

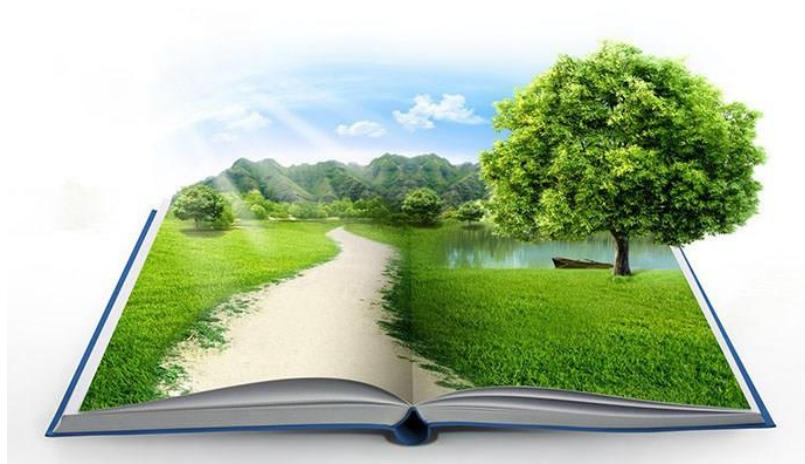


CEQA 101

Introduction TO THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT AND HISTORICAL RESOURCES

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Heritage Preservation Commission, Oct. 6, 2020





What Is CEQA?

The California Environmental Quality Act

- State law adopted in 1970 (Public Resources Code 21000 et seq.)
- Requires public agencies to give “major consideration” to preventing environmental damage.
- Administered by the California Natural Resources Agency
- Implemented by the “CEQA Guidelines” (Cal. Code of Regulations, Title 14, Ch. 3)
- Certain projects are also subject to the National Environmental Policy Act (NEPA)
 - ◆ Federally funded projects
 - ◆ Projects requiring a federal permit

Fundamental Requirement of CEQA

- A public agency cannot approve a project if there are alternatives or mitigation measures that would avoid or substantially lessen the significant environmental effects of the project...
- ...unless the alternatives or mitigation measures are infeasible due to specific economic, social, or other conditions or “specifically identified benefits” outweigh the environmental effects.

Pub. Res. Code §21002,
CEQA Guidelines §§15021, 15043



CEQA is an informational process that discloses the project's environmental effects. It does not dictate the outcome. The agency can approve or deny the project based on local needs.

The Process of CEQA: Basic Steps

1. Is this a “project” subject to CEQA?
2. Does an exemption apply? (*Preliminary Review*)
3. If not exempt, what level of CEQA is required? (*Initial Study*)
 - Negative Declaration (*Neg. Dec.*)
 - Mitigated Negative Declaration (*MND*)
 - Environmental Impact Report (*EIR*)
4. Complete the required level of review and public input
5. Make the required CEQA findings
6. Approve (or deny) project
7. File Notice of Exemption (*NOE*) or Notice of Determination (*NOD*)

CEQA Exemptions

- Many common activities are exempt from CEQA.
- Some exemptions are created by statute (“statutory exemptions”), others are in the CEQA Guidelines (“categorical exemptions”).
- Two general types of exemptions:
 1. Routine activities not likely to have an environmental impact (e.g. home remodels, minor landscaping).
 2. Activities that the state promotes.
 - ◆ Family day care homes
 - ◆ Bike lanes
 - ◆ Certain in-fill development and affordable housing
 - ◆ Emergency repairs after a disaster
 - ◆ Special one-off projects



Initial Study

- Determines whether the project's impacts will require a negative declaration, mitigated negative declaration, or EIR.
- May enable the City or applicant to modify a project in order to eliminate significant environmental impacts.
- Helps focus the EIR to eliminate subject areas with no environmental impacts.
- Establishes factual basis for a Neg. Dec./MND.
- Establishes basis to rely on a program EIR or another earlier CEQA document (tiering) to eliminates unnecessary EIRs.



This is the stage where we require studies such as a historical resources report.

Environmental Impact Categories

Required Subject Areas:

- Aesthetics
- Agriculture & Forestry
- Air Quality
- Biological Resources
- **Cultural Resources** (*includes historical, archeological and paleontological resources, and human remains*)
- Hazards/Hazardous Materials
- Hydrology/Water Quality
- Land Use/Planning
- Mineral Resources
- Noise
- Agriculture & Forestry
- Population/Housing
- Public Services
- Recreation
- Transportation/Traffic
- Tribal Cultural Resources
- Utilities/Service Systems
- Mandatory Findings of Significance (environmental degradation, cumulatively considerable impacts, substantial adverse effects)

Negative Declaration/MND

- Based on the Initial Study, there are no significant impacts, or all the significant impacts can be mitigated to a “less than significant” level.
 - ◆ If no impacts require mitigation = **Negative Declaration**
 - ◆ If mitigation needed = **Mitigated Negative Declaration (MND)**
 - ◆ Common examples: construction noise, dust control, tree preservation, nesting birds, tribal cultural resources.
- ND/MND is circulated for public review and comment.
- Decision-maker must “consider and adopt” the ND/MND prior to approving the project.
- Mitigation is incorporated into the project’s design and/or conditions of approval.

Environmental Impact Report

- EIR required when there is a “fair argument” that the project will have a significant environmental impact that can’t be mitigated.
- **If any doubt, the Agency must prepare an EIR.**
- Agency generally has 1 year to complete and certify the EIR (complex projects may take longer)
 - ◆ Scoping meeting
 - ◆ Notice of Preparation
 - ◆ Administrative draft EIR (staff review)
 - ◆ Draft EIR released for public comment
 - ◆ Comments and responses incorporated into the Final EIR
 - ◆ Public hearing



Project Alternatives

- EIR must analyze a reasonable range of alternatives that would attain the project objectives and avoid or substantially lessen the proposed project's significant effects, including a "no project" alternative.
- Must explain alternatives that were considered but rejected:
 - ◆ Not feasible;
 - ◆ Would not attain the project objectives; or
 - ◆ Would not reduce the project's significant effects.
- Analysis of alternatives need not be as detailed as analysis of the project.
- Must identify the "environmentally superior" alternative (other than "no project"), but the agency is not required to choose this alternative.

Statement of Overriding Considerations

The EIR must analyze each significant impact and determine:

- Impacts that can be mitigated to **“less than significant”**
- Impacts that are **“significant and unavoidable”**
 - ◆ No mitigation exists
 - ◆ Mitigation is not feasible
 - ◆ Mitigation will not reduce the impact to less than significant
 - ◆ Mitigation would be unconstitutional (Guidelines §15126.4)
- Agency must adopt a **“Statement of Overriding Considerations”** to approve a project that has significant unavoidable impacts (Guidelines §§15021(d), 15093)
- Agency can also reject the project and require redesign with lesser impact.

Recap

Project Exempt



Findings/Notice of Exemption

No Significant Impacts



Negative Declaration

Impacts can be mitigated to
“less than significant”



Mitigated Negative Declaration
(MND)

There is a “fair argument” that
some impacts cannot be fully
mitigated



Environmental Impact Report (EIR)

Significant
Unavoidable
Impacts



Statement of
Overriding
Considerations

Historical Resources under CEQA



In General

- Historical resources are part of the physical environment governed by CEQA.
- An EIR must be prepared if a project has the potential to “eliminate important examples of the major periods of California history or prehistory” (Guidelines §15065)
- Historical resources are defined as:
 1. **Mandatory**: A resource listed in, or eligible for listing, in the California Register of Historical Resources.
 2. **Presumptive**: Included in a local register of historic places.
 3. **Discretionary**: Anything else that the Lead Agency determines to be historically significant based on substantial evidence.

Pub. Res. Code §21084.1,
CEQA Guidelines §15064.5

Substantial Adverse Change

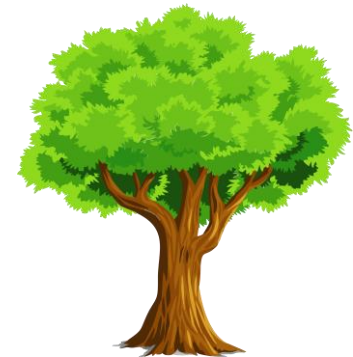
- **Significant impact** = “**substantial adverse change**” in the significance of an historical resource (Guidelines §15064.5).
- Negates CEQA exemptions that normally apply to demolition or replacement of structures (Guidelines §15300.2).
- “**Substantial adverse change**”
 - ◆ Physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings, such that the significance of the historical resource would be materially impaired.
- “**Materially impaired**” = the project demolishes or materially alters physical characteristics of the resource that:
 - ◆ Convey its historical significance, or
 - ◆ Account for the inclusion of the resource in a local register of historical resources, historical resources survey, or Calif. Register.

Possible Mitigation

- Comply with Secretary of Interior's Standards for the Treatment of Historic Properties (Guidelines §15064.5(b)(3))
- Re-design project to eliminate damaging aspects
- Relocate the historical resource
 - ◆ Relocation itself may be a substantial adverse change
 - ◆ May mitigate to “less than significant” if retains eligibility for State listing
 - ◆ Preservation in place is preferred for historical resources of an “archaeological nature” (note that archaeological sites/artifacts have heightened protection under state and federal laws)
- Document resource through photographs, drawings, and displays
 - ◆ Won't reduce loss of the resource to less than significant
 - ◆ Statement of Overriding Considerations will be required

Hypothetical: Heritage Tree

- Affordable housing project will require removal of a 300-year-old heritage oak tree which is a locally designated historic resource.
- Potential mitigation:
 - ◆ Redesign the project (what are the trade-offs? Is a re-design feasible?)
 - ◆ Replant site with new oak trees (only partially mitigates the loss)
 - ◆ Require developer to dedicate tree and land to create a park (constitutional issues; may require city to purchase the property)
- Possible overriding considerations:
 - ◆ General Plan designates the site for housing
 - ◆ Critical need for affordable housing
 - ◆ Project provides other community benefits
 - ◆ The condition of tree could also be a factor.



CEQA Litigation Involving Historical Resources

- Alteration or loss of historical resources is a frequent area of CEQA litigation.
- Common issues:
 - ◆ When is an EIR required?
 - ◆ What will justify the demolition of a historical resource?
 - ◆ Can an agency decide that something is not a historical resource?
 - ◆ What mitigation measures will reduce an impact on historical resources to “less than significant”?

League for Protection of Oakland v. City of Oakland (1997)

In 1995, Oakland approved a plan to demolish the historic Montgomery Ward building in the City's Fruitvale District. The City adopted a mitigated negative declaration finding that loss of the building could be mitigated to "less than significant" by a historical survey report and commemorative plaque.



League for Protection of Oakland v. City of Oakland

- Court held that the City should have prepared an EIR.
- The building qualified for mandatory treatment as a historical resource because it was eligible for listing in California Register.
- Loss of the building was not adequately mitigated. “A large historical structure, once demolished, normally cannot be adequately replaced by reports and commemorative markers.”

Outcome:

The City scrapped plans for a commercial center, but after a long battle between preservationists and neighborhood activists, the Montgomery Ward building was ultimately demolished in 2001 to make way for a new elementary school. Lesson: CEQA only governs the process, not the result.

Architectural Heritage Ass'n v. County of Monterey (2003)

In 2002, Monterey County approved the demolition of the old jail in Salinas, a Gothic Revival building where Cesar Chavez was briefly incarcerated during the 1970s. The County's MND concluded that the loss would be mitigated by photographic documentation, a monograph, and preservation of blueprints.



Architectural Heritage Ass'n v. County of Monterey

- As in *League for Protection of Oakland*, the Court held that the agency violated CEQA by failing to prepare an EIR.
- Court acknowledged that the building was not unique, and that its poor condition diminished its architectural integrity.
- However, the Court found sufficient evidence that the building was potentially eligible for listing on both the state and national registers due to its association with the farmworker movement.

Outcome:

The old jail is still standing, but it has been closed to the public for years due to contamination from lead paint and asbestos. The Salinas community continues to debate its future.

LA Conservancy v. City of West Hollywood (2017)

In 2014, the City of West Hollywood approved a retail/residential project that included the demolition of 9080 Santa Monica Blvd., an architecturally significant “Streamline Moderne” building eligible for listing in the California Register. The City certified an EIR and adopted overriding considerations.



LA Conservancy v. City of West Hollywood

- City did not dispute the building's historical significance.
- The EIR identified the loss of the building as a significant unavoidable impact, only partially mitigated by photographic documentation and preparation of a pamphlet.
- City concluded that preservation of the building was infeasible.
- Court upheld the City's determination that preservation of the building was inconsistent with project objectives.
 - ◆ City wanted an iconic "gateway" development with cohesive, high-quality architecture, pedestrian features and open space.
 - ◆ Preservation of the building would disrupt the site design.
 - ◆ Alternatives would not contribute to the City's economic base or enhance the City's fiscal health to same extent as the proposed project.
- Upshot: In this case, the City did everything right to comply with CEQA and achieve its desired result.

Citizens for Restoration of L Street v. City of Fresno (2014)

What is a “historical resource”? In 2011, the City of Fresno approved a townhouse project that included demolition of two vintage homes. One home was listed on a local historic register; the other had no historic listing. City adopted an MND, finding that the homes were not historical resources.



Citizens for Restoration of L Street v. City of Fresno

- As we learned in *League for Protection of Oakland*, demolition of a “historic resource” requires an EIR. However...
- These homes were not listed or eligible for listing in the California Register.
- The locally registered home was uninhabitable and had lost its historic integrity due to loss of original woodwork and inappropriate alterations.
- The other home was in better condition, but had never been designated historic due to “innumerable” alterations.
- Court notes that the historic status of the homes was extensively analyzed during the environmental review process and the City had sufficient information to make an informed decision.
- Court defers to City’s decision as to the homes’ historicity, saying that CEQA does not require the “fullest possible protection to objects that *might* have historic significance”.



L Street and San Joaquin St., Fresno, Jan. 2017

Old Orchard Conservancy v. City of Santa Ana (2017)

What is adequate mitigation? In 2014, the City of Santa Ana approved construction of 22 homes on a locally listed historic site containing a farmhouse and orange orchard. The project included restoration of the house and replanting a small grove of orange trees. The EIR concluded that with the proposed mitigation, the impact on historic resources was less than significant.



Old Orchard Conservancy v. City of Santa Ana

- Preservationists wanted the entire 5-acre site turned into a park. They tried to buy the site but were unable to raise enough funds.
- Lawsuit argued that any development of the site would be a “substantial adverse change” to the historical resource.
- Court ruled that the project would enhance, rather than impair, the historical significance of the property.
 - ◆ Rehab of farmhouse and replacement of dead and dying trees.
 - ◆ Property will retain its major elements, defining features, and historic integrity.
 - ◆ Construction of homes is compatible with the historic site.
- *Upshot*: because the impact on the historical resource was less than significant, City did not have to adopt a Statement of Overriding Considerations.

Local Example: Mellow's Nursery

- Construction of office building on historic nursery site containing farmhouse, nursery buildings, and fruit trees.
- Mitigation:
 - ◆ House restored and preserved on-site.
 - ◆ Photographic documentation of entire site.
 - ◆ Tree replanting and open space.
- EIR still found a significant and unavoidable impact.
- Overriding considerations:
 - ◆ Vacant, under-utilized site.
 - ◆ Development consistent with General Plan.
 - ◆ Project will provide community benefits.



Interaction with New State Housing Laws

- CEQA does not apply to “ministerial” approvals.
 - ◆ Ministerial = city has no discretion to deny or impose additional conditions on a project that meets an enumerated set of standards.
- Accessory Dwelling Units
 - ◆ City must approve ADUs ministerially
 - ◆ Cannot prohibit ADUs in historic districts or parcels
 - ◆ “Non-streamlined” ADUs that would alter a listed historic structure would need a resource alteration permit
- SB 35 (2017) – ministerial approval of certain residential projects.
 - ◆ Project must not demolish any listed historic structures.
 - ◆ Does not limit development within historic or landmark districts.
- SB 9 (2021) – ministerial approvals of lot splits and duplexes
 - ◆ Does not apply to parcels within historic districts and listed structures

Final Thoughts

- CEQA requires fully informed decisions with public participation about environmental impacts and alternatives.
- CEQA alone can't stop an agency from demolishing or significantly altering a historic building or site.
- However, CEQA is a tool for engaging the community in important land use decisions so that the decision-makers are fully informed and all voices are heard.



QUESTIONS?