



Preparing an Environmental Impact Report in California: In-house Counsel's Guide

As the California coastline meets the Pacific Ocean, so too must development meet the state's rigorous standards of environmental protection. Where progress and preservation converge, the Environmental Impact Report (EIR) stands as both gatekeeper and guide, providing a comprehensive examination of a project's potential significant environmental effects.

It's a document as essential to California as the redwoods themselves, and preparing it is a critical responsibility for in-house counsel, as it's a key component of environmental review under [the California Environmental Quality Act](#) (CEQA).

Here's what you need to know to prepare a thorough and legally defensible EIR.

What is an EIR?

EIRs are the cornerstone document within the CEQA process, which serves as California's environmental guardian.

CEQA was designed with two fundamental aims:

- 1 **Environmental protection**, requiring agencies to identify, avoid, and mitigate environmental damage when feasible through alternatives or mitigation measures
- 2 **Informed decision-making**, ensuring government officials and the public receive comprehensive information about potential environmental impacts before project approval

The [purpose of an EIR](#) is to:

- Provide detailed information about how a project could impact the environment
- Suggest ways to reduce or avoid major environmental harm
- Ensure that projects include feasible changes or alternatives to prevent unnecessary environmental damage
- Explain why an agency approved a project, even if it has significant environmental effects

An EIR must be written clearly so that both experts and the general public can understand it, facilitating well-informed environmental decisions throughout the state.



When is an EIR necessary?

The EIR comes into play when an initial study shows that a project has the potential to significantly impact the environment. This determination is based on whether there will be a major — or potentially major — negative impact on the natural or physical conditions in the area where a project is happening. This includes, for example, land, air, water, plants, animals, noise levels, and historically or aesthetically significant sites.

If a project causes economic or social changes (like higher housing costs), that doesn't automatically count as an environmental impact. If those economic or social changes are directly connected to a physical change — such as new construction leading to more traffic or pollution — they can be considered when deciding if the environmental impact is significant.



What must be included in an EIR

Though [CEQA guidelines](#) don't specify a specific structure for EIRs, it's a good idea to follow a standard format when preparing them. Here are the key sections to include:

- A table of contents or index. Most EIRs use a table of contents, which is simpler and quicker to prepare.
- A summary of the proposed project and its consequences in clear, simple, practical language. Make sure this matches the full report. Any inconsistencies can raise doubts about accuracy and make it harder to finalize decisions. Before releasing the EIR for public review — and again when the final version is prepared — check this summary carefully for consistency.
- A list of agencies, individuals, and organizations consulted.
- A list of people, firms, and agencies who prepared the draft.
- Citations to documents and reports. These should be referenced by subject matter, title or page, and section number when possible. These documents don't need to be included in the EIR but should be cited.
- A [clear and specific description](#) of the project, giving enough information for the public and reviewing agencies to evaluate and comment on its environmental impacts.
- An overview of the environment in the vicinity before the project begins to establish a baseline for evaluating its impact. This description should emphasize rare or unique environmental resources that would be affected.
- An evaluation of any inconsistencies between the proposed project and applicable general or regional plans. While the project doesn't have to conform perfectly to every general plan policy, courts will give deference to a local agency's determination of a project's consistency with its own general plan.
- A description of the project's significant environmental impacts, including direct, indirect, and long-term effects.
- An analysis of significant cumulative impacts, which can be done in one of two ways:
 - By listing the proposed project along with existing or planned projects that could cause similar impacts, or
 - By summarizing projections from a planning document that forecasts regional or area-wide conditions.
- An examination of whether the project will cause economic or population growth or encourage development or other activities that might impact the environment.
- An explanation of any potentially significant impacts that are unavoidable. If these impacts can't be mitigated without changing the project design, the EIR should describe the consequences of those impacts and explain why the project is still being proposed.
- A brief summary of less significant impacts, including why they were found to be insignificant.
- Some projects must also describe any significant, irreversible changes they will cause. This includes projects that create or change public agency plans, policies or rules, decisions by local agencies, and projects that need an environmental impact statement under the National Environmental Policy Act of 1969.
- A description of measures that could reduce or avoid each significant environmental impact.
- A [reasonable range of alternatives](#) to the project or its location that could feasibly attain similar objectives while reducing or avoiding the biggest environmental impacts. The report should evaluate the merits of each alternative, including a "no project" alternative, and identify an environmentally superior option.

Key stages of the review process

The primary government agency responsible for the preparation of an EIR must ensure it complies with all applicable laws and regulations. In-house counsel should be aware of the lead agency's role in the process, as they may need to collaborate to address legal concerns or provide necessary information.

Other common exclusions include:



1 A notice of preparation

The lead agency will first prepare and distribute a "notice of preparation," which is a formal document announcing that an EIR will be prepared. It informs responsible agencies and the public about the project, its location and probable environmental impacts, while soliciting input on the report's scope and content.

2 Sources of information

Lead agencies might require applicants to provide information that helps them prepare the draft EIR, including identifying other agencies with jurisdiction over the project. Drafters will also pull information from project engineering reports, scientific studies, and other technical documents evaluating environmental issues. Anyone can submit information and comments as the lead agency prepares the report, and most of the documents it relies on are subject to public disclosure.

3 The preparers

EIRs must be prepared by or under contract with a public agency. CEQA guidelines explain that the lead agency can prepare the draft in several ways:

- Using its own staff
- Contracting with a public or private company (while still evaluating it independently)
- Accepting a draft prepared by the project applicant or its consultant (which the agency must then independently review)
- Establishing an agreement with the applicant to hire an independent contractor
- Using a previously prepared EIR if applicable

Though the agency can rely on outside help, it must ensure the reflects its independent judgment and be responsible for reviewing, analyzing, and making decisions.

Key stages of the review process *(continued)*



4 Scope of work

It's crucial that all consultant responsibilities are clearly defined — typically via a "scope of work" contract, which outlines the tasks to be completed, the personnel involved, the hours required, and payment terms. Here, attorneys play a key role in anticipating potential issues that could lead to delays or higher costs down the line. It's also a good idea to consider including contract provisions for incentives like bonuses for on-time delivery or penalties for delays.

The scope of work should:

- Outline which topics the EIR will cover and the proposed methodology for analyzing project impacts.
- Highlight any areas in which the consultant bases its analysis primarily on previously completed studies.
- If relying on previously prepared EIRs, studies or planning documents, determine whether those documents are current and adequate, or subject to possible challenge.
- If the proposal is likely to result in consideration of legally adequate project alternatives.

Be sure to provide time for internal administrative review of the completed draft of the EIR, and specify whether the consultant will also be responsible for preparing CEQA findings or the mitigation monitoring program.

Key stages of the review process *(continued)*



5 Coordinating with consultants

Schedule regular meetings with agency staff and EIR consultants, especially if the report isn't being prepared in-house. This can prevent costly legal issues, allowing you to advise on various matters to address during the preparation phase. These issues might be general (such as emerging claims from project opponents) or specific to the project at hand.

One of the most valuable contributions in-house attorneys can make is advising the EIR team to show their work. That's because a common problem with EIRs is their failure to explain the reasoning behind their conclusions or decisions clearly. If a consultant chooses a particular methodology or recommends specific mitigation measures, for instance, make sure they explain why these choices were made, even if they seem obvious. This makes the EIR more transparent and strengthens its legal adequacy. Even a brief sentence or two of explanation can be enough to clarify a decision.

6 Reviewing the internal draft

Many lead agencies require internal review of at least one draft EIR. Agencies have different rules about communication between project applicants and consultants. Some allow open communication, while others restrict contact. In jurisdictions with limited contact, attorneys should advise applicants to keep the lead agency informed about any changes to the project, even if they can't communicate directly with the consultant. The attorney for a public agency should act as a go-between to help prevent errors. When communication is more open, attorneys can meet regularly with agency staff and the consultant. Agency staff typically lead these meetings and set the agenda, so it's useful to keep a record of their guidance.

Best practices for preparing EIRs

- **Create a detailed outline**
Organize your thoughts and key points for each section of the EIR. This way, you ensure that no important details are overlooked and that the document flows logically.
- **Ensure consistency**
Provide guidelines for multiple authors to maintain consistency in language, formatting, and style throughout the document.
- **Use clear, concise language**
Avoid jargon and explain technical terms when necessary.
- **Seek out robust data and analysis**
Support impact assessments with credible, up-to-date data and thorough analysis.
- **Consider cumulative impacts**
Analyze the project's impacts in combination with other past, present, and reasonably foreseeable future projects.
- **Engage stakeholders**
Involve relevant agencies, experts, and community members throughout the process to gather valuable input and ensure transparency.
- **Monitor CEQA updates**
Keep a close eye on updates to [CEQA guidelines](#) and relevant [case law](#).
- **Keep your client's goals and interests top of mind**
Your role in the CEQA process will depend on your client's interests:
 - If you represent a public agency sponsoring its own project, your aims — in addition to ensuring CEQA guidelines are met — will include reducing the risk of litigation and avoiding the possibility of an attorney fee award for the opposing party if the project is challenged.
 - If you represent a private client seeking approval or funding, you might need to navigate disagreements over issues like project fees or the validity of proposed mitigation measures.
 - If you represent parties opposing a project or seeking additional changes, you must ensure all necessary steps are taken to preserve your client's right to challenge the project in court, ensuring that administrative remedies are fully explored.

Building a sustainable future

A well-prepared EIR not only facilitates informed decision-making but also demonstrates a commitment to sustainable development and environmental stewardship — essential elements of California's progressive and nationally influential legal framework. While EIRs are detailed and complex, they don't have to be painful. By following a structured approach, engaging stakeholders through scoping, conducting thorough environmental analyses and addressing public comments, in-house counsel can help their organizations navigate the process effectively and avoid potential legal challenges and delays.

**For more insights into
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