

Opt-In Certification

FAQs

What is the California Energy Commission (CEC) required to do?

The CEC is required to prepare an environmental impact report (EIR) under the California Environmental Quality Act (CEQA) and make its decision at a public meeting on the application within 270 days of receiving a complete application. The law identifies certain factors that could impact the CEC's ability to render a decision within 270 days, including the identification of new significant effects after publication of the Draft EIR that requires additional public comment.

The CEC is required to coordinate its review of opt-in applications with the California Department of Fish and Wildlife (CDFW), the

State Water Resources Control Board, and applicable Regional Water Quality Control Boards (Water Boards), and the Department of Toxic Substances Control (DTSC). CEC must consult with CDFW to ensure necessary information is submitted during the CEC certification process to grant any authorizations under the Fish and Game Code (e.g., authorized take of a listed species) in lieu of CDFW, and for the agencies that retain their permitting authority to issue their respective permits. The CEC is required to consult with all responsible and trustee agencies on the scope and content of the EIR under CEQA. The CEC must also certify the administrative record within 5 days of certifying the EIR and granting a certificate to a project.

What are other agencies required to do?

Agencies that retain their permitting authority are required to issue permits within 90 days of a CEC decision to certify a project. Per memorandums of understanding, CDFW, Water Boards, and DTSC may also participate in pre-filing meetings and CEQA review of proposed projects.

Will CEC consult with California Native American tribes?

Yes. Within five days of an application being deemed complete, the CEC is required to send requests for consultation letters to tribes that are culturally and traditionally associated with the geographic area of a proposed project. During the consultation process, the CEC is required to solicit the traditional ecological knowledge of affiliated tribes and incorporate this knowledge where feasible in the EIR. The CEC is required to take all feasible measures to avoid or minimize adverse effects to tribal cultural resources.

Will this process allow the public an opportunity to comment on a proposed project?

Yes. There are multiple opportunities for the public to provide comments. The CEC will announce the receipt of an opt-in application through its email subscription service, and by advertising in a newspaper of general circulation in the project area. Within 30 days of an application being deemed complete and prior to publication of the Draft EIR, the CEC is required to hold a public information and scoping meeting as close as practicable to the proposed project site. There will be a comment period on the Draft EIR, and the CEC will hold at least one public workshop in the project area to take public comment. All public meetings will be announced at least 10 days in advance.

Can the CEC approve a project that was denied by a local government, or does not conform to local ordinances?

Yes. If a project is approved, CEC's certificate is in lieu of any local permit or local law or ordinance. However, to grant a certificate to a project, the CEC must make findings that the project will comply with all applicable laws, ordinances, regulations, and standards, or make findings that despite the non-conformance, the project is required for public convenience and necessity, and that there are not more prudent and feasible means of achieving public convenience and necessity. The CEC is required to invite the local government to attend a mandatory pre-filing meeting with an applicant.

What findings must the CEC make to approve a project?

To approve an opt-in project, the CEC must find that the project will provide an overall net positive economic benefit to the local government, that the applicant has entered into a community benefits agreement, and that the applicant has certified payment of prevailing wage, or equivalent, for all construction, and the use of a skilled and trained workforce, or equivalent, for all construction.

The CEC must also find that the project will comply with all applicable laws, ordinances, regulations, and standards (LORS). If a project will not comply with any applicable LORS, the CEC must find that the project is required for public convenience and necessity, and that there are not more prudent and feasible means of achieving public convenience and necessity. In making the determination, the CEC must consider the entire record of the proceeding, including, but not limited to, the impacts of the facility on the environment, consumer benefits, and electric system reliability.

The CEC must make findings under CEQA for any project that would have a significant effect on the environment. For each significant effect, the CEC must find that project changes have been required to avoid or substantially lessen the significant effect, or that mitigation or alternatives to avoid or substantially lessen the significant effect are infeasible. To approve a project that is found to have a significant and unavoidable impact on the environment, the CEC will need to adopt a statement of overriding considerations that identifies how the project's benefits will outweigh any unavoidable impact.

Is CEC's certificate in lieu of all permits an applicant will need to build and operate an eligible facility?

The CEC's certificate is in lieu of any permit that would normally be required by the local land use authority and most but not all state permits. The CEC's permit will not supersede the permitting requirements of the California Coastal Commission or San Francisco Bay Conservation and Development Commission for projects in these agencies' jurisdiction. Nor will the CEC's permit supersede the permits of the applicable Regional Water Quality Control Board, and in the case of manufacturing facilities, the permits required by the applicable local air district and Department of Toxic Substances Control.



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