

# Overview of the California Environmental Quality Act

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# Objectives of CEQA

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## Environmental Protection

- Avoid/Minimize Effects
- Mitigation



## Disclosure

- Inform decision makers about environmental consequences
- Disclose to the public why decisions were made

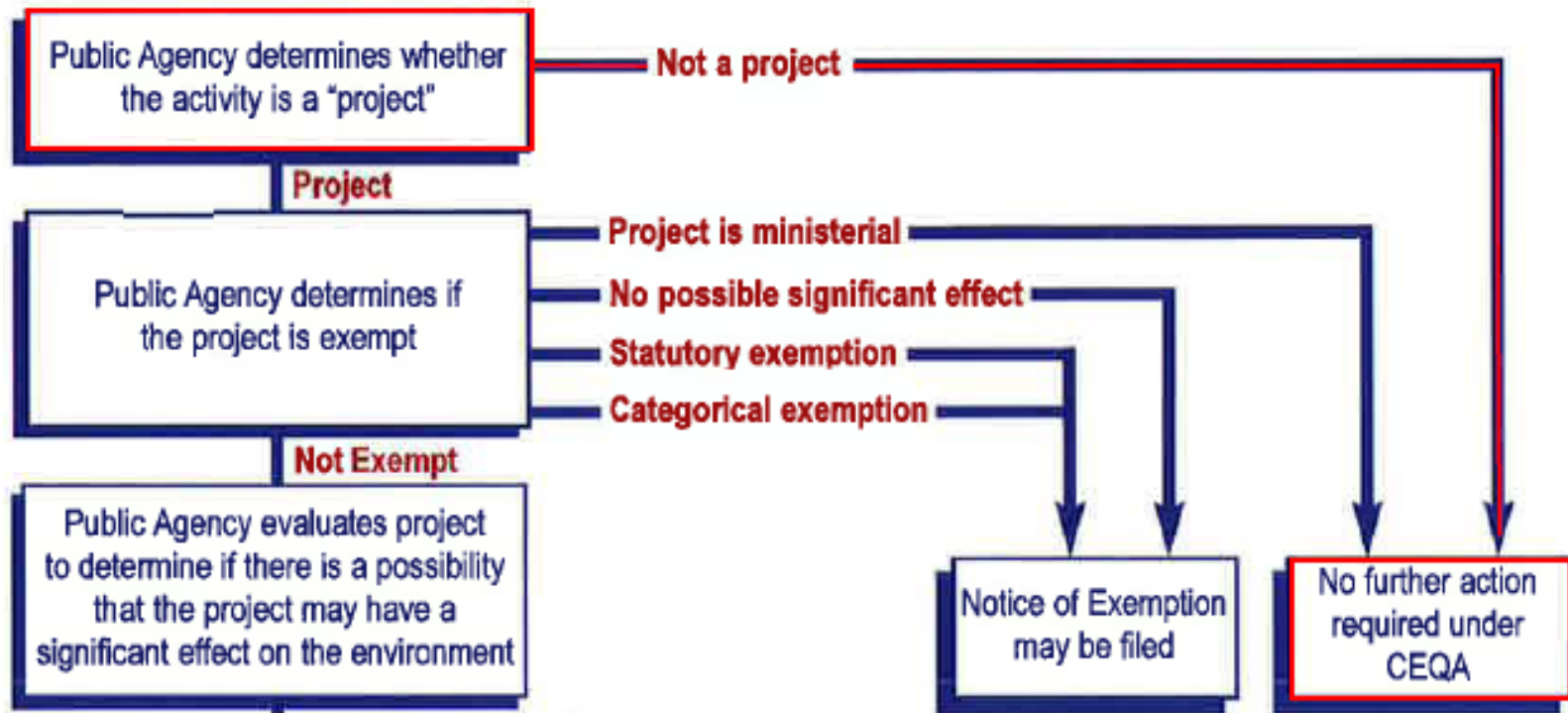
## Public Participation

# Interpreting CEQA

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- CEQA Statute
- CEQA Regulations and Guidelines
- Local CEQA Guidelines
- Court Cases
- Governor's Office of Planning and Research

# When does CEQA apply?



# Types of CEQA Documents

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- Exemptions
- Initial Study (IS) a.k.a. “the CEQA Checklist”
- Negative Declaration (ND)/Mitigated Negative Declaration (MND)
- Environmental Impact Report (EIR)

# Initial Study (IS)

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## CEQA Guidelines

### § 15063. Initial Study

An “Initial Study” is a preliminary analysis prepared to determine if the project may have a significant effect on the environment.

- An IS must be prepared prior to issuing a Negative Declaration or a Mitigated Negative Declaration.
- Must be based on facts not argument, speculation, unsubstantiated opinion, or erroneous information.

# Negative Declaration

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## CEQA Guidelines

### § 21064. NEGATIVE DECLARATION

“Negative declaration” means a written statement briefly describing the reasons that a proposed project will not have a significant effect on the environment and does not require the preparation of an environmental impact report.

# Negative Declaration

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## PREPARED WHEN:

There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.



# Mitigated Negative Declaration (MND)

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## CEQA GUIDELINES

### § 21064.5. MITIGATED NEGATIVE DECLARATION

“Mitigated negative declaration” means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and

(2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

# Mitigated Negative Declaration (MND)

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## PREPARED WHEN:

The lead agency, based on the initial study, determines that there is substantial evidence in the record that the project may have a significant effect on the environment but:

- revisions in the project plans or proposals would avoid or mitigate the effects to a point where clearly no significant effect on the environment would occur and
- there is no substantial evidence in light of the whole record that the project, as mitigated, may have a significant effect on the environment.

# Environmental Impact Report (EIR)

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An informational document to inform regarding environmental impacts, ways to minimize impacts, and alternatives.

## Prepared when:

When there is substantial evidence, in light of the whole record, that the project may have a significant effect on the environment.

- EIR conclusions must be based on substantial evidence (e.g., technical studies)
- Much more detailed than an IS
- Includes evaluation of alternatives to the project

# MND or EIR?

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## **MND -**

**“Fair Argument Standard”**: whether it can be fairly argued, based on substantial evidence, that project may have a significant effect on the environment. (Initial Study/ND/MND)

## **EIR -**

**“Substantial Evidence Test”**: means enough relevant information to support a conclusion. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (EIR)

# MND or EIR?

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## “Fair Argument Standard”

Whether it can be fairly argued, based on substantial evidence, that the project may have a significant effect on the environment.

- *any* substantial evidence showing potential for significant effects
- burden on the lead agency to provide evidence

# MND or EIR?

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## “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. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute evidence.” Pub. Resources Code, 21082.2, subd. (c); CEQA Guidelines 15384.

- burden is on challenger to provide evidence
- courts defer to lead agencies

# Initial Study

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## CONTENTS

- Table of Contents/Summary
- Project Description
- Environmental Setting
- Thresholds of Significance  
(usually Appendix G of CEQA Guidelines)
- Discussion of Cumulative Impacts
- Discussion of Mitigation Measures
- Mitigation and Monitoring Program

# Initial Study/MND

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## PROCESS

- Publication
- Public review period (20 – 30 days)
- Lead agency review of IS/MND and any public comments
- Approval of project, adoption of MND and MMRP
- Notice of Determination (starts statute of limitations)





# EIR

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- Table of Contents/Summary
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- Thresholds of Significance  
(usually Appendix G of CEQA Guidelines)
- Growth Inducing Impacts
- Discussion of Cumulative Impacts
- Discussion of Mitigation Measures
- Alternatives Analysis
- Mitigation and Monitoring Program

# EIR

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## PROCESS

- Notice of Preparation (NOP) and Scoping
- Publication and Public review period (30 – 45 days or longer)
- Lead agency review of EIR and any public comments
- Publication of FEIR (includes responses)
- Approval of project, certification of EIR and adoption of MMRP
- Notice of Determination (starts statute of limitations).



# Initial Study/MND and EIR

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## Mitigation Measures

- Evidence of feasibility
- Cannot be deferred
- Fully enforceable
- Essential nexus
- “Roughly proportional”



# Pitfalls

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Watch for:

- Incomplete Description
- Deferred Analysis
- Deferred Mitigation
- Cumulative Impacts
- Reasonable alternatives



# Online Resources

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## **Governor's Office of Planning and Research (OPR)**

<http://www.ca.gov/>

<http://www.opr.ca.gov/ceqa/technical-advisories.html>

## **Statutes, Guidelines, Appendix G/Initial Study Checklist**

<http://resources.ca.gov/ceqa/guidelines/>

<http://resources.ca.gov/ceqa/flowchart/>

# Thank You!

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