CEQA Background

• 1969: President Nixon signs National Environmental Policy Act
• 1970: Governor Reagan signs California Environmental Quality Act
• CEQA (the Statute): Established by Legislature
  – continuously modified by Legislature
  – “interpreted” by the Courts
  – “Guidelines” prepared by Office of Planning and Research
The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects ... (PRC § 21002)
The legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

[CEQA is not intended to stop projects, although it can be used to try and achieve that outcome.]
Purposes of CEQA (cont.)

1) Inform government decision makers and the public about the potential significant environmental impacts of proposed activities

2) Identify ways that environmental impact(s) can be avoided or significantly reduced
3) Prevent significant avoidable damage to the environment by requiring changes in the project through the use of *feasible* alternatives and mitigation.

4) Disclose to the public the reason that an agency approved a project notwithstanding its unavoidable, significant environmental impacts *[Decisions made in the light of day]*.
Where Does CEQA Live?

• The Statute
  – Public Resources Code §§ 21000-21178 [Part of State Law. Can only be changed by legislation.]

• The Guidelines
  – California Code of Regulations Title 14, §15000 et seq.

• The Courts
  – Ongoing case law
Various Agency Roles

- Lead agency (CCR 15050 et seq.)
- Responsible agency
- Trustee agency
- Certified regulatory process agency
- Federal agencies
  - Not CEQA responsible agencies, but can use CEQA information to satisfy NEPA
Key Participants in the CEQA Process

- Lead Agency
- Agencies with Jurisdiction by Law
- Concerned Citizens and Organizations
- Responsible Agencies
- California Tribes
- Trustee Agencies
- Project Applicants
- Environmental Consultants
- Courts
Lead Agency CEQA Review Process

- Action proposed
- Decide if action is a project
- Decide if the project is subject to CEQA
- Decide if the project is exempt
- If not exempt, prepare an Initial Study to determine appropriate CEQA document (or make decision to prepare an EIR)
- Initiate AB 52 consultation
CEQA Review Process (cont.)

- Make an environmental document determination
- Prepare appropriate environmental document
- Public review
- Certify EIR/adopt (M)ND, MMRP, project approval, findings
- Notice of determination
Public Agency determines whether the activity is a *project*.

- **Project**
  - Project is ministerial
    - No possible significant effect
    - Statutory exemption
    - Categorical exemption
    - Notice of Exemption may be filed
    - No further action required under CEQA
  - Not a project

- **Not Exempt**
  - Public Agency evaluates project to determine if there is a possibility that the project has a significant effect on the environment.
    - Possible significant effect
      - Yes = EIR
      - No = Negative Declaration
    - No further action required under CEQA

*CEQA Process Flow Chart*
“Project” means

... an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

a) An activity directly undertaken by any public agency

b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from one or more public agencies,

c) An activity that involves the issuance to a person of a lease, permit, license, certificate or other entitlement for use by one or more public agencies.

(PPC § 21065)
When Does CEQA Apply? Discretionary Project

Discretionary vs. Ministerial Actions

“Ministerial” decision:

...Government decisions involving little or no personal judgment by the public official as to the wisdom or manner of carrying out a project...a ministerial decision involves only the use of fixed standards or objective measurements. (CCR §15369)

“Discretionary project”:

...a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statues, ordinances or regulations. (CCR §15357)
When Does CEQA Apply? Discretionary Project

Examples of Discretionary and Ministerial Actions

• Discretionary projects
  – Tentative subdivision maps
  – General plans
  – Conditional use permits

• Ministerial decisions
  – Demolition permits (sometimes)
  – Building permits (sometimes)
  – Final Subdivision maps
When is a Project Exempt from CEQA?

Types of Exemptions:

• Ministerial
  – Determination made by public agency through implementing regulations or case-by case basis

• Statutory
  – Activities exempted from all or part of CEQA by the State Legislature regardless of impacts (policy decision)

• Categorical
  – Classes of projects which are exempted from CEQA (set forth in Article 19) because they typically do not have significant impacts (there are exceptions)
## Categorical Exemptions

<table>
<thead>
<tr>
<th>Class</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 1</td>
<td>Operation, repair, or maintenance of existing structures or facilities</td>
</tr>
<tr>
<td>Class 2</td>
<td>Replacement or reconstruction of existing structures or facilities</td>
</tr>
<tr>
<td>Class 3</td>
<td>Construction or conversion of small new facilities</td>
</tr>
<tr>
<td>Class 4</td>
<td>Minor alterations of land, water, or vegetation</td>
</tr>
<tr>
<td>Class 5</td>
<td>Minor alterations in land use limitations</td>
</tr>
<tr>
<td>Class 6</td>
<td>Data collection, research, experimental management, or resource evaluation</td>
</tr>
<tr>
<td>Classes 7 and 8</td>
<td>Public agency maintenance, restoration, or enhancement of environmental or natural resources</td>
</tr>
<tr>
<td>Class 9</td>
<td>Inspections of operations or projects</td>
</tr>
<tr>
<td>Class 10</td>
<td>Loans under Veterans Farm and Home Purchase Act and mortgages for existing structures</td>
</tr>
<tr>
<td>Class 11</td>
<td>Construction or placement of accessory structures</td>
</tr>
<tr>
<td>Class 12</td>
<td>Surplus government property sales</td>
</tr>
<tr>
<td>Class 13</td>
<td>Acquisition of lands for wildlife conservation purposes</td>
</tr>
<tr>
<td>Class 14</td>
<td>Minor additions to existing schools</td>
</tr>
<tr>
<td>Class 15</td>
<td>Minor land divisions</td>
</tr>
<tr>
<td>Class 16</td>
<td>Transfer of land ownership to create parks</td>
</tr>
<tr>
<td>Class 17</td>
<td>Open space contracts or easements</td>
</tr>
</tbody>
</table>

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Note: Each class is listed with an associated description.
## Categorical Exemptions (cont.)

<table>
<thead>
<tr>
<th>Class</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class 18</td>
<td>Designation of wilderness areas</td>
</tr>
<tr>
<td>Class 19</td>
<td>Annexations of existing facilities and lots for exempt facilities</td>
</tr>
<tr>
<td>Class 20</td>
<td>Changes in organization of local agencies</td>
</tr>
<tr>
<td>Class 21</td>
<td>Enforcement actions by regulatory agencies</td>
</tr>
<tr>
<td>Class 22</td>
<td>Educational or training programs involving no physical changes</td>
</tr>
<tr>
<td>Class 23</td>
<td>Normal operations of facilities for public gatherings</td>
</tr>
<tr>
<td>Class 24</td>
<td>Regulations of employee wages, work hours, or working conditions</td>
</tr>
<tr>
<td>Class 25</td>
<td>Transfers of ownership of interest in land to preserve existing natural conditions and historical resources</td>
</tr>
<tr>
<td>Class 26</td>
<td>Acquisition of housing for housing assistance programs</td>
</tr>
<tr>
<td>Class 27</td>
<td>Leasing new facilities exempt from CEQA</td>
</tr>
<tr>
<td>Class 28</td>
<td>Small hydroelectric projects at existing facilities</td>
</tr>
<tr>
<td>Class 29</td>
<td>Cogeneration projects at existing facilities</td>
</tr>
<tr>
<td>Class 30</td>
<td>Minor alterations … hazardous waste or hazardous substances</td>
</tr>
<tr>
<td>Class 31</td>
<td>Historical resource restoration or rehabilitation</td>
</tr>
<tr>
<td>Class 32</td>
<td>Infill development projects</td>
</tr>
<tr>
<td>Class 33</td>
<td>Small habitat restoration projects</td>
</tr>
</tbody>
</table>
Exceptions to Categorical Exemptions:

- Certain classes qualified by consideration of where located
- Not applicable when cumulative impact is significant
- Not used when potential significant effect due to unusual circumstances
- Scenic highways
- Hazardous waste sites
- Historical resources
Types of CEQA Documents

• Negative Declaration
• Mitigated Negative Declaration
• Environmental Impact Report
  – Project EIR
  – Program EIR
  – Master EIR
  – Subsequent EIR
  – Supplement to an EIR
• Addendum
The Appropriate CEQA Document

- Legal Standard - *EIR is required if fair argument exists* that a project may have a significant effect on the environment.

- What is a “significant effect on the environment”?
  - Substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A social or economic change by itself shall not be considered a significant effect on the environment (CCR §15382).

- Fair argument must be backed by *substantial evidence*. 
What is “substantial evidence”?

• Factual evidence in the record
  – Facts, expert opinion based on facts, conclusions drawn for factual basis

• It does not include:
  – Argument, speculation, unsubstantiated opinion, clearly erroneous evidence, or social-economic impacts not related to a physical change in the environment
An ND or MND may be prepared:

- When there is no substantial evidence that a significant effect may occur (CCR §15070[a])
- When revisions in a project, made by or agreed to by the applicant, mitigate to a point where “clearly” no significant effect would occur (PRC §21064.5)
- As one choice for a subsequent document after a Master EIR (PRC §21157.5)
- When tiering from a previously certified EIR (under certain circumstances) (CCR §15152)
Mitigation Measures

• CCR §15370 definition:
  – Avoiding the impact altogether
  – Minimizing impacts by limiting the magnitude
  – Rectifying by repairing, rehabiliting, restoring
  – Reducing or eliminating over time
  – Compensating by replacing or providing substitute resources

• Considerations for Mitigation Measures
  – must be feasible
  – must be fully enforceable
  – must have essential nexus (Nollan v. CCC) and roughly proportional to impacts (Dolan v. Tigard)
  – not necessary if impact is not significant (but not prohibited)
  – significant environmental effects caused by mitigation measures must be considered
What is Considered “Feasible”? 

• Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors. (CCR §15364)
Types of EIRs

- Project EIR
- Program EIR
- Master EIR and Focused EIR
- Subsequent EIR
- Supplement to an EIR
- Others (Staged, Redevelopment, Base Reuse, General Plan)
- Addendum to an EIR
Scoping Meeting

• A meeting held to receive comments on the scope of an EIR (what are the environmental issues that should be evaluated?)

• Not required, except for projects of statewide, regional, and area-wide significance as defined in CCR §15206

• No public notice requirements unless person requests notice, but good to invite interested public.

• Notice to Responsible, Trustee Agencies, and persons requesting notice (PRC §21083.9; CCR §15082)
Required Contents of an EIR

Specific format may vary, but the following contents are required to be included in an EIR:

- Table of contents
- Summary
- Project description
- Environmental setting
- Consideration and discussion of impacts
- Significance Thresholds
- Significant effects
- Mitigation measures
- Alternatives
- Cumulative impacts
- Significant irreversible changes
- Growth inducing impacts
- Effects found not to be significant
- Organizations and persons consulted
Alternatives to the Project

• An EIR is required to evaluate alternatives to the proposed project. The analysis:
• Shall focus on alternatives to the project or its locations which are capable of avoiding or substantially lessening any significant effects of the proposed project, even if these alternatives would impede to some degree the attainment of the project objectives
Final EIR

- Text revisions to Draft EIR
- Responses to comments
  - Must be good-faith, reasoned analysis
  - Must respond to significant environmental points
  - Discuss any alternatives suggested during public review
- No separate review period for Final EIR
- Written response to commenting public agencies
  - At least 10 days prior to certification
- Explain rationale behind responses (use substantial evidence, refer to Draft EIR coverage)
Decision Process

• Consider and Certify EIR
• Approve Project
  – Make Findings
  – Adopt Mitigation Monitoring and Reporting Program (MMRP)
  – Adopt Statement of Overriding Considerations (if necessary)
Findings of Fact

• Findings needed for approval of project
• Only 3 possible findings:
  – (a)(1) Changes or alterations have been required that avoid or substantially lessen significant effects
  – (a)(2) Such changes or alterations are within the responsibility and jurisdiction of another public agency, and such changes have been adopted or can and should be adopted by that agency
  – (a)(3) Specific economic, legal, social, technological, or other considerations make mitigation/alternatives infeasible

(CCR § 15091)
Findings of Fact (cont.)

• Finding must be made for each significant effect
• Facts explain rationale behind the finding
• MMRP need not be in EIR, but must be adopted with project approval
• Mitigation measures become conditions of approval
Statement of Overriding Considerations

• Statement needed for approval of project with remaining significant effects (CCR § 15093)
  – Reasons to approve a project where significant impacts are not avoided or substantially lessened
  – Reasons can be economic, legal, social, technological or other, including region-wide or statewide environmental benefits
  – These reasons “outweigh” the unavoidable adverse environmental effects
  – Supported by substantial evidence in the record
Is the CEQA approach appropriate?

- If a categorical exemption:
  - the project fits within the exemption
  - There are no “unusual circumstances”

- If an ND/MND:
  - the initial study includes sufficient analysis to support its conclusions
  - There is no fair argument for a significant impact

- If an EIR:
  - all the required EIR parts are there
  - it provides a “good faith” effort at disclosure
Planning Commissioner: What to Look for

Draft and Final EIR:

• the analysis is objective

• the project description is consistent across the environmental issues

• There is more than one alternative analyzed
  – the alternatives reduce or avoid one or more project impacts

• CEQA comments have been responded to

• Any mitigation or alternatives suggested by commenters have been addressed in the written responses to comments
Is the mitigation adequate?

• There’s a mitigation measure for each potentially significant impact
  – *If not, there’s a reasonable explanation of why mitigation is infeasible*

• The mitigation measure fits the significant impact
  – *The mitigation addresses an impact of this project*
  – *It’s proportional to the project’s share of the impact*

• Specific enough to implement as conditions of approval
  – *Who, what, where, when, and how*
Planning Commissioner: What to Look for

When the Commission has the final decision on a project:

• For a project determined to be exempt, you should be comfortable with the exemption before approving the project.

• You should be satisfied with the adequacy of the CEQA document before adopting a Neg Dec, or certifying an EIR with the related findings.
  
  – *It isn’t your role to write the CEQA document*
  
  – *It is your role to review it for adequacy*
Questions?