

# **CEQA 101: Introduction to the California Environmental Quality Act**



**May 30, 2015**

# Overview

- What is the purpose of CEQA?
- When does CEQA apply?
- What are a lead agency's duties?
- What document(s) must the agency prepare?
- What are the main elements of an Environmental Impact Report?
- Are there tools for streamlining the process?
- How can/does the public participate?

# Purpose of CEQA

- National Environmental Policy Act (NEPA) (1969)
- “Little NEPA” statutes – such as CEQA (1970)
- Purposes:
  - Prevent significant, avoidable damage to the environment
  - Foster informed public decision making
  - Ensure transparency in governmental decision making process
  - Encourage public participation

See CEQA §§ 21000-21006; Guidelines 15001-15003

# CEQA Includes a Substantive Mandate

- NEPA has been described as purely procedural.
- CEQA contains a “substantive mandate” – public agencies must refrain from approving projects with significant environmental effects if “there are feasible alternatives or mitigation measures” that can substantially lessen or avoid those effects.



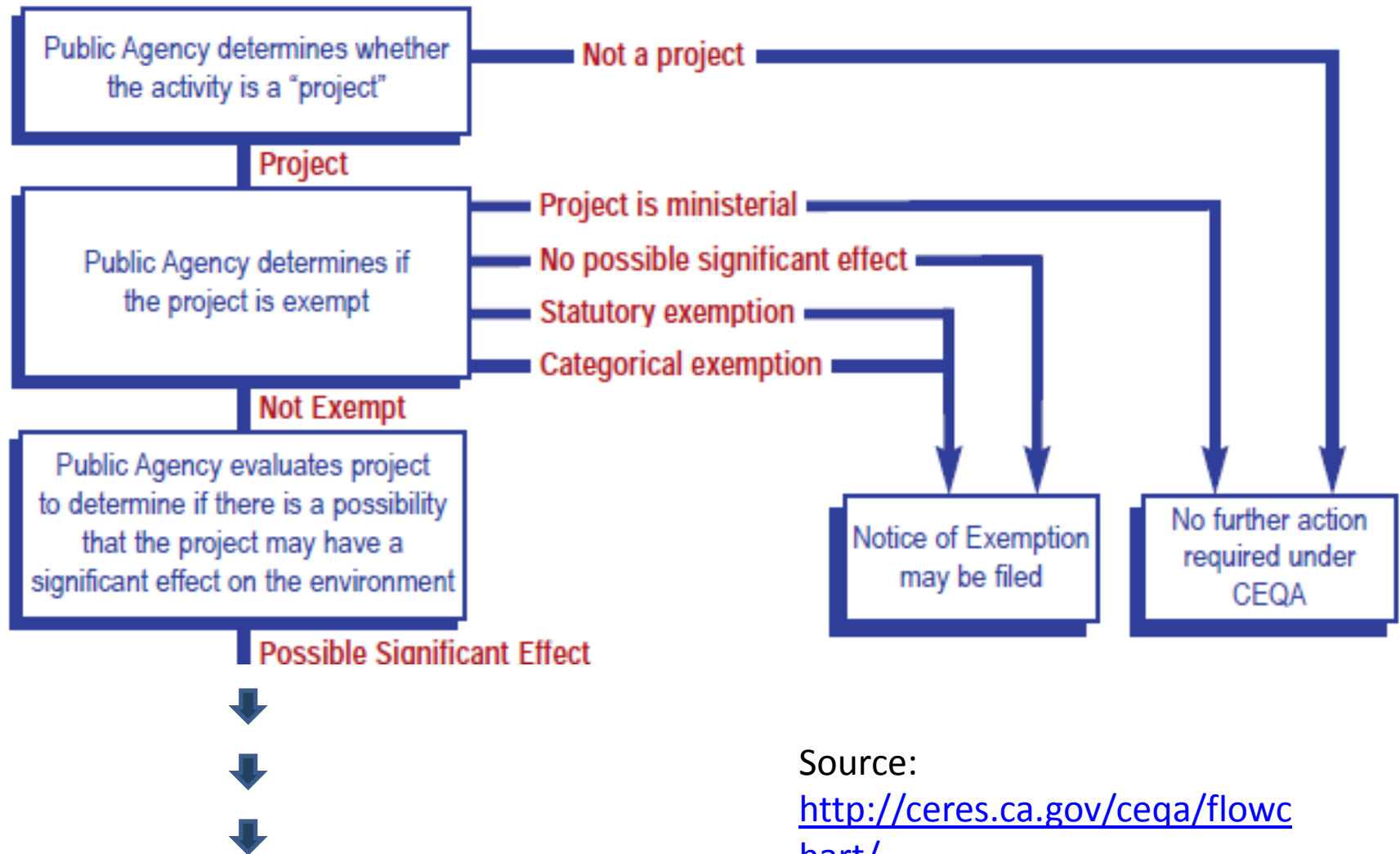
*See Mountain Lion Found. v. Fish and Game Comm’n*, 16 Cal.4th 105, 134 (1997); Pub. Res. Code § 21002

# Lead Agency Duties

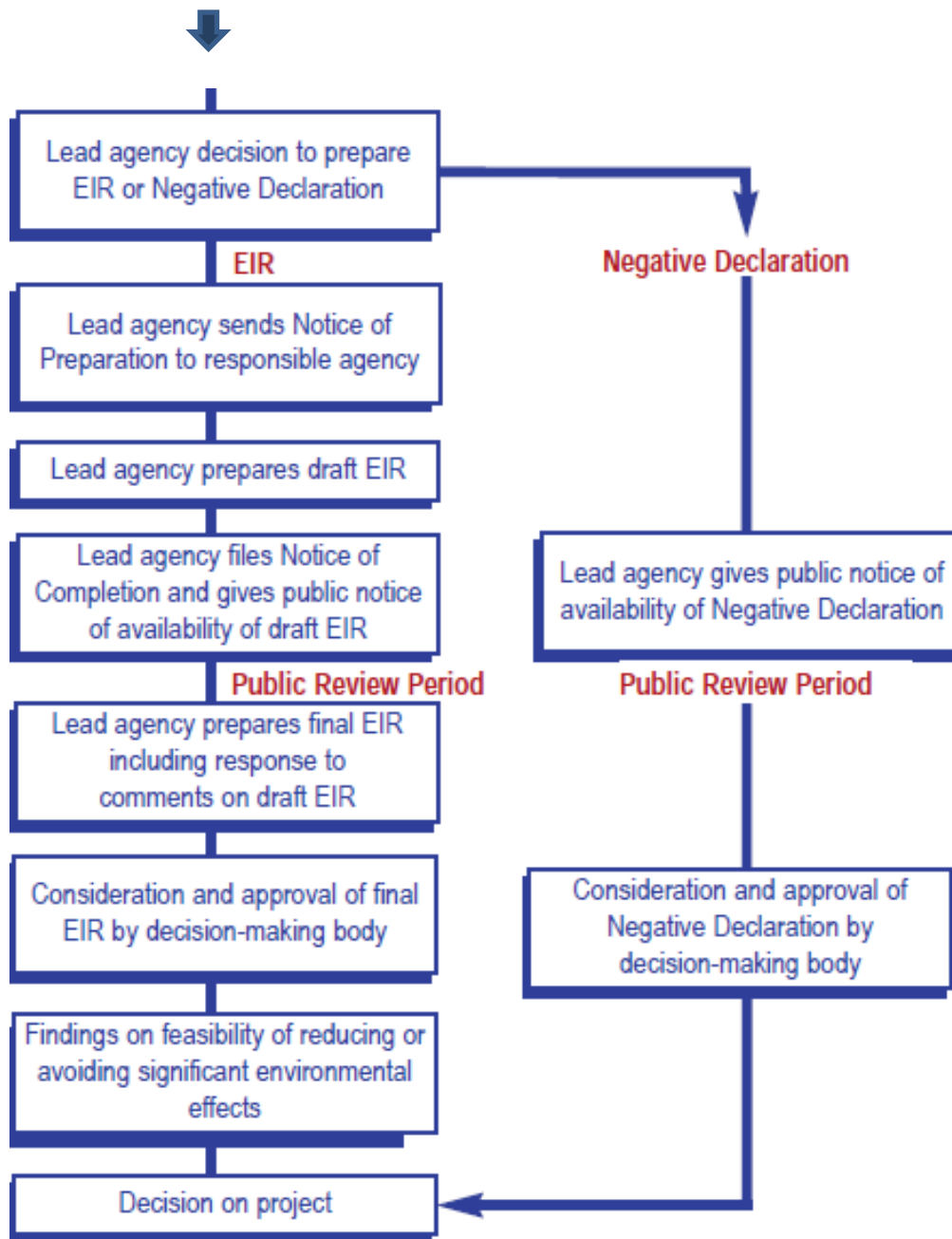
Agency determines that is it  
making a decision on a  
“project” ....

Now what?









Source:

<http://ceres.ca.gov/ceqa/flowchart/>

# Types of CEQA documents

If the project is not exempt, agency must determine what type of document to prepare.

Agency prepares initial study to assist in determining if the physical change in the environment is potentially significant. (Guidelines § 15063; Appendix G).

Two types of documents:

- Negative Declaration (includes mitigated negative declaration) (Guidelines, § 15070, *et seq.*) or
- Environmental Impact Report (EIR) (§ 15080, *et seq.*)

If project may have “significant” environmental impact, EIR is required (§ 15064(a)(1), (f)(1)).



# Significant or not?

“Significant effect on the environment” is a substantial or potentially substantial adverse change in the physical conditions of the area.

(Pub. Resources Code §21068; Guidelines §§15002(g), 15382)

- Determination calls for agency judgment; “ironclad definition” not always possible
- Must consider context and setting
- Effects can be direct or indirect
- Effects can be incremental or cumulative
- Determination must be based on substantial evidence in the record – scientific and factual data

(Guidelines § 15064, *et seq.*; new section on GHGs, see § 15064.4 and Statement of Reasons.)

# Significant or Not?

Significance “normally” measured against existing “physical environmental conditions” – that “will normally constitute the baseline.” (Guidelines § 15125(a).)



# What is an EIR?

The Environmental Impact Report is the “heart of CEQA.”

*Laurel Heights Improvement Assn. v. Regents of the U.C.* (1993) 6 Cal.4th 1112, 1123

Used by lead and responsible agencies (those with some discretionary authority to approve or carry out a portion of the project) to evaluate environmental impacts of their approvals



# What is an EIR?

Required elements of EIR include:

- Project description
- Discussion of [significant] environmental impacts
- Impacts to be measured against the baseline
- Alternatives to the project
- Mitigation measures
- Discussion of cumulative impacts (including GHG-related)

Guidelines § 15120, *et seq.*

# 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.”

– Guidelines § 15021(a)(2)



# Mitigation

“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),
- actions that reduce or minimize an impact,
- actions that correct an impact, or
- actions that compensate for an impact by providing substantive resources.

(Pub. Res. Code § 21002, 21002.1(b), 21004; Guidelines §15370.)



# Mitigation

“An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy.”

– Guidelines § 15126.4(a)(1)

# 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.”

– Guidelines §15126.6

# 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 objectives and fundamental goals
- Alternatives that would reduce at least one impact
- “No project” alternative (can be different from the baseline)

Range of alternatives governed by “rule of reason”

# Streamlining

Subsequent change to the project does not necessarily require new EIR or Negative Declaration

Only if:

- A new significant impact is caused by a substantial change in the project or substantial changed circumstances that requires major revisions to EIR;
- New information not known at the time of project approval becomes available;
- Proposed change never analyzed in original EIR

(Pub. Res. Code § 21166.)

# Streamlining

Tiering means:

- Using analysis of environmental impacts contained in a previously certified EIR (e.g., for a general plan, regional wastewater project) on later projects;
- Incorporating by reference the general discussions from the previously certified EIR; and
- Focusing the later document solely on the issues specific to the later project

Guidelines § 15152

New section addressing tiering/streamlining analysis of GHGs (§ 15183.5)

# Approving the Project

After circulating draft EIR, agency must:

- Evaluate and respond to comments (Guidelines, § 15088)
- Prepare final EIR (§ 15089)
- Certify final EIR (§ 15090)
- Make findings concerning significant impacts (§ 15091)
- Approve (or reject) the project (§ 15092)
- Impose a mitigation monitoring/reporting program (§ 15097)
- If necessary, issue a Statement of Overriding Considerations (Pub. Res. Code § 21081; § 15093)



# Public Participation

- Opportunities for public participation at every stage of process.
- Commenters can provide recommendations and submit data/information, where available.
- Two main opportunities for comments; during comment period on environmental document and before the close of the hearing on project.
- Administrative appeal may be available (*e.g.*, to Board of Supervisors).
- Legal challenges governed by strict time limits and criteria in Pub. Res. Code § 21167, *et seq.* and Guidelines § 15112.
- Exhaustion of administrative remedies prerequisite to lawsuit.

# Resources

California Environmental Quality Act (CEQA), Pub. Res. Code, § 21000, *et seq.*  
(available at <http://ceres.ca.gov/ceqa/>)

Guidelines for the Implementation of CEQA (CEQA Guidelines) (available at <http://ceres.ca.gov/ceqa/>)

CEQA – Frequently Asked Questions  
(<http://ceres.ca.gov/ceqa/more/faq.html>)

CEQAmapping (free database of CEQA documents) (<http://www.ceqamapping.com/>)

Governor's Office of Planning and Research, State Clearinghouse  
(<http://opr.ca.gov/index.php?a=sch/sch.html>)

Recent Updates re CEQA and Climate Change (Senate Bill 97)  
(<http://ceres.ca.gov/ceqa/guidelines/>)

# Questions?

