



THE CITY OF SAN DIEGO

Environmental Review Process

CITY OF SAN DIEGO DEVELOPMENT SERVICES
1222 FIRST AVENUE, MS 501, SAN DIEGO, CA 92101
CALL (619) 446-5300 FOR APPOINTMENTS AND (619) 446-5000 FOR INFORMATION.

This information bulletin describes the requirements that projects must follow to comply with federal, state and local regulations regarding environment review, environmental impact reports (EIR), appeals, and mitigation monitoring.

I. FEDERAL STATE AND ENVIRONMENTAL MANDATES

The State of California environmental review process is established by the California Environmental Quality Act of 1970 (CEQA) (Public Resources Code Section 21000 et seq.) and the Guidelines for Implementation of the California Environmental Quality Act (California Code of Regulations Section 15000 et seq.), as well as court interpretations of CEQA. The Federal environmental review process is established through the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) (1970) in conjunction with the implementing regulations for the Act which are found in the Code of Federal Regulations (40 CFR Parts 1500 et seq.).

II. CITY RESPONSIBILITY

The City's Municipal Code/Land Development Code, Implementation Procedures for the California Environmental Quality Act and the State CEQA Guidelines (Chapter 12, Article 8) specifically assigns the responsibility for implementation of CEQA to the Development Services Department (DSD). DSD is charged with maintaining independence and objectivity in its review and analysis of the environmental consequences of projects under its purview. The Director of DSD must work with both public and private project applicants to ensure that all feasible environmental mitigation measures or project alternatives are incorporated to minimize or preclude adverse impacts to the environment resulting from the project.

Projects subject to NEPA review have some type of federal government involvement as discussed below. The environmental analysis is usually conducted by Environmental Analysis Section staff in concurrence with a project's CEQA review.

III. BASIC PURPOSE OF CEQA

The basic purposes of CEQA and the (State CEQA Guidelines, Section 15002) are to:

- Inform governmental decision-makers and the

DOCUMENTS REFERENCED IN THIS BULLETIN:

- [Land Development Code](#)
- [California Environmental Quality Act \(CEQA\) Public Resources Code 21000-21177](#)
- [CEQA Guidelines \(California Code of Regulations, Title 14, Division 6, Chapter 3, Sections 15000-15387\)](#)
- [2007 California Environmental Quality Act, Statutes and Guidelines, by the Association of Environmental Professionals](#)
- [National Environmental Quality Act \(NEPA\) of 1969 \(P.L. 91-190, 42 U.S.C. 4321-4347, January 1, 1970, 83 Stat. 852 as amended\)](#)

public about the potential significant environmental effects of proposed activities.

- Identify ways that environmental damage can be avoided or significantly reduced.
- Prevent significant, avoidable damage to the environment by requiring changes in projects by using of alternatives or mitigation measures when the governmental agency finds the changes to be feasible.
- Disclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.

CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible (State CEQA Guidelines, Section 15021). A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures that would substantially lessen any significant effects that the project would have on the environment.

IV. ACTIVITIES SUBJECT TO CEQA

CEQA applies in situations where a governmental agency uses its judgment to decide whether and how to carry out or approve a project. A project subject to such judgmental controls is called a "discretionary project." CEQA applies to the following governmental actions:

- Activities directly undertaken by a governmental agency. Such activities include the construction of streets, bridges, or other public structures, or adoption of plans and zoning regulations.
- Activities financed in whole or in part by a

- governmental agency.
- Private activities that require approval from a governmental agency such as rezoning, tentative subdivision maps, planned development permits, conditional use permits, and site development permits.
- A private action is not subject to CEQA unless the action involves governmental participation, financing or approval.

V. ACTIVITIES SUBJECT TO NEPA

NEPA (National Environmental Protection Act) was signed into Federal law in December, 1969. Projects which are subject to NEPA review are those projects (both public and private) that receive federal financial assistance, occur on federal property, and/or receive federal permits. Since each federal agency is responsible for administering NEPA for those projects they fund or permit, environmental analysis criteria can vary among individual agencies. Federal courts have also assumed an extensive role in the interpretation and administration of NEPA. Some limited NEPA review is done by city staff in conjunction with community development block grant projects and/or federally funded projects.

VI. ORGANIZATION OF THE ENVIRONMENTAL ANALYSIS SECTION

Under the direction of the DSD Director, the Environmental Analysis Section (EAS) of the Entitlements Division is responsible for the review of projects and activities under CEQA. Projects include both public and private development undertakings. EAS staff consists of professional planners who specialize in environmental analysis.

VII. ENVIRONMENTAL REVIEW PROCESS

A. Exemptions

The first task in environmental review is to conduct a preliminary review to determine if the activity is subject to or exempt from CEQA based on four general measures:

1. It must be determined if the activity is a project as defined by CEQA.
2. The State Legislature has mandated that certain activities such as emergency projects and the issuance of ministerial permits, such as building permits, are statutorily exempt from CEQA.
3. The State Secretary of Resources has established categories of projects which have been determined not to have a significant effect on the environment, such as minor additions to existing facilities, and actions by regulatory agencies for the protection of

the environment. However these categorical exemptions cannot be applied if there is substantial evidence that the activity may result in a significant environmental impact.

4. If a preliminary evaluation enables determinations that there is no possibility that the project may have a significant effect on the environment, then no further action is required under CEQA (see Figure 1).

The time that it takes to complete an exemption averages two to four weeks after the receipt of the project application. If a determination for an exemption cannot be made at this time due to unresolved environmental issues, the project will proceed to the initial study phase of the review process.

B. Initial Study

If a project is not conclusively exempt from environmental review, EAS will conduct a preliminary analysis, referred to as an Initial Study, to determine whether the project may have a significant effect upon the environment.

All phases of project planning, implementation, and operation must be considered in the Initial Study of the project. The Initial Study includes, a checklist with references, and a brief report with a discussion of the project description and location. It also discusses the project's environmental impacts, if any, and includes appropriate maps and figures.

The purpose of an Initial Study is to provide staff with information to use as the basis for deciding whether to prepare an Environmental Impact Report (EIR), Mitigated Negative Declaration (MND), or Negative Declaration (ND) (State CEQA Guidelines, Section 15063). An Initial Study can eliminate the need for unnecessary EIRs by enabling modification of a project to mitigate adverse impacts before an EIR is prepared, thereby qualifying the project for a MND or ND. If an EIR is required, an Initial Study can assist in its preparation by focusing the EIR on the effects determined to be significant, as well as identifying and explaining the reasons for determining non-significant effects. Initial Studies also provide documentation of the factual basis for the finding in a MND or ND that a project will not have a significant effect on the environment.

EAS may determine that additional information is required before the Initial Study and determination of potential impacts can be

Figure 1
Initial Determination

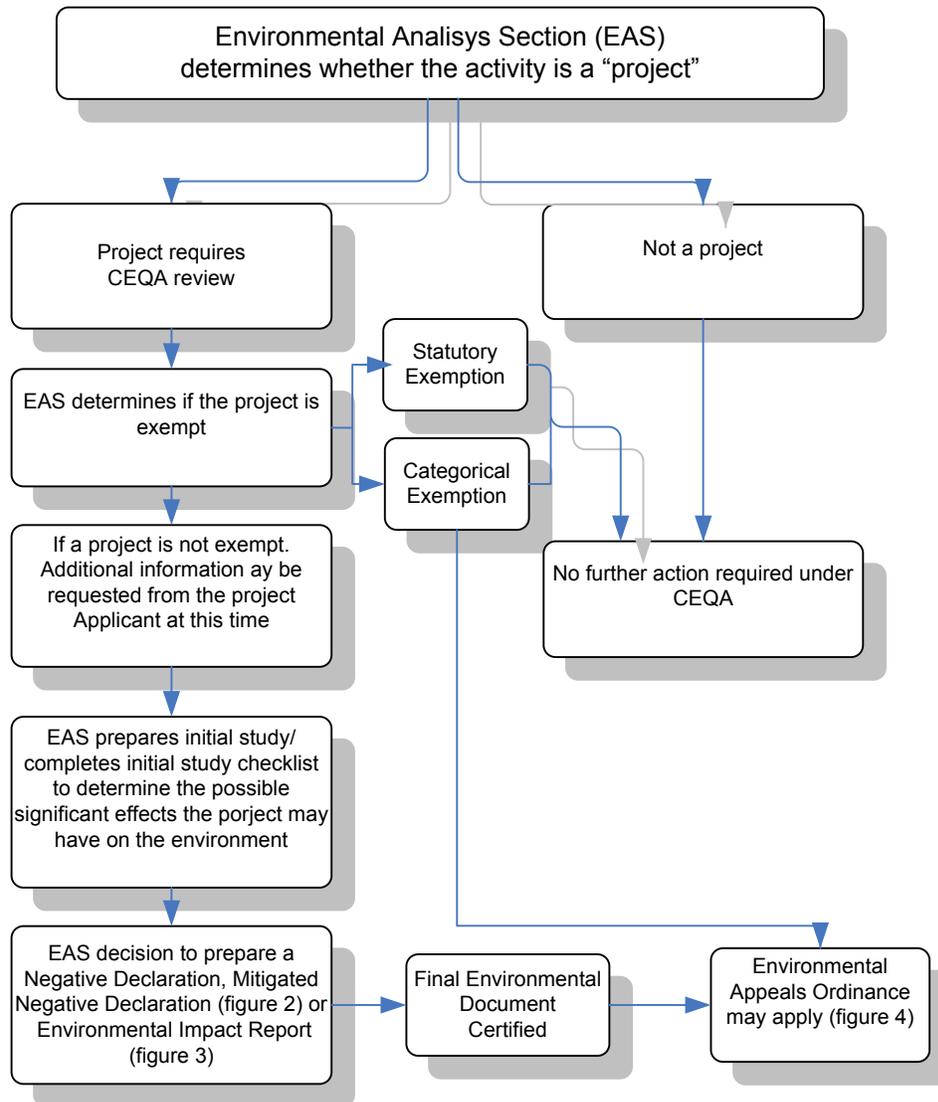
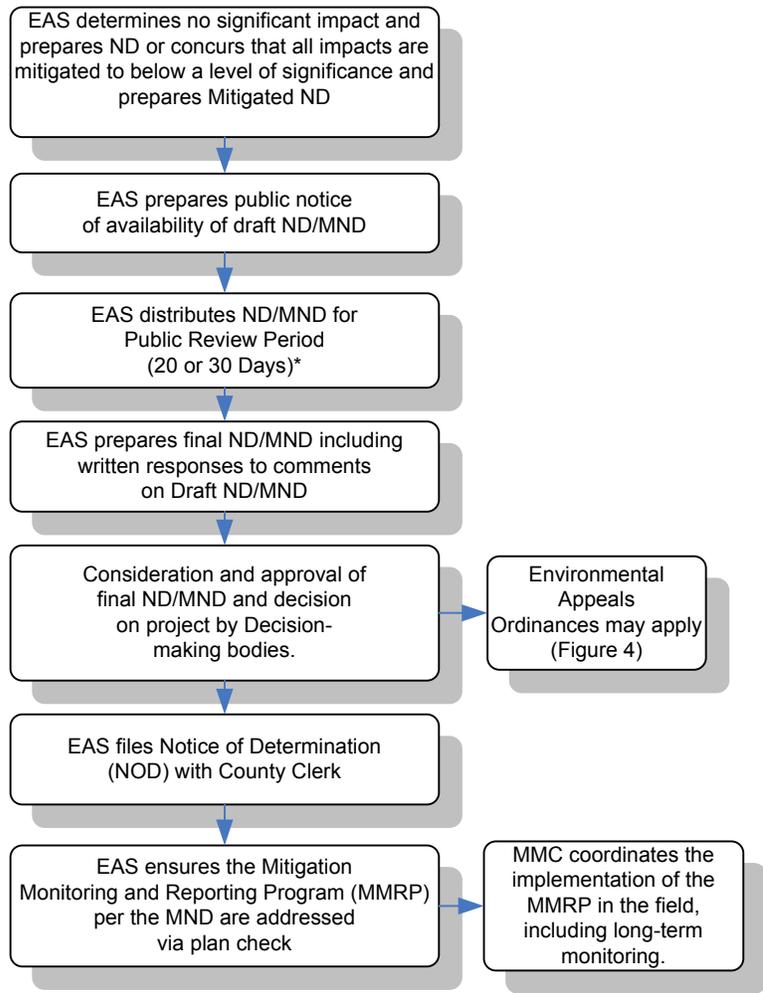


Figure 2
Negative Declaration(ND)/
Mitigated Negative Declaration (MND)



* The public review period for a draft ND/MND is 20 or 30 calendar days.

completed. This information may include technical studies that address issues such as noise, geology/soils, water quality, biology, and historical resources. This process is referred to as an Extended Initial Study.

C. Negative Declaration/Mitigated Negative Declaration

If, after completing the Initial Study, it can be determined that there is no potential for significant impacts, EAS will prepare Negative Declaration (ND) (see Figure 1). If the Initial Study identified potentially significant impacts, but the applicant revises the project or agrees to enforceable conditions which would mitigate the identified significant impacts, a Mitigated Negative Declaration (MND) will be prepared.

The ND includes a brief description of the project, project name, legal description, project applicant and the proposed finding that the project will not have a significant effect on the environment. In the case of a MND the document includes specific mitigation measures and a Mitigation, Monitoring and Reporting Program (MMRP) to be included in the project to avoid or reduce potentially significant impacts. The Initial Study documenting the reasons to support the findings is attached to the ND or MND. Figure 2 illustrates the ND/MND process that includes a published Notice of Availability and a 20 or 30 calendar day public review period for the draft document. Completion of a ND/MND will take an average of two to six months after the environmental determination is made.

If NEPA applies and a project has no significant impacts, a Finding of No Significant Impact (FONSI) is prepared and combined with a CEQA Negative Declaration. If mitigation is required for potentially significant impacts, then a FONSI (with mitigation) is prepared and combined with a CEQA Mitigated Negative Declaration (see Figure 2).

D. Environmental Impact Report

If there is substantial evidence (as defined in Section 15384 of the CEQA Guidelines) that the project may have a significant effect on the environment (as defined in Section 15382 of the CEQA Guidelines), an EIR is prepared. The EAS analyst discusses this determination and the issues to be addressed in the EIR with the Assistant Deputy Director and senior environmental staff, with the goal of ensuring consistency in environmental determinations. The EIR is a detailed report describing the

project, analyzing its significant environmental effects, and discussing ways to mitigate or avoid the effects. Figure 3 illustrates the EIR process. The majority of EIRs are prepared by consultants, who although hired by the applicant, are under the supervision of EAS staff. Completion of an EIR can vary from six to twelve months, and in the case of more complex projects, the process may take longer.

If NEPA applies, an Environmental Impact Statement (EIS) is prepared. A joint EIR/EIS is prepared if a project requires both state and federal clearance. An EIR/EIS should provide a full discussion of significant environmental impacts and should inform the public and decision-makers of the reasonable alternatives that would avoid or minimize adverse impacts.

The majority of EIR/EISs are prepared by consultants who are retained by the project applicant. Completion of an EIR/EIS can vary from about eight months to two years, depending on its complexity.

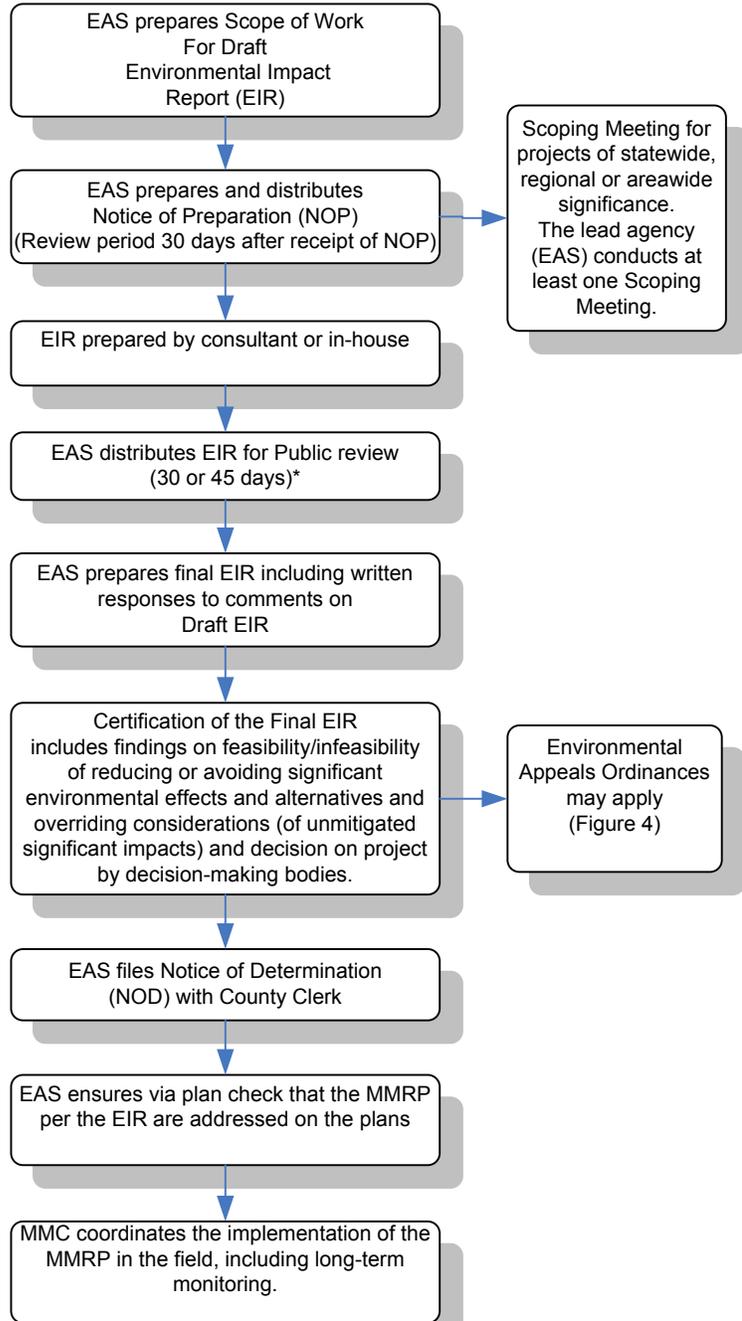
E. Substantial Evidence and Significant Effect

When determining whether a Negative Declaration or an EIR is to be prepared, the key phrases are “substantial evidence” and “significant effect.” (State CEQA Guidelines, Sections 15384 and 15382).

“Substantial evidence” as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts that do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

Per Sections 15382 and 15064 of the CEQA Guidelines, significant effect on the environment means “a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project...” “The determination of whether a project may have a significant effect on the environment calls for careful judgement on the part of the public agency involved, based to the extent possible on scientific and factual data.”

Figure 3 Environmental Impact Report



* The EIR review period for a draft is 30 or 45 calendar days.

F. Standards for Adequacy of an EIR

CEQA requires that an EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision, that intelligently takes into account the project's environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection, but for adequacy, completeness, and a good faith effort at full disclosure. (State CEQA Guidelines, Section 15151)

G. Notice of Preparation and Determination of Scope of EIR

Immediately after deciding that an EIR is necessary for a project, CEQA requires that the lead agency send a Notice of Preparation that an EIR will be prepared to the State Clearinghouse and each responsible and trustee agency. The purpose of the Notice of Preparation is to solicit comments and input on the scope of the EIR. Responses to the Notice of Preparation are required within 30 days of receipt of the notice. (State CEQA Guidelines, Section 15082)

Additionally, for projects of statewide, regional or area wide significance, the lead agency must conduct at least one public scoping meeting. A notice of the scoping meeting must be sent by the lead agency to any county or city that borders the project, any responsible agency, any public agency that has jurisdiction over the project by law, and any organization or individual who has filed a written request for the notice. It is possible to combine both the Notice of Preparation of an EIR and notice of the scoping meeting into one notice.

H. Mitigation, Monitoring and Reporting Program

Public Resources Code Section 21081.6 requires that public agencies "shall adopt a reporting or monitoring program for the changes to the project or conditions of project approval, adopted to mitigate or avoid significant effects on the environment." The Entitlement Division is the primary group responsible for ensuring that mitigation measures are implemented. Entitlement works with other DSD Divisions and City Departments to ensure compliance with codes and permit conditions

during project implementation. The four basic steps in the monitoring program are as follows: 1) Discretionary Permit Review; 2) Plan Check; 3) Permit Compliance; and 4) Long Term Compliance.

I. Alternatives

A key element of the EIR is the Alternatives section. CEQA requires discussion of a range of reasonable alternatives to the project, or to the location of the project that could feasibly attain the basic objectives of the project. The EIR should evaluate the comparative merits of alternatives and should focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if the alternative would impede to some degree the attainment of the project objectives, or would be more costly.

The range of alternatives required in an EIR is governed by the "rule of reason" that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice. The key issue is whether the selection and discussion of alternatives fosters informed decision-making and public participation. An EIR need not consider an alternative whose effect cannot be reasonably ascertained and whose implementation is remote and speculative.

Within an EIS, NEPA requires not only a full and fair discussion of reasonable alternatives, but environmental analysis of each alternative equal to the analysis given to the initial project proposed. An EIS must also include the alternative of "no action" and its comparative merits. For those alternatives which were eliminated from detailed study for a project proposal, the EIS must briefly discuss the reasons for their having been eliminated.

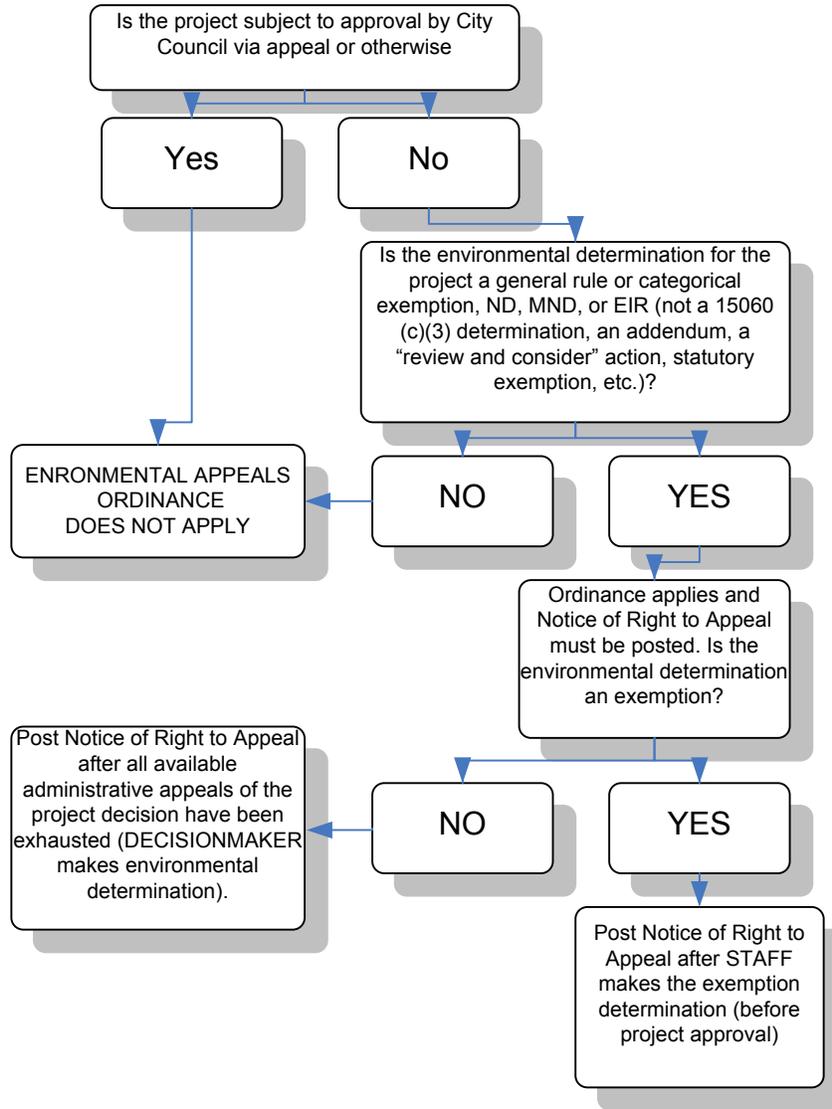
J. Noticing Requirements

Notice of availability of environmental documents for public review and comment is published one time in the officially designated City newspaper (San Diego Daily Transcript), posted on the City's official web site, and sent by Entitlement Division to appropriate trustee and responsible agencies and to organizations and individuals who have previously requested such notice. Notice of availability is also sent to the officially recognized community planning group representing the planning area involved, as well as to the local library.

K. Public Review and Comment

Once a draft environmental document has

Figure 4
Environmental Appeals Ordinance Procedures*



* These procedures do not affect the need or process for posting Notice of Exemption or Notices of Determination per CEQA

been prepared, the public review period is 20 calendar days for a draft Negative Declaration and 30 calendar days for a draft EIR. Documents for projects that must also be acted upon by a responsible state or trustee agency or that have regional significance, must be routed through the State Clearinghouse for an additional 10 calendar days for NDs and 15 calendar days for EIRs. The public review period for a draft EIR/EIS is not less than 45 days. All addenda for environmental documents certified more than three years previously are distributed for public review for 14 calendar days along with the conclusion section of the previously certified environmental document.

The DSD Director may allow an additional review period not to exceed 14 calendar days, upon request of the affected officially recognized community planning group. At the end of the public review period, EAS staff responds to all written comments that address the adequacy or accuracy of the report and revises the report if necessary. The report is then available for the decision-making process.

L. Findings and Statement of Overriding Considerations

If an EIR identifies one or more significant environmental impacts, CEQA states that the public agency cannot approve the project unless one or more written findings are made for each of the significant impacts, accompanied by a brief explanation of the rationale for each finding. Possible findings include:

- a) Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the final EIR.
- b) Such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
- c) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR.

If the impacts are not mitigated to a level below significance, and the City Council or other decision-maker wishes to approve the project, it is also necessary to adopt a Statement of Overriding Considerations indicating that the benefits of a proposed

project outweigh the unavoidable adverse environmental effects.

The draft candidate findings and proposed statement of overriding considerations are completed and made available with copies of the final EIR 14 calendar days prior to the first public hearing or discretionary action on the project.

M. Certification/Approval

At the time of the public hearing, if the City Council or other decision-maker wishes to approve the project, the decision-maker must certify that:

1. The final environmental document has been completed in compliance with CEQA (and with NEPA when applicable);
2. The document reflects the independent judgment of the decision-maker, and
3. That the decision-maker reviewed and considered the information contained in the final environmental document prior to approving the project.

N. Environmental Appeals Ordinance

In July 2004, the City of San Diego City Council adopted the Environmental Appeals Ordinance (Ordinance 19303) that established a process for appealing environmental determinations. This ordinance was created in response to state legislation that allows appeals of CEQA exemptions, NDs, MNDs, and EIRs to the City Council (see Figure 4). The ordinance requires that a Notice of Right to Appeal Environmental Determination be posted for general rule or categorical exemptions, NDs, MNDs, and EIRs (e.g., not a 15060(c)(2) determination, statutory exemption, an addendum, or a "review and consider" action). The posting of the notice is done after all available administrative appeals of the project decision have been exhausted. Anyone may file an appeal.

O. Mitigation Monitoring Coordination (MMC)

Mitigation Monitoring Coordination (MMC) is a section in the Entitlement Division of the City of San Diego's Development Services Department. This section is responsible for coordinating the implementation of the Mitigation Monitoring Reporting Program (MMRP) during all phases of the construction process. This includes permit conditions, project features shown on the plans, specifications, referenced documents, and bond releases. MMC serves as the primary liaison between Division and the field. MMC assists Field Engineering, Building Inspectors, and Public/Private developers, who are all jointly responsible for ensuring that the MMRP is implemented.