2.1.7 Decision to Prepare a Negative Declaration or an EIR

The decision to prepare a Negative Declaration or an EIR is one of the most critical aspects of the environmental review process. An EIR is required when there is substantial evidence in the record that a project may have a significant effect on the environment (CEQA Guidelines Section 15064(f)). Otherwise, a Negative Declaration may be prepared as described in Section 2.2 of this Handbook.

The campus, in consultation with the Offices of the President and General Counsel, makes this decision based on:

- The levels of significance of potential impacts as documented in the Initial Study;
- Whether impacts can be mitigated or eliminated;
- Whether public controversy exists about potential significant environmental impacts; and
- Whether it can be “fairly argued” that the project could result in a significant impact even though other conclusions could also be reached.

Legal Background and Practical Considerations: “Fair Argument” versus “Substantial Evidence”

Courts have determined that, based on both legislative intent and public policy considerations, CEQA should be construed sufficiently broadly “…as to afford the fullest possible protection to the environment….” *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal. 3d 247. Among the most significant consequences of this interpretation is that courts use a different legal standard in reviewing the adequacy of an EIR than they do in reviewing the appropriateness of a Negative Declaration.

Courts have held that a Negative Declaration is inappropriate “if it can be fairly argued” that the project will cause significant environmental impacts. The “fairly argued” standard of review is much more stringent than the “substantial evidence” standard used to review the adequacy of an EIR, and it places a greater burden of proof on the project proponent.

Furthermore, even in cases where a Negative Declaration appears to be appropriate but the project has resulted in significant public controversy, a court may find that an EIR should have been prepared. In *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, the court stated that “the existence of serious public controversy in itself indicates that preparation of an EIR is desirable.” However, *CEQA Guidelines Section 15064* indicates that public controversy regarding an environmental effect will not trigger preparation of an EIR unless there is substantial evidence that the project may have a significant effect.

Because of the different standards of judicial review, an EIR is more easily defended in a CEQA-related lawsuit than a Negative Declaration.

It is generally advisable to consider the following points when deciding which type of CEQA document
to prepare:

- Determine whether the Initial Study identified potential significant impacts.

- Assess whether the project is likely to result in public controversy concerning an environmental effect.

- Consult with the Offices of the President and the General Counsel.

- If the project would potentially result in significant environmental impacts prepare an EIR. See also *UC CEQA Handbook Section 2.3.1* for types of EIRs.