

Environmental Alert

March 2013

White House Releases Draft NEPA and CEQA Integration Handbook

AUTHORS

Monica Derbes Gibson
Douglas C. Emhoff
Margaret N. Strand
Melissa C. McLaughlin
Megan M. Roberts-Satinsky

RELATED PRACTICES

Environmental Law

ARCHIVES

2013 2009 2005
2012 2008 2004
2011 2007 2003
2010 2006

On March 5, 2013, the Council for Environmental Quality and the California Governor's Office of Planning and Research released *NEPA and CEQA: Integrating State and Federal Environmental Reviews* for public review and comment. This draft handbook explains the key differences between the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), provides a framework for agencies undertaking a joint NEPA/CEQA review to develop a Memorandum of Understanding (MOU), and addresses the role of the California Energy Commission licensing process for thermal power plant projects.

The Handbook was released as a draft and **is open for public comment until April 19, 2013**. The environmental studies involved under NEPA and CEQA can be costly and burdensome, and the comment period provides an opportunity for companies doing business in California to tell the Handbook's drafters where coordination is most urgently required. Private applicants for federal permits are affected by duplicative requirements because the applicants bear the costs and burdens of delay. Clients doing business in California can contact the authors or their Venable attorney about submitting comments on the draft Handbook.

NEPA and CEQA Compared

NEPA is the federal statute that requires agencies to evaluate the potential environmental impacts of legislation and "major Federal actions" (42 U.S.C. § 4332(2)(c)) which can include permits issued by federal agencies and projects seeking federal funding. It allows federal, state, and local agencies to be co-leads on an environmental review. Each federal agency has its own regulations implementing NEPA, so the deadlines and public comment periods may differ among agencies. NEPA requires analysis of whether a major federal action, which can include awarding federal grants for transportation projects or issuance of permits, will have a "significant impact." If so, then the agency must prepare an environmental impact statement (EIS) identifying and analyzing alternatives – including a "no action" alternative – to the action. The EIS must also discuss strategies for mitigating environmental impacts. The public must have the opportunity to review and comment on a draft of the EIS before the agency makes a final decision on the action.

CEQA requires California state and local agencies to identify the significant environmental impacts of their actions and, if feasible, to avoid or mitigate those impacts. CEQA applies to actions financed by state agencies and private activities that require governmental approval, as well as to agency actions. Under CEQA, only one agency can serve as the lead agency. CEQA requires agencies to identify each "significant effect on the environment" resulting from the action, along with ways to mitigate each significant effect. An environmental impact report (EIR) must be prepared if there is substantial evidence to support a fair argument that there may be a significant effect, and the EIR must analyze a broad range of alternatives to ensure adequate discussion of mitigation opportunities. Like NEPA, CEQA requires that the public have the opportunity to review and comment on a draft EIR before a final decision is made.

NEPA and CEQA Coordination

The draft Handbook identifies specific opportunities for coordinating NEPA and CEQA reviews. These include:

- Encouraging federal agencies to choose one lead agency to work with a CEQA co-lead;
- Encouraging federal and California agencies to conduct public hearings, public comment periods, and final review periods jointly where possible;
- Recommending that federal and California agencies develop a joint public review timeline that incorporates the strictest applicable public participation requirements under both statutes;
- Suggesting that federal and California agencies preparing a joint EIS/EIR include a section in each impact analysis that makes a CEQA significance determination; and

- Recommending that agencies preparing a joint EIS/EIR select a range of alternatives broad enough to meet CEQA requirements and discuss them at a level of detail that would meet NEPA requirements.

Memorandum of Understanding

The draft Handbook also includes information for agencies planning to enter into a memorandum of understanding (MOU) to guide a joint NEPA/CEQA process. A MOU can define the roles of each agency and establish the framework of the environmental review. The draft Handbook suggests that MOUs be used to address issues such as which agency will communicate with the applicant; allocate the responsibility for reviewing and responding to public comments; and determine the applicable time frames and milestones. An MOU can also define how the agencies will resolve disagreements.

Next Steps

The draft NEPA/CEQA Handbook is a comprehensive project planning resource for agencies and proponents of projects in California that require federal approval. Although the draft Handbook is not legally binding, it will be used by federal and California agencies, so it is important that potential applicants for federal permits or proponents of California projects submit comments to ensure that the Handbook is complete and accurate.

The comment period for the draft Handbook ends on April 19, 2013, at 5 p.m. Eastern Time.

Counsel in **Venable's Environmental Practice Group** are experienced in both NEPA and CEQA. Contact any of the authors or your Venable counsel for more information.