

CEQA Advanced

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Presentation Overview

How CEQA Determinations are Made

Project Description

Project Design Features

Mitigation Measures

Findings

Statements of Overriding Consideration

Testimony at Hearing(s)

Questions?

How CEQA Determinations are Made

- Type of project
- Results of technical studies
- Knowledge of the community
- Previous decisions by decision makers
- Results of litigation
- Public controversy



What Type of CEQA Analysis?

Substantial Evidence

- Exemptions
 - Statutory
 - Categorical
- Environmental Impact Reports
 - Subsequent
 - Supplement
 - Master
 - Program
 - Project
- Addendum to EIR

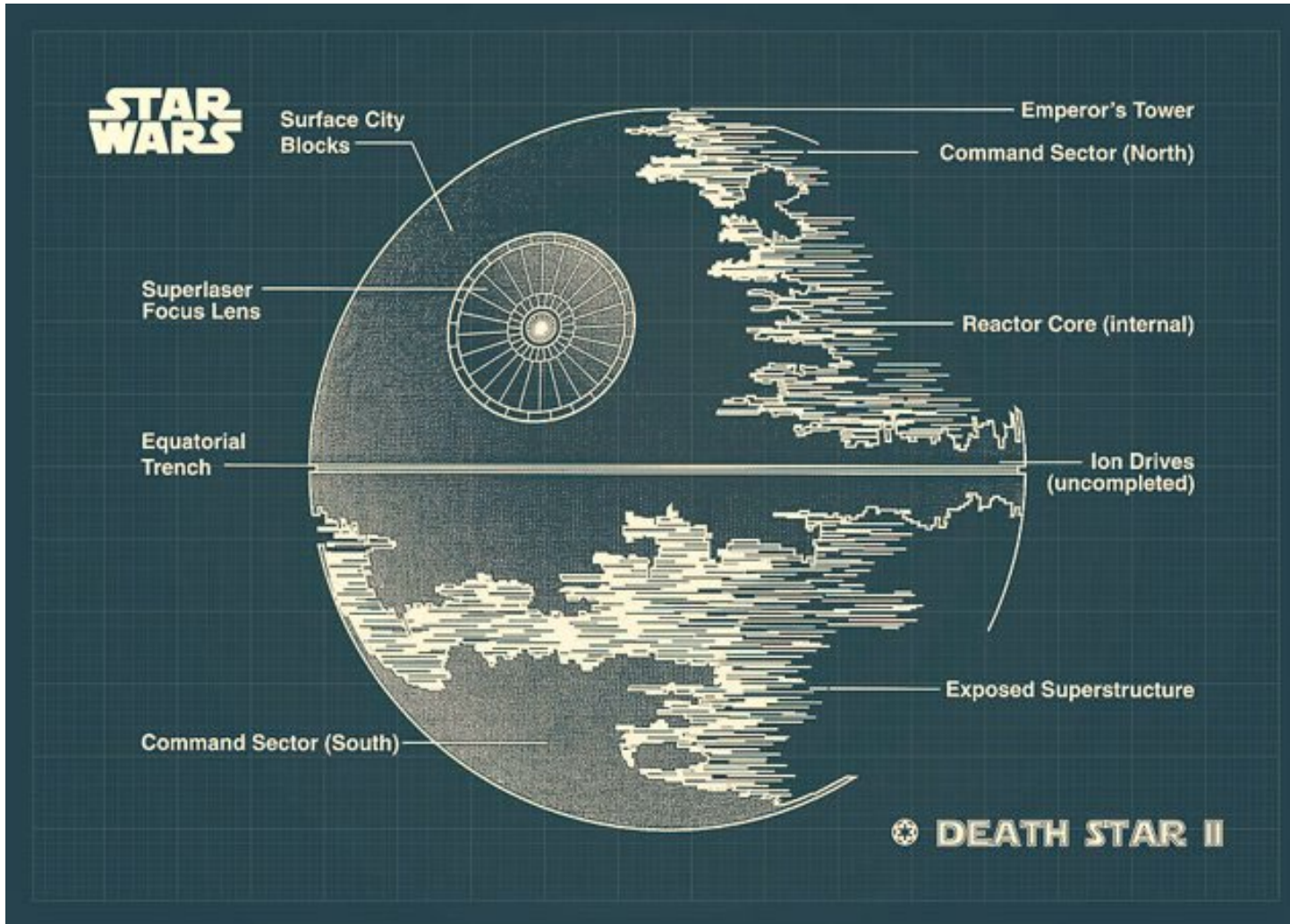
Fair Argument

- Negative Declarations
 - Negative Declaration (No Mitigation Measures)
 - Mitigated Negative Declaration
- Addendum to Negative Declaration



Project Description

- The WHOLE of the project:
 - Baseline
 - On-site changes
 - Off-site changes
 - Operational characteristics
 - Design features

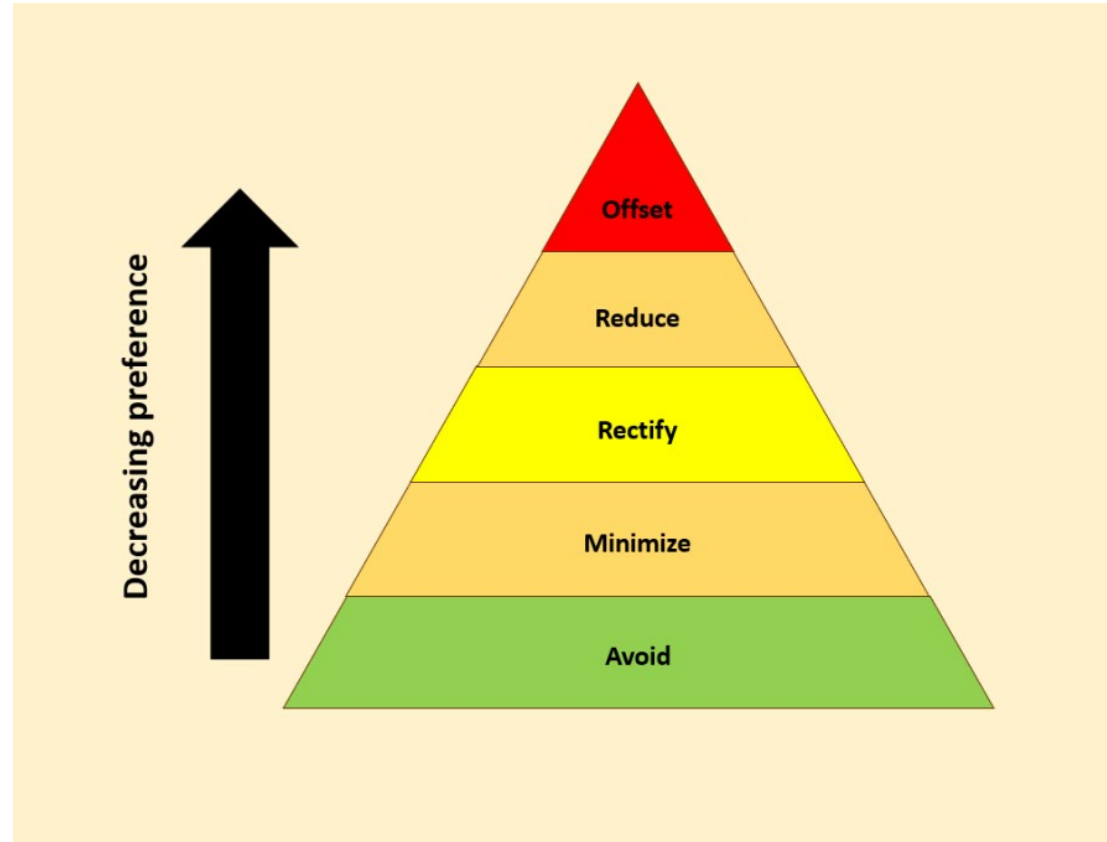


Project Design Features

- Elements of the project designed to reduce environmental impact
- Included in the project description
- Shown on site plans
- Should be reflected in the approvals

Mitigation Measures

- Project design features
- Measurable changes to a project
- What does feasible mitigation mean?
- What level do we mitigate to?



Mitigation Measures

- Requirement to mitigate does not confer to agencies any new legal authority:
 - “...a public agency may exercise only those express or implied powers provided by law other than this division.” (PRC 21004)
- Measures must be enforceable.
 - Pay particular attention to “fair-share fees”
 - Difficult to enforce future public behavior
- Be linked to an impact – **No nexus, no mitigation**



What are “Mitigation Measures” Supposed to Do?

Changes required of the project to:

- Avoid the impact altogether
- Minimize the degree of magnitude of impact
- Rectify the impact through restoration
- Reduce or eliminate the impact through preservation
- Compensate for the impact





Formulation of Mitigation Measures

- Clearly state the required action or level of performance that is necessary to mitigate.
- Explain how the measure would mitigate, especially if it is not facially obvious.
- Clearly state conclusion of effect after mitigation.
- Substantial evidence must support determination that measure will mitigate.

Adequacy of Mitigation



Adequate

Avoid

Minimize

Rectify

Reduce over time

Compensate



Questionable

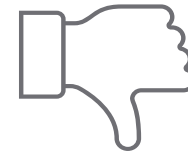
Provide funding

Hire staff

Monitor or report

Comply with existing
regulations or ordinances

Preserve already existing
natural areas



Inadequate

Consult with

Submit for review

Coordinate with

Study further

Inform

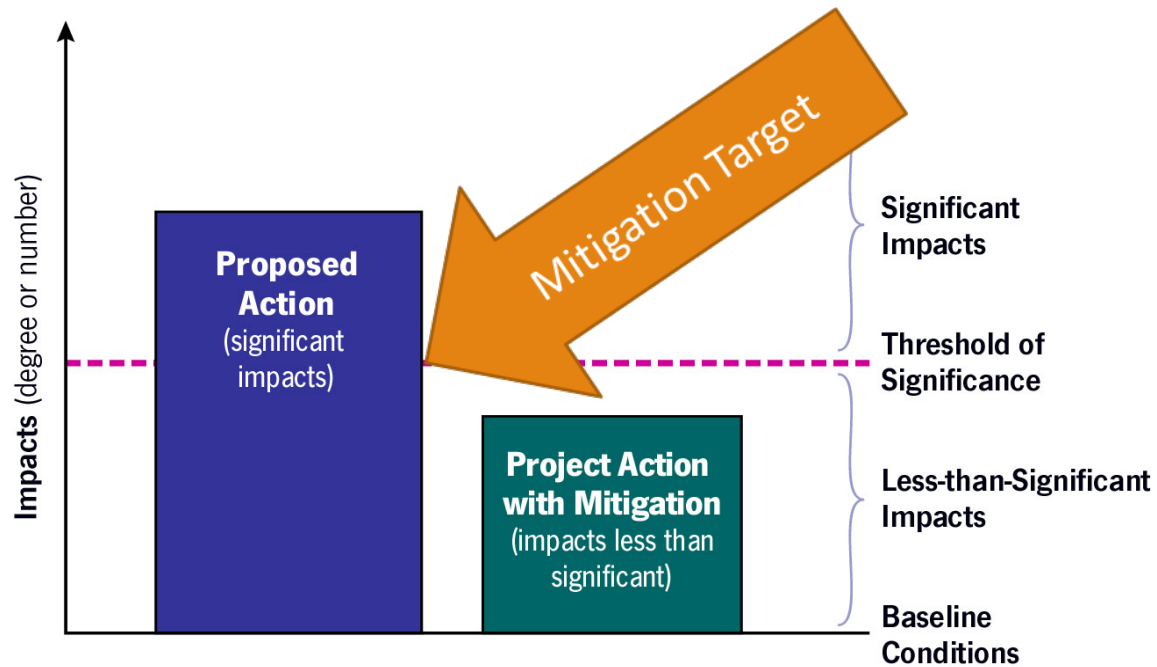
Encourage/Discourage

Facilitate

Strive to

If feasible

To What Level do we Mitigate?



To a level at or below the threshold

Zero impact is not the goal

Can not mitigate for impacts of others

Important to demonstrate level of impact after mitigation

Impacts that Can't be Mitigated to Less Than Significant

Sometimes even with mitigation an impact remains significant

The analysis must include all feasible mitigation

Substantial evidence is needed to discard a suggested mitigation

Cost should not be the only reason to discard the mitigation

The project can still be considered, however

If you have them you need an EIR

With an EIR you can still approve the project!

Findings

- Showing your work
- Explaining your reasoning
- Information other than the EIR/IS/MND
- Drafted by Staff, Modified and Approved by Council or Commission



Because

Statement of Overriding Considerations

- Reasons why the project should be approved even though it has significant environmental impacts
- Supported by substantial evidence
- We need the \$\$\$ isn't likely to survive challenge
- List as many reasons as make sense, only one is needed to support the determination





People can
be
passionate...



Testimony at Hearings

- Late Hits
- How to balance testimony
- When to Continue the item
- When to decide

Other CEQA Pieces: EIRs

Cumulative Analysis

- Not Necessarily “build out”
- Two methods: project list or regional model
- May have different setting than project
- Not the worse case

Alternatives

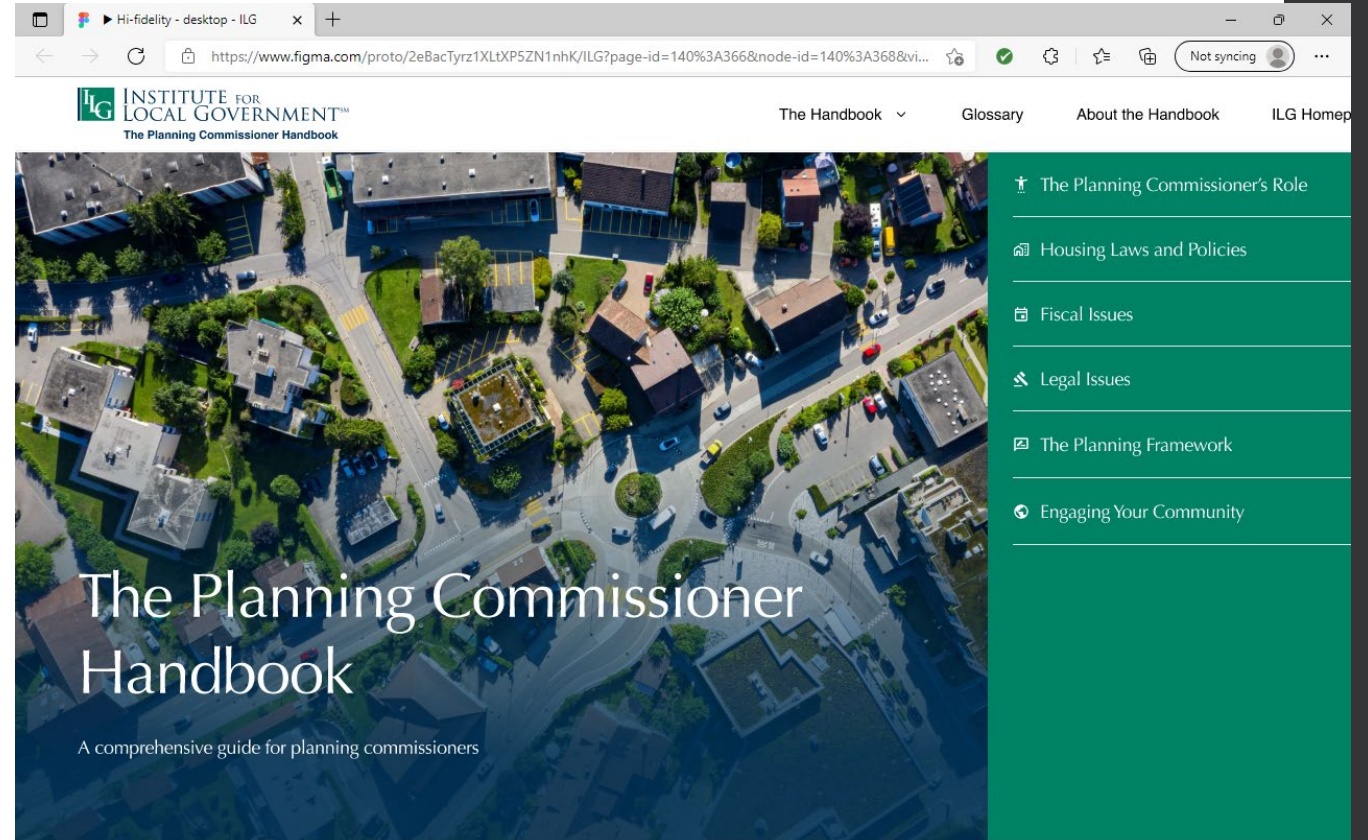
- Must avoid or lessen an environmental impact
- Project alternatives may not be CEQA alternatives
- Not discussed at the same level as the project
- Compared against project applicant’s project objectives
- Only the no-project alternative is required.

ADDITIONAL RESOURCES

- California Office of Planning and Research (OPR)
 - <https://lci.ca.gov/>
- California Environmental Quality Act (CEQA)
 - <https://lci.ca.gov/ceqa/getting-started/>
- California Legislative Information Code Search (laws)
 - <http://leginfo.legislature.ca.gov/faces/codes.xhtml>
- League of California Cities (Cal Cities)
 - <https://www.calcities.org/>
 - Planning and Community Development Department www.cacities.org/Member-Engagement/Professional-Departments/Planning-Community-Development
- Planning Commissioner Handbook
 - <https://www.ilgplanninghandbook.org/>
- CalEnviroScreen
 - <https://oehha.ca.gov/calenvirosc>
- Housing and Community Development (HCD)
 - www.hcd.ca.gov/
- State Department of Finance (DOF)
 - www.dof.ca.gov/Forecasting/Demographics/
- CEQAnet
 - <https://ceqanet.opr.ca.gov/>
- Institute for Local Government
 - <https://www.ca-ilg.org/>

PLANNING COMMISSIONER HANDBOOK

- New digital toolkit for Planning Commissioners
- Updated content on:
 - CEQA
 - Community Engagement
 - Legal Issues
 - Housing Laws
 - Financing
 - & More!



ILGPlanningHandbook.org

Thank You

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Questions?