



Trails Conference

CEQA

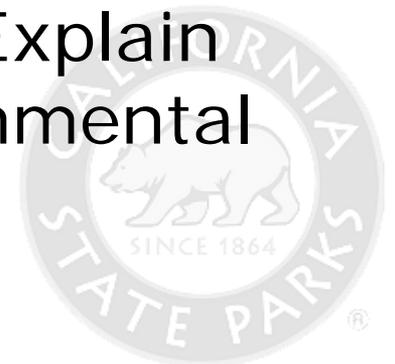
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Purposes of CEQA

- ❑ 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.



Legislative Mechanisms to Accomplish CEQA's Purposes (1)

- DISCLOSURE OF ENVIRONMENTAL IMPACTS
 - EIRs
 - Negative Declarations
 - Initial Studies

- AVOIDANCE OR REDUCTION OF ENVIRONMENTAL IMPACTS
 - Mitigation Measures
 - Alternatives
 - Findings on Mitigation Measures and Alternatives



Legislative Mechanisms to Accomplish CEQA's Purposes (2)

❑ INTERGOVERNMENTAL COORDINATION

- Early Consideration
- Scoping
- Notice of Preparation
- State Clearinghouse Review

❑ PUBLIC INVOLVEMENT

- Public Notice and Review
- Response to Comments
- Citizen Enforcement



Legislative Mechanisms to Accomplish CEQA's Purposes (3)

- ACCOUNTABILITY IN DECISION MAKING
 - Findings
 - Statements of Overriding Consideration
 - Reporting and Monitoring



Key Participants In The CEQA Process



Three Step CEQA Analysis

Question #1:

Is the Action Subject to CEQA?

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



“Approval” of an Action

- Earliest commitment to pursue “project”

OR

- Issuance by public agency to contract, grant, subsidy, loan or other financial assistance, lease, permit, license, certificate or other entitlement



“Project” Subject to CEQA

- Definition:
 - Direct physical change in environment
 - OR
 - Reasonably foreseeable indirect physical change
- Sweeping definition but finite and stable
- Whole of the action
- Discretionary actions
- Not ministerial actions
- Piecemealing and segmentation



Three Step CEQA Analysis

Question #2:

Is the Project Exempt from CEQA?

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



Statutory Exemptions

- ❑ Ministerial projects
- ❑ Emergencies
- ❑ Setting of rates, tolls, fares, or other charges
- ❑ Local agency rules to implement a state certified regulatory program
- ❑ Feasibility or planning studies
- ❑ Pipelines of less than 1 mile in a public rights-of-way



Classes of Categorical Exemptions

Class 1: Modifications

Class 2: Replacement/reconstruction of existing facilities

Class 3: New construction/conversion of small structures

Class 4: Minor alterations to land

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



Classes of Categorical Exemptions

Class 11: Accessory structures

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



Classes of Categorical Exemptions

Class 21: Enforcement actions by regulatory 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 26: Acquisition of housing for housing assistance programs

Class 27: Leasing new facilities

Class 28: Small hydroelectric project at existing facilities

Class 29: Cogeneration project at existing facilities



Categorical Exemptions (Section 15300.2)

- ❑ 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



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



Exemptions Analysis

- 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) **AND**
- New information



Three Step CEQA Analysis

Question #3:

Will the Project Have a Significant Effect on
the Environment?



Determination of “Significance”

- ❑ Determination of compliance document
- ❑ Initial study
- ❑ Impact analysis
- ❑ Comments
- ❑ Response to comments
- ❑ Findings
- ❑ Approval of project



Making CEQA Threshold Decisions

- ❑ Substantial Evidence
- ❑ Section 15382 Definition
- ❑ Appendix G – Environmental Checklist Form
- ❑ 15065
- ❑ Compliance with Standards
- ❑ Economic and Social Changes
- ❑ Public Controversy and Disagreement Among Experts



Substantial Evidence

- ❑ 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.
- ❑ Facts, reasonable assumptions predicated upon facts and expert testimony supported by facts.
- ❑ NOT speculation, uncorroborated or unsubstantiated statements, opinions, argument, narrative, or evidence clearly erroneous.



Determining Significant Impact

- Significant Environmental Impact
 - Avoidable (feasible mitigation available)
 - Unavoidable (no feasible mitigation)
 - Less Than Significant Environmental Impact
- Unclear Modifiers:
 - “Somewhat” significant
 - “Potentially” significant
 - “Very” significant
 - “Major” or “Insignificant” impact
- Beneficial Impact



How To Determine Significance

- Context
- Intensity
 - Public health and safety
 - Unique local characteristics
 - Controversy
 - Cumulative effect
 - Violation of law



Mandatory Findings of Significance 15065

Potential impact is considered significant if a project would substantially:

- ❑ Degrade environmental quality
- ❑ Reduce fish or wildlife habitat
- ❑ Cause a fish or wildlife habitat to drop below self-sustaining levels
- ❑ Threaten to eliminate a plant or animal community
- ❑ Reduce the numbers of range of a rare or endangered species
- ❑ Eliminate important examples of the major periods of California history or prehistory
- ❑ Achieve short-term goals to the disadvantage of long-term goals
- ❑ Have possible environmental effects that are individually limited but cumulatively considered when viewed in connection with past, current, and probable future projects
- ❑ Have environmental effects that will cause substantial adverse effects on human beings directly or indirectly



Significance Analysis

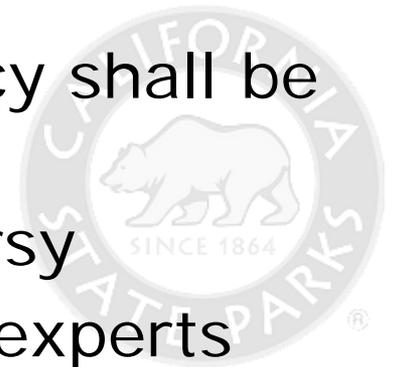
- ❑ Threshold*
- ❑ Impact
- ❑ Level of Significance
- ❑ Mitigation Measures
- ❑ Residual Level of Significance

*Use of an Identifiable, quantitative, qualitative, or performance level of a particular environmental effect to measure significance.



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



Where There Are Significant Effects, The Lead Agency Must Do One of the Following:

- ❑ Change the Project
- ❑ Impose Conditions of Approval
- ❑ Adopt Plans or Ordinances
- ❑ Choose an Alternative
- ❑ Deny the Project
- ❑ FIND that Changing or Altering the Project is Infeasible
- ❑ FIND that the Unavoidable Significant Damage is Acceptable



Determining Scope of EIR

- Initial Studies
- Notice of Preparation
- Consultation with Agencies
- Scoping Meetings



Initial Studies

USES

- ❑ Deciding to prepare EIR/Negative Declaration
- ❑ Avoiding EIRs
- ❑ Focusing on potentially significant effects
- ❑ Facilitating early environmental assessment
- ❑ Supporting negative declarations
- ❑ Fostering reuse of EIRs



Initial Studies

- ❑ Project description
- ❑ Identification of setting
- ❑ Identification of potential impacts
- ❑ Mitigation measures
- ❑ Consistency with plans and policies
- ❑ Naked checklist



Purpose of Notice of Preparation

- Notify Responsible Agencies about Project
- Solicit Comments on Scope and Content
- Foster Interagency Coordination and Cooperation
- Early warning system



Comments on CEQA Documents

- ❑ Distinguish between CEQA and project
- ❑ Make sure you understand the project
- ❑ Focus on substantive issues
- ❑ Oppose the project if you need to but also offer constructive ideas, mitigation, etc.



CEQA TERMS

NEPA TERMS

Lead Agency

Responsible and Trustee
Agencies

Categorical Exemption

Initial Study

Negative Declaration

Environmental Impact Report

Findings

Lead Agency

Cooperating Agency

Categorical Exemption

Environmental Assessment

Finding of No Significant Impact

Env. Impact Statement

Record of Decision



NEPA AND CEQA

□ Procedural Differences

- Limited public review of FONSI
- Public notice
- Recirculation of FEIS
- Time limits
- Statute of limitations
- Record of Decision

□ Substantive Differences

- Substantive effect
- Alternatives analysis
- Incomplete or unavailable information
- Related federal laws
- Growth-inducing impacts and mitigation measures

