



CEQA: Basics

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Planning Commissioner's Academy
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Presentation Overview

History & Purpose of CEQA

Terms and Acronyms

Who does what in the Process?

Types of CEQA Decisions

What is a Mitigation Measure

Public Comments

CEQA Changes ahead

CEQA's History

Enacted in 1970; signed into law by Governor Reagan

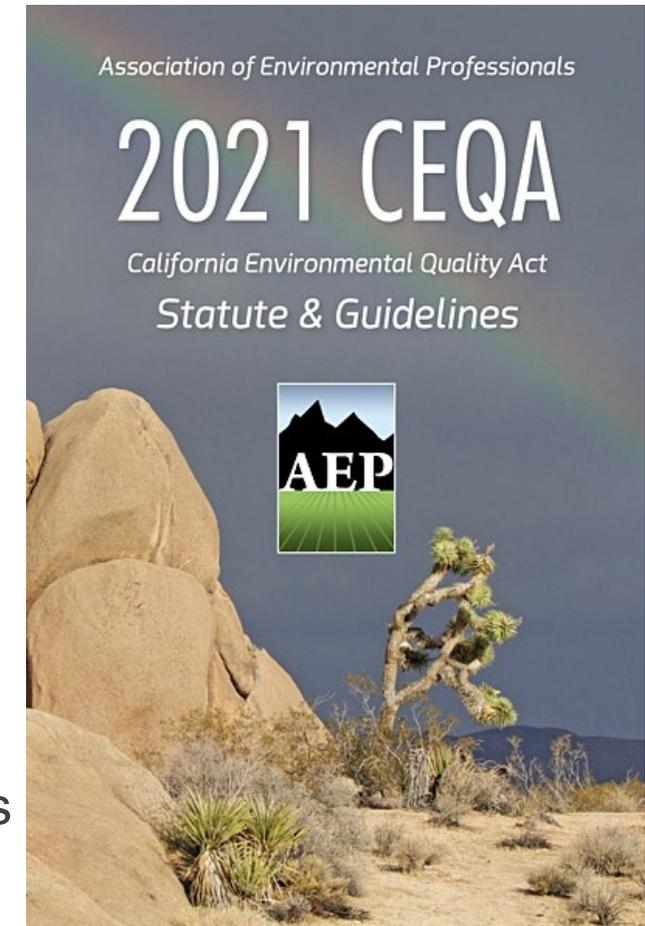
Based on *The Environmental Bill of Rights*

Modeled after *National Environmental Policy Act (NEPA)*

Implementation at local agency level by *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal. 3rd 247

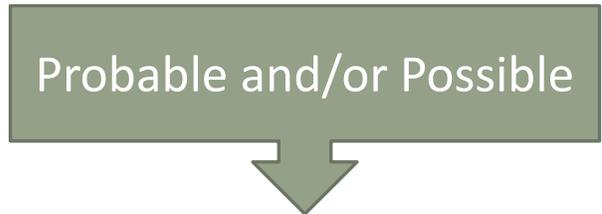
Important CEQA amendments in 1972, 1976, 1978, 1984, 1989, 1993, 2010, and 2019

Amended all the time by the legislature, courts, and local jurisdictions





What's the point?



Informs you of the environmental effects of the project
To solve a project's environmental impacts if possible; or,
To allow your consideration even if it isn't

Key Terms of CEQA

Baseline	A fixed point in time from which impact of future changes are analyzed
Environmental Impact Report	A means of approving a project that exceeds a threshold after mitigation
Exemption	A list of actions that the state believes do not need extensive analysis
Fair Argument	A reasonable person could come to a different conclusion
Impact	Change in the environment
Initial Study	Checklist of environmental topics to consider (Appendix G)
Mitigated Negative Declaration	A discussion of impacts that conclude that mitigation is needed
Mitigation Measure	A change to a project designed to reduce an impact below a threshold
Negative Declaration	A discussion of impacts that determine no mitigation is needed
Preponderance of the Evidence	51% of testimony supports the conclusion
Significant and Unavoidable Impact	An impact that cannot be reduced below the threshold of significance
Significant Impact	Change in the environment that exceeds a threshold of significance
Speculation	Making up a future condition
Substantial Evidence	At least 1 study supports the conclusion
Thresholds of Significance	A point at which the agency determines an impact is important



CEQA Evaluates Change

Change from existing condition (not the plan...mostly)

Short- and long-term impacts

Direct and indirect changes

Cumulative changes (includes other projects)

Local and regional plans



The Players

- Applicant:** A representative of the project who is responsible for the submittal of all information and usually both the cost of the environmental analysis and the legal indemnification if the agency is sued.
- Staff:** Usually someone in the Planning Department charged with coordinating both in-agency review, and communication with other agencies.
- Public:** The recipient of the information, and the target audience.
- Lead Agency:** The agency with discretionary change to which the Applicant has applied.
- Consultant:** Staff from either the public or private sector hired to provide assistance or expertise for the Lead Agency Staff.
- Responsible Agency:** An agency with some permitting authority, but not approval authority over the project.
- Planning Commission:** A volunteer body tasked with reviewing hundreds of pages of highly technical information in order to make a decision narrowly defined by law and to be roundly criticized for having made the decision. (Or not make a decision.)



It all starts with a *discretionary* project...

- ▶ A project means the *whole of the action*, which has the potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment.

Once we have a project, then...

We must determine the level of environmental review.

Three basic outcomes:

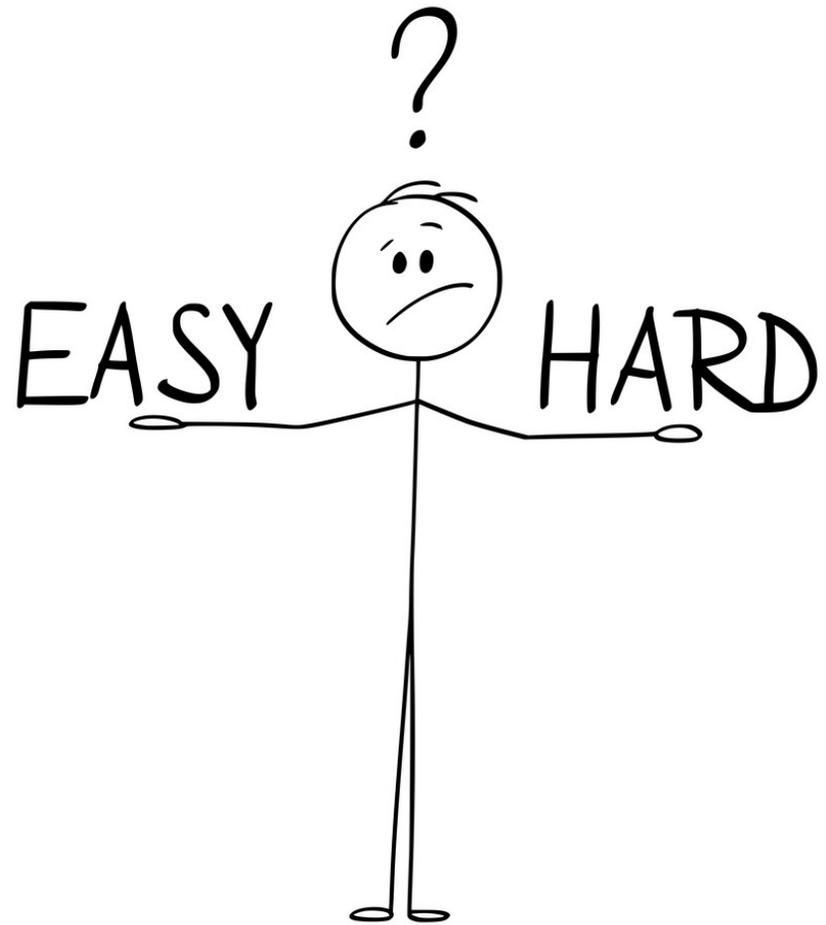
- Exempt
- Negative Declaration or Mitigated Negative Declaration
- Environmental Impact Report



Yes, the CEQA Guidelines say this...

Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA. (15061(a))





How are CEQA determinations made?

- Knowledge of the community
- Precedent of decision makers
- Understanding of the impacts
- Results of technical studies
- Public Controversy



Managing Risk

Weighing cost with benefit

Higher 'protection' comes at a cost

Not all decisions are obvious

The deciding factor is the difference between fair argument and substantial evidence



Ministerial vs. Discretionary Projects

Ministerial:

Little personal judgment, use of fixed or objective standards

Discretionary:

Requires exercise of judgment or deliberation

Mixed Decision Projects:

Considered discretionary



Fair Argument Standard

When must an EIR be prepared? – *When it can be fairly argued, based on substantial evidence, in light of the whole record, that a project may have a significant environmental effect.*

- This is purposely a low threshold for EIRs
- “Fairly argued” means that there is evidence of the potential for impact in the administrative record before the agency
- Impacts = direct, indirect, and cumulative contribution impacts
- “May have” means that the evidence need not be absolute or unequivocal



Substantial Evidence

15384. SUBSTANTIAL EVIDENCE

(a) “Substantial evidence” as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. *Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.*

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.



What is substantial evidence?

- ▶ What it is:
 - ▶ Facts
 - ▶ Reasonable assumption predicated on facts
 - ▶ Expert opinion supported by facts
- ▶ What it isn't:
 - ▶ Argument
 - ▶ Speculation
 - ▶ Unsubstantiated opinion or narrative
 - ▶ Clearly inaccurate or erroneous information
 - ▶ Socioeconomic impact not linked to physical environmental impact



Types of CEQA Documents

Substantial Evidence

Exemptions

- Statutory
- Categorical

Environmental Impact Reports

- Subsequent
- Supplement
- Master
- Program
- Project

Addendum to EIR

Fair Argument

Negative Declarations

- Negative Declaration (No Mitigation Measures)
- Mitigated Negative Declaration

Addendum to Negative Declaration



Exemptions

- Statutory:** Items ruled by the legislature to be exempt from CEQA. (15260–15285) and other places in the state statutes.
- Categorical:** Items in the state or local agency guidelines that are considered to have little or no environmental impact in most instances. (15300–15332)
- General:** A determination that the project will not result in direct or reasonably foreseeable indirect physical change in the environment. This is known as the *common sense* exemption. (15060(c))



Negative or Mitigated Negative Declaration

The difference is whether mitigation is required

Based on a checklist (See Appendix G of the Guidelines)

Conclusions based on fact in the record

Circulated for 30 Days

No requirement to respond to public comments, but to consider them before action

Considered “draft” until adopted



Environmental Impact Report (EIR)

Several different types

Most follow the same basic format

Gold standard of environmental review

Circulated for 30-days and then 45-days

All comments from the 45-day period must have a reasoned response

Considered “draft” until certified





Context is Everything

Every community has different standards

Comparing agencies is difficult

Not all large projects have impacts

Not all small project don't

How do we know?



Threshold of Significance

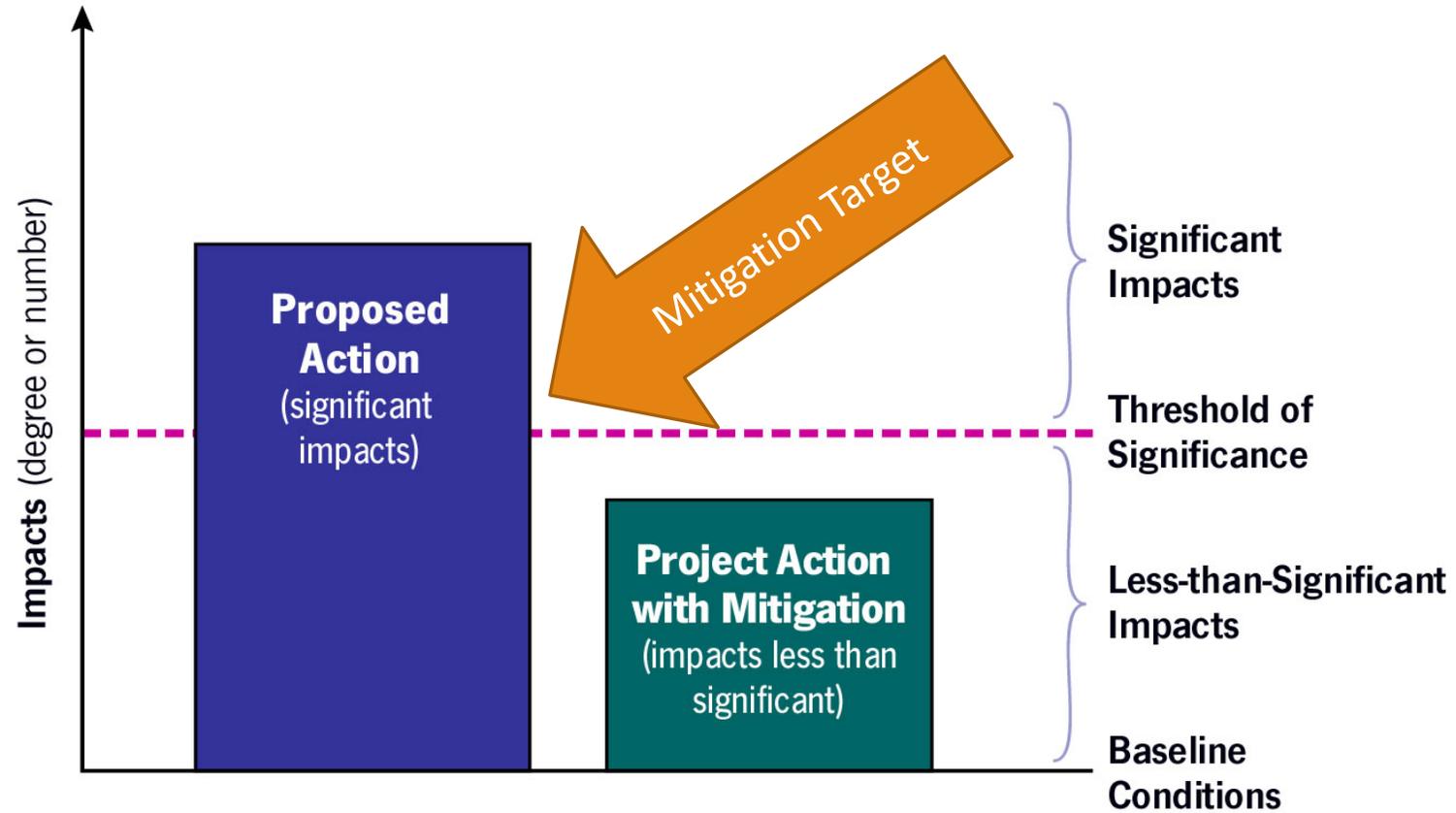
A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

Found in:

- CEQA Guidelines
- General Plan
- Municipal Code
- Adopted Development Standards



Understanding Thresholds





What Is a Mitigation Measure?

Avoid	Avoid the impact altogether by not taking certain action or parts of an action
Minimize	Minimize impacts by limiting the degree or magnitude of the action and its implementation
Rectify	Rectify the impact by repairing, rehabilitating, or restoring the affected environment
Reduce or Eliminate	Reduce or eliminate the impact over time through preservation and maintenance during the life of the action
Compensate	Compensate for the impact by replacing or providing substitute resources or environments



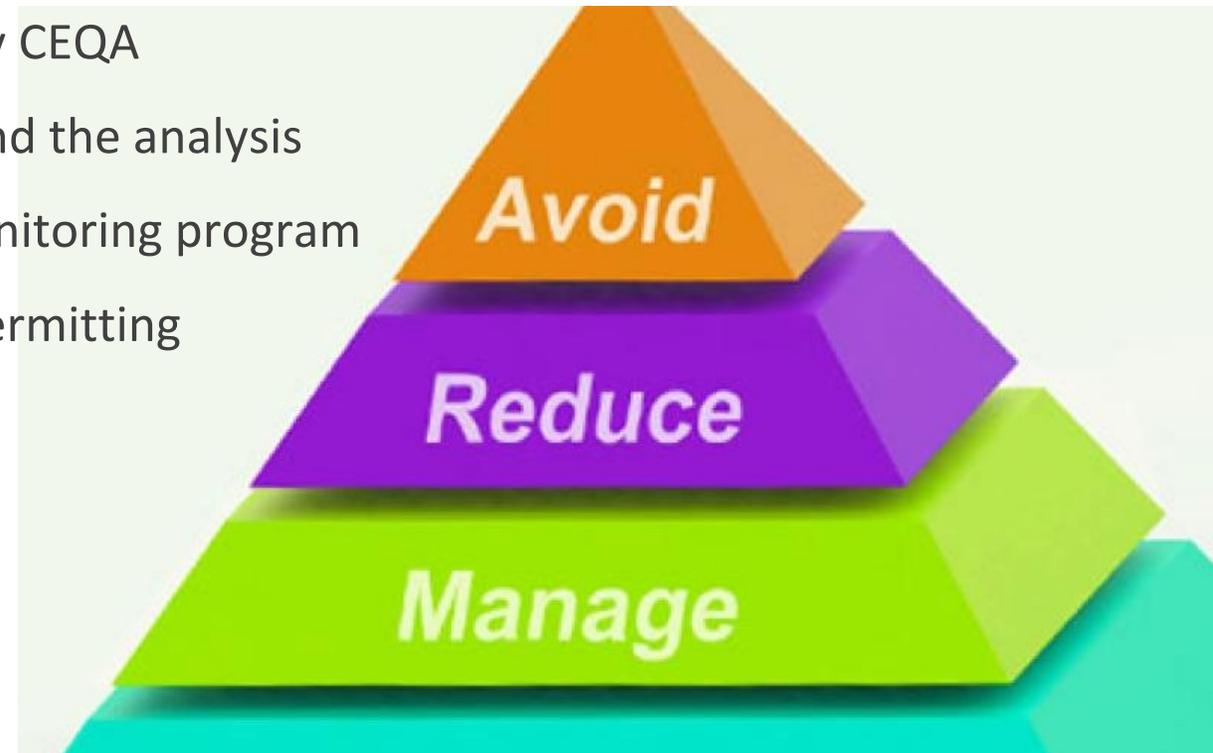
Project Features that Minimize Impacts

Are specifically allowed (perhaps encouraged) by CEQA

Should be called out in the project description and the analysis

Many put them in the executive summary or monitoring program

Design features can be hard to follow through permitting





Public Comments

The public process is a good part of
CEQA

Embrace the passion of the community

Not all in favor show up...and not all who
oppose comment

Beware hurrying up at the very end

Late hits and document dumps are part
of the process

Let staff guide you, delaying a meeting is
not the end of the world



It's done by the time I get it, what can I do?

CEQA is not done until the project is approved

You are the last set of eyes before the decision is made

Give staff time a heads up if you have a question

Add your reasoning to the record



EIR Myths

The EIR will stop the project.

The EIR will tell me how to vote on the project.

The EIR will be more expensive than a mitigated negative declaration.

The EIR will take longer and than a mitigated negative declaration.

The EIR will be more thorough than a ND/MND.

The EIR will be bulletproof.



What CEQA isn't...

Perfect

An advocate for a project

The project itself

A chance to fix existing problems

An encyclopedia of everything everywhere

The analysis of 'worst case'

A decision maker



That's it...

CEQA evaluates how the project changes environment

The evaluation is circulated for public review

If the change is above an adopted threshold then an agency must take action to:

- Adopt measures (mitigation) to reduce the impact below the threshold; or,
- Make findings of overriding consideration to approve the project anyway

The agency must consider the changes as reported in the analysis before taking action

Vehicle Miles Traveled vs. Level of Service

Lack of discretionary approval for some projects

Objective standards

Use of Section 15183.3 Infill to avoid more EIRs

Increased use of Addendums

More emphasis on planning, less on CEQA





Resources for More Information

Wikipedia

https://en.wikipedia.org/wiki/California_Environmental_Quality_Act

Office of Planning and Research

<https://opr.ca.gov/ceqa/>

CEQA Portal – Court Cases and Topic Papers

<https://ceqaportal.org/>



Shameless Plug for CEQA 201 - In The Weeds
Wednesday, March 31, 2021 | 10:45 – 12:00

Questions?

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