

CEQA and Federal Laws

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June 23, 2017

Overview

- **The Big Three – CEQA, NEPA, and Section 106**
- **Understanding Key Differences**
- **Coordination or Integration?**

The Big Three – CEQA, NEPA, Section 106

■ CEQA

- Applies only to California agency projects
- Was the first state law modeled after NEPA – and California is one of only 16 states with a “Little NEPA”
- Section 106 isn’t applicable

■ National Environmental Policy Act

- Applies only to federal agency actions
- Must integrate Section 106 considerations

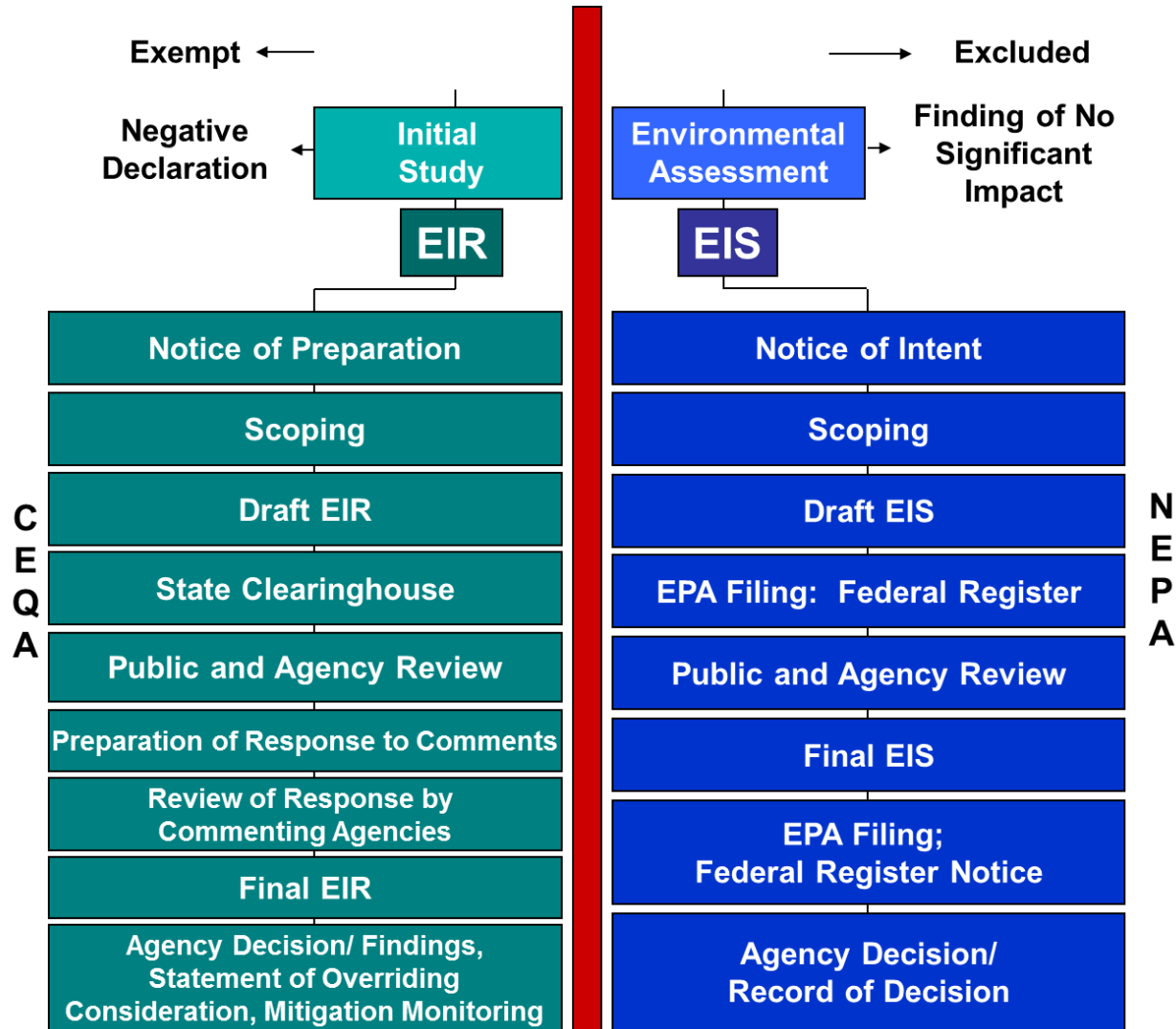
■ Section 106 of the National Historic Preservation Act

- Applies to Federal undertakings (funding, approval, or agency projects)
- Typically, if NEPA applies, then so does Section 106

Typical Triggers for Requiring Both State and Federal Reviews

- **California project receiving federal funds**
 - Road projects
 - HUD funding of residential/economic development projects
- **California project requiring federal permits**
 - Section 404 permits from the USACE for placing dredge or fill in waters of the United States (wetlands)
 - Section 10 permits under the ESA for “incidental take” of federally listed threatened or endangered species
 - Others
- **Large project co-sponsored by state and federal agencies**
 - e.g., California WaterFix, California High Speed Rail

CEQA and NEPA as Parallel Processes

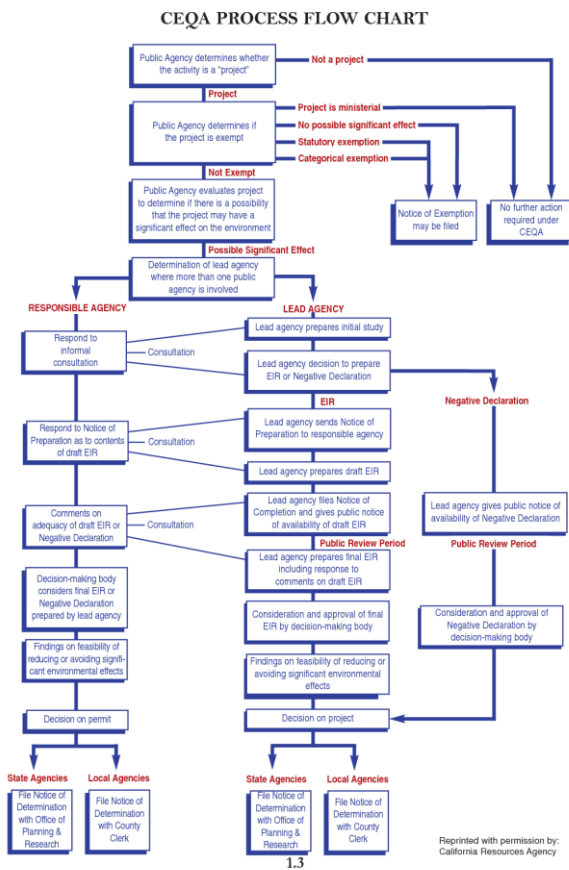


Similar, But Not the Same

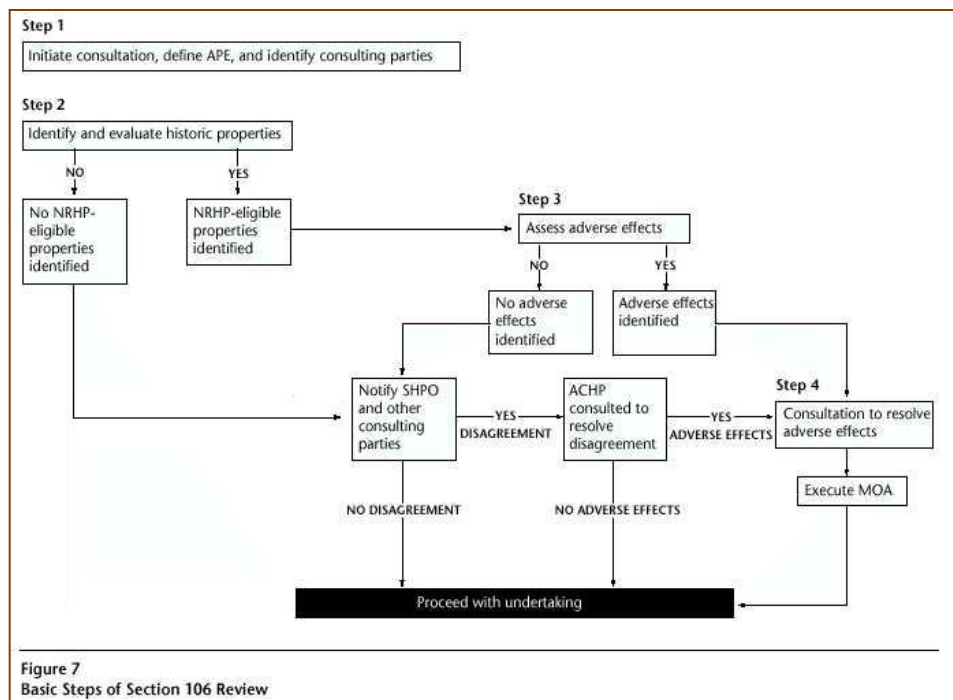
- The state and Federal processes are handled separately by the respective Lead Agencies
- CEQA is typically completed first, since California agency approval usually occurs before the Feds will initiate it as a project; NEPA and Section 106 are often completed later when federal agency permits are pursued
- Some resulting problems include:
 - CEQA historical resources analysis that doesn't provide sufficient information for Section 106
 - Mitigation measures imposed by the respective agencies that are inconsistent
 - The public and interest groups don't know when to most effectively engage

CEQA and Section 106 – Not Exactly Parallel Processes

CEQA PROCESS FLOW CHART



SECTION 106 PROCESS FLOW CHART



Comparing Environmental Review Requirements

Requirement	Scoping Process	Draft Document	Final Document	Decision Making
NEPA	Notice of Intent	Draft EIS	Final EIS	Lead Agency issues and Record of Decision
CEQA	Notice of Preparation	Draft EIR	Final EIR	Lead Agency issues Notice of Determination
Endangered Species Act Sec. 7	Request species list	Biological Assessment	Biological Opinion	
Clean Water Act Sec. 404	Define objectives; Screen alternatives; Submit permit application	Draft Sec. 404(b)(1) analysis	Final Sec. 404(b)(1) analysis	USACE issues Sec. 404 permit (after Sec. 401 certification of waiver)
National Historic Preservation Act Sec. 106	Initiate consultation; plan for public involvement; define the APE	Identification of Historic Properties (technical reports)	Finding of Effect	Lead Agency, SHPO, and Signatory consulting parties execute a Memorandum of Agreement or Programmatic Agreement
Clean Air Act Conformity (non-transportation project)	Determine whether the conformity requirement applies	Preliminary analysis (comparison to <i>de minimis</i> levels)	Detailed modeling analysis if necessary	Federal agency issues conformity determination
Public involvement	Scoping meetings	Public comment; Public hearing	Public comment	

Key Differences Between CEQA and Section 106

CEQA

- Applies only to projects before California agencies
- CEQA is multi-disciplinary; cultural resources is one facet
- No formal process for historical resources consultation and evaluation

Section 106

- Applies only to projects before federal agencies
- Sec. 106 is focused on cultural resources
- Formal process for historical resources consultation and evaluation

More Key Differences

CEQA

- No mandate to consult with OHP over cultural resources
- No role for the SHPO (unless there is state-owned property)
- Broad range of resources may be deemed a CEQA historical resource

Section 106

- Federal agencies must consult with SHPO over historic properties
- SHPO has a central, mandatory role
- Focus is on NRHP or NRHP-eligible properties

More Key Differences

CEQA

- Public involved during scoping meeting at the beginning and the opportunity to comment on Draft Negative Declaration or EIR
- Phased identification of resources or impacts strongly discouraged (Madera Oversight case)

Section 106

- Requires a “plan to involve the public” (36 CFR 800.3(e) at initiation, with opportunities for involvement at every stage of the review process.
- Phased identification of historic properties or effects is allowed if addressed in a Programmatic Agreement (36 CFR 800.13(a)(2))

And Still More Key Differences

CEQA

- Threshold: A project may have a significant effect if there would be a substantial adverse change in the significance of the resource, namely through material impairment that *demolishes or materially alters in an adverse manner those physical characteristics that convey significance and justify its eligibility for inclusion in the CRHR or qualified local list.*

Section 106

- Threshold: An adverse effect is found when an undertaking may *alter...any of the characteristics...that qualify the property for inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.*

Just a Few More Key Differences

CEQA

- No impact, Less-than-Significant Impact, Significant Impact with Mitigation, or Significant Unavoidable Impact.
- Developing mitigation for significant impacts is Lead Agency's responsibility

Section 106

- No effect, No adverse effect, or Adverse effect.
- Resolving adverse effect includes MOA or PA between Lead Agency, SHPO, and consulting parties

Integrating or Coordinating the Big Three for Efficiency

- **Decide whether to integrate or coordinate Federal reviews**
 - ACHP and CEQ 2013 publication: “NEPA and NHPA: A Handbook for Integrating NEPA and Section 106” (http://www.achp.gov/docs/NEPA_NHPA_Section_106_Handbook_Mar2013.pdf)
 - Integration requires consultation between lead agencies to define documentation standards, review authority, public involvement, and thresholds for significance
 - Coordination requires awareness and best practices
- **Define project and project area with the Area of Potential Effects in mind**
 - Different agencies may have different jurisdiction, and thus different APE
- **Records searches**
 - Include a broad enough area to cover CEQA cumulative impacts and S106 APE
 - Consider possibility of updated searches if the review processes are staggered too far out

Integrating or Coordinating the Big Three for Efficiency

■ Consultation

- Extend invitation to all who may be interested parties
- Clearly distinguish the Tribal consultation required for each regulatory process
- Provide clear indication of when interested parties can engage under each review process, and to what degree (providing information, document review, workshops)

■ Technical reports

- Apply NRHP and CRHR when evaluating, and identify resources included on qualified local lists local criteria, in one report
- Clearly state character-defining features for each eligibility criteria

■ Impacts analysis

- Impacts/effects are based upon project's potential to reduce historical integrity
- The impacts and effects conclusions may not come out the same, and that's OK

How Does Section 4(f) Fit In?

- **Section 4(f) is part of the Department of Transportation Act of 1966**
- **The DOT agency can only approve a project that “uses” a Section 4(f) resource if:**
 - there are no prudent and feasible alternatives, and
 - The project includes all possible planning to minimize harm
- **The process is similar to Section 106, but with different terms and thresholds**
 - Determine if Section 4(f) resources are present in the study area
 - Determine if the project “uses” land from Section 4(f) resources
 - Determine whether to process as *de minimis* or individual evaluation
 - Fulfill compliance requirements, including minimization of harm

How Does Section 4(f) Fit In?

- **4(f) include significant historic sites and parks, recreation areas, and wildlife areas that are publicly owned and open to the public**
- **Section 4(f) is only concerned about historic sites that are listed in or eligible for listing in the NRHP**
 - Archaeological sites must be important for preservation in place to qualify
- **Coordination only involves the official(s) with jurisdiction over the resource (SHPO or ACHP) and the DOT agency**
- **Section 106 effects and Section 4(f) uses**
 - Projects with a Section 106 no adverse effect can be processed as de minimis
 - A Section 106 adverse effect is not always a 4(f) use
 - use requires incorporation of the resource for transportation purposes, physical temporary occupancy, or substantial impairment resulting in a ‘constructive use’

Questions/Discussion

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