California Environmental Quality Act
Part 1: CEQA Basics

California Preservation Foundation
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Overview of CEQA

California Environmental Quality Act (CEQA)

- Principal statute mandating environmental assessment of projects in California
- Enacted in 1970
- Part of Public Resources Code (PRC) Sections 21000 et seq.
- CEQA Guidelines = regulations

  California Code of Regulations (CCR),
  Title 14, Chapter 3, Sections 15000 et seq.
- Binding on state and local agencies

CEQA's purpose:

- Evaluate whether proposed projects may have a significant impact on the environment
- Establish whether environmental impacts can be reduced or avoided by pursuing alternatives or through mitigation.

CEQA's goals:

- Develop and maintain a high-quality environment now and in the future
- Ensure that California's public agencies
  1. Identify the significant environmental effects of their actions
  2. Avoid and/or mitigate those effects where feasible

CEQA applies to "projects"

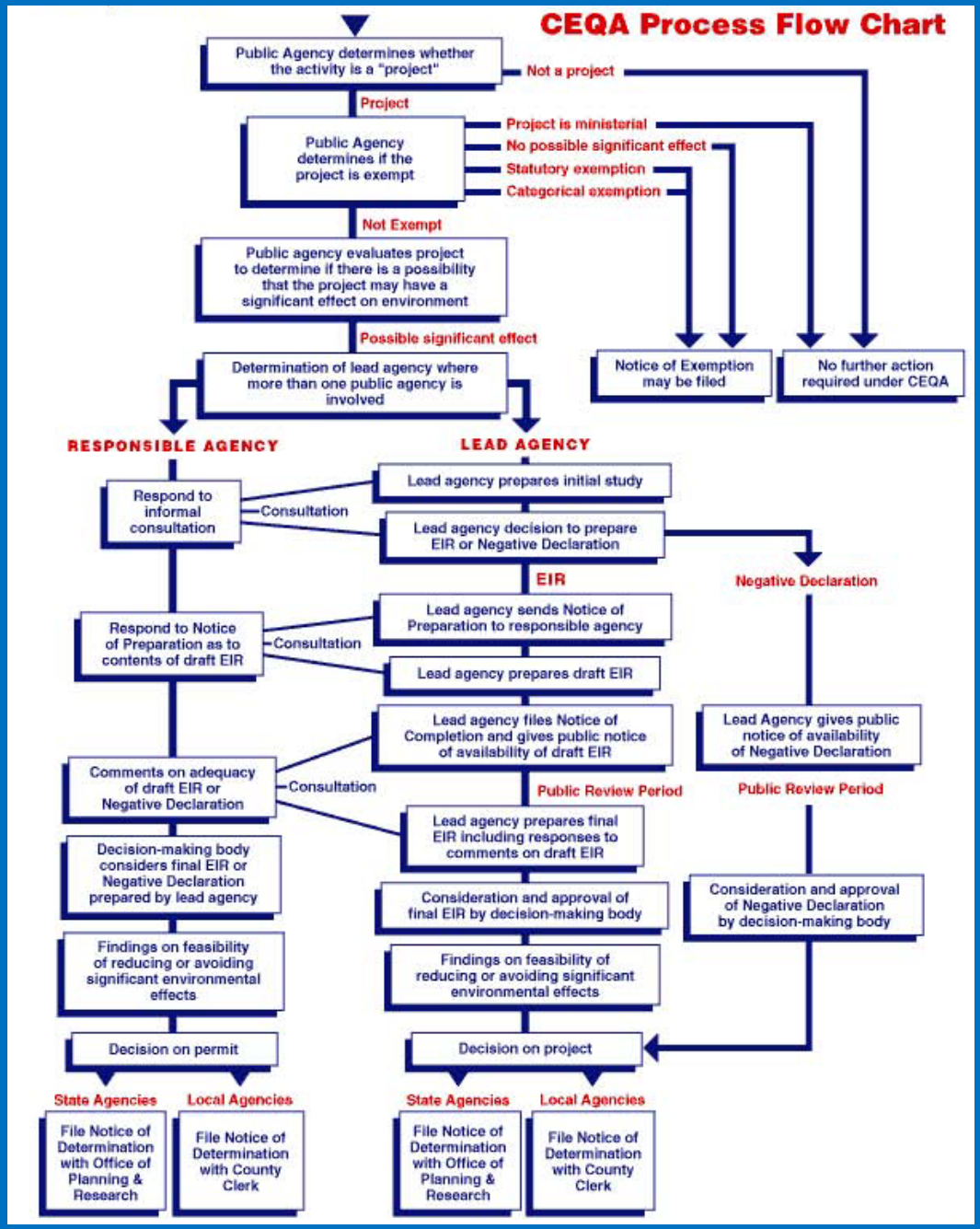
- Actions undertaken or requiring approval by state or local public agencies
- Actions that have potential to physically impact the environment – directly or indirectly
- "Whole of an action" – not segments of an activity or series of related activities

CEQA's three basic questions:

Is the activity a project, as defined under CEQA?

Is the project exempt from CEQA?

Will the project have a significant effect on the environment?



http://resources.ca.gov/ceqa/flowchart/index.html

CEQA Exemptions

- Statutory Exemptions

  Ministerial (not discretionary) Projects

  Emergency Projects

  Many specific situations (see 14 CCR 15260)

- Categorical Exemptions

  Specific types of projects assumed to have no significant impacts (14 CCR 15300)

  Projects that meet the Secretary of Interior's Standards for the Treatment of Historic Properties

Ministerial vs. Discretionary Projects

Ministerial project

- conformance with fixed standard or objective measurement
- requires little or no personal judgment by a public official
- conforms with applicable zoning and building code requirements

Discretionary project

- requires exercise of judgment or deliberation by a public agency to determine project approval / issuance of permit

Projects with both types of actions are considered discretionary

CEQA Environmental Review

Preliminary Review – identify project and whether project is exempt

Initial Study (IS) - identify potential environmental impacts

Three Potential Environmental Review Documents

- Negative Declaration (ND)
- Mitigated Negative Declaration (MND)
- Environmental Impact Report (EIR)

Public Review / Input

Lead Agency Findings and Decision

- CEQA is a process – emphasizes disclosure, analysis, assessment, and feasible mitigation
- CEQA compliance ensured through judicial system – case law / rulings affect process
- No central enforcement / reviewing agency
- Areas and levels of expertise are important
- Findings must be supported by “substantial evidence”
- Timelines for review / input are crucial
- Impacts can be direct, indirect, or cumulative

CEQA Environmental Review

Initial Study

- Detailed information in Appendix G Checklist – includes Cultural Resources
- Lead agency must weigh *fair argument* in concluding whether to proceed with ND or EIR
- Provides focus on potential significant effects to be addressed in MND or EIR
- IS not as detailed as EIR
- IS does not have to consider alternative plans

CEQA Environmental Review

Initial Study

"Fair Argument " pertains to requirement for Lead Agency to prepare EIR

- EIR is to be prepared if Lead Agency is presented with a fair argument that a project may have a significant effect on the environment
- Argument must be based on substantial evidence in light of the whole record
- Lead Agency has discretion to not prepare an EIR if it has sufficient substantial evidence in contrast to fair argument

CEQA Environmental Review

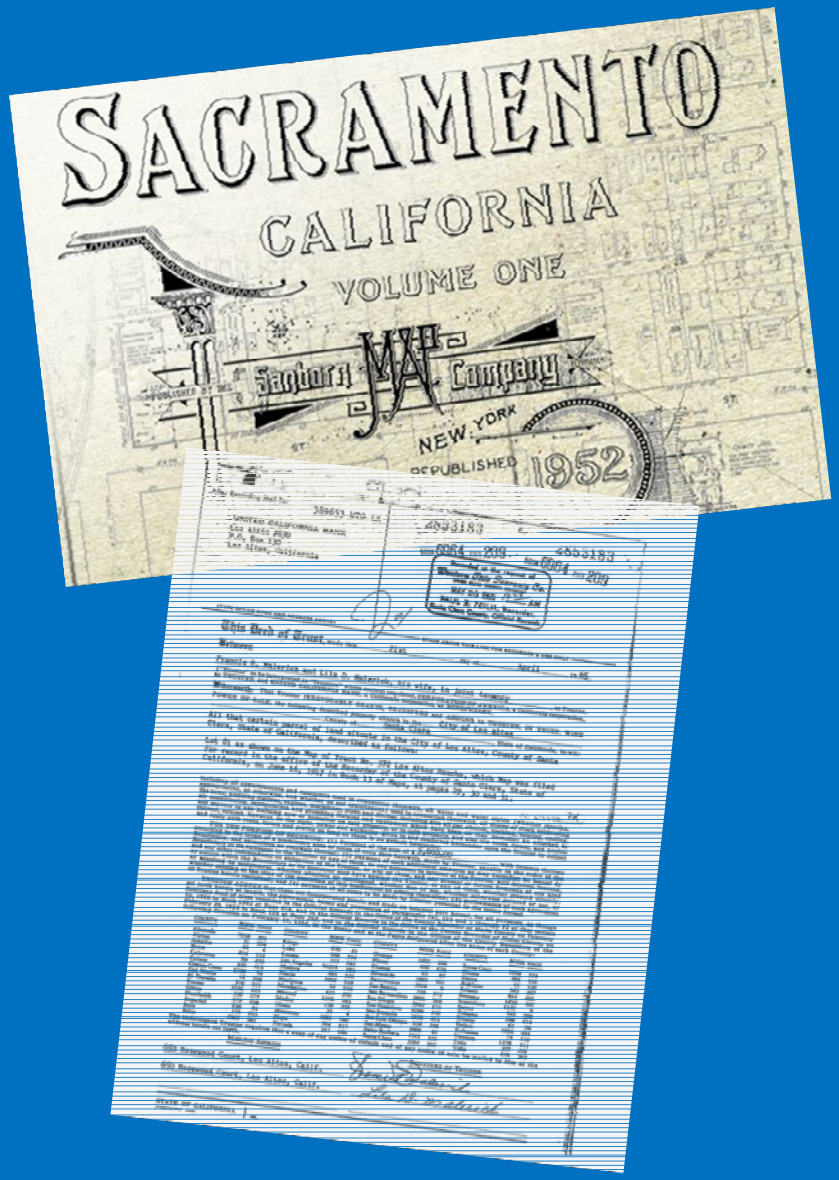
Substantial Evidence

- Standard used to support ND / MND / EIR findings
- Facts / Expert opinion supported by facts
- Not:

  Speculation

  Unsubstantiated opinion / narrative

  Socioeconomic impact not linked to physical environment



CEQA Environmental Review

Negative Declarations / Mitigated Negative Declarations

ND = no significant impact

MND = less than significant impact with mitigation or revisions to project plans

Both require standard of substantial evidence of no significant impact

Mitigation may not be deferred

Written comments received and addressed

Public hearing is not required

New streamline environmental review similar to ND

CEQA Environmental Review

Environmental Impact Reports

- Notice of Preparation / public comment / possible scoping meeting
- Draft EIR – most important document in process

  DEIR and technical reports present analysis and findings

  Lead agency receives written public input / comment – often includes public hearing
- Final EIR prepared – response to comments
- Monitoring program adopted
- Lead Agency makes decision on project ⟶ certification

CEQA Environmental Review

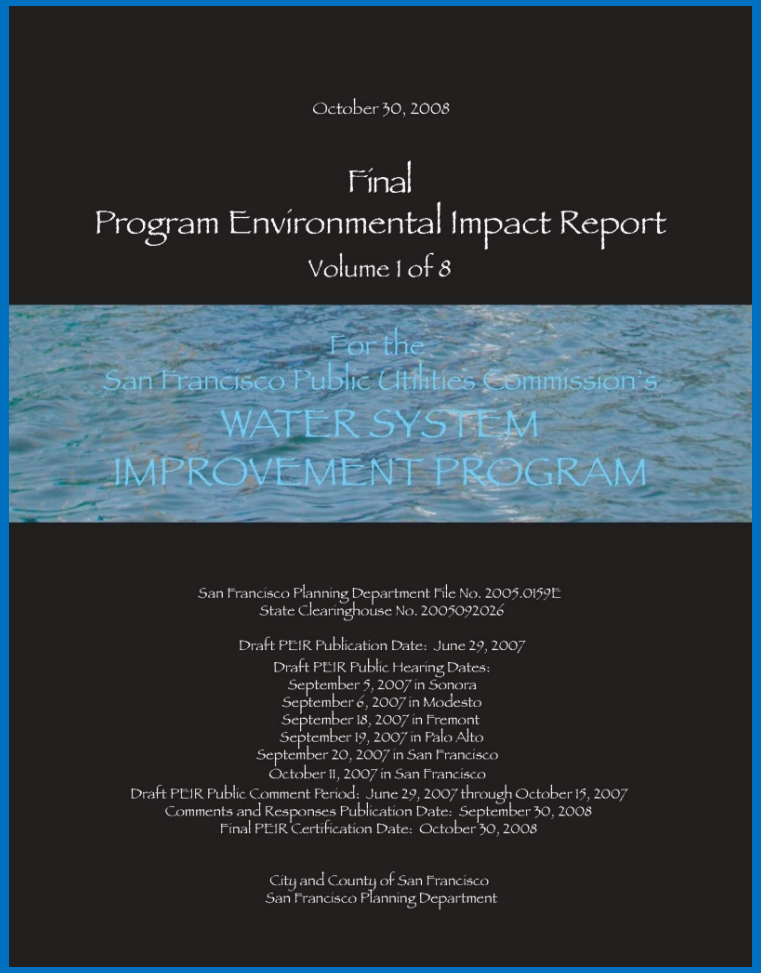
Environmental Impact Reports

Prepared for:

- Specific Project
- Plan / Policy / Program
- Supplement previous EIR

EIRs can be tiered –
e.g., Program EIR with later project-specific EIR

EIRs prepared along with federal environmental compliance documents – e.g., EIR / EIS



CEQA Environmental Review

Environmental Impact Reports

Include reasonable range of alternatives

- No Project and
- Others that meet most basic objectives, but that would avoid or substantially lessen significant effects

EIR compares merits of alternatives

No obligation to consider every possible alternative or alternatives that are not feasible

Alternatives can be analyzed in less detail than project

CEQA Environmental Review

Environmental Impact Reports

Statement of Overriding Considerations

- Lead Agency elected officials approve project that causes significant unavoidable impact on the environment
- Finding – benefits outweigh significant impacts
- Written statement supported by substantial evidence in the record providing reasons re: economic, legal, social, technological, or other benefits

CEQA Environmental Review

Administrative Record

- Record used by decision makers
- Important in legal proceedings
- Includes technical studies, supporting documents, research, communications

CEQA and Historic Preservation

CEQA and Historic Preservation

CEQA applies to non-exempt projects that may impact historic buildings, structures, objects, sites, and districts (including archaeological resources)

Presence of historical resource does not trigger specific level of environmental review

CEQA and Historic Preservation

Two basics steps:

- Identify what is historically / culturally significant
- Establish what can be done to preserve historically / culturally significant resources

CEQA and Historic Preservation

CEQA Participants:

Public Agencies	• State and/or Local Agencies • Lead Agency and Responsible Agency • Decision Making Governmental Body – often City Council / Board of Supervisors • Planning Department / Planning Commission • Historic Preservation Commission / Landmarks Board • Other relevant agencies - Public Works or Housing Dept
Project Applicants	• Project Proponents that Lead Agency is requiring to comply with CEQA
Consultants	• Professional Qualified Historians, Architectural Historians, Historic Architects, and Archaeologists (experts)
Public	• Historic preservation advocates • Individuals interested in development and historic preservation

CEQA and Historic Preservation

Step 1: What is historically significant?

- Identify Historical Resource(s), as defined under CEQA

Step 2: Establish what can be done

- Impacts assessment
- Identification of avoidance and/or mitigation
- Provide input in decision making process

Identification of Historical Resources

Identification of what is historically / culturally significant

"Historical Resource" defined in:
- CEQA Guidelines §15064.5
- PRC 5020.1 and 5024.1

Historical resources can be:
- Buildings
- Structures
- Objects
- Sites
- Districts
- Archaeological Resources

Lead Agency concludes whether resources are "historical resources"

Historical Resources are:

- Resources listed in or eligible for listing in the California Register of Historical Resources (CRHR)
- Resources listed in, or determined to be eligible to be listed in CRHR by State Historical Resources Commission
- Unique archaeological resources (Section 21083.2)
- Resources automatically listed in CRHR:
  1. Resources listed in or formally determined eligible for listing in the National Register of Historic Places (NRHP)
  2. California State Landmark No. 770 and above

Other historical resources:

- Resource listed in a qualified local register of historical resources
- Resource identified as significant in a qualified historic resource survey
  1. Survey is or will be included in the State Historic Resources Inventory
  2. Survey prepared in accordance with OHP procedures / requirements
  3. Resource evaluated and determined by OHP to have a significance rating of Category 1 to 5 on DPR 523 Form
  4. Surveys more than five years old need to be updated

Lead Agency must treat these resources as significant, unless the preponderance of evidence demonstrates that such resources are not historically or culturally significant

California Register of Historical Resources

- NRHP Criteria and CRHR Criteria are very similar
- OHP guidance advises use of National Register Bulletin 15 for interpreting CRHR Criteria
- Resource must have historic significance and historic integrity
- Differences between NRHP and CRHR
  1. Interpretation of Historic Integrity
  2. Special Considerations / Criteria Considerations

California Register of Historical Resources

A resource must be significant at the national, state or local level and meet at least one of the following:

Criterion 1: associated with events that have made a significant contribution to the broad patterns of local or regional history, or the cultural heritage of California or the United States

Criterion 2: associated with the lives of persons important to local, California, or national history

Criterion 3: embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of a master or possesses high artistic values

Criterion 4: has yielded, or has the potential to yield, information important to the prehistory or history of the local area, California, or the nation

Integrity: Location, Setting, Design, Materials, Workmanship, Association, and Feeling

Special Considerations – Moved Bldgs; Less than 50; Reconstructions

Identification of Historical Resources

- Providing substantial evidence is crucial
- Applying criteria (for built environment) involves:
  1. Establishing appropriate historic context
  2. Providing justification about why resources is significant within that context
  3. Assessing whether resource has physical features that convey its significance, i.e. historic integrity
- Research / Inventory
  1. More than records search and reviewing previous reports
  2. Examine primary and secondary sources
  3. Consult interested parties
  4. Site visit / photographs
  5. Standard = preparation of DPR 523 forms
  6. Important to identify boundaries and character-defining features

Impacts to Historical Resources

- Impact = substantial adverse change
- Analysis of impacts to historic integrity
  1. assessment of whether historical resource will be materially impaired
  2. physical demolition / destruction
  3. alteration of the resource or its immediate surroundings
- Assessment of project's conformance with Secretary of Interior's Standards for the Treatment of Historic Properties
- Impacts can be direct, indirect, or cumulative

Demolition of a historical resource cannot be mitigated to a level that is less than significant (requires EIR)

Destruction of archaeological site does not necessarily require EIR

Reduce / Avoid / Mitigate Impacts to Historical Resources

- A project that follows the Secretary of the Interior's Standards for the Treatment of Historic Properties . . . shall be considered as mitigated to a level of less than a significant impact on the historical resource
- Lead Agency shall identify potentially feasible measures to mitigate significant adverse changes
- Adopted mitigation:
  1. fully enforceable through permit conditions, agreements, or other measures.
  2. reduces project impact

Reduce / Avoid / Mitigate Impacts to Historical Resources

Some possible mitigation measures:

- Documentation – HABS / HAER, oral histories
- Resource interpretation – displays, signage, plaques
- Educational materials – exhibit, report, brochure, website
- De-construction and salvage
- Moving historical resource

Documentation alone (historic narrative, photos, drawings) usually will not mitigate impacts to a level that is less than significant

Where is pertinent information?

Historical Resources information and analysis is in:

- IS Cultural Resources Section in Appendix G
- ND or MND Cultural Resources Section
- Draft EIR Cultural Resources Section
- Technical Reports regarding historical resources / archaeological resources
- Comments and Response to Comments in Final EIR

Keep In Mind

For advocating regarding historic preservation:

- Know location of pertinent information and analysis
- Know what / when re: review and input opportunities

CEQA is intended to:

1. Encourage open government / public involvement
2. Make projects less environmentally damaging
3. Ensure evidentiary basis for decisions

CEQA downsides:

1. Project specific focus can avoid larger issues regarding long term outcomes for historical resources
2. Projects that demolish historical resources can (and do) get approved – based on political support for historic preservation

OHP's role in CEQA is limited

1. OHP can comment, but this is advisory
2. SHPO's largest role is review of actions state agencies take affecting their own historical resources

When providing input regarding historical resources, consider:

- Adequacy of analysis and/or expertise
- Focus on relevant issues that decision makers will consider as support
- Examine alternatives
- Avoid irrelevant factors
  1. Unsubstantiated opinion
  2. Economic / social effects not related to physical effects
  3. Speculative physical changes to environment

Questions / Comments