

# Toeing the CEQA Line

Preparing Defensible CEQA Documents for Linear Projects



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## Topics

1. Scoping
  2. Characterizing the Environmental Setting
  3. Conducting the Impact Analysis
  4. Defining Mitigation
  5. Constructing the Project
- ▶ Bonus: NEPA



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## Themes

- ▶ Increased numbers of affected ecosystems, habitats, and species
- ▶ Increased number of agencies, tribes, and NGOs
- ▶ More landowners and interested public
- ▶ Anticipate increased resources
- ▶ Build in flexibility from the start



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## 1: Scoping



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## Stakeholder Diversity: Challenges

- ▶ Multiple jurisdictions
- ▶ Multiple neighborhoods
- ▶ Multiple environmental resources
- ▶ Increased consultation requirements
- ▶ More opinions
- ▶ Disagreement



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## Stakeholder Diversity: Best Practices

- ▶ Capitalize on familiarity with communities
- ▶ Building incremental alliances helps build overall consensus
- ▶ Develop relationships first a on personal, not project level basis
- ▶ Work with other agencies to select a CEQA lead



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## 2: Characterizing the Environmental Setting



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### Environmental Diversity: Challenges

- ▶ More ground covered
- ▶ Wider variety of resources
- ▶ Increased level of effort
- ▶ Increased reader confusion and information overload



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## Environmental Diversity: Best Practices

- ▶ Be mindful of piecemealing
- ▶ Programmatic approach
- ▶ Treat linear project as a series of non-linear projects



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## 3: Conducting the Impact Analysis



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## Significance Conclusions: Challenges

- ▶ Multiple jurisdictions
- ▶ Different contexts
- ▶ Differing significance thresholds
- ▶ Differing significance conclusions
- ▶ Can cause confusion



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## Significance Conclusions: Best Practices

- ▶ Justify use of different significance thresholds
- ▶ Clarity is key
- ▶ Specify precise locations of impacts in significance conclusion



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## Alternatives Analysis: Challenges

- ▶ Alternatives located in new areas
- ▶ Increased level of effort
- ▶ Might be a mitigation measure
- ▶ Public input from many stakeholders



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## Alternatives Analysis: Best Practices

- ▶ Decide if it is a mitigation measure or alternative
- ▶ Think carefully about a totally unique route for an alternative
- ▶ Be thoughtful about public input on alternatives; set and manage expectations



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## Cumulative Analysis: Challenges

- ▶ Lots of nearby projects
- ▶ Increased level of effort
- ▶ Many project variables to consider
- ▶ Confusing for the reader
- ▶ Subjectivity of aesthetics analysis can be an issue



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## Cumulative Analysis: Best Practices

- ▶ Cumulative analysis governed by standards of practicality and reasonableness
- ▶ Can utilize summary of projections instead of list of projects
- ▶ Can assume (with support) significant cumulative impact and focus on analysis of the project's contribution to the impact



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## 4: Defining Mitigation



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### Mitigation: Challenges

- ▶ Different jurisdictions, resources, and significance thresholds result in different mitigation
- ▶ Increased level of effort to track and implement
- ▶ More uncertainty about impacts
- ▶ Mitigation may be less flexible



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## Mitigation: Best Practices

- ▶ Recall best practices for determining significance – clarity is key
- ▶ Specify locations in mitigation measures and in MMRP
- ▶ Consider requiring a plan be prepared if specifics are not known at the time of the CEQA analysis
- ▶ Adaptive management measures should provide for more stringent and less stringent measures



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## 5: Constructing the Project



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## Project Changes: Challenges

- ▶ Routes provide less flexibility than boxes
- ▶ Construction-phase (and post-CEQA-evaluation) changes more difficult to accommodate



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## Project Changes: Best Practices

- ▶ Address construction challenges early in planning
- ▶ Evaluate a larger work area than may be needed
- ▶ Design a flexible project with options
- ▶ Conduct subsequent CEQA review if needed



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## Construction Monitoring: Challenges

- ▶ Construction activities may be geographically spread out
- ▶ Monitors located in multiple places
- ▶ More-confined work areas



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## Construction Monitoring: Best Practices

- ▶ Promote continuity and foster teamwork
- ▶ Be mindful that mitigation measures are really "promises made" to protect the resources within the project area.
- ▶ Provide reminders about location-specific substance of mitigation
- ▶ Issue bite-sized notices to proceed



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## Bonus: NEPA



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## Multiple Federal Agencies: Challenges

- ▶ NEPA Streamlining mandate
  - 150 pages maximum for most projects; 300 pages for “complex” projects
- ▶ Joint CEQA – NEPA documents will likely become a rarity
  - “CEQA-izing” a NEPA document is one path
- ▶ Environmental Justice is a component of NEPA, not specifically in CEQA



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## Multiple Federal Agencies: Best Practices

- ▶ Collaborative information dissemination is critical to permitting success
- ▶ Issues at the local staff level need to be cautiously elevated for resolution
- ▶ Ensure the federal agency understands that projects may still be approved through a Statement of Overriding Considerations
- ▶ CEQA requires mitigation monitoring to ensure promises are kept



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## Thank you!



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