

# CEQA Basic Training

## What is CEQA?

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- CEQA is the California Environmental Quality Act, Public Resource Code § 21000 *et seq.*
- *Regulations are in 14 CCR § 15000 et seq.*
- <http://ceres.ca.gov/ceqa/index.html>

# CEQA

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- The process of identifying, estimating and evaluating the environmental consequences of current and proposed actions
- Very lengthy document



# Fundamental Principles

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- To inform the public and agency decisions makers about the environmental impacts of their decisions before the decisions are made
- To avoid or mitigate environmental impact
- If not feasible to mitigate impacts, agency may only approve a project if there are overriding circumstances justifying approval (e.g.- jobs, affordable housing, state of emergency)

# Why bother?

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- CEQA is widely used by project opponents to delay projects they don't like
  - Can cause delay during approval process and litigating
- Embarrassment
  - If issues are not clear cut, opponents can claim more analysis or public review and comment is required

# When does CEQA apply?

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- CEQA applied to all discretionary public and private projects
- Those undertaken by public agency
  - Public works projects
  - Adoptions/amendments of ordinances
  - General plan amendments
  - <http://www.sanjoseca.gov/planning/gp/>

# When does it apply?

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- Public Agency decides whether to *allow a* private agency to do something (e.g. bend a zoning code rule, build a set of trails)
  - Stanford University General Use Permit
  - Mountain Winery Use Permit 🎵 🎵

# Exemptions to CEQA

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- For private projects, CEQA applies when a government permit or other entitlement for use is necessary
- Notice of exemption (NOE) with the County Clerk's office.
  - Reduce the statute of limitations from 180 to 35 days

# When must CEQA compliance occur?

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- Rule: CEQA process must be completed before the project is “approved”
- Key Questions: When will the agency irretrievably commit itself to a course of action
  - Awarding a contract for construction of building
  - Issues a permit to a private developer



# If CEQA applies to my project, what must I do?

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- Determine what role the various agencies will play.
  - Lead agency- has primary responsibility for CEQA compliance and prepares the environmental document
    - For public projects, the agency that will carry out the project is the lead agency
    - For private projects, the agency with more general jurisdiction (e.g., County vs air district) or that needs to act first on the project is usually the lead agency
    - Lead agencies must consult with responsible agencies and trustee/ resources agencies

# Agency Roles

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- Responsible agencies- agencies that must issue a discretionary permit or other approval for the project (e.g., BAAQMD, CHP, CDFG)
  - Cannot take action on the project until the Lead Agency completes and certifies the environmental documents
  - Must make their own CEQA findings before approving the project
- Experts must be used from these agencies



# No Significant impact

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- Determine what types of environmental documents is required
  - Prepare an Initial Study to identify possible impacts If there is no substantial evidence in light of the whole record that project has the potential to cause a significant environmental impact, can do a Negative Declaration (Neg Dec)



# Environmental Impact Report

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- If there is a potentially significant impact, need to either do a Mitigated Negative Declaration or an Environmental Impact Report (EIR)
  - Mitigated Negative Declaration- appropriate where the project can be altered or mitigated to avoid all significant impact
  - EIR – must be done if a project has Potentially Significant Impact and the project proponents agrees to these changes before the document is released for public comment



# Key differences between Neg. Dec. & EIR

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- EIR's usually are much more lengthy, detailed and expensive
- Public comment period is 20-30 days for a Neg. Dec. vs 30-60 days for an EIR
- Lead agencies need not respond to comments received on Neg. Dec, but must prepare a response to each substantive comment on an EIR
- It is safer legally to prepare an EIR



# Process

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- Generally dictated by the type of documents to be prepared (EIR, Neg Dec.)
  - Public notice- This is because public participation is so crucial to the process.
  - Public hearings- sometimes required for the underlying approval.



# Procedural Requirements

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- Practice tips:
  - Even if no public hearing is legally required, public agencies often choose to hold several public hearings, workshops and community meetings on controversial project to help identify, discussed and resolve issues early in the process. Professional facilitators may be helpful
  - If a federal agency approval is needed for the project, NEPA may apply. Find this out early so you can coordinate processes.

# Exemptions

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- Some projects are exempt from CEQA
  - Statutory exemptions
  - “common sense” exemptions
  - Categorical exemptions- projects the State Resource Agency has determined do not normally have significant impacts.
  - Exception: categorical exemptions do not apply where there is a reasonable possibility that, due to unusual circumstances, the project will have a significant effect



# Litigation

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- Procedure for challenging CEQA compliance
  - Writ of mandate (CCP §§ 1085 or 1094.5)
- Standard of review
- Effects of lawsuits on projects
- No automatic stay or injunction. Normal test for preliminary injunction applies (success based on merits, balance of interim harm)

# Litigation

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## ○ Statue of Limitations

- 30 days after filing a Notice of Determination for challenges to Neg Dec and EIR (failure to file NOD results in 180-days limitations period)
- 35 days after filling a Notice of Exemption for challenges to exemptions determination (180 days if no NOE filed)
- 180 days of project is undertaken without any CEQA compliance

# Project Approval

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- Make the following findings
  - All *potentially significant impacts* have been mitigated or avoided OR
  - Specific economic, legal, social or other considerations make the mitigation measures and alternatives identified in the EIR infeasible
    - If the latter finding is made, the agency cannot approve the project unless it finds the projects specific economic, legal, social, technological or other benefits outweigh the environmental impact
  - These findings must be supported by substantial evidence in the record, and the findings must be fairly detailed

# Project Approval

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- Adopt a mitigation monitoring and reporting program only for a *Mitigated Neg. Dec and EIR*
- File a *Notice of Determination (NOD)* with the County Clerk within 5 working days of final project approval. Must also file NOD with State Office of Planning and Research if state agency is “Responsible Agency”



# Project Approval

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- Make sure the approving body takes all required actions before approving project
  - Before approving a project which a Mitigated Neg Dec or EIR was prepared the lead agency must:
    - Consider the environmental documents and comments received
    - Find the documents reflects its independent judgments
    - Certify that the document was prepared in compliance with CEQA



# Lessons from the Trenches

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- Don't try to hide anything
  - You will only end up delaying your project
  - CEQA litigation often turns on whether the court felt the agency made a good faith effort to comply with the law, particularly in the areas of public disclosure and involvement
  - You risk losing the public's interest



# Lessons from the trenches

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- Do it right the first time
  - Try to identify issues early so you can address them in the environmental document.
  - Failure to do so will create months or even years of delay
- Make sure you identify all pertinent agencies early in the process and get their input