



- Board of Directors
Communications and Legislation Committee

4/9/2013 Board Meeting

8-6

Subject

Adopt policy principles on the California Environmental Quality Act

Executive Summary

Modernization of the California Environmental Quality Act (CEQA) has been identified by Governor Brown and legislative leaders as a top priority for discussion during the 2013/2014 state legislative session. California policymakers are calling for a comprehensive review of the CEQA process and improvements to CEQA that hold high standards for the environment, while facilitating economic expansion and job growth.

Details

Background

Signed into law in 1970 by then-Governor Ronald Reagan, CEQA grew out of the environmental movement of the late 1960s and early 1970s. Propelled by rising concerns about the implications of development on the environment, CEQA was intended to improve regional planning and reduce environmental degradation by requiring state and local government agencies to evaluate, disclose and mitigate the environmental impacts of their proposed projects. In short, the purpose of CEQA is to ensure that government decision makers consider environmental consequences prior to approving projects.

CEQA was patterned after the National Environmental Policy Act (NEPA) passed in 1969. NEPA is CEQA's federal counterpart, establishing the process by which federal agencies conduct environmental planning and analysis. California was ultimately the first of 17 states to adopt NEPA-style legislation to evaluate the environmental impacts of projects and activities.

CEQA has four primary goals:

- To *inform* governmental decision makers and the public about potentially significant environmental effects of proposed activities before they are approved or carried out,
- To *identify* the ways in which environmental damage can be avoided or significantly reduced,
- To *prevent* significant, avoidable damage to the environment by requiring changes in proposed projects through the use of alternatives or mitigation measures when the government agency finds the changes to be feasible, and
- To *disclose* to the public the reasons why a government agency approved the project in the manner the agency chose if significant environmental effects are involved.

CEQA, like NEPA, is essentially a procedural law, dictating a detailed process to be followed by public agencies, such as the preparation and circulation of environmental documentation. CEQA goes further than NEPA, however, in that CEQA also includes substantive provisions that make feasible mitigation mandatory and creates a mechanism by which public agencies are held accountable for accomplishing this mitigation.

CEQA's procedural mandate is implemented through the *State CEQA Guidelines*, which are part of the California Code of Regulations. These guidelines include specific criteria which public agencies must adhere to in order to comply with CEQA, such as in determining whether or not a project may have a significant effect on the environment, which agency is the Lead Agency and the contents of Environmental Impact Reports (EIRs) and Negative Declarations. The guidelines were adopted through the state's rule-making process and are legally enforceable regulations.

During its more than 40-year existence, CEQA remains one of California's most controversial laws, particularly because there is no other state law that so directly affects so many aspects of development planning and project implementation. Project proponents have long argued that CEQA is too often abused as a litigation tool to prevent or delay projects. In addition, changes to numerous federal, state, and local environmental and land use regulations since CEQA's inception have led to costly duplication of environmental processes and mitigation requirements, further encumbering the regulated community and leading to additional cost and delay of implementing projects in California.

Proposed CEQA Policy Principles

Modernization of CEQA is expected to be among the Legislature's top priorities during the 2013/14 legislative session. Compliance with CEQA is required for all discretionary actions carried out by Metropolitan and, as a result, modifications to the law will directly affect the cost and schedule of Metropolitan's projects and activities. Accordingly, Metropolitan has a significant interest in this effort to revise CEQA.

The proposed policy principles ([Attachment 1](#)), will guide staff in the ongoing discussions to shape possible CEQA legislation in ways that would be beneficial to Metropolitan's interests as a water purveyor and State Water Project contractor. The proposed policy principles replace CEQA policy principles adopted by Metropolitan's Board in February 1998 and affirm and advance Metropolitan's objectives for long-term water supply reliability for the Southern California region and responsible resource stewardship.

Policy

Board-adopted California Environmental Quality Act policy principles (last adopted in February 1998)

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and adopt the CEQA Modernization Policy Principles as found in [Attachment 1](#).

Fiscal Impact: None

Business Analysis: This board action will provide staff the necessary direction to engage and provide comments on CEQA modernization legislation that could potentially impact the cost and schedule of Metropolitan's projects and activities.

Option #2

Take no position on the CEQA Modernization Policy Principles.

Fiscal Impact: None

Business Analysis: Could lead to additional cost and delay of implementing public infrastructure projects in California

Staff Recommendation

Option #1

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|  Linda Waade Deputy General Manager, External Affairs | <u>4/3/2013</u> Date |
|  Jeffrey Kightlinger General Manager | <u>4/3/2013</u> Date |

Attachment 1 – Proposed Policy Principles Modernization of California Environmental Quality Act

Ref# ea12624010

PROPOSED POLICY PRINCIPLES

MODERNIZATION OF CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Issue: Provide for modernization of CEQA and other regulatory procedures to improve efficiency without loss of environmental protection and for clarification to reduce the potential for litigation. Metropolitan's objective with respect to CEQA is to uphold the environmental protection and public participation provisions afforded by the Act while improving the clarity and workability of the statute and its implementing guidelines.

Proposed Policies:

- Clarify and streamline processes to reduce delays in preparation, submittal, and review of CEQA documents;
- Better integrate the CEQA process with other regulatory permitting processes;
- Eliminate duplicative CEQA/National Environmental Quality Act (NEPA) processes;
- Support expansion of CEQA exemptions for minor activities subject to exceptions for special circumstances, including extension of such existing exemptions to water supply facilities;
- Support reform or streamlining of CEQA processes that will assist Metropolitan in meeting its State Water Project and Bay-Delta policies;
- Clarify CEQA requirements in a manner that does not undermine environmental protection or reduce opportunity for public involvement;
- Oppose measures that would significantly modify the threshold test for determining whether an environmental impact report (EIR) is required for a particular project; and
- Consider reforms to legal challenges to CEQA process to avoid frivolous lawsuits and abuses of the legal process.