2.1 Project Definition/Classification/Initial Study

2.1.1 Project Definition

The correct and complete definition of all reasonably foreseeable elements of a proposed project is the single most important element of the CEQA compliance process.

Defining the Project

CEQA applies to all “discretionary projects.” The term *discretionary* refers to situations in which a governmental agency can exercise its judgment in deciding whether and how to approve or carry out a project.

The term *project* refers to the whole of an action that has the potential, directly or ultimately, to result in a physical change to the environment (*CEQA Guidelines Section 15378* [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art20.html]). This includes all phases of a project that are reasonably foreseeable, and all related projects that are directly linked to the project.

For the University of California, typical projects that could have a significant effect on the environment include capital construction projects, LRDPs, leases, acquisition of property, substantial changes in the use of facilities, and series of actions such as seismic renovation or asbestos removal. Real estate transactions such as leases and acquisitions of property may be considered projects that could have a significant effect on the environment.

The proposed location for the project is also essential as it is frequently the site of a project that determines the type, intensity and extent of the environmental impacts. There must also be a rational, documented process for site selection among alternative sites.

The Time to Define a Project

Within the University of California, the Project Planning Guide (PPG) (*UC CEQA Handbook, Appendix B*) is the document that describes the proposed capital improvement project. Project definitions should include a description of the policy objective(s) to be served by the proposed project and a general description of the project itself. The project description should include detail sufficient to ascertain the nature and general magnitude of environmental impacts.

The *Facilities Manual (Volume 2 - Planning, Chapter 6 Pre-Design Phase* [http://www.ucop.edu/facil/fmc/facilman/volume2/ch6.html]) describes the elements of project development that precede design. Sections include Site Analysis, Existing Building Analysis (for remodeling), Surveys of Existing Hazardous Materials (Due Diligence), Data Compilation, Facilities Infrastructure Analysis, Programming and Construction Cost. Elements in these sections are helpful to the environmental analysis for a project. Consultation during the project definition phase may enable some potential environmental impacts to be avoided, thereby reducing documentation and mitigation requirements.
Practical Considerations

The way a project is defined directly affects how the proposed action is analyzed for environmental compliance with CEQA, particularly in relation to such issues as primary and secondary effects and alternatives. For these reasons it is advisable to define the project as specifically as possible in terms of purpose, reasonably foreseeable population, development, and proposed uses as early as possible. Furthermore, it is helpful to discuss the use of replacement, released, or reallocated space, if any, in terms of square footage, population, and increased generation of traffic.

Early consultation with the Offices of the President and the General Counsel is strongly recommended for projects that may have significant environmental effects or which may be controversial. Consultation is most efficient if initiated at an informal level before campus decisions regarding the project have been made.

One very useful tool, especially for complex projects, is a project element summary table. A project element summary table describes all the elements of a project in a dated, one-page table format. This table can then be shared with the project manager, environmental consultant, project architects, and others involved with the project. If and when any of these elements change, a revised table can be recirculated to the project team to make all aware of project changes. Changes may have ramifications for the environmental analysis, which would need to be communicated to the project team at the time changes are made.
2.1.2 Environmental Classification

The generic decision making required for environmental classification is shown in Figure 3. The University Environmental Impact Classification (EIC) form (See UC CEQA Handbook Appendix C) is used to determine whether a project is subject to CEQA and what form of environmental documentation is anticipated. The EIC form is included in the Project Planning Guide (See UC CEQA Handbook Appendix B) which is submitted to the Office of the President for funding approval.

If a project does not require Office of the President concurrence, an EIC form must be prepared and approved by the campus prior to approval of the project design. Examples of types of projects for which an EIC should be sent to the Office of the President:

- Capital projects over $5 million [under current Regents Policy 6090 (http://www.ucop.edu/facil/fmc/facilman/volume1/rp6090.html)]
- Real estate transactions requiring Office of the President approval
- Projects requiring an environmental document
- State funded projects

The EIC form is organized as follows:

Project Information (title, campus, project number).

I. Exempt from CEQA (See UC CEQA Handbook Section 2.1.3)

This category is used if:

- The activity is not a “project” as defined by CEQA (CEQA Guidelines Section 15378 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art20.html);

- The project is covered by the “general rule” that CEQA only applies to projects with the potential for significant effects on the environment (CEQA Guidelines Section 15061(b)(3) http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html);

- The project qualifies for a statutory exemption (CEQA Guidelines Sections 15260-15285 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art18.html)

II. Categorically Exempt

This category is used if the project falls within one of the 32 classes of Categorical Exemptions (http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art19.html) and none of the exceptions to the exemptions apply (CEQA Guidelines Section 15300.2)

III. Initial Study

This category is checked if the project is not exempt and an Initial Study will be prepared. If the project has been included in the LRDP EIR, check Initial Study on the EIC form. The
Initial Study is the appropriate vehicle to evaluate where and whether the project is adequately analyzed in the LRDP EIR.

IV. Environmental Impact Report
This category is checked if it is known that the project will have a significant effect on the environment and an EIR will be prepared.

Project Description
This section of the EIC form is used to describe the relevant features of the project (size, location, uses, etc). If classifying a project as Categorically Exempt, verify and state that none of the exceptions to the exemption apply.

V. Conformance with LRDP
Check whether the project conforms to the LRDP or not. If the project is not included in the LRDP, check Not Applicable.

VI. Prepared by and local approved by signatures.

VII. Office of the President concurrence or nonconcurrence.

Process
The process for preparation and approval of an EIC form is as follows:

A. Prepare EIC form (UC CEQA Handbook Appendix C) at the time the project is proposed.

B. If Regents’ or Presidents’ action is required, send the EIC to Planning, Design & Construction for concurrence. Include the EIC in the PPG.

C. If Regents’ or Presidents’ action is not required (the project will be approved by the Chancellor or Chancellors’ delegatee), complete and approve the EIC on campus, then send copies to Planning, Design & Construction.
Figure 3: Environmental Classification

Preliminary Review of Project

Decision on Environmental Classification

Exempt
- Prepare Notice of Exemption (Statutory or Categorical)

Non-Exempt
- Prepare CEQA Document (Negative Declaration or EIR)
2.1.3 CEQA Exemptions

A number of projects are exempt from CEQA either by law or because they fall within classes of projects that have been determined generally not to have a significant effect on the environment.

Statutory Exemptions

Statutory exemptions, found in CEQA Guidelines Sections 15260 to 15285 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art18.html, are provisions in CEQA or other statutes that indicate that by law certain projects are either completely or partially exempt from CEQA’s environmental review requirements, or have special requirements.

A number of University of California projects are frequently exempt from CEQA under the following statutory exemptions:

- Feasibility and planning studies that are not legally binding and which have not been approved, adopted or funded (CEQA Statutes Section 21102 http://ceres.ca.gov/ceqa/stat/chap3.html, CEQA Guidelines Section 15262 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art18.html).

- Ministerial projects including issuance of building permits and approval of individual utility service connections and disconnections (CEQA Guidelines Section 15268 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art18.html). Projects that have both ministerial and discretionary aspects should be considered discretionary overall and subject to CEQA.

- Emergency projects such as actions required to restore damaged facilities or mitigate an emergency (CEQA Guidelines Section 15269 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art18.html).

- Special rules also apply to projects in areas subject to redevelopment plans or military base reuse plans. (CEQA Statutes Section 21083.8.1 and 21090 http://ceres.ca.gov/ceqa/stat/chap2_6.html.

Categorical Exemptions

Categorically exempt projects are classes of projects that the State Resources Agency has determined do not have a significant effect on the environment and therefore do not require preparation of environmental documents. Examples of categorically exempt projects include minor alterations to existing facilities and minor alterations to land. Categorically exempt projects are described in detail in CEQA Guidelines Sections 15300 to 15332 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art19.html.

Notice of Exemption for Categorically Exempt Project Approved by Campus

A Notice of Exemption (NOE) (http://ceres.ca.gov/topic/env_law/ceqa/guidelines/appendices.html) is a brief notice that the campus may file with the State Office of Planning and Research (OPR) after it determines that a project is exempt from CEQA and decides to carry out or approve a project. Directions for
preparing a Notice of Exemption are found in CEQA Guidelines Section 15062 http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html. (See UC CEQA Handbook, Appendix D) If the Regents approve an exempt project, Planning, Design and Construction will file an NOE.

The filing of a Notice of Exemption with OPR begins a 35-day statute of limitations (See CEQA Guidelines Section 15112(c)(2) and http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art8.html) on legal challenges to the campus's decision that the project is exempt from CEQA. A statute of limitations defines the period of time during which a lawsuit may be filed or other legal action taken. If a Notice of Exemption is not filed, a 180-day statute of limitations applies. (See CEQA Guidelines Section 15062(d) http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html).

Steps for Filing a Notice of Exemption

- Prepare approval letter for Chancellor signature (UC CEQA Handbook, Appendix K).
- Recommend that the project be deemed exempt from CEQA.
- Decide whether to file NOE and apply the 35-day statute of limitations or do not file the NOE and apply the 180-day statute of limitations.
- Prepare a Notice of Exemption that includes the following requirements (see Section 15062 of the CEQA Guidelines http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html):
  1. A brief description of the project that supports the specific exemption and explains that no exceptions to the exemption apply;
  2. A finding that the project is exempt from CEQA, including citation to the CEQA Guideline(s) under which it is found to be exempt; and
  3. A brief statement of reasons to support the finding.
- Consult with Offices of the President and General Counsel.
- Send two copies of the Notice of Exemption to OPR. Request that one be date stamped and returned to verify receipt by OPR. Copies of the NOE should be sent to Planning, Design and Construction at the Office of the President, and the Office of General Counsel.
- Campuses can also confirm OPR receipt of Notices by monitoring the on-line State Clearinghouse Newsletter http://www.opr.ca.gov/clearinghouse/Newsletter.shtml.

Exceptions to the Exemptions

Special circumstances can affect exemption status; thus, it is advisable to consider any project in light of the exceptions. In these situations, the Office of the President recommends that the campus prepare an environmental analysis to verify that an exemption from CEQA is appropriate, or to demonstrate that due to an exception, environmental review is required. The
environmental analysis substantiates the decision-making process (See *CEQA Guidelines Section 15300.2* [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art19.html]).

Categorical exemptions cannot be used if the project triggers any of the following exceptions:

- **Sensitive location.** If the project generally would be insignificant, but the location is sensitive resulting in significant effects, Categorical Exemption Classes 3, 4, 5, 6, and 11 cannot be used. For example, the minor expansion of an existing maintenance facility may be an exempt activity. However, if the expansion were to occur on wetlands, the exemption would not be applicable.

- **Cumulative impact.** The cumulative impact of the project and successive similar projects in the same location create a significant impact.

- **Unusual circumstances.** If there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances, a categorical exemption shall not be used.

- **Scenic Highway.** A categorical exemption shall not be used if a project will damage scenic resources, including, but not limited to trees, historic buildings, rock outcroppings, or similar resources within an officially designated scenic highway.

- **Hazardous Waste Site.** A categorical exemption shall not be used for a project located on a site which is included on any list of hazardous waste sites (Cortese list, Government Code 65962.5)

- **Historic Resources.** A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a historic resource.
2.1.4 Initial Study

The Initial Study, described in Section 15063 of the CEQA Guidelines, serves as a preliminary investigative tool to identify potential environmental effects. It is recommended as the basis for determining whether to prepare an EIR or Negative Declaration. The possible outcomes of an Initial Study are as follows:

General Exemption

A General Exemption applies in situations "where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment..." (See CEQA Guidelines Section 15061(b)(3)). In such cases, it is not necessary for the lead agency to prepare an Initial Study, but it does help substantiate such an exemption where appropriate.

Categorical Exemption

There are 32 classes (types) of projects that are normally considered exempt from CEQA. (See CEQA Guidelines Section 15300-15332). In order to verify the classification, it is useful, but not required, to prepare an Initial Study for projects that are determined to be categorically exempt from CEQA. The Initial Study should evaluate whether the project fits within the scope of the exemption, as well as whether one or more of the exceptions in the CEQA Guidelines Section 15300.2 would preclude reliance on the exemption. The most common exceptions apply in situations where the project would have significant impacts due to unusual circumstances, where cumulative impacts would be significant, or where the project may cause a substantial adverse change in the significance of a historical resource.

The substantive requirements for an Initial Study are set forth in Section 3.1 of this Handbook.

Findings

If the potential significant environmental effects of the proposed project have been adequately considered in a Program EIR or Negative Declaration, and impacts have been avoided or mitigated pursuant to that earlier EIR or Negative Declaration, or are imposed upon the proposed project, no further environmental document is required and findings may be prepared based on the existing environmental document(s).

Consult with the Office of the President for advice regarding this option.

Negative Declaration

A Negative Declaration should be prepared when the proposed project either has no impacts, or adverse impacts that are not significant (See UC CEQA Handbook Section 2.1.7).


Tiered Negative Declaration

When the proposed project could have adverse impacts which were not considered in a Program EIR (e.g. LRDP EIR), but those impacts are not significant, a Tiered Negative Declaration should be prepared.

Mitigated Negative Declaration

A Mitigated Negative Declaration applies where the proposed project could have significant effect(s) on the environment, but mitigation measures would be a required condition of project approval, which would mitigate the effects to a point where clearly no significant effects would occur.

Tiered Mitigated Negative Declaration

A Tiered Mitigated Negative Declaration applies where the proposed project could have significant effect(s) on the environment, these effects have been analyzed and mitigated in a Program EIR (e.g. LRDP EIR), and there will not be a significant effect because program mitigation measures and new project specific mitigation measures will be required as a condition of project approval, and would mitigate the effects to a point where clearly no significant effects would occur.

EIR

If the proposed project may have one or more significant effects that were not adequately analyzed in the LRDP or program EIR, an EIR would be prepared.

Tiered EIR

If the proposed project may have one or more new significant effects that were not considered in a Program EIR, or which may be substantially worse than identified in a Program EIR, but some impacts were adequately analyzed, a Tiered EIR should be prepared, as described in CEQA Guidelines Section 15152(f) [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art10.html].

Significant impacts are considered to have been adequately addressed by a previous EIR where:

- The impacts were mitigated or avoided in connection with a previous EIR.
- The impacts were examined at a sufficient level of detail in the prior EIR to enable the effects to be mitigated or avoided by project-level revisions, conditions, or other means.

If a project is not exempt from CEQA, the campus should prepare an Initial Study to determine the scope of environmental impacts attributable to the project. If the campus determines that an EIR will clearly be required for the project, an Initial Study is not required. It is, however, still useful to prepare an Initial Study to provide a mechanism to involve campus decision makers in the preliminary review process, to substantiate the decision-making process, to ascertain probable costs of preparing an environmental document and, if appropriate, focus an EIR that may be tiered from analysis in an LRDP.
If the Initial Study indicates there is substantial evidence that any aspect of a project, either individually or cumulatively, may have a significant effect on the environment, the campus should:

- prepare an EIR;
- demonstrate that a previous EIR (such as an LRDP EIR or other program EIR) adequately analyzes the project; or, if possible,
- modify the project to eliminate all significant impacts or reduce them to less-than-significant levels.

**Initial Study to Findings**

For projects that are part of a larger project or program for which a program EIR has already been prepared, an Initial Study should be prepared to determine whether the project would result in any potential impacts not evaluated or mitigated in the program EIR. One of the possible determinations of such an Initial Study is that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or Negative Declaration pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or Negative Declaration, including revisions or mitigation measures that are imposed upon the proposed project, no further environmental document is required. Findings consistent with the determination will be prepared.

**Practice Tip**

The campus environmental planner should give the applicable LRDP EIR mitigation measures to the consultant at the outset of the project environmental review, so that the consultant can determine if further mitigations are necessary. Appending the entire LRDP EIR mitigation list only confuses the reader as to which mitigations apply to the project.

Review LRDP EIR mitigation measures to determine the timing of implementation (e.g., geotechnical evaluation should be done and reported on in the Tiered Initial Study to enable determination if further mitigations are required or if design changes are needed).
2.1.5 Agency Consultation

For projects that may have significant environmental effects, the campus must consult with appropriate Responsible and Trustee Agencies (Reviewing Agencies) while preparing the Initial Study to determine the potential environmental effects of a proposed project and to solicit information that might affect the decision to prepare a Negative Declaration or an EIR. (See CEQA Guidelines Section 15063(g) http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html) The campus may also contact state, regional, and local agencies on this matter.

Verify specifically what operating permits may be required for the project so that relevant information can be included in the environmental document, and the appropriate agencies are included in the Responsible Agency distribution list.

Practical Considerations

When it is necessary to consult with Responsible or Trustee Agencies, it is generally helpful to review the list of Reviewing Agencies (http://ceres.ca.gov/planning/sch/appen_f.html#anchor1205082) to determine which one(s) should be notified. Part of this effort requires determining the appropriate contact person(s) for each of the agencies and planning departments that might be affected. Once a working list has been established, Responsible, Trustee, and reviewing agencies and planning departments should be contacted to discuss the proposed project. During this process, maintain a written record of information received and comments made about the proposed project. Depending on the complexity of the project, it may be advisable to consult with the Office of the President regarding which agencies should be consulted.
2.1.6 Determination of Significance

The determination of whether a project may have a significant effect on the environment is a critical step in the CEQA process, and one that requires professional knowledge and judgment, as described in CEQA Guidelines Section 15064 [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html]. The determination should be based on information in the record and, to the extent feasible, on scientific and factual data. Generally, an environmental professional with specific training in a particular area of environmental review can make this determination. This determination is made prior to and separate from the development of mitigation measures for the project.

The CEQA Guidelines Section 15382 [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art20.html], sets forth the following definition for significant effect:

“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, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

The CEQA Guidelines Section 15064(b) [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html], also indicate that:

An ironclad definition of significant effect is not possible because the significance of an activity may vary with the setting.

According to CEQA Statutes Section 21083 [http://ceres.ca.gov/ceqa/stat/chap2_6.html], (Significance Guidelines) and CEQA Guidelines Section 15065 [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html] (Mandatory Findings of Significance), if any of the following impacts would result from a proposed project, the project is considered to have a significant effect on the environment:

- The project has the potential to substantially degrade the quality of the environment, substantially reduce the habitat of fish or wildlife population, cause a fish or wildlife species to drop below self-sustaining levels, threaten to eliminate a plant or animal community, significantly reduce the number or restrict the range of an endangered, rare, or threatened species, or eliminate important examples of the major periods of California history or prehistory.

- The project has the potential to achieve short-term environmental goals to the disadvantage of long-term environmental goals.

- The project has possible environmental effects which are individually limited but cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects and the effects of reasonably foreseeable probable future projects (as defined in CEQA Guidelines Section 15130 [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art9.html]).

- The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.
CEQA Guidelines Section 15064.5 [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html), addresses archaeological and historical resources and notes that physical changes that would demolish or materially alter in an adverse manner those characteristics that convey the historical significance of the resource and justify its listing on inventories of historical resources are typically considered significant impacts. Generally, a project that follows the pertinent U.S. Secretary of the Interior’s guidelines will be considered as mitigated to a less-than-significant level.

For an effect to be significant, the projected physical change need not be immediately forthcoming. This consideration is particularly relevant in determining impacts of projects such as LRDPs.

Public opinion is another factor to consider in the process of determining whether a project would have an adverse or beneficial effect on the environment. The lead agency shall consider the views held by members of the public in all areas affected as expressed in the whole record before the lead agency. Before requiring an EIR, the lead agency must still determine whether the environmental change itself might be substantial (CEQA Guidelines Section 15064(c) [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html)).

The Environmental Checklist form [http://www.ucop.edu/facil/pd/uc_ceqa.pdf](http://www.ucop.edu/facil/pd/uc_ceqa.pdf) and Section 3.3 of this Handbook provide additional examples and information on determining the level of significance of project impacts.

When using a Program EIR as the basis for identifying project-level impacts, refer to the discussion on tiering environmental documents in Section 3.5 of this Handbook.

**Responses to the environmental checklist:**

- **Potentially Significant Impact** is appropriate where there is substantial evidence that an effect may be significant. If there are one or more “Potentially Significant Impact” entries an EIR is required.

- **Less than Significant with Mitigation Incorporated** applies where the incorporation of mitigation measures has reduced an effect from “Potentially Significant Impact” to a “Less Than Significant Impact.” The lead agency must describe the mitigation measures, and briefly explain how they reduce the effect to a less-than-significant level (mitigation measures from earlier analyses may be cross-referenced).

- **Impact for which LRDP/Program EIR is Sufficient** applies where the impacts of the project were adequately addressed and mitigated in a certified Long Range Development Plan EIR or in a Program EIR. (See also Tiering section below.)

- **Less Than Significant Impact** applies where the project creates no significant impacts, only less than significant impacts.

- **No Impact** applies where a project does not create an impact in that category. “No Impact” answers need to be adequately supported by information which shows that the impact simply

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does not apply to projects like the one involved (e.g., the project falls outside a fault rupture zone). A “No Impact” answer should be explained where it is based on project-specific factors as well as general standards (e.g., the project will not expose sensitive receptors to pollutants, based on a project specific screening analysis).

CEQA does not require mitigation of “less-than-significant impacts”; however, campuses may choose to identify mitigation measures to further reduce the level of impact.

During the preliminary stages of environmental review, it is difficult to distinguish between “significant” and “significant and unavoidable” impacts. These impacts should be designated “significant” initially until a thorough investigation of feasible mitigation measures indicates that the impacts are unavoidable. It may also be helpful to check each of the technical sections of Section 3.3 of the UC CEQA Handbook for the appropriate standards for determining significance of project impacts. Other factors to consider include:

- Examining the standards of significance in the Long Range Development Plan EIR;
- Considering any local conditions, including public opinions, that may affect the determination of significance; and
- Identifying impacts that may not be significant by themselves but when added together produce a significant adverse affect.

**Tiering**

Earlier analysis may be used where, pursuant to the tiering, program EIR, or other CEQA process, an effect has been adequately analyzed in an earlier EIR or negative declaration. (CEQA Guidelines Section 15063 (c)(3)(D) [http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html](http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html) ) In this case a brief discussion should identify the following:

1. Earlier Analysis Used. Identify and state where the previous document is available for review.
2. Impacts Adequately Addressed. Identify which effects from the checklist were within the scope of, and adequately analyzed in, an earlier document pursuant to the earlier analysis.
3. Mitigation Measures. For effects that are “Less than Significant with Mitigation Measures Incorporated,” describe the mitigation measures that were incorporated or refined from the earlier document and the extent to which they address site-specific conditions for the project.
4. The column labeled “Impact for which LRDP/Program EIR is Sufficient” is meant to be used in the following situations:

   a) The LRDP EIR found the impact to be less than significant for all projects, including this project, assuming implementation of applicable LRDP EIR mitigation measures,
b) The LRDP EIR concluded that the impact would be significant for some projects, but would not be significant for the project under review.

c) The impact is significant on a cumulative but not a project level, and the LRDP EIR fully addressed the cumulative impact, or

d) The impact is significant and unavoidable on a project level, but the LRDP EIR contained an adequate project-level analysis for the impact. This conclusion may also be appropriate where the particular impact and associated mitigation measures are sufficiently generic so that no further analysis is necessary or appropriate (i.e. the LRDP EIR contains all of the analysis that reasonably could be included on the topic with respect to all projects generally, including the specific project under analysis), and where no additional mitigation is feasible.

The guidance set forth in *CEQA Guidelines Section 15152*  
http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art10.html (Tiering), should also be considered in making this determination. Where this column of the checklist is selected, an explanation of the basis for doing so should be included in the discussion. The discussion should also state briefly why the criteria for supplemental environmental review under *CEQA Statutes Section 21166*  
http://ceres.ca.gov/ceqa/stat/chap6.html (project changes, changed circumstances and/or new information) have not been triggered.
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.
Figure 4: Fair Argument Standard

Can It Be Argued Fairly That The Project Might Have Potentially Significant Impacts

yes → Prepare EIR

no → Prepare Negative Declaration