § 15168(a)(1)-(4). (14 CCR § 15168(a).) CalGEM must consider later activities in the program against the Program EIR to determine whether to prepare an additional environmental document. (14 CCR § 15168(c).) If a later activity would have environmental effects that the Program EIR did not examine, a new IS would need to be prepared leading to an EIR, MND, or ND. That later analysis may tier from the Program EIR as provided in 14 CCR § 15152. (14 CCR § 15168(c)(1).)

Tiered Multiple Environmental Documents in RA Review

The CEQA review of a proposed project may rely on multiple LA environmental that “tier” off each other. Tiering is when a broader EIR covers general matters (e.g., EIR for a general plan or policy statement) and a subsequent or narrower EIR or site-specific EIR incorporates by reference the broader EIR and concentrates solely on the issues specific to that later EIR. (14 CCR § 15385.)

When relying on tiered environmental documents, complete the Impact Analysis section of the RA Review Form with these additional steps:

- For each environmental factor in the Impact Analysis section, reference the document that substantiates the impact and/or mitigation determination.
- Reference each environmental document used in the RA Review in the Review Conclusions section. If applicable, this section is inputted into WellSTAR as a Condition of Approval.

If an NOD is filed for a proposed project relying on multiple environmental documents, list all the environmental documents relied upon in chronological or reverse chronological order. However, the NOD may focus primarily on any environmental document that best covers the scope of the proposed project.

Environmental Setting⁹

Read the environmental document and description of the physical environmental conditions, including above and below ground, in the proposed project vicinity. The environmental setting should constitute the baseline physical conditions by which the LA determined whether an impact was significant. The environmental setting should address both the environmental resources in the area and the operations within the proposed project area. Operations should include the operations of the field such as production, well drilling, maintenance, vehicle trips, and materials transportation that were occurring at the time of the analysis for the environmental document was conducted.

Knowledge of the regional setting is critical to identifying and assessing environmental impacts. Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the proposed project.¹⁰ Environmental resource discussions should include for example, how close are streams

⁹ 14 CCR § 15125.

¹⁰ 14 CCR § 15125(c).

(leading to potential spill impacts); what are the potential sensitive species in the field, as provided by CDFW or determined using the CNDDDB database (leading to grading impacts on species); etc. If the environmental document does not demonstrate that the significant environmental impacts of the proposed project that CalGEM may approve were adequately disclosed and mitigated, CalGEM Program staff should consult with their legal advisors to determine whether a subsequent or supplemental environmental document or addendum might be appropriate.

Drilling Operations, Equipment, and Duration of Use

Review the documentation submitted with the application or NOI. Determine if additional equipment is being moved on site for the proposed project and the duration that equipment will be used. The addition of equipment not mentioned in the original environmental document could be an indication a significant environmental impact may occur at the proposed project location. For example, installation of a new oil and gas processing plant with utility lines, drainage ponds, and roads could impact a substantial amount of surface area. This surface area could be the site of threatened and endangered species. If an existing environmental document is being used, and since this surface area may not have been part of the baseline conditions of the original environmental document, we must consider whether the new equipment results in direct significant impacts or substantially contribute to significant cumulative impacts not addressed in the environmental document. Cumulative impacts consist of an impact which is created as a result of the combination of the proposed project evaluated in the EIR together with other projects causing related impacts.¹¹ An Initial Study will determine if any of the potential cumulative impacts are potentially significant.

Geographic Location and Proximity

Complete the RA Review Form with specific sections on geographic location and well proximity. Utilize imagery provided by the operator, Google Earth, or Well Management to verify that the well location and surface ownership mentioned in the application or NOI matches the environmental document submitted by the operator.

Review Conclusions of the RA Review

At the conclusion of the RA review process, the staff will make one of the following determinations:

1. CalGEM relies on the Lead Agency's document, as it pertains to the proposed project activity; or
2. The Lead Agency's document is insufficient for the purposes of CalGEM's CEQA review of the proposed project. CEQA Program staff may recommend that CalGEM assume the Lead Agency role.

¹¹ 14 CCR § 15130 (a)(1).