

CEQA THE CALIFORNIA ENVIRONMENTAL QUALITY ACT



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CEQA - HISTORY



➤ PASSED BY CALIFORNIA LEGISLATURE AND SIGNED INTO LAW BY GOVERNOR REAGAN

➤ ADOPTED IN RESPONSE TO THE FEDERAL NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)



➤ CALIFORNIA LEGISLATURE DESIRED STATE LEVEL SUPPLEMENT TO NEPA

➤ REFLECTED ENVIRONMENTAL MOVEMENT OF THE 1960s



CEQA – PURPOSE

- AVOID OR MINIMIZE SIGNIFICANT DAMAGE TO THE ENVIRONMENT
- SUPPORT INFORMED DECISION MAKING
- PROVIDE TRANSPARENCY IN GOVERNMENTAL DECISION MAKING
- ENCOURAGE PUBLIC PARTICIPATION

“Ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions.”– Public Resources Code 21001



CEQA – APPLICABILITY

PUBLIC AGENCIES MUST COMPLY WITH CEQA WHEN AN ACTIVITY QUALIFIES AS A “PROJECT”

WHAT IS A PROJECT?

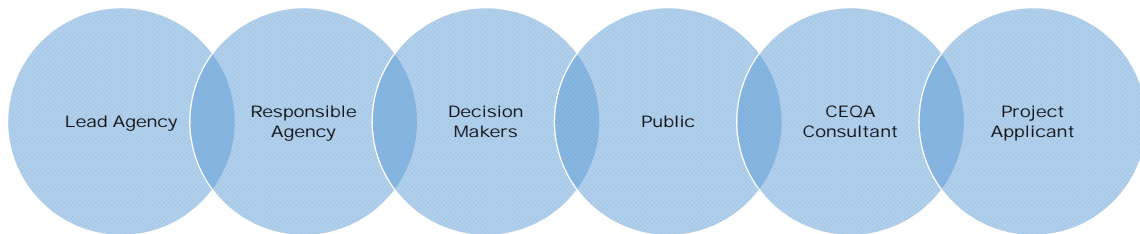
A “PROJECT” IS AN ACTIVITY UNDERTAKEN BY A PUBLIC AGENCY OR PRIVATE ENTITY THAT:

- REQUIRES SOME OF DISCRETIONARY APPROVAL FROM A GOVERNMENT AGENCY; AND
- MAY CAUSE A DIRECT OR INDIRECT PHYSICAL CHANGE IN THE ENVIRONMENT

AFTER NEARLY 50 YEARS OF ADMINISTERING CEQA – CALIFORNIA COURTS, INTEREST GROUPS, AND PUBLIC AGENCIES CONTINUE TO ARGUE OVER WHAT CONSTITUTES A “PROJECT”



CEQA – PARTICIPANTS



CEQA – LEVELS OF ENVIRONMENTAL REVIEW

THE CEQA PROCESS CAN BE DIVIDED INTO FOUR LEVELS OF ENVIRONMENTAL REVIEW:

- STATUTORY & CATEGORICAL EXEMPTIONS (CAT EX)
- NEGATIVE DECLARATION (ND)
- MITIGATED NEGATIVE DECLARATION (MND)
- ENVIRONMENTAL IMPACT REPORT (EIR)

EXAMPLES:

CONSTRUCTION OF ONE SINGLE-FAMILY HOME – CAT EX

CONSTRUCTION OF A HOTEL ON AN INFILL PARCEL – ND OR MND

CONSTRUCTION OF A PROFESSIONAL FOOTBALL STADIUM - EIR



CEQA – LEVELS OF ENVIRONMENTAL REVIEW

NEGATIVE DECLARATION

- 4 TO 9 MONTH PROCESS
- \$40K TO \$70K COST TO PREPARE
- FEWER PUBLICLY NOTICED ACTIVITIES
- 20/30 DAY PUBLIC COMMENT PERIOD
- SUBJECT TO FAIR ARGUMENT STANDARD
- MORE DIFFICULT TO DEFEND IN COURT

ENVIRONMENTAL IMPACT REPORT

- 9 TO 18 MONTH PROCESS
- \$100K+ TO PREPARE
- MORE PUBLICLY NOTICED ACTIVITIES
- ADDITIONAL IMPACT CATEGORIES ASSESSED
- 45-DAY PUBLIC COMMENT PERIOD
- SUBJECT TO SUBSTANTIAL EVIDENCE STANDARD
- STATEMENT OF OVERRIDING CONDITIONS



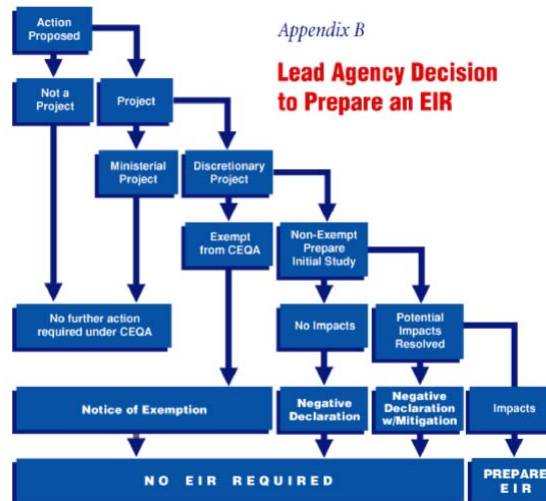
CEQA – PROCEDURE (SUMMARY)

THE CEQA PROCESS INVOLVES A SEQUENCED REVIEW BY THE LEAD AGENCY:

- PROJECT?
- STATUTORILY OR CATEGORICALLY EXEMPT?
- IF NOT, PREPARE INITIAL STUDY (IS)
- IF IS IDENTIFIES NO IMPACTS – ADOPT NEGATIVE DECLARATION
- IF IS IDENTIFIES POTENTIALLY SIGNIFICANT IMPACTS, BUT MITIGATABLE – MITIGATED NEGATIVE DEC.
- IF IS IDENTIFIES SIGNIFICANT IMPACTS – MITIGATION NOT AVAILABLE OR EFFECTIVE – PREPARE EIR



CEQA - PROCEDURES



CEQA - INITIAL STUDY

THE INITIAL STUDY IS THE “BACKBONE” OF THE CEQA PROCESS, REPRESENTING A PRELIMINARY ANALYSIS TO DETERMINE IF A PROJECT MAY HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT

ENVIRONMENTAL FACTORS ANALYZED:

- Aesthetics
- Air Quality
- Biological Resources
- Cultural Resources
- Geology and Soils
- Greenhouse Gas Emissions
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resource
- Noise
- Population and Housing
- Public Services
- Recreation
- Transportation and Traffic
- Utilities and Service Systems



CEQA – THRESHOLDS OF SIGNIFICANCE

- CRITERIA USED TO DETERMINE WHETHER A POTENTIAL ENVIRONMENT IMPACT IS LESS THAN SIGNIFICANT OR SIGNIFICANT
- THRESHOLDS MAY BE:
 - QUANTITATIVE (“OBJECTIVE”)**
 - EXAMPLE: WOULD THE PROJECT EXCEED A MAXIMUM NOISE LEVEL OF 60 DECIBELS?
 - QUALITATIVE (“SUBJECTIVE”)**
 - EXAMPLE: WOULD THE PROJECT SUBSTANTIALLY DEGRADE THE EXISTING VISUAL CHARACTER OF THE PROJECT SITE?
- THRESHOLDS COME FROM STATE LAW, STATE AGENCY POLICY, AND/OR LOCAL POLICY



CEQA – MITIGATION MEASURES

ACTION OR CHANGE IN A PROJECT TO AVOID, MINIMIZE, OR OFF-SET A POTENTIALLY SIGNIFICANT ENVIRONMENTAL IMPACT.

MITIGATION MEASURES MUST:

- HAVE A NEXUS TO PROJECT IMPACTS
- BE ROUGHLY PROPORTIONAL TO IMPACTS
- BE FEASIBLE TO IMPLEMENT

EXAMPLES:

PLANTING NEW TREES TO OFF-SET THE LOSS OF EXISTING TREES
 REQUIRING AN ARCHEOLOGICAL MONITOR TO SUPERVISE GRADING OPERATIONS
 CONDUCTING A NESTING BIRD SURVEY PRIOR TO THE START OF CONSTRUCTION



CEQA – DETERMINATIONS

- A CEQA DOCUMENT IS INTENDED TO DISCLOSE IMPACTS AND INFORM DECISION MAKING
- A CEQA DETERMINATION DOES NOT CONSTITUTE APPROVAL/DENIAL OF A PROJECT
- ANY CITY DECISION AUTHORITY (e.g., PLANNING COMMISSION) CAN MAKE DETERMINATION
- PROJECTS REQUIRING AN EIR USUALLY INVOLVE DETERMINATION BY CITY COUNCIL
- REVIEW AUTHORITY MAY ADOPT “STATEMENT OF OVERRIDING CONSIDERATIONS”
 - ACCEPTS SIGNIFICANT AND UNAVOIDABLE IMPACTS
 - BALANCES COMPETING PUBLIC OBJECTIVES – SOCIAL, TECHNICAL, ECONOMIC FACTORS



CEQA – PUBLIC PARTICIPATION

THE PUBLIC’S RIGHT TO PARTICIPATE IN THE CEQA PROCESS IS MANDATED BY LAW AND IS AGGRESSIVELY PROTECTED BY CALIFORNIA COURTS.

ENVIRONMENTAL IMPACT REPORT

- NOTICE OF PREPARATION
- ENCOURAGES SCOPING MEETING
- NOTICE OF COMPLETION
- 45-DAY PUBLIC COMMENT PERIOD
- AGENCY MUST PROVIDE RESPONSE TO COMMENTS
- OPPORTUNITY TO SUBMIT WRITTEN COMMENTS OR SPEAK AT A PUBLIC HEARING

NEGATIVE DECLARATION/MITIGATED NEGATIVE DECLARATION

- NOTICE OF INTENT TO ADOPT
- 20-DAY REVIEW PERIOD – LOCAL AGENCY INVOLVEMENT
- 30-DAY REVIEW PERIOD – STATE AGENCY INVOLVEMENT
- OPPORTUNITY TO SUBMIT WRITTEN COMMENTS OR SPEAK AT PUBLIC HEARING



CEQA – PUBLIC PARTICIPATION

EFFECTIVE PUBLIC PARTICIPATION INVOLVES:

- TAKING THE TIME TO REVIEW ENVIRONMENTAL REVIEW DOCUMENTS
- FORMULATING RELEVANT AND MEANINGFUL COMMENTS
- OFFERING RECOMMENDATIONS ON PROJECT CHANGES AND/OR MITIGATION MEASURES
- ATTENDING PUBLIC HEARINGS IF POSSIBLE
- ASKING QUESTIONS OF STAFF DURING PUBLIC COMMENT PERIODS AND PRIOR TO HEARINGS



CEQA – ROLE OF THE COURTS

- CALIFORNIA COURTS SERVE TO ENSURE COMPLIANCE WITH CEQA
- JUDICIAL RELIEF - FINAL OPPORTUNITY FOR A PLAINTIFF TO CHALLENGE A LOCAL AGENCY'S CEQA DETERMINATION
- EACH YEAR THE COURTS PUBLISH NEW CASE LAW – CLARIFYING AND DEFINING CEQA PROCEDURES
- CEQA LITIGATION IS COMMON, BUT OUT OF THOUSANDS OF CEQA DOCUMENTS PREPARED ANNUALLY ONLY A SMALL NUMBER ARE CHALLENGED



CEQA – ABUSES & UPDATES

ABUSES

FRIVOLOUS LAWSUITS INTENDED TO:

- DELAY PROJECTS
- DRIVE-UP COSTS TO INDUCE ABANDONMENT OF A PROJECT
- COERCE UNION LABOR AGREEMENTS
- LEVERAGE PUBLIC AGENCIES AND PRIVATE DEVELOPERS INTO MONETARY SETTLEMENT AGREEMENTS

TRENDS

- ELIMINATED PARKING AS IMPACT CATEGORY
- ELIMINATE LEVEL OF SERVICE – ADD VEHICLE MILES TRAVELED
- REDUCE/ELIMINATE CEQA REVIEW FOR HOUSING PROJECTS NEAR TRANSIT
- CA LEGISLATURE IS ACTIVELY CONSIDERING FURTHER AMENDMENTS TO ADDRESS HOUSING

