

# CALIFORNIA ENVIRONMENTAL QUALITY ACT

May 21, 2025

# OVERVIEW

- ❖ What is CEQA and what is the purpose
  - ❖ Key Concepts
  - ❖ Levels of Environmental Review
  - ❖ Public Comments
  - ❖ Findings/Statements of Overriding Consideration/Approvals
  - ❖ What to look for when reviewing an environmental document
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# WHAT IS THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA), enacted in 1970, is a statute that requires state and local agencies to identify the significant environmental impacts of their actions and to avoid or mitigate those impacts, if *feasible*\*.

\*Be careful of this word. Mitigation is rarely infeasible. Should read “if possible”.

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# PURPOSE OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

- ❖ To provide objective information regarding the environmental consequences of a proposed *discretionary* project to the decision-makers who will be reviewing and considering the project.
  - ❖ To provide the public and applicable regulatory agencies the ability to participate in the public decision-making process and comment on the environmental effects of a proposed project (based on established thresholds).
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# PURPOSE OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

- ❖ Evaluate the change between existing conditions and the proposed project conditions.
  - ❖ Reduce or avoid the environmental effects of a project, if possible.
  - ❖ Allow for the approval of beneficial projects even when impacts are significant and unavoidable.
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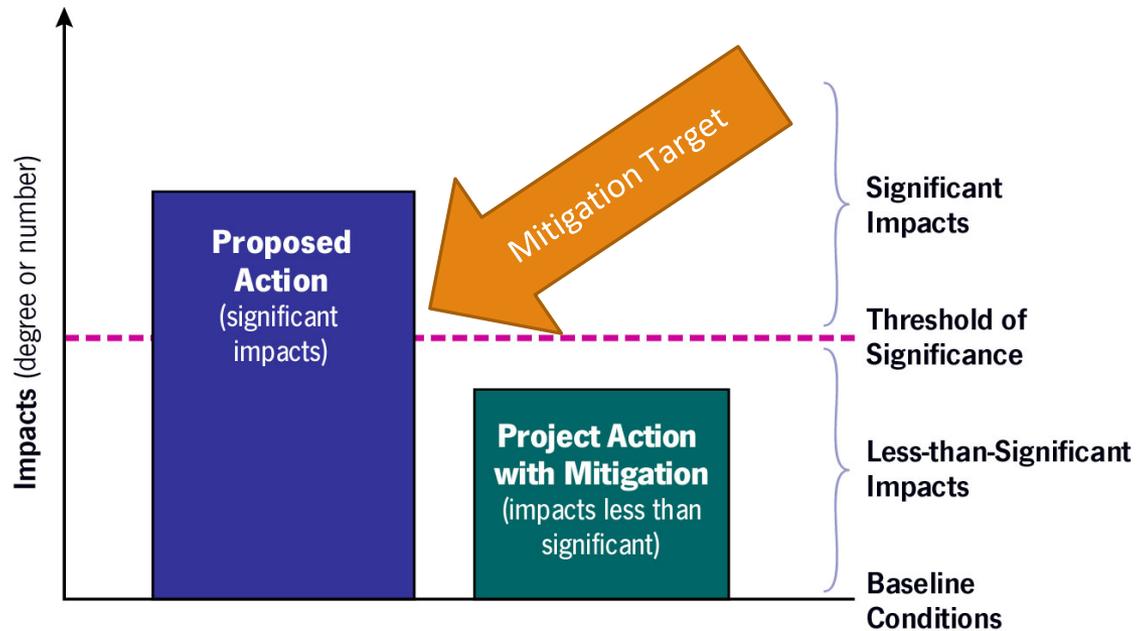
# KEY CONCEPTS - BASELINE

- ❖ Most often the existing conditions
  - ❖ “Frozen” at the start of the process
    - Conditions at the start of the Initial Study process
    - Conditions at the time the Notice of Preparation is published for an EIR
  - ❖ It is critical to understand the “change” resulting from the project
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# KEY CONCEPTS - THRESHOLDS

- ❖ Thresholds are a standard against which impacts are measured
  - ❖ Should be agency specific
  - ❖ Often agencies use Appendix G (Checklist) rather than adopt their own
  - ❖ Can come from outside CEQA
  - ❖ How are they determined?
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# UNDERSTANDING THRESHOLDS



# KEY CONCEPTS - MITIGATION

What is a Mitigation Measure?

<b>Avoid</b>	Avoid the impact altogether by not taking certain action or parts of an action
<b>Minimize</b>	Minimize impacts by limiting the degree or magnitude of the action and its implementation
<b>Rectify</b>	Rectify the impact by repairing, rehabilitating, or restoring the affected environment
<b>Reduce or Eliminate</b>	Reduce or eliminate the impact over time through preservation and maintenance during the life of the action
<b>Compensate</b>	Compensate for the impact by replacing or providing substitute resources or environments

# MITIGATION 101

- ❖ Must clearly state the required action or level of performance that is necessary to mitigate.
  - ❖ Must be *objectively* measurable and enforceable.
  - ❖ Must explain how the measure would mitigate.
  - ❖ Must clearly state conclusion of effect after mitigation.
  - ❖ Substantial evidence must support determination that measure will mitigate the impact.
  - ❖ There must be a nexus between the mitigation and an identified impact. *No impact, no mitigation.*
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# MITIGATION 101

- ❖ The mitigation must be proportional to the size of the impact.
  - ❖ The mitigation must be within the ability of the lead agency to implement.
  - ❖ Needs to be linked to an action (i.e., permits).
  - ❖ Fees are only mitigation under specific circumstances (i.e., school impact fees, CIP approved projects, etc).
  - ❖ Mitigation cannot be just do another study.
  - ❖ Mitigation cannot be deferred.
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# LEVELS OF ENVIRONMENTAL REVIEW

- ❖ There are three basic options:
    - ✓ Exemption
    - ✓ Initial Study/Negative Declaration or Mitigated Negative Declaration
    - ✓ Environmental Impact Report
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# WHAT IS THE SCOPE OF THE ANALYSIS

- ❖ The scope of the analysis must be proportional to the project.
  - ❖ The scope is based on:
    - The project description
    - The consistency of the project with the land use designations
    - The characteristics and location of the site (technical reports)
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# HOW TO DETERMINE WHAT IS NEEDED

- ❖ When must an EIR be prepared? – 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.
  
  - ❖ Fair argument standard
    - This is purposely a low threshold to trigger an EIR
    - “Fairly argued” means that there is evidence of the potential for impact in the administrative record before the agency
    - Impacts = direct, indirect, and cumulative impacts
    - “May have” means that the evidence need not be absolute or unequivocal
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# HOW TO DETERMINE WHAT IS NEEDED

## Substantial Evidence

### Exemptions

- Statutory
- Categorical

### Environmental Impact Reports

- Subsequent
- Supplement
- Master
- Program
- Project

### Addendum to EIR

## Fair Argument

### Negative Declarations

- Negative Declaration (No Mitigation Measures)
- Mitigated Negative Declaration

### Addendum to Negative Declaration

# WHAT IS SUBSTANTIAL EVIDENCE

## ❖ What it is:

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

## ❖ What it isn't:

- ▶ Argument
  - ▶ Speculation
  - ▶ Unsubstantiated opinion or narrative
  - ▶ Clearly inaccurate or erroneous information
  - ▶ Socioeconomic impact not linked to physical environmental impact
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# INITIAL STUDY VS. EIR

- ❖ An Initial Study is often (but not always) less expensive and faster than an EIR
  - Cannot result in impacts that are significant and unavoidable
  - Has a “fair argument” threshold for challenge
  
- ❖ An EIR takes a longer and can cost more than an Initial Study
  - Can result in a statement of overriding considerations
  - Has a “substantial evidence” standard for challenge
  - Is used for projects where an impact is expected, or where being cautious\*

\*For private developments, the decision to be “cautious” should be made by the developer, not the Lead Agency. The Lead Agency cannot require more environmental review than is necessary by law.

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# WHY DO AN EIR IF AN INITIAL STUDY IS WARRANTED

- ❖ EIR's afford more legal protection
  - ❖ EIR's are not subject to the fair argument standard
  - ❖ Developer is concerned about legal challenges (typically from special interest groups)
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# PROGRAM VS PROJECT LEVEL EIRS

- ❖ A program EIR addresses the broad policy of a planning document or area plan and typically does not address potential site-specific impacts of the individual projects within the plan area.
    - Program EIR's require subsequent environmental review for specific projects.
    - Program EIR's can address some resource areas at a project level to focus the subsequent environmental analysis.
  - ❖ A project-level EIR focuses on the environmental changes caused by a specific development project, including planning, construction, and operation.
  - ❖ The courts have stated that the project determines the level of specificity required within the EIR, not the name, as all EIRs must include the same general content.
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# PUBLIC COMMENTS

## ❖ During the public review period

- Formal written responses to public comments are only required for EIRs.
  - It is typical to prepare a response memo for Initial Studies.
  - CEQA only requires responses to comments specifically addressing the environmental analysis.
  - Non-CEQA comments are typically addressed as well, but “comment noted” is an acceptable response.
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# PUBLIC COMMENTS

## ❖ At hearings

- Public comments received during a hearing should be addressed on the spot by staff or the CEQA consultant.
- If a CEQA comment cannot be addressed without additional research or review, a continuation of the project may be required.

## ❖ Late hits

- Late comments are unfortunately common
  - While no response is required, it is best for staff/consultant to respond
  - Read responses into the record at the hearing
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# FINDINGS/STATEMENT OF OVERRIDING CONSIDERATION/APPROVALS

- ❖ Findings: Written statements that document the environmental effects of a proposed project.
  - ❖ Statement of Overriding Consideration: Written statement explaining the specific reasons why the social, economic, legal, technical, or other beneficial aspects of a project outweigh the unavoidable environmental impacts and why the Lead Agency is willing to approve the project.
    - Supported by substantial evidence
    - We need the \$\$\$ isn't likely to survive challenge
    - List as many reasons as make sense, even though only one is needed to support the determination
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# FINDINGS/STATEMENT OF OVERRIDING CONSIDERATION/APPROVALS

- ❖ Approvals: Decisions made by a Lead Agency that consider the environmental impacts of a proposed project.
    - Approval of the CEQA document and approval of the project should be taken as separate actions.
    - To approve the CEQA document, the decision-makers must determine that the environmental analysis is adequate.
    - The CEQA document can be approved, even if the project is not. But not the other way around.
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# BEWARE THE PITFALLS

More is not better: Paperwork is not the purpose.

- Intent is to identify ways to avoid or reduce environmental damage
- Speculative analysis is not allowed
- Analysis should focus on the thresholds
- Adequate but not exhaustive study
- Disclosure is the purpose!

Asking for analyses not covered by CEQA:

- Economics
- Subjects for which there is no clear *environmental* effect or established thresholds

Assuming the analysis would find a different conclusion with an EIR as opposed to an Initial Study. The thresholds are the same regardless of the level of analysis.

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# WHAT IS REQUIRED FOR CEQA CLEARANCE

- ❖ CEQA clearance is based on consistency with applicable City policies and the development assumptions in the General Plan.
  - ❖ The level of review required should be commensurate with the level of project detail available.
  - ❖ If project details are unknown at the time of the CEQA review but necessary for permits, *conditions of approval* should be required in the CEQA document.
  - ❖ Conditions of approval should be linked to specific actions taken by the City to ensure compliance.
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# WHAT TO LOOK FOR WHEN REVIEWING AN ENVIRONMENTAL DOCUMENT

- ❖ Clearly written and complete project description. All analyses are based on this.
- ❖ Clearly written analysis based on substantial evidence. Technical jargon should be limited.
- ❖ Measurable and enforceable mitigation measures.
- ❖ Clear conclusions which show the level of impact, particularly after mitigation is implemented.
- ❖ Make sure all the checklist questions/thresholds have been addressed.
- ❖ Make sure the analysis is consistent with relevant City policies.

**\*No document will be perfect, but it needs to be understandable and legally adequate.**

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# WHAT TO LOOK FOR WHEN REVIEWING AN EIR – CUMULATIVE ANALYSIS

- ❖ Must look at the effects of the project when combined with other projects (past, present, and reasonably foreseeable).
  - ❖ The EIR must include a list of these projects.
  - ❖ A project does not have a significant cumulative effect just because it adds to an impact.
  - ❖ The EIR should explain the area of impact used for each cumulative resource discussion.
    - The area of impact will vary by resource.
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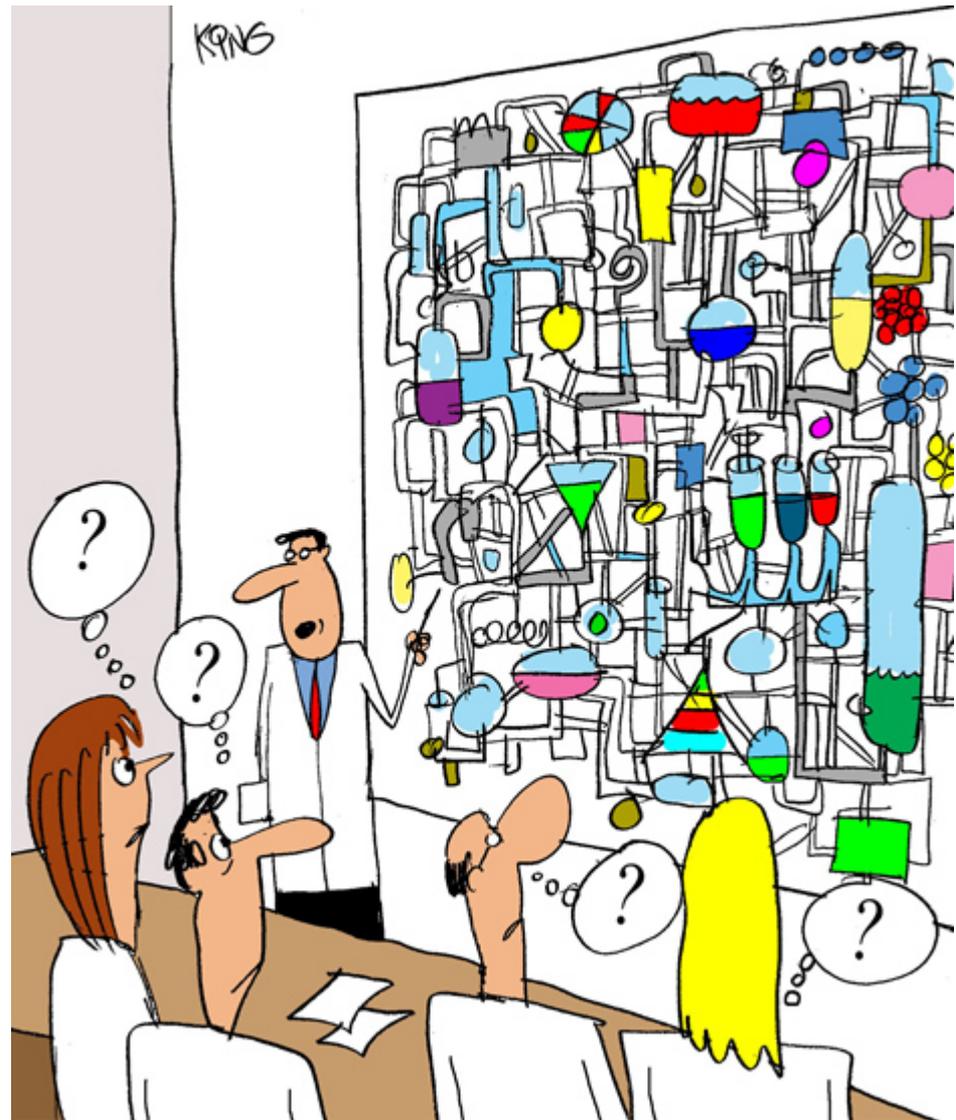
# WHAT TO LOOK FOR WHEN REVIEWING AN EIR - ALTERNATIVES

- ❖ Must include a reasonable range. This is not defined in CEQA, but dependent on the project.
    - There is no specific number of alternatives required.
  - ❖ The EIR should describe alternatives considered but rejected, and the reason for rejection.
  - ❖ Alternatives are not reviewed at the same level of detail as the project but must provide sufficient information for the decision-makers.
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# TOP 10 TAKEAWAYS

1. Follow the process, don't create extra work
  2. Mitigation MUST be measurable
  3. Regardless of document it should 'show its work'
  4. If you can't understand it neither can the public
  5. The key to the impact determination is in the thresholds
  6. Make sure the project is 'complete'
  7. The record includes the environmental document as well as testimony
  8. The public comment period isn't over until the vote
  9. Substantial evidence (EIR) trumps fair argument (MND)
  10. The environmental document is not the project
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# QUESTIONS?



And in this diagram, we see how CEQA works. Any Questions?

NEED MORE INFORMATION?

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