

# CEQA and Historical Resources

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Joint Meeting of the  
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Planning Commission and  
Historic Preservation Review Commission  
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# What is CEQA ?

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- ❑ CEQA is the "California Environmental Quality Act"
  - ❑ CEQA was the first state law modeled after NEPA – only 16 other states have a similar law
  - ❑ CEQA introduced the concept of environmental impact assessment to state and local planning
  - ❑ CEQA is the backbone of environmental policy in California
  - ❑ CEQA is a process
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# Four General Principles

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- 1. **Information** : Inform decision makers & public about significant environmental effects of proposed activities
  - 2. **Identification**: Identify ways that environmental damage can be avoided or significantly reduced
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- **3. Prevention:** Prevent significant, avoidable damage to the environment by requiring changes in projects through use of alternatives or mitigation measures when the agency finds changes to be feasible
  
  - **4. Disclosure:** Disclose to the public the reasons why an agency approved the project in the manner the agency chose if significant environmental effects are involved (Code § 21001 (d); Guidelines §15002)
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# CEQA has a

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- ❑ **Substantive** Mandate; it is not just procedural
- ❑ Public agencies **must** deny approval of projects with significant environmental effects if “there are feasible alternatives or mitigations measures” that can substantially lessen or avoid those effects

## CEQA is a Self-Executing statute:

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- ❑ Public agencies are entrusted with compliance of CEQA and its provisions are enforced, as necessary, **by the public** through **litigation** and the threat thereof.
  - ❑ Who can/who does sue: private citizens, organizations, and public agencies
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# CEQA applies to **Discretionary** projects

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- ❑ **Project:** any activity which may cause either a direct or indirect physical change in the environment
- ❑ Whole of the action which has potential in resulting in either “direct” or reasonably foreseeable indirect physical change
- ❑ Project segmenting is not permitted

(PRC Section 21065; Guidelines 15378(a))

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# When does CEQA Apply?

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- ❑ To **All** projects undertaken by a public agency
  - ❑ **Discretionary** projects undertaken by private parties
  - ❑ **BUT**, the presence of a historical resource does not “trigger” CEQA
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# Brief Overview of CEQA Process

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CEQA process begins:

Phase 1: Preliminary Review whether an  
Exemption might apply

Phase 2: Initial Study

Phase 3: Decision for an **EIR** or **ND** or  
**MND**

Completes CEQA process

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# CEQA Exemptions

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- Common Statutory Exemptions
    - Ministerial or Emergency Projects
  - Categorical Exemptions
    - 33 Classes created in the CEQA Guidelines
  - No public review/comment is required for adoption of exemption
  - Notice of Exemption
    - Optional filing starts 35-day statute of limitations
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# Categorical Exemption for Historical Resources

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- ❑ Class 31, Exemption per **§ 15331**:
  - ❑ Projects must conform to the Secretary of Interior's Standards and are
  - ❑ Limited to repair, rehab, restoration, preservation, reconstruction, maintenance
  - ❑ Section **§ 15300.2**
  - ❑ **But** an Exception precludes use of Class 31 for:
    - ❑ Substantial adverse change in significance of historical resources
    - ❑ Reasonable probability the project will have a significant effect on the environment
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# Purpose of Initial Study

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If Project is not Exempt, then an Initial Study (IS) must be prepared

## IS Purpose:

- Facilitate early environmental assessments
- Decide whether to prepare ND\*, MND\*, or EIR\*
- IS becomes the supporting decision for ND or EIR
- Avoid unnecessary EIRs by mitigating impacts
- Focus an EIR on significant effects

CEQA Guidelines § 15063

- \*ND= Negative Declaration
  - \*MND=Mitigated Negative Declaration
  - \*EIR=Environmental Impact Report
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# Types of Environmental Impacts

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- Direct Effects
- Reasonably foreseeable indirect effects
- Growth-inducing effects
- Cumulative effects

# Threshold for Preparing EIRs: Fair Argument Standard

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**An EIR must 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.

# What is Substantial Evidence?

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## Substantial Evidence is:

- Facts
- Fact-related reasonable assumptions-predicated on facts
- Expert opinion supported by facts

## Substantial Evidence is not:

- Argument
- Speculation
- Unsubstantiated opinion or narrative
- Clearly inaccurate or erroneous information
- Socioeconomic impact not linked to physical environmental impact

# Negative Declaration (ND)

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- Basis for “Neg. Dec.” (ND):
- No substantial evidence that project may result in a significant effect
  - Initial study (IS)
  - Supporting reports/studies
  - Other evidence in record

Negative Declaration is the agency's finding; the IS supports that finding

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# Basis for a Mitigated Negative Declaration (MND)

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## **Initial Study shows potentially significant impacts, BUT:**

- ❑ Revisions in project plans agreed to by applicant before public review would mitigate to below level of significance
- ❑ No substantial evidence in record of a significant effect of revised project
- ❑ No substantial evidence that mitigation will be inadequate

# Environmental Impact Report (EIR)

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- Is required: if Project may have a significant impact on the environment
- EIR must disclose:
  - project description, environmental setting
  - impacts and mitigations
  - direct, indirect, cumulative, growth-inducing
  - Alternatives to project, including no-project

Legal Standard: Good-faith effort at full disclosure; perfection not required

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# Role of an agency under CEQA:

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- ❑ Make determination who is lead agency for project
  - ❑ Adopt CEQA procedures
  - ❑ Adopt procedures which encourage both the public's formal and informal involvement and should be designed to receive and evaluate public comments on environmental issues related to an agency's activities
  - ❑ Requires lead agency to make an independent finding
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# No approval if significant effect unless findings

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- ❑ **Public agency** shall not approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that would occur unless both of the following occur:
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(a)

1. Changes or alterations have been required or incorporated which mitigate or avoid significant effect
2. Changes or alterations are within jurisdiction of another agency who will adopt them
3. Specific economic, legal, social, technological or other considerations make

Mitigation or alteration infeasible

- (b) Specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment

PRC 21081

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# Fair Argument Standard & Substantial Evidence & EIR

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- The Public can raise at any time of the environmental review process; will become threshold for an EIR

Case law: (Architectural Heritage Association v. County of Monterey (2004) 122 Cal. App. 4<sup>th</sup> 1095) the Court made clear that the “fair argument “ standard of review applicable to the preparation of an EIR applies to the question of whether a resource is to be treated as historic for purposes of CEQA

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# In summary:

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- Fair Argument standard applies to the question:
  - Whether a resource is historic
  - Whether a project will cause a significant impact to the resource
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- A lead agency must make a determination about historical resources on the basis of factual information.
  - It does not get to **choose** what the historical resources are
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# So, how does lead agency determine what is an Historical Resource?

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## Two – Part Test:

Lead Agency has to determine whether there is a **significant impact** to an historic resource by a project

Question 1: Is resource “historically significant” (§15064.5)?

Question 2: Would project cause a “substantial adverse change” in its significance?

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# What is a Cultural Resource?

## **In General:**

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- Historical Resources are the built environment, districts, districts with historical landscapes features, etc.
  - archeological resources
  - unique archeological resources
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# CEQA's definition of an Historical Resource:

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- Very broad, very inclusive
    - CEQA Guidelines §15064.5 and PRC 21084.1
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(a) For purposes of this section, the term “historical resources” shall include the following:

- (1) A resource listed in, or determined to be eligible by the State Historical Resources Commission (SHRC), for listing in the California Register of Historical Resources.
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# California Register

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Resources listed in the California Register include:

- direct listing by the SHRC;
  - properties listed in the National Register of Historic Places;
  - determined eligible for inclusion in the NR by the Keeper of the NR;
  - determined eligible for inclusion in the NR through the Section 106 process;
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# California Register

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- determined eligible for inclusion in the NR through the Part 1 of the federal historic preservation tax credit process;
  - California Historical Landmarks beginning with #770; and
  - California Points of Historical Interest and CHL prior to #770 may be on California Register as a result of action by State Historical Resources Commission
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(a) For purposes of this section, the term “historical resources” shall include the following:

- (2) A resource included in a **local register** of historical resources. . . . or identified as significant in an historical resources **survey** . . . . shall be **presumed** to be historically or culturally significant. **Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.**
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# Local Designation

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“Local register of historical resources” means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution

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# Surveys

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- A resource identified as significant in an historical resources **survey** may be listed in the California Register if the survey meets all of the following criteria:
    - (1) The survey has been or will be included in the State Historic Resources Inventory
    - (2) The survey and the survey documentation were prepared in accordance with office procedures and requirements.
    - (3) The resource is evaluated and determined by the office to have a significance rating of Category 1 to 5 on DPR Form 523.
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# Surveys

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- What about surveys that are over 5 years of age?
    - The reference in the CEQA Guidelines is confusing.
      - If a survey is **nominated** to the California Register it must be updated if it is more than 5 years old.
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# Surveys

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- **However. . .**
  - This does **not** mean that resources identified in an older survey need not be considered “historical resources” for purposes of CEQA.
  - Unless a resource listed in a survey has been demolished, lost substantial integrity, or there is a preponderance of evidence indicating that it is otherwise not eligible for listing, a lead agency should consider the resource to be potentially eligible for the California Register.
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(a) For purposes of this section, the term “historical resources” shall include the following:

- (3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency’s determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resources.
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(a) For purposes of this section, the term “historical resources” shall include the following:

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- (4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of historical resources, not included in a local register of historical resources, or identified in an historical resources survey does not preclude a lead agency from determining that the resource may be an historical resource. . . .
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So, you have a historical resource...

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What then is CEQA's definition of Significant Effect?

- Significant effect on the environment means a **substantial**, or potentially substantial, **adverse change** in any of the **physical** conditions within the area affected by the project including. . . objects of historic or aesthetic significance. (Public Resources Code 21068; CEQA Guidelines §15382)
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CEQA defines adverse change as:

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**Physical Demolition,  
Destruction, Relocation, or  
Alteration** of the resource or its  
**immediate surroundings** such  
that the **significance** of the  
historical resource would be  
**materially impaired.**

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# What is Integrity?

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**Integrity** is the authenticity of an historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance.

Seven aspects: Location, Design,  
Setting, Materials, Feeling, Workmanship,  
Association

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The Significance of a historical resource is materially impaired when a project:

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demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its inclusion in, or eligibility for inclusion in the

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California Register, Local Register, or its identification in a survey, or demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance and that justify its eligibility for inclusion in the California register as determined by a lead agency for purposes of CEQA

(§15064.5(b)(1-2)(A-C))

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## **HISTORICAL RESOURCES & MITIGATION**

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A lead agency **must** identify any potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource

Any adopted mitigation measures **must** be made fully enforceable through permits, conditions, agreements, or other measures

(CEQA Guidelines § 15064.5 (b) (3-5))

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# AUTHORITY TO MITIGATE

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- The **PUBLIC AGENCY** HAS AUTHORITY TO REQUIRE FEASIBLE CHANGES IN ANY OR ALL ACTIVITIES TO LESSEN OR AVOID SIGNIFICANT EFFECTS ON THE ENVIRONMENT

(CEQA GUIDELINES §15041)

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# In General:

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For **each** significant impact identified in the EIR, feasible measures to **avoid or substantially reduce** the project's environmental effect **must be discussed** (CEQA Guidelines §15126.4(a))

A draft EIR must describe a **reasonable range of feasible alternatives** to the project **or** project location that could **feasibly attain** most of the basic project objectives and would **avoid or substantially lessen any** of the significant environmental impacts of the proposed project.

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# Mitigation May Not Be Deferred !!

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Mitigation MAY NOT BE DEFERRED TO  
SOME FUTURE TIME....

# Contact Information

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