

2.2 Negative Declaration

2.2.1 Preparation of a Negative Declaration/Mitigated Negative Declaration

A Negative Declaration or a Mitigated Negative Declaration should be prepared for a project when there is no substantial evidence that the project or any of its aspects could result in significant adverse impacts (*CEQA Guidelines Section 15063(b)(2)*

http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html).

A Negative Declaration or a Mitigated Negative Declaration shall be prepared when the Initial Study shows that: (1) there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment; or (2) the Initial Study identifies potentially significant effects, but revisions to the project agreed to prior to public review would avoid the significant effects, or reduce them to a less-than-significant level; and there is no substantial evidence that the revised project would result in a significant environmental effect (See *CEQA Guidelines Section 15070*

http://ceres.ca.gov/topic/env_law/guidelines/art6.html).

A Negative Declaration or Mitigated Negative Declaration is a short document that describes the proposed project, presents findings related to environmental conditions, includes a copy of the Initial Study which documents the reasons to support the findings, and includes mitigation measures, if any, included in the project to avoid potentially significant effects (Mitigated Negative Declaration). See *UC CEQA Handbook, Appendix H*.

Mitigated Negative Declaration

As described above, the campus may prepare a Mitigated Negative Declaration if the Initial Study identified potentially significant environmental effects of the project and the project is revised to eliminate or mitigate impacts to less than significant levels. A Mitigated Negative Declaration may be adopted when there is no substantial evidence in light of the whole record that the project, as revised by incorporation of the mitigation measures, may have a significant effect on the environment. (*CEQA Statutes Section 21064.5* http://www.ceres.ca.gov/ceqa/stat/chap2_5.html and *CEQA Guidelines Section 15070*

http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html).

Mitigation measures that are made part of the project can be considered in reaching the conclusion that the project will not result in a significant impact. These measures must be incorporated into the project, described in the project description, and circulated for public review before certification of the Negative Declaration. (See *UC CEQA Handbook Section 2.2.2*). If a Mitigated Negative Declaration is prepared, the campus will need to prepare an accompanying Mitigation Monitoring Program to document who is responsible for mitigation measure implementation and monitoring, and how and when mitigations will be implemented and monitored. (See *UC CEQA Handbook Section 2.2.4 and Chapter 5*).

Practical Considerations

Process for filing a Negative Declaration/Mitigated Negative Declaration

The Initial Study is attached to a:

- Notice of Intent to Adopt a Negative Declaration (or Mitigated Negative Declaration) (*UC CEQA Handbook, Appendix G*) and
- an Environmental Document Transmittal Form (*CEQA Guidelines Appendix C* (http://ceres.ca.gov/topic/env_law/ceqa/guidelines/pdf/appen_c.pdf) when sent to the State Clearinghouse.
- Receipt of the notice by the Clearinghouse starts the 30-day review period for State agencies.

Distribution

The State Clearinghouse should receive:

- One (1) Environmental Document Transmittal Form
- 15 copies of the Notice of Intent to Adopt a Negative Declaration with Initial Study attached

The following should receive copies (“cc’s”) of the Notice of Intent to Adopt and the Initial Study:

- Office of the President, Planning, Design, and Construction
- Office of General Counsel
- Regional Clearinghouse
- Responsible agencies if applicable
- Trustee agencies if applicable
- Relevant City or County
- Individuals who and organizations which have previously requested such notices in writing.
- Transportation planning agencies and public agencies which have transportation facilities within their jurisdiction which could be affected by the project, if the project is of statewide, regional or areawide significance

Contents of a Notice of Intent to Adopt a Negative Declaration

See *UC CEQA Handbook, Appendix H* for sample format

1. Brief description of project and location.
2. Starting and ending dates for public review.
3. Date, time and place of any scheduled public meetings or hearings to be held by the lead agency on the project if known at the time of the notice.
4. Address(es) where copies of proposed Negative Declaration or Mitigated Negative Declaration and all referenced documents are available for review. The location is to be available during normal working hours.
5. Whether the site is listed on any hazardous site lists per California Government Code 65962.5 <http://www.leginfo.ca.gov/calaw.html>.
6. Other information required by statute or regulation for a particular project or type of project.

2.2.2 Public Notice/Agency and Public Review

The campus must notify the public, State and local agencies, and local cities and counties that it intends to adopt a Negative Declaration or Mitigated Negative Declaration for a project. This notification serves as the beginning of a public review period of 30 days. As indicated in *CEQA Guidelines Section 15073* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html, if desirable, a longer review period may be used to provide agencies and the public with more time to comment on the proposed Negative Declaration or Mitigated Negative Declaration before it is approved.

Practical Considerations

In accordance with *CEQA Guidelines Section 15072* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html, public notice should be provided to all organizations and individuals who have previously requested such notice. Specifically, notices must be mailed to any person who has filed a written request for notices with the campus. (*CEQA Statutes Section 21092.2* http://ceres.ca.gov/ceqa/stat/chap2_6.html.)

Public notification should also be provided in at least one of the following ways:

- at least one notification in a local newspaper with general circulation in the area affected by the proposed project;
- posting of a notice on and off campus in the area where the project would be located; or
- direct mailing to owners and occupants of property contiguous to the project, such as to the owners shown on the latest equalized tax roll (*CEQA Guidelines Section 15072* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.)

Campuses may also choose to post notices in their main libraries or other campus locations where notices are typically posted, or distribute notices via email or web sites.

There are three additional notification requirements in specific circumstances:

- if a project involves the construction or alteration of a facility that might reasonably be expected to emit hazardous or acutely hazardous air emissions within one-quarter mile of a school, the campus must consult with such school districts regarding the potential impact of such a project and provide written notification of the project at least 30 days before approving the Negative Declaration (*CEQA Statutes Section 21151.4* <http://ceres.ca.gov/ceqa/stat/chap4.html>.)
- if a project is of statewide, regional or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in Section 21092.4(a) of the Public Resources Code. “Transportation facilities” include: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within ten miles of the project site. (*CEQA Guidelines Section 15072(e)*).

- The lead agency shall notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement (*CEQA Guidelines Section 15073(e)*).

State and local agencies should be instructed to respond in writing if they have comments on the Negative Declaration or Mitigated Negative Declaration.

Steps for Providing State and Public Notice

- Provide the public with a Notice of Intent to Approve a proposed Negative Declaration or Mitigated Negative Declaration (*UC CEQA Handbook, Appendix G*) according to the requirements set forth in *CEQA Guidelines Section 15072* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.
- Send one (1) NOC/Environmental Document Transmittal Form and fifteen (15) copies of the Notice of Intent to Adopt the Negative Declaration, or Mitigated Negative Declaration with Initial Study to the State Clearinghouse for distribution to appropriate state agencies (per correspondence from State Clearinghouse 1/13/2000). In addition, send a copy to the regional clearinghouse and to each Responsible Agency, Trustee Agency, the County Clerk and any public agency with legal jurisdiction over resources affected by the project area (*CEQA Guidelines Section 15073(d)* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html). A copy is sent to the County Clerk for their information, not for the County Clerk to file with the State Clearinghouse. UC files with the state directly (*CEQA Guidelines Section 15073(d)*).
- Make the proposed Negative Declaration or Mitigated Negative Declaration available on campus, at the local public library. The state also recommends that documents be made available electronically.
- Send Notice of the Intent to Adopt (the notice of availability) the proposed Negative Declaration or Mitigated Negative Declaration to all organizations and individuals who have previously requested such notice (*CEQA Statutes Section 21092.2* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html and *CEQA Guidelines Section 15073* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html).
- Public and State Agency review period - 30 days.
- State lead agencies are to file directly with the State Clearinghouse. This practice should also be followed when filing an NOI, NOC, and NOD. (*CEQA Guidelines Section 15073(d)* and *15075(c)*).
- For projects located within an airport comprehensive land use plan boundary or within two miles of a public use airport, consult with CalTrans Division of Aeronautics (PO Box 942874 MS-40, Sacramento, CA 94274-0001 (916) 654-5413) and other requirements per *CEQA Statutes Section 21096* http://ceres.ca.gov/ceqa/stat/chap2_6.html.

- For projects within one quarter mile of a school, if the project may emit or handle hazardous materials, notify and consult with the affected school district per *CEQA Guidelines Section 15186* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art12.html.
- For projects of statewide, regional or areawide significance, the lead agency shall also provide notice to transportation planning agencies and public agencies which have transportation facilities within their jurisdictions which could be affected by the project as specified in *CEQA Statutes Section 21092.4(a)*. “Transportation facilities” include: major local arterials and public transit within five miles of the project site and freeways, highways and rail transit service within ten miles of the project site. (*CEQA Guidelines Section 15072(e)*).
- Notify in writing any public agency which comments on a proposed negative declaration or mitigated negative declaration of any public hearing to be held for the project for which the document was prepared. A notice provided to a public agency pursuant to Section 15072 satisfies this requirement (*CEQA Guidelines Section 15073(e)*).
- The state encourages public agencies to put CEQA notices on the Internet.

2.2.3 Response to Comments and Recirculation (if required)

Negative Declaration or Mitigated Negative Declaration Comments

Steps for Responding to Comments

- Evaluate all comments received on the proposed Negative Declaration or Mitigated Negative Declaration to determine whether there is substantial disagreement about the potential significance of impacts.

The campus must consider any written comments submitted on the proposed Negative Declaration or Mitigated Negative Declaration. If issues are raised concerning potentially significant impacts, the campus must clarify whether impacts can be mitigated or whether an EIR should be prepared to analyze the project more thoroughly. If it can be “fairly argued” that the project could result in potentially significant environmental impacts, an EIR should be prepared (*CEQA Guidelines, Section 15064(g)*) http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art5.html). Potential impacts must be analyzed and appropriate mitigation measures structured before the Negative Declaration or Mitigated Negative Declaration is filed with the Office of Planning and Research (OPR).

- If issues are raised concerning potentially significant impacts, demonstrate in a revised Negative Declaration or Mitigated Negative Declaration and/or staff memo that impacts can be adequately mitigated to reduce impacts to less than significant levels.

The lead agency must:

- Consider all comments on the proposed Negative Declaration or Mitigated Negative Declaration.
- Include all comments in the final Negative Declaration or Mitigated Negative Declaration.
- Summarize the comments in the Regents’ item.
- Make the comments part of the Administrative Record.

The CEQA Statutes and CEQA Guidelines do not provide guidance on responding to comments on the Negative Declaration or Mitigated Negative Declaration. The Office of the President recommends, however, that the campus revise the proposed Negative Declaration or Mitigated Negative Declaration in response to substantive comments relating to environmental issues. The campus may choose to send responses directly to commentors, although it is not required to do so.

CEQA Statutes Section 21080(f) http://ceres.ca.gov/ceqa/stat/chap2_6.html generally provides that mitigation measures may be replaced with equivalent or more effective measures, following a public hearing, without requiring that the Mitigated Negative Declaration be recirculated. Additional criteria for recirculation are found in the *CEQA Guidelines Section 15073.5* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.

Recirculation of Negative Declaration or Mitigated Negative Declaration

A lead agency is required to recirculate a Negative Declaration or Mitigated Negative Declaration when the document must be substantially revised after the public notice of its availability, but prior to being adopted. “Substantial revision” is defined in *CEQA Guidelines Section 15073.5*

http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.

- A new, avoidable significant effect is identified and new mitigation measures or project revisions must be added to reduce the effect to insignificance, or
- The lead agency determines that the proposed mitigation measures or project revisions will not reduce potential effects to less than significance (sic) and new measures or revisions are required.

Recirculation is ***not*** required if:

- Mitigation measures are replaced with equivalent or more effective measures per *CEQA Guidelines Section 15074.1* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.
- New project revisions are added in response to written or verbal comments on the project’s effects identified in the proposed negative declaration which are not new avoidable significant effects.
- Mitigation measures or conditions of approval are added which are not required by CEQA, do not create new significant environmental effects, and are not necessary to mitigate an avoidable significant effect.
- New information is added which merely clarifies, amplifies, or makes insignificant changes to the Negative Declaration or Mitigated Negative Declaration.

2.2.4 Preparation of Final Negative Declaration or Mitigated Negative Declaration, Findings, Mitigation Monitoring Program

Prior to adoption of the Negative Declaration or Mitigated Negative Declaration, a statement of *Findings* should clearly demonstrate that the project would not result in significant impacts to the environment. For a Mitigated Negative Declaration, Findings should be made for each potentially significant effect that was mitigated in the Negative Declaration. The Findings on each significant impact should provide sufficient detail and explanation to allow a court to trace the route of the University's reasoning (*UC CEQA Handbook Section 2. 4 and 3.4*). The Findings must also specify the location and custodian of the administrative record (*CEQA Guidelines Section 15074(c)*) http://www.ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.

Mitigation Monitoring Program

A Mitigation Monitoring Program must also be developed for all mitigation measures that are adopted for the project to reduce potential significant impacts (*CEQA Guidelines Section 15074(d)*) http://www.ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html. See also *UC CEQA Handbook Chapter 5*.

Project Approval

Once the University decides to approve a project for which a Negative Declaration or Mitigated Negative Declaration has been adopted, the University files a Notice of Determination with the State Clearinghouse. (*CEQA Guidelines Section 15075*) http://www.ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html (See *UC CEQA Handbook Section 2.2.5* for more on Project Approval).

2.2.5 Project Approval for Negative Declaration or Mitigated Negative Declaration

“Project approval” in CEQA terms is the irrevocable commitment to proceed with a project. Under normal procedures, CEQA project approval is the design approval by UC decision makers. Approval of some capital improvement projects may require that environmental documents be considered prior to design approval if a prior step may be interpreted as the decision that commits the University of California to a definite course of action.

After reviewing the Negative Declaration or Mitigated Negative Declaration and any comments received through agency consultation and during the State and public comment period, an informed decision to approve or disapprove the project should be made.

To approve a project, The Regents (UC decision makers), the President or the Chancellor, need to make Findings that the project as approved will not have a significant effect on the environment or that the impacts have been eliminated or mitigated to less than significant levels.

The campus should develop its own process to document campus level approval. Typically this includes a written *approval letter* (See *UC CEQA Handbook Appendix K*) with background on the project, its environmental documentation, and Findings signed by the Chancellor. Copies of the approval should be sent to Planning, Design and Construction at the Office of the President.

A Mitigation Monitoring Program must be adopted at the same time as the Mitigated Negative Declaration. (See *UC CEQA Handbook Chapter 5* and *CEQA Guidelines Section 15074(d)* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html .) Project approval triggers campus responsibility to monitor mitigation measures pursuant to *CEQA Statute Section 21081.6* http://ceres.ca.gov/ceqa/stat/chap2_6.html .

Steps for Project Approval

- Prior to project approval, review and evaluate the Negative Declaration or Mitigated Negative Declaration and any comments received from agencies and the public (*CEQA Guidelines Section 15074(b)*) http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.
- Adopt the Negative Declaration or Mitigated Negative Declaration if, on the basis of the Initial Study and any comments received on the Negative Declaration or Mitigated Negative Declaration, there is no substantial evidence that the project would have a significant effect on the environment (*CEQA Guidelines, Section 15074(b)*) http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.
- Make appropriate Findings in writing.
- Adopt a Mitigation Monitoring Program *CEQA Guidelines Section 15074(d)* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html.

2.2.6 Notice of Determination (NOD) for Negative Declaration or Mitigated Negative Declaration

A Notice of Determination (NOD) is the formal notice filed with the State Clearinghouse after UC has approved a project that is subject to CEQA (*UC Handbook, Appendix J; CEQA Statutes Section 21108* <http://ceres.ca.gov/ceqa/stat/chap3.html>). A NOD advises the public and relevant agencies with jurisdiction by law over the project area that a Negative Declaration or Mitigated Negative Declaration and the corresponding project have been approved. It also starts a 30-day statute of limitations for court challenges to the CEQA document (*UC CEQA Handbook Section 2.2.7*).

Practical Considerations

- Two copies of the NOD should be sent to the State Clearinghouse. Request that one copy be date stamped and returned to verify receipt. A NOD must also be mailed to any person who has filed a written request for notices with the campus. The NOD must be mailed within five days of project approval (*CEQA Statutes Sections 21092.2* http://ceres.ca.gov/ceqa/stat/chap2_6.html and *21167(f)* <http://ceres.ca.gov/ceqa/stat/chap6.html>).
- State law requires that a filing fee be paid to the Department of Fish and Game <http://www.dfg.ca.gov/dfghome.html>, or a Certificate of Fee Exemption (COFE) to be filed if the UC decision maker makes a de minimis impact finding regarding wildlife resources. A sample Certificate of Fee Exemption is located at *Appendix P* of this Handbook. The fee is submitted with the NOD to the State Clearinghouse. The fee for a Negative Declaration is \$1,250. The NOD will only be accepted and posted by the State Clearinghouse if either a check or a Certificate of Fee Exemption is included.
- The state encourages all CEQA notices to be made available on the Internet in addition to other forms of public notification (*CEQA Guidelines Section 15075(f)* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html).

2.2.7 Thirty Day Statute of Limitations

A statute of limitations defines the period of time in which a lawsuit may be filed to challenge a CEQA decision.

Under CEQA, a 30-day statute of limitations applies after an NOD has been received by the Office of Planning and Research (OPR) following adoption of a Negative Declaration or Mitigated Negative Declaration and approval of the project.

The period ends 30 calendar days later, or on the first working day following a weekend or holiday. If no NOD is filed, a lawsuit may be filed up to 180 days after approval of the project. (*CEQA Statutes Section 21167*) The statute of limitations can be 180 days from approval OR, if a project is undertaken without a formal decision by a public agency, the statute of limitations is 180 days from the date of commencement of the project. (*CEQA Guidelines Sections 15075(e)* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art6.html and *15094(f)* http://ceres.ca.gov/topic/env_law/ceqa/guidelines/art7.html).

The University may learn about a CEQA lawsuit a number of ways including formal service on the Regents, direct communications, or press reports or inquiries. If any University entity learns of a CEQA lawsuit, promptly alert the Office of General Counsel, Office of the President and the campus.

It is advisable, but not required, to delay project implementation and the mobilization of contractors until after the 30-day period expires and no lawsuit has been filed.