

Overview: The Basics of CEQA

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CEQA and Historic Preservation: A 360 Degree View

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CEQA Purpose and Goals

First: What is CEQA?

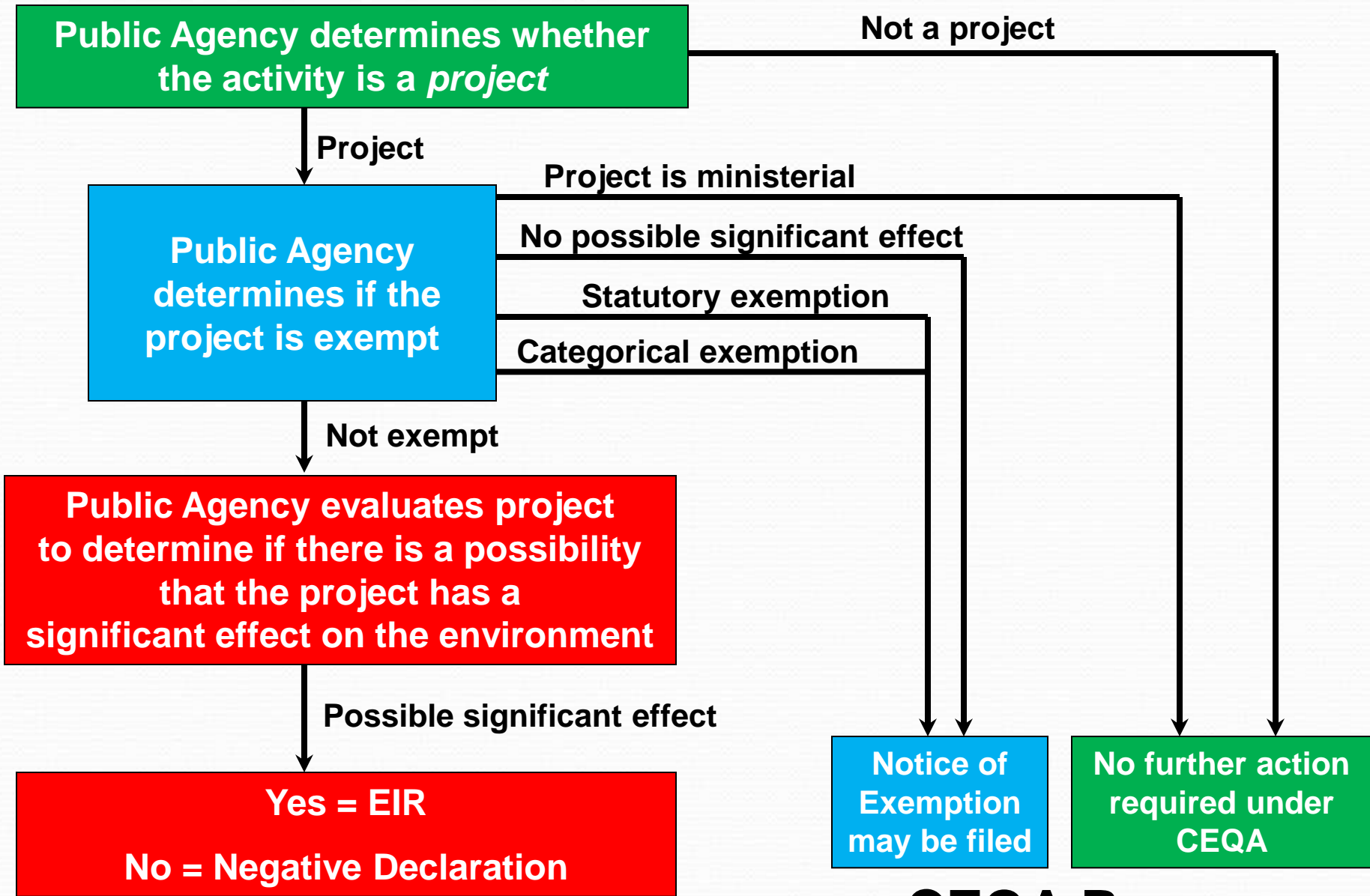
- *California Environmental Quality Act*: Is a state law that applies to discretionary actions by agencies (state, regional, local) subject to California jurisdiction:
 - This amounts to thousands of projects each year
- It requires disclosure of potential significant impacts of an action prior to approval
- It requires mitigation of any significant impacts after approval

What Are CEQA's Objectives?

- Disclose to decision makers and public significant environmental effects of proposed activities
- Identify ways to avoid or reduce environmental damage
- Prevent environmental damage by requiring implementation of feasible alternatives or mitigation
- Disclose to public reasons for agency approval of projects with significant environmental effects
- Foster interagency coordination in project review
- Enhance public participation in the planning process

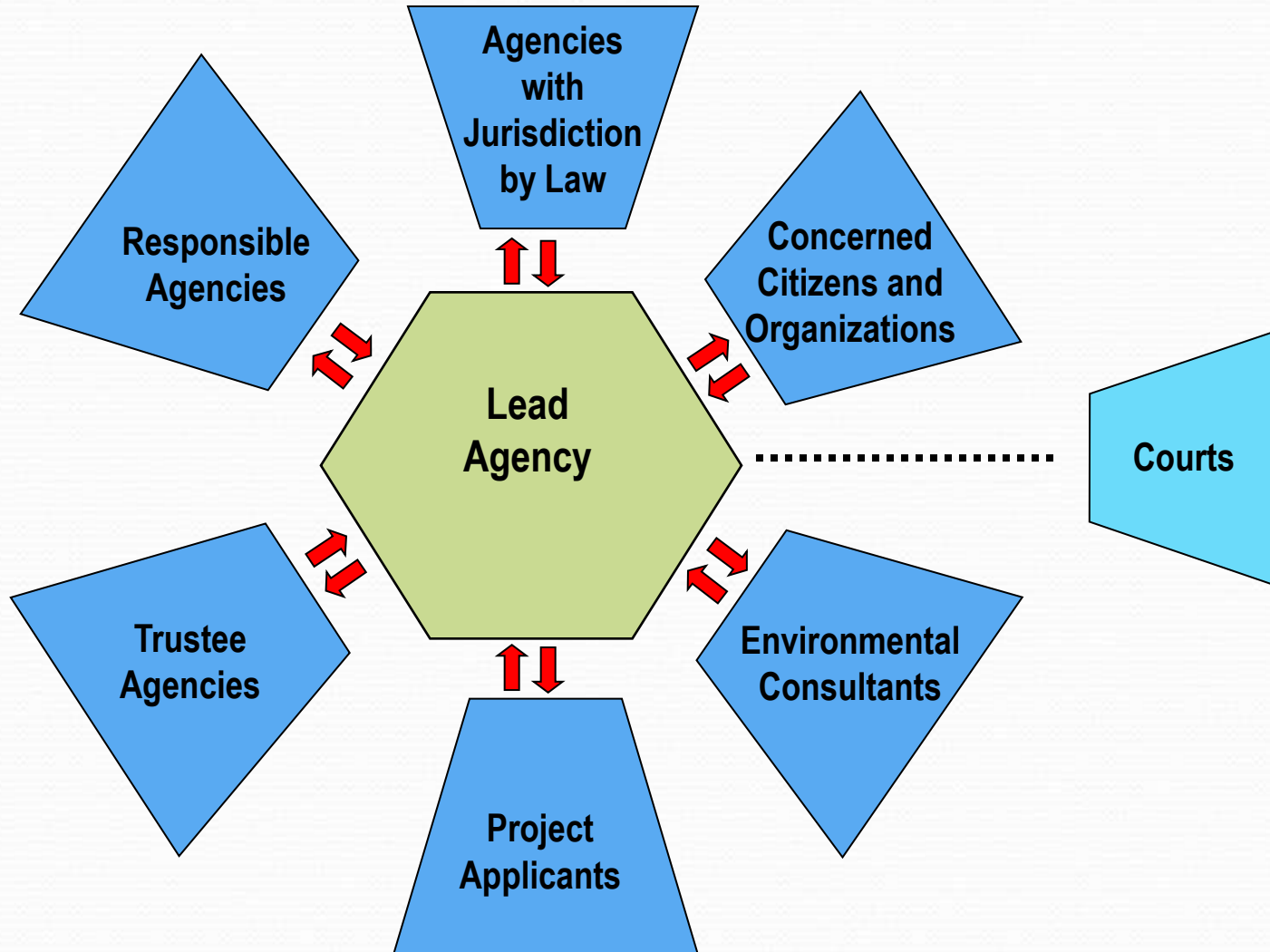


The
Who's Who
Of CEQA



CEQA Process Flow Chart

Key Participants





What is a “Project”
under CEQA?

Discretionary v. Ministerial

- CEQA applies to discretionary projects
 - Examples: General Plan action, rezoning, development agreement, Conditional Use Permit, variance
 - Environmental analysis required prior to final action
- CEQA *doesn't* apply to ministerial projects:
 - Decision involves “little or no personal judgment by the public official as to the wisdom or manner of carrying out the project” (ex: dog license, building permits in some jurisdictions)
 - No environmental analysis is required

What is the “Project”?

- (a) “Project” means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and that is any of the following:
 - (1) An activity directly undertaken by any public agency including ... enactment and amendment of zoning ordinances, and the adoption and amendment of local General Plans or elements thereof

Or...

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

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

- CEQA Guidelines Section 15378(a)



Is the Project
Exempt from
CEQA?

Categorical Exemptions

- 33 Classes – typically innocuous projects
 - Categorical exemptions have exceptions including when historic resources are *adversely* affected (CEQA Guidelines Section 15300.2)
 - “Mitigated exemption” is not allowed
- Class 31 – Projects involving historical resources consistent with the *Secretary of Interior’s Standards for the Treatment of Historic Properties*

Statutory Exemptions

- Created by Law - limited by their own terms.
 - Some are broad, some are narrow.
 - Emergency exemption
 - “Common Sense Exemption”
 - when it can be seen with certainty that there is no possibility that the activity may have a significant effect on the environment. (CEQA Guidelines Section 15061(b)(3).)



The Initial Study

Initial Study

- If a project doesn't qualify for an exemption...
- Initial study helps determine significance of impact
 - No significant impacts = MND or ND
 - Possible significant impacts = EIR
- CEQA Guidelines Appendix G is the model IS checklist

Appendix G Questions

CULTURAL RESOURCES. Would the project:

- a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?
- b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?
- d) Disturb any human remains, including those interred outside of formal cemeteries?

Answers – Choose one.

- Potentially Significant Impact
 - Project may significantly affect the resource
- Less Than Significant With Mitigation Incorporation
 - Specific mitigation avoids the significant impact
- Less Than Significant
- No Impact

Supporting Documentation

- There must be no “naked checklists”
 - CEQA requires analysis, not just conclusions
- The Initial Study can include:
 - Archaeological survey
 - Historical resources assessment
 - Air quality analysis, biological survey, traffic analysis, etc.
- Depends on the project being analyzed



“Fair Argument”

And

“Substantial
Evidence”

An EIR is required when...

- It can be *fairly argued*, based on *substantial evidence*, in light of the whole record, that a project *may have* a significant environmental effect
- “Fairly argued” = there is evidence of the potential for impact in the administrative record before the agency
- “May have” means that the evidence need not be absolute or unequivocal
- Compliance with a regulatory standard does not create a presumption that there is no fair argument

Fair Argument

- Anyone may introduce this evidence
 - Lead agency, responsible agency, public, etc.
- What if there's competing evidence that the project will not have an impact?
 - Fair argument requires preparation of an EIR

Substantial Evidence Is

- Facts
- Reasonable assumption predicated on facts
- Expert opinion supported by facts

Substantial Evidence Is Not

- Argument
- Speculation
- Unsubstantiated opinion or narrative
- Clearly inaccurate or erroneous information
- Socioeconomic impact not linked to physical environmental impact



Summary of NDs, MNDs, and EIRs

ND or MND

- Two sides of the same coin
 - A finding that the proposed project would not have significant adverse environmental impacts
- ND used when the project would have no significant impacts
- MND used when mitigation would reduce below the level of significance

Mitigation

- Specific actions to address the project's impact
- Methods of mitigation:
 - Avoid
 - Reduce
 - Minimize
 - Rectify
 - Compensate

Mitigation Measures

- For each potential significant impact, the CEQA document must identify one or more feasible mitigation measures:
 - If no mitigation is feasible, explain why
 - If mitigation is infeasible, an EIR is required
- Mitigation measures must be fully enforceable
- Mitigation measures are not limited to the lead agency's jurisdiction:
 - Off-site mitigation measure may be required
 - Measures may be undertaken by another agency

ND or MND Procedures

- Proposed ND or MND and initial study must be circulated for public review
 - 20-day review period
 - 30-day period if submitted to State Clearinghouse
 - Lead agency must *consider* the comments received
- Project cannot be approved unless ND or MND is adopted by the lead agency
- If approved:
 - Adopt mitigation monitoring/reporting program
 - File Notice of Determination (begins 30-day statute of limitations)

Environmental Impact Report

- Steps:
 - Prepare Initial Study
 - Send out Notice of Preparation (30-day review period)
 - Hold a scoping meeting
 - Prepare Draft EIR, send out public notice and release DEIR for a 30- to 45-day period
 - Prepare a Final EIR, responding to DEIR comments
 - Certify the FEIR
- If project's approved:
 - Adopt findings, statement of override, MMRP
 - File Notice of Determination

Draft EIR – bigger than an MND

- Basic Draft EIR Contents:
 - Project description,
 - Environmental settings
 - Impact analyses
 - Significance determinations
 - Feasible mitigation measures, if any
 - Analysis of project alternatives
- Final EIR adds:
 - Written responses to comments
 - Any revisions to the DEIR

EIR Findings and MMRP

- Findings describe the disposition of the significant impacts identified in the EIR
- Three possible findings:
 - Impact is being mitigated
 - Impact will be mitigated by another agency
 - Impact mitigation is infeasible and alternatives not selected are infeasible
- Statement of Overriding Considerations
- MMRP – program to ensure implementation of MMs

File Notice of Determination

- Lead Agency files an NOD within 5 days of project approval.
- When NOD's filed, sets challenge period on EIR and project as 30 days.
- If no NOD filed, the challenge period is 180 days.