CEQA

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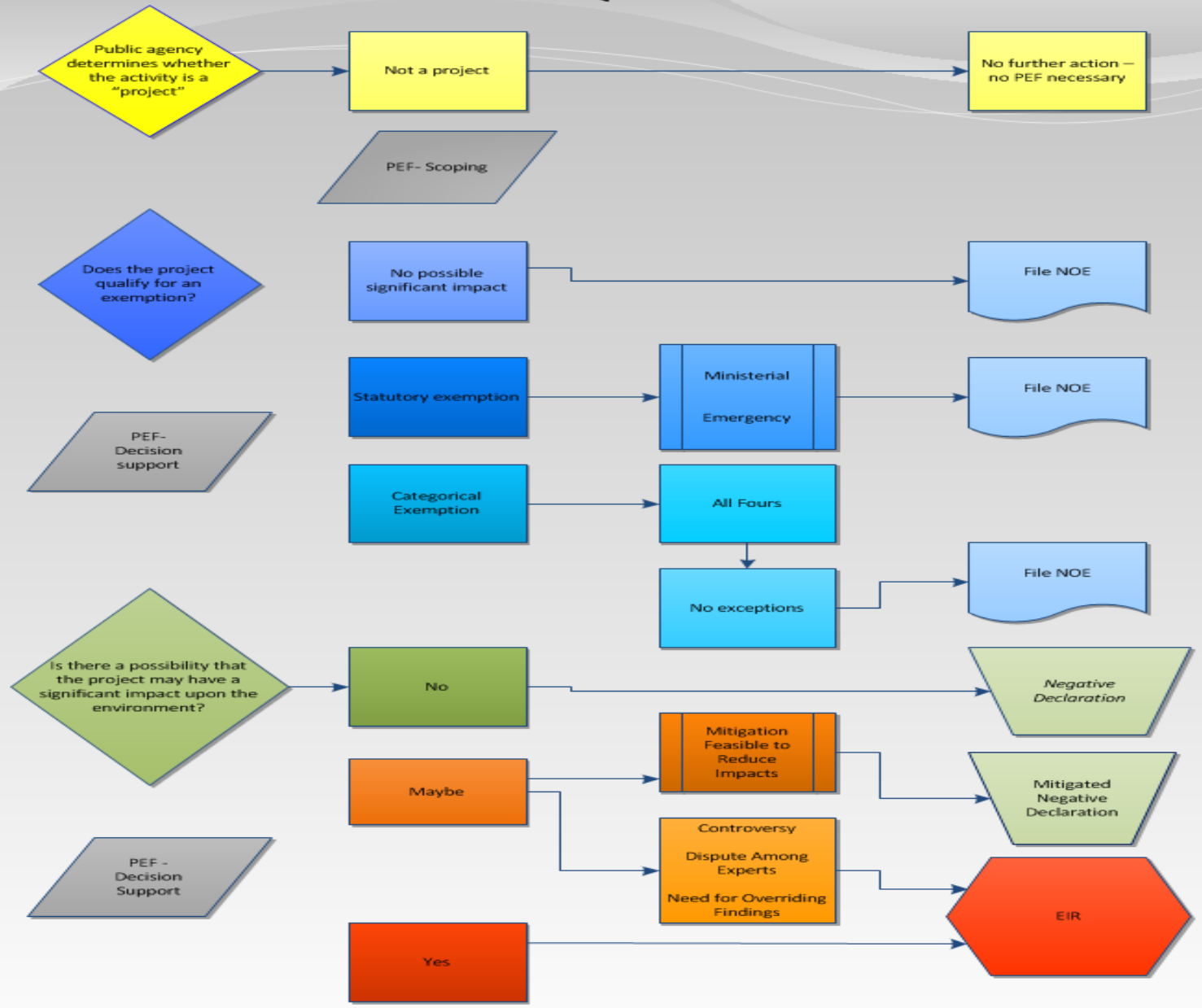
CEQA Process



Purposes of CEQA

- Establish Environmental Protection **Policies**
- Require **Disclosure** of Environmental Impacts
- Require Agencies to **Avoid or Reduce** Environmental Damage When Feasible
- Foster Interagency **Coordination**
- Enhance **Public Participation**
- Require Agency Decision Makers to Explain the **Reasons Why They Allow Environmental Damage to Occur**.

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Three Step CEQA Analysis

Question #1:

Is the Action Subject to CEQA?

- Is there a discretionary approval?
- Is it a “project”?
- Will it cause a physical change in the environment?

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Three Step CEQA Analysis

Question #2:

Is the Project Exempt from CEQA?

- Statutory Exemption?
- Categorical Exemption?
- Exception to the Exemption?
- General Rule Exemption?

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Classes of Categorical Exemptions

Class 1: Modifications

Class 2: Replacement/reconstruction of existing facilities

Class 3: New construction/conversion of small structures/equipment

Class 4: Minor alterations to land, water, veg.

Class 5: Minor alterations in land use limitations

Class 6: Information collection

Class 7: Actions by regulatory agencies for protection of natural resources

Class 8: Actions by regulatory agencies for protection of the environment

Class 9: Inspections

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Classes of Categorical Exemptions

Class 11: Minor/Accessory structures to existing facilities

Class 12: Surplus government property sales

Class 13: Land acquisition for wildlife conservation purposes

Class 15: Minor land division

Class 16: Transfer of ownership of land to create state parks

Class 17: Open space contracts or easements

Class 18: Designation of wilderness areas

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Classes of Categorical Exemptions

Class 21: Enforcement actions by regulator agencies

Class 22: Educational or training programs

Class 23: Normal operations of facilities for public gatherings

Class 25: Transfers of ownership of interest in land to preserve open space

Class 27: Leasing new facilities

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Exemptions Analysis

- May only be used where project has no significant effect
- May not broaden or expand exemption beyond scope of statutory language
- May not mitigate project around the exception
- Burden is on challenger if decision is supported by substantial evidence
- 2 parts to analysis:
  - Whether project raises "reasonable possibility" that significant effect upon environment may occur; **AND**
  - Whether the possibility is due to unusual circumstances (causal connection)
  - ❑ New information

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Exceptions to Exemptions (6)

- Environmentally sensitive site (3,4,5,6,11)
- Cumulative Impacts
- Unusual circumstances
- Damage to scenic resources, including trees, historic buildings, rock outcroppings, or similar resources
- Listed hazardous waste site
- Historical resources

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How to fit your project under an exemption?

- Consider CEQA issues as soon as you start thinking about a “project”
- Bring your staff in right from the start
- Design your project with standard requirements (formerly mitigation measures)
- Don’t try to avoid CEQA, embrace it!
- Consider likelihood of controversy

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File your Notice of Exemption!

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Three Step CEQA Analysis

Question #3:

Will the Project Have a Significant Effect on the Environment?

Significant Effect on the environment

- Section 15382 Definition
- CEQA Guidelines – Appendix G
- Mandatory Findings of Significance
- Compliance with Standards
- Economic and Social Changes
- Public Controversy and Disagreement Among Experts

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CEQA Baseline

- Existing environmental conditions at time of NOP (or when environmental analysis begins)
- “Normally” – substantial evidence; lead agency
- Modification/expansion – level of existing operations, NOT level of operations allowed by existing permits/plans
- 2 baselines: ok but still must compare to existing conditions

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CEQA Baseline (con't.)

- When project is revision of plan or policy, project's impacts are assessed against existing conditions and future conditions are treated as 'no-project" alternative
- Change to existing facility not previously analyzed under CEQA: conditions at time, not maximum operations allowed under permits
- Baseline must be "plainly identified" in EIR; discussion of past operations may be req'd

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How To Determine Significance

- Context
- Intensity
  - Public health and safety
  - Unique local characteristics
  - Controversy
  - Cumulative effect
  - Violation of law
- Threshold
- Impact
- Level of Significance
- Mitigation Measures
- Residual Level of Significance

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Effect of Public Controversy

- PRC 21082.2(a): existence of public controversy over environmental effects of project shall not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.

- Guidelines 15064(h)(1): in marginal cases where it is not clear whether there is substantial evidence that a project

  will have a significant effect, lead agency shall be guided by following factors:

  Presence of serious public controversy

  presence of disagreement between experts

Substantial Evidence

- Issues need real “study” to achieve substantial evidence
- citizen observations may be enough, if based on “facts” (surveys, studies, expertise)
- facts, reasonable assumptions based on facts, and expert opinion supported by facts
- substantial evidence is NOT: argument, speculation, unsubstantiated opinion, erroneous information, evidence of social or economic issues that do not result in physical impacts

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Negative Declarations

- A conclusion (the “declaration”) that an EIR is not necessary (the “negative”)
- “Fair argument test”- if it can be fairly argued on the basis of substantial evidence that the project has the potential to cause significant environmental impacts (“Fair Argument Test)”-**shall** prepare EIR
- No naked checklists – cite references
- Do not leave a negative agency letter in file- contact and correct!

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Cumulative Impacts

Practical and Reasonable Approach – Either:

- List Approach
  - Past, Present, and Reasonably Foreseeable Future Projects
  - Related Impacts
  - Projects Outside Control of Agency
- Forecast Approach
  - Summary of Projections
  - Adopted General Plan or Other Planning Document
  - Regional or Areawide Conditions
- Summary of Expected Effects
- Reasonable Analysis of Effects

When is a Project Growth- Inducing?

- When It Directly or Indirectly Fosters
  - Economic Growth
  - Population Growth
  - Additional Housing
- When It Removes Obstacles to Growth
- When It Taxes Community Service Facilities
- When It Encourages or Facilitates Other Activities That Could Significantly Affect the Environment

Treatment of Alternatives in EIRs

- Preferred Alternative
- No Project Alternative
- General Plan Stays The Same
- Environmentally Superior Alternative
- Focus on Avoidance or Reduction of Impacts
- Impacts of Alternatives
- Reasonable Range of Alternatives
  - Reduced Intensity
  - Reduced Density
  - Different Uses of Project Site
  - Different Locations of Project

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Supplemental/ Subsequent EIR

- When Required
  - Change in Project
  - Change in Circumstances
  - New Information
- Legal Standard for Requiring Supplement
- Use of Initial Study
- Relationship to Tiering

CEQA Terms	NEPA Terms
Lead Agency	Lead Agency
Responsible and Trustee Agencies	Cooperating Agency
Categorical Exemption	Categorical Exemption
Initial Study	Environmental Assessment
Negative Declaration	Finding of No Significant Impact
Environmental Impact Report	Environmental Impact Report
Findings	Record of Decision

New Cases

- **Preserve Poway v. Poway** – 2016
- "community character" is not within scope of required CEQA analysis of neg dec.
- **CBIA v. BAAQMD – 2015**

  "reverse" CEQA? No, generally
- **Berkeley Pres. v. Berkeley** – 2015
  - -two prong inquiry to determine exception to exemption
- **Cit. Env. Rsp. v State** - 2015

  -"normal" v. unusual circumstances
- **San Francisco Beautiful v. SF** – 2014

  class 3 exemption clarification

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