

CEQA 101: Introducing the California Environmental Quality Act

Ken Bernstein
June 2017



California Environmental Quality Act (CEQA) Background

- Enacted 1970; modeled after NEPA (1969)
- Purposes:
 - Prevent significant, avoidable damage to the environment
 - Foster informed public decision making
 - Ensure transparency in governmental decision making process
 - Encourage public participation



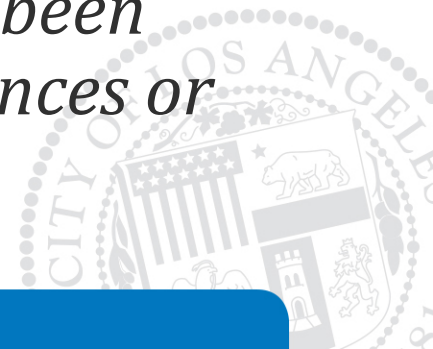
CEQA Introduction

- Applies to all governmental agencies
- Public projects and private development
- Disclosure and informational law – does not dictate outcomes
- Multidisciplinary
- Requires disclosure of environmental impacts; decisionmakers to consider environmental implications in their actions
- Historic resources



When does CEQA apply?

- Must be a “project”
 - the “whole of the action” – the activity approved by the public agency, not each individual permit or approval
- Requires a discretionary approval by an agency
- Discretionary: *“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 statutes, ordinances or regulations.”*



When does CEQA NOT apply?

- “Ministerial” action – no real decision by the agency or
- No possibility of a significant environmental effect or
- Projects rejected or disapproved by public agency



Discretionary vs. Ministerial

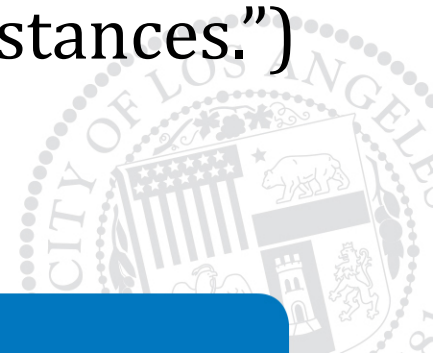
- “Discretionary” Actions
 - Subdivision Maps
 - Conditional Use Permits
 - Zone Changes
 - Community Plans
- Ministerial Actions
 - Demolition Permits
 - Building Permits



Some Projects Are “Exempt”

Two types of exemptions:

- Statutory (granted by the legislature) (*e.g.* specific projects, emergency projects)
- Categorical (determined by the Resources Agency) (*e.g.*, existing facilities, replacement or reconstruction)
 - Additional requirements – (*i.e.*, may not apply if project will cause significant effect on environment due to “unusual circumstances.”)



Examples of Categorical Exemptions

- Existing facilities
- Reconstruction
- Small structures
- Minor alterations to land
- Actions by regulatory agencies for natural resources protection
- Actions by regulatory agencies for protection of the environment
- Inspections
- Accessory structures
- Surplus property sales
- Minor additions to school



Types of CEQA Documents

- If project is not exempt, lead agency must determine what type of document to prepare.
- Agency prepares Initial Study to determine level of impacts
- Negative Declaration (or Mitigated Negative Declaration) (ND or MND)
- Environmental Impact Report (EIR)



Significant Effect?

- “Significant effect on the environment”: a substantial or potentially substantial adverse change in the physical conditions of the area.
- Based on **substantial evidence** in the record – scientific and factual data
- Significance “normally” measured against existing “physical environmental conditions” – “baseline”



Fair Argument Standard

- EIR required if fair argument exists that a project may have a significant effect on the environment
- Fair argument must be backed by “substantial evidence”: studies, supporting documentation from experts
- Doesn't include argument, speculation, unsubstantiated opinion,
- Generally does not matter how much evidence supports the opposite conclusion of less than significant



ND/MND Process

- Notice of Intent to Adopt
- 20 or 30 day public review
- No public hearing necessary for CEQA
- Public comments must be considered.
- No written response to comments required
- Project approval
- File Notice of Determination



What is an EIR?

- The “heart of CEQA” (*Laurel Heights Improvement Assn. v. Regents of the U.C.* (1993))
- Required elements of EIR include:
 - Project description
 - Discussion of [significant] environmental impacts
 - Analysis of impacts (measured against baseline)
 - Alternatives to the Project
 - Mitigation Measures
 - Discussion of cumulative impacts



Mitigation and Alternatives

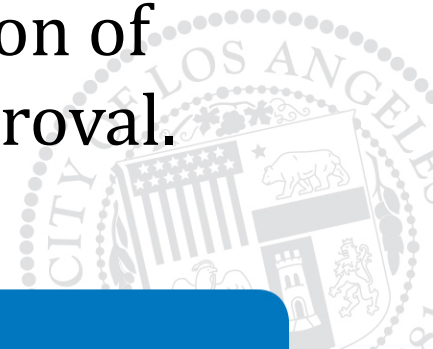
“A public agency should not approve a project as proposed if there are **feasible alternatives or mitigation measures** available that would substantially lessen any significant effects that the project would have on the environment.”

– CEQA Guidelines



Mitigation Measures

- “Mitigation Measure” is an action or change to the project that reduces or avoids some impact on the environment (including actions that completely avoid an impact)
- Must be:
 - devised for each significant impact identified in EIR
 - enforceable
 - roughly proportional” to the impact of the project
- In general, improper to defer the formulation of mitigation measures until after project approval.



Alternatives

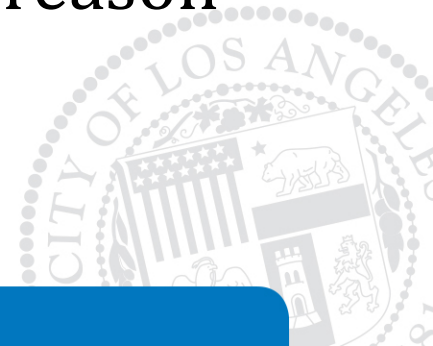
“An EIR shall describe a **range of reasonable alternatives to the project, or to the location of the project**, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.”



What Are Appropriate Alternatives?

In range of alternatives, lead agency must include:

- Only “feasible” alternatives (economic, practical, legal)
- Alternatives that would achieve most of the project’s basic goals and objectives
- Alternatives that would reduce at least one impact
- “No project” alternative
- Range of alternatives governed by “rule of reason”



Public Participation

- Opportunities for public participation at every stage
- Two main opportunities for comments; during comment period on environmental document and before the close of the hearing on project
- Sometimes “scoping” meeting; or comments on Notice of Preparation for EIR
- Possibility of litigation
- “Exhaustion of administrative remedies” prerequisite to lawsuit



Approving the Project

After circulating Draft EIR, agency must:

- Evaluate and respond to all comments
- Prepare Final EIR
- Certify Final EIR
- Make findings concerning significant impacts
- Approve (or reject) the project
- If necessary, issue a Statement of Overriding Considerations



Applying the CEQA Basics: CEQA and Historic Resources



Key Questions for CEQA & Historic Resources

1. Does CEQA apply?: Is it a “project”?
2. Identification: **Is there a “Historical Resource”** as defined by CEQA?
3. Impacts: If there is a resource, **would the project cause a substantial adverse change** in the significance of the resource?



First, is it a “Project?”

- “Project” is any activity that could cause direct or indirect change in the environment
- CEQA applies to “discretionary” actions by government
- Not “ministerial”
- Demolition in many cities often ministerial; not subject to review



Second: Is there a “Historical Resource?”

- In CEQA Statute and Guidelines, “Historical Resources” include properties **listed in or formally determined eligible** for listing in the California Register of Historical Resources
- (Note: all properties formally determined eligible for the National Register of Historic Places are thereby listed in the California Register and are historical resources pursuant to CEQA)



Additional Categories of “Historical Resources”

- “Historical Resources” also include properties:
- **Listed in an adopted local historic register** (for City of L.A., that means designated Historic-Cultural Monuments, contributing structures in HPOZs) OR
- **Identified as significant in a historical resource survey** meeting minimal requirements
- Public agencies must treat these resources as significant unless a preponderance of evidence demonstrates otherwise (clear errors, past demolition, etc.)



Other “Historical Resources”

- Even if a property is **not** already listed, determined eligible, or identified in a survey, it may still be a historical resource
- Lead agency needs to consider carefully whether the property may contain historical resources – even if they haven’t previously been identified



So, you have a “Historical Resource”...

- Triggers the third question:
- Would the project cause a “**substantial adverse change** to the **significance** of an historical resource?”



What is a “substantial adverse change?”

- **“Physical demolition, destruction, relocation or alteration** of the resource or its immediate surroundings such that the **significance** of an historical resource would be **materially impaired.**”
- Significance is “materially impaired” when a project **“demolishes or materially alters in an adverse manner those physical characteristics of an historical resource that convey its historical significance”** and that justify its inclusion in the California Register, local register or historic resource survey.



If the proposed project will not cause a substantial adverse change...

- A Mitigated Negative Declaration or categorical exemption would be appropriate
- CEQA Guidelines make available a categorical exemption for projects consistent with Secretary of the Interior's Standards for the Treatment of Historic Properties
- CEQA considers historical resource impacts to be fully mitigated if project conforms to the Standards
- Converse not always true: lack of strict compliance with all 10 Standards may or may not “materially impair” significance



Options to Mitigate Potential Impacts

- Demolition **cannot** typically be fully mitigated through documentation (photos, drawings) of the historic structure
- Can **reconfigure or redesign** project to avoid demolition or major alteration of the resource
- **Relocation:** may move a resource to avoid demolition and avoid impacts
- New location should be compatible with original character and use; resource should retain its historic features, compatibility of orientation, setting & general environment



Without these mitigation measures...

- An EIR will be required to study and analyze the significant historical resource impacts
- The alternatives analysis is particularly critical on historic resource EIRs
- Need to analyze feasibility of preservation alternative(s)
- Provides information to preservation advocates; time and opening for advocacy

