

# CEQA The Basics

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# Presentation Overview

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History & Purpose of the California Environmental Quality Act (CEQA)

Key Terms

Who does what in the Process?

Types of CEQA Decisions

What is a Mitigation Measure

Public Comments

# CEQA's History

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Enacted in 1970; signed into law by Governor Reagan

Based on *The Environmental Bill of Rights*

Modeled after *National Environmental Policy Act* (NEPA)

Implementation at local agency level by *Friends of Mammoth v. Board of Supervisors of Mono County* (1972) 8 Cal. 3rd 247

Important amendments in 1972, 1976, 1978, 1984, 1989, 1993, 2010, and 2019

Amended all the time by the legislature, courts, and local jurisdictions

# What's the point?

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Probable and/or Possible



- Informs you of the environmental effects of the project
- To solve a project's environmental impacts if possible; or,
- To allow your consideration even if it isn't

# Key Terms of CEQA

<b>Baseline</b>	A fixed point in time from which impact of future changes are analyzed
<b>Environmental Impact Report</b>	A means of approving a project that exceeds a threshold after mitigation
<b>Exemption</b>	A list of actions that the state believes do not need extensive analysis
<b>Fair Argument</b>	A reasonable person could come to a different conclusion
<b>Impact</b>	Change in the environment
<b>Initial Study</b>	Checklist of environmental topics to consider (Appendix G)
<b>Mitigated Negative Declaration</b>	A discussion of impacts that conclude that mitigation is needed
<b>Mitigation Measure</b>	A change to a project designed to reduce an impact below a threshold
<b>Negative Declaration</b>	A discussion of impacts that determine no mitigation is needed
<b>Preponderance of the Evidence</b>	51% of testimony supports the conclusion
<b>Preponderance of the Evidence</b>	51% of testimony supports the conclusion
<b>Significant and Unavoidable Impact</b>	An impact that cannot be reduced below the threshold of significance
<b>Significant Impact</b>	Change in the environment that exceeds a threshold of significance
<b>Speculation</b>	Making up a future condition
<b>Substantial Evidence</b>	At least 1 study supports the conclusion
<b>Thresholds of Significance</b>	A point at which the agency determines an impact is important



# CEQA Evaluates Change

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Change from existing condition (not the plan...mostly)

Short- and long-term impacts

Direct and indirect changes

Cumulative changes (includes other projects)

Local and regional plans

# The Players

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<b>Applicant:</b>	A representative of the project who is responsible for the submittal of all information and usually both the cost of the environmental analysis and the legal indemnification if the agency is sued.
<b>Staff:</b>	Usually someone in the Planning Department charged with coordinating both in-agency review, and communication with other agencies.
<b>Public:</b>	The recipient of the information, and the target audience.
<b>Lead Agency:</b>	The agency with discretionary change to which the Applicant has applied.
<b>Consultant:</b>	Staff from either the public or private sector hired to provide assistance or expertise for the Lead Agency Staff.
<b>Responsible Agency:</b>	An agency with some permitting authority, but not approval authority over the project.
<b>Planning Commission:</b>	A volunteer body tasked with reviewing hundreds of pages of highly technical information in order to make a decision narrowly defined by law and to be roundly criticized for having made the decision.

# It all starts with a *discretionary* project...

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- ▶ A project means the *whole of the action*, which has the potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment.



# Once we have a project, then...

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We must determine the level of environmental review.

Three basic outcomes:

- Exempt
- Negative Declaration (ND) or Mitigated Negative Declaration (MND)
- Environmental Impact Report (EIR)

# Ministerial vs. Discretionary Projects

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**Ministerial:**

Little personal judgment, use of fixed or objective standards

**Discretionary:**

Requires exercise of judgment or deliberation

**Mixed Decision Projects:**

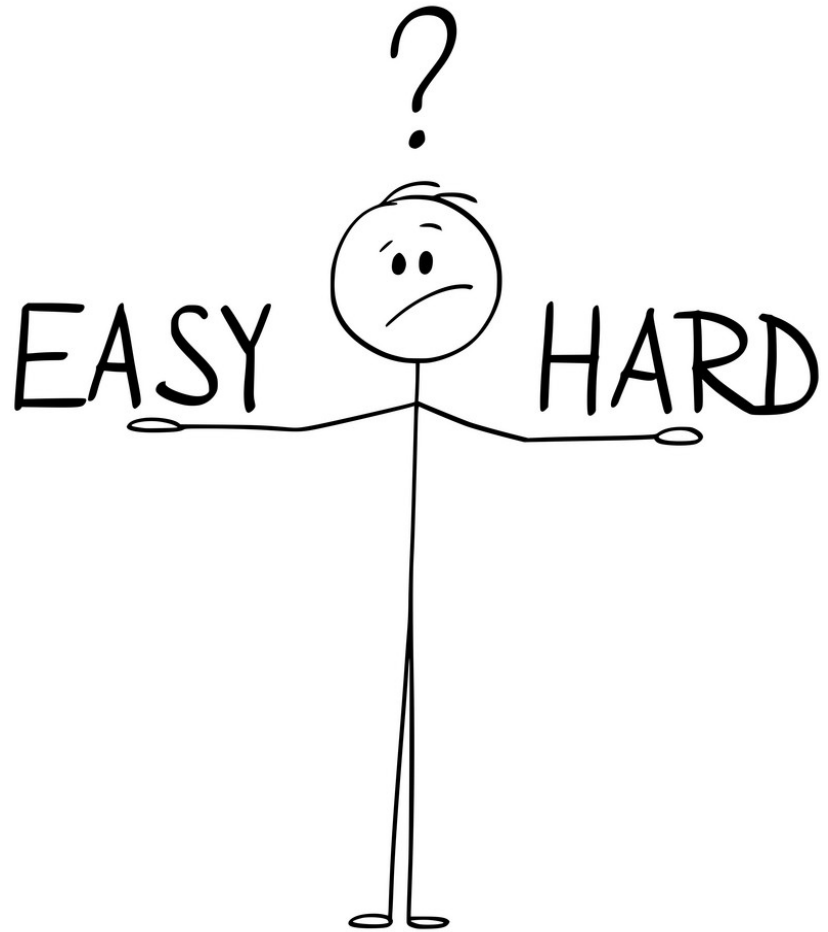
Considered discretionary

# Yes, the CEQA Guidelines say this...

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*Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA. (15061(a))*





## How are CEQA determinations made?

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Knowledge of the community

Precedent of decision makers

Understanding of the impacts

Results of technical studies

Public Controversy

# Checklist and Appendices

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Appendix G provides an example checklist

Each agency can (and should) adopt their own

The questions in the checklist are not thresholds

Thresholds are not always in the checklist

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<u>I. AESTHETICS.</u> Would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Substantially degrade the existing visual character or quality of the site and its surroundings?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Exemptions

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- Statutory:** Items ruled by the legislature to be exempt from CEQA. (15260–15285) and other places in the state statutes.
- Categorical:** Items in the state or local agency guidelines that are considered to have little or no environmental impact in most instances. (15300–15332)
- General:** A determination that the project will not result in direct or reasonably foreseeable indirect physical change in the environment. This is known as the *common sense* exemption. (15060(c))

# Not all Exemptions are in CEQA

Section 15183

Housing Exemptions (SB 330 / SB 35, etc.)

Office of Planning and Research (OPR) CEQA Exemptions Outside of the CEQA Statute Listing

Lead agency exemptions

Statutory

Specialized Legislation

## TECHNICAL ADVISORY

CEQA EXEMPTIONS OUTSIDE OF  
THE CEQA STATUTE



June 2018

# Managing Risk

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Weighing cost with benefit

Higher 'protection' comes at a cost

Not all decisions are obvious

The deciding factor is the difference between fair argument and substantial evidence

Cost of substantial evidence to support an Initial Study (IS)/MND the same as an EIR





# Fair Argument Standard (CEQA Guidelines 15064[a])

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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

- This is purposely a low threshold for EIRs
- “Fairly argued” means that there is evidence of the potential for impact in the administrative record before the agency
- Impacts = direct, indirect, and cumulative contribution impacts
- “May have” means that the evidence need not be absolute or unequivocal

# Substantial Evidence

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## **15384. SUBSTANTIAL EVIDENCE**

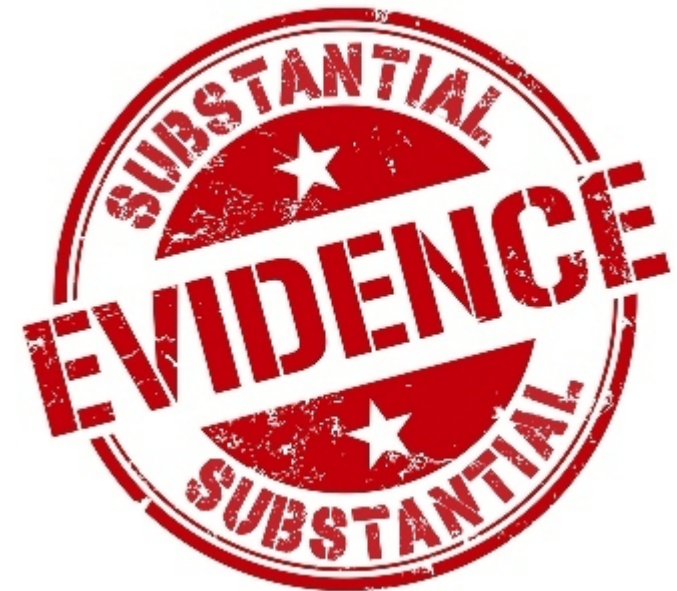
(a) “Substantial evidence” as used in these guidelines means enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute substantial evidence.

(b) Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.

# What is substantial evidence?

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- ▶ 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



# Types of CEQA Documents

## Substantial Evidence

### Exemptions

- Statutory
- Categorical

### Environmental Impact Reports

- Subsequent
- Supplement
- Master
- Program
- Project

### Addendum to EIR

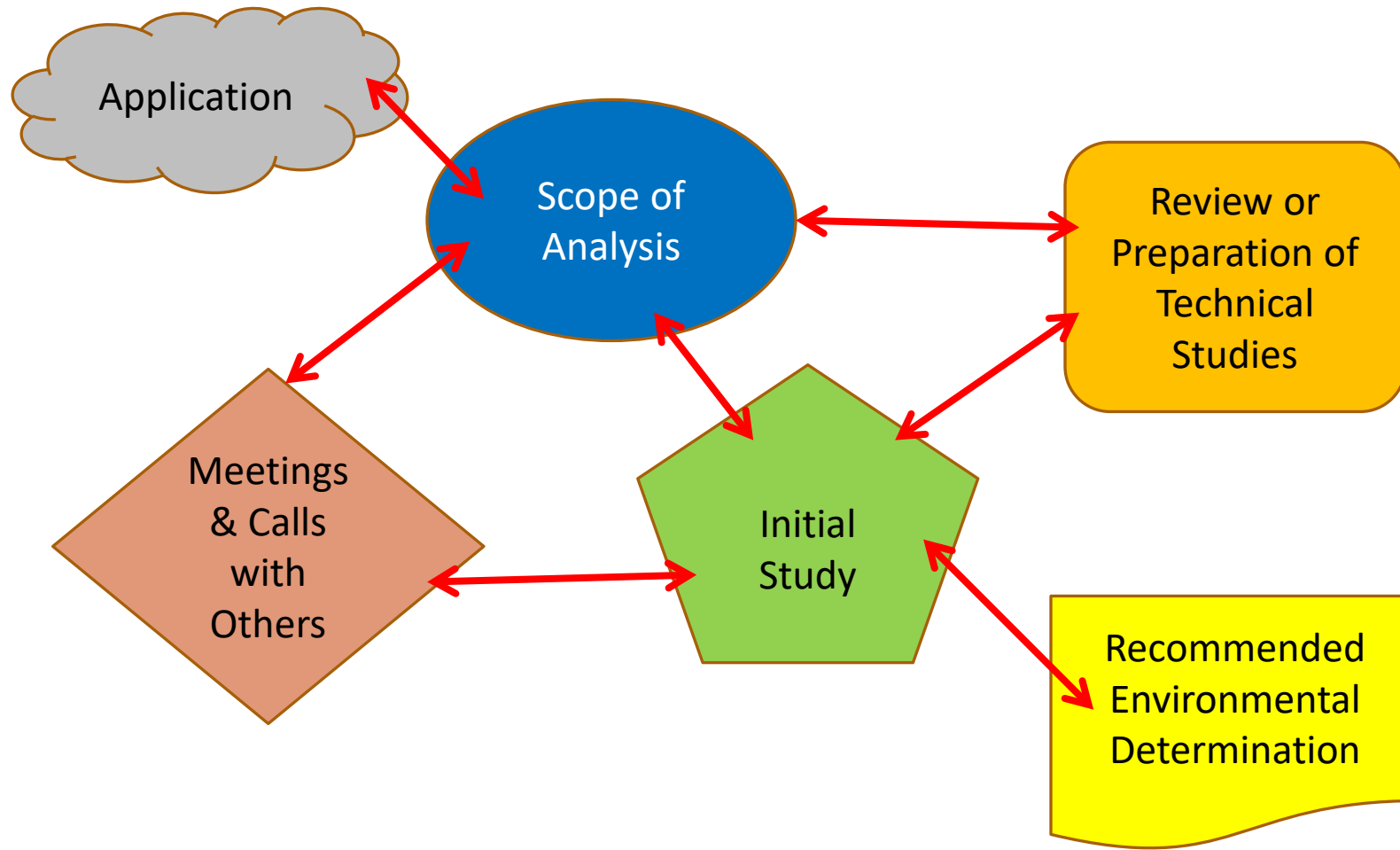
## Fair Argument

### Negative Declarations

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

### Addendum to Negative Declaration

# Nonlinear Process



# Context is Everything

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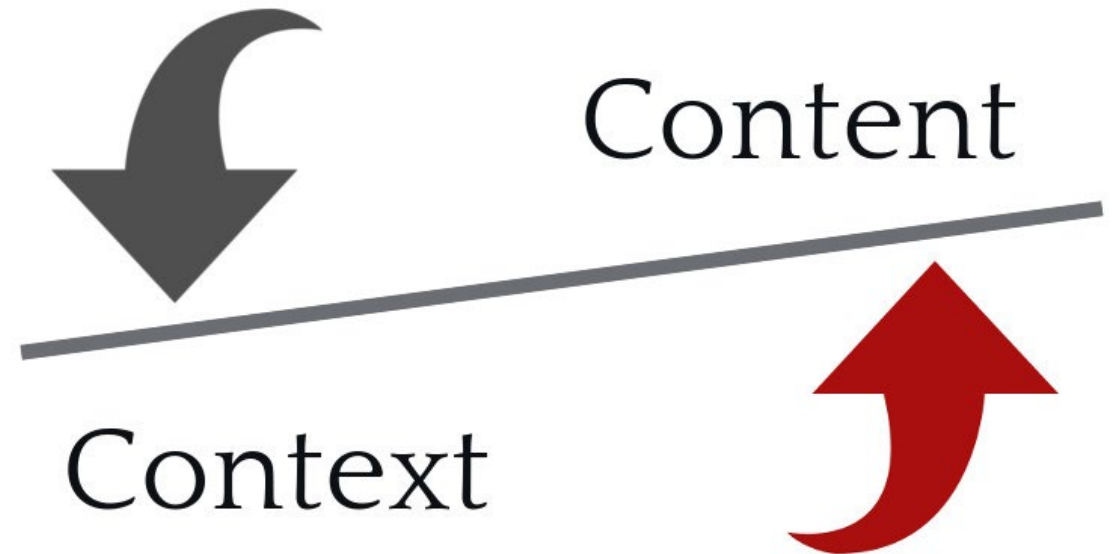
Every community has different standards

Comparing agencies is difficult

Not all large projects have impacts

Not all small project don't

How do we know?



# Thresholds of Significance

A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, noncompliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

Found in:

- CEQA Guidelines
- General Plan
- Municipal Code
- Adopted Development Standards

<u>P-VALUE</u>	<u>INTERPRETATION</u>
0.001	HIGHLY SIGNIFICANT
0.01	
0.02	
0.03	
0.04	SIGNIFICANT
0.049	OH CRAP. REDO CALCULATIONS.
0.050	
0.051	ON THE EDGE OF SIGNIFICANCE
0.06	HIGHLY SUGGESTIVE, SIGNIFICANT AT THE P<0.10 LEVEL
0.07	
0.08	
0.09	HEY, LOOK AT THIS INTERESTING SUBGROUP ANALYSIS
0.099	
≥0.1	

# Baseline

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Defined by the agency – And Stated in the Document

Usually 'existing conditions'

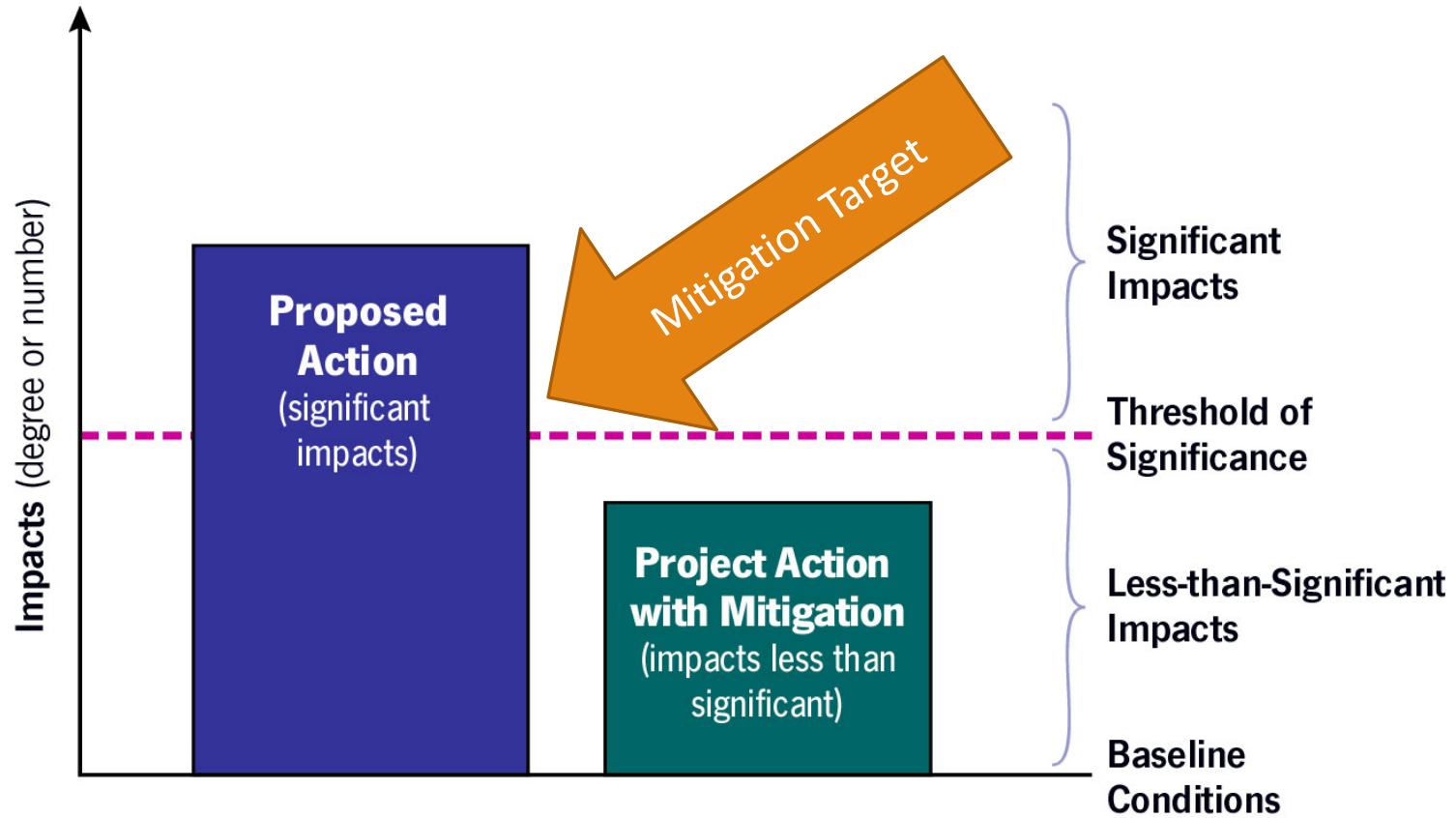
Carefully explained in the document, never assume

A fixed point against which change is measured





# Understanding Thresholds



# What Is a Mitigation Measure?

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<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

# Why does CEQA take so long?

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## Writing of the documents (normally):

- Exemption: < week
- ND/MND: 20 to 180 days
- EIR: 90 to 200 days

## Mandatory public review periods:

- Exemption: none
- ND/MND: 30 days
- EIR: 85 days
  - 30 days for Notice of Preparation (NOP)
  - 45 days for Draft EIR
  - 10 days for Final EIR





# Public Comments

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The public process is a good part of CEQA

Embrace the passion of the community

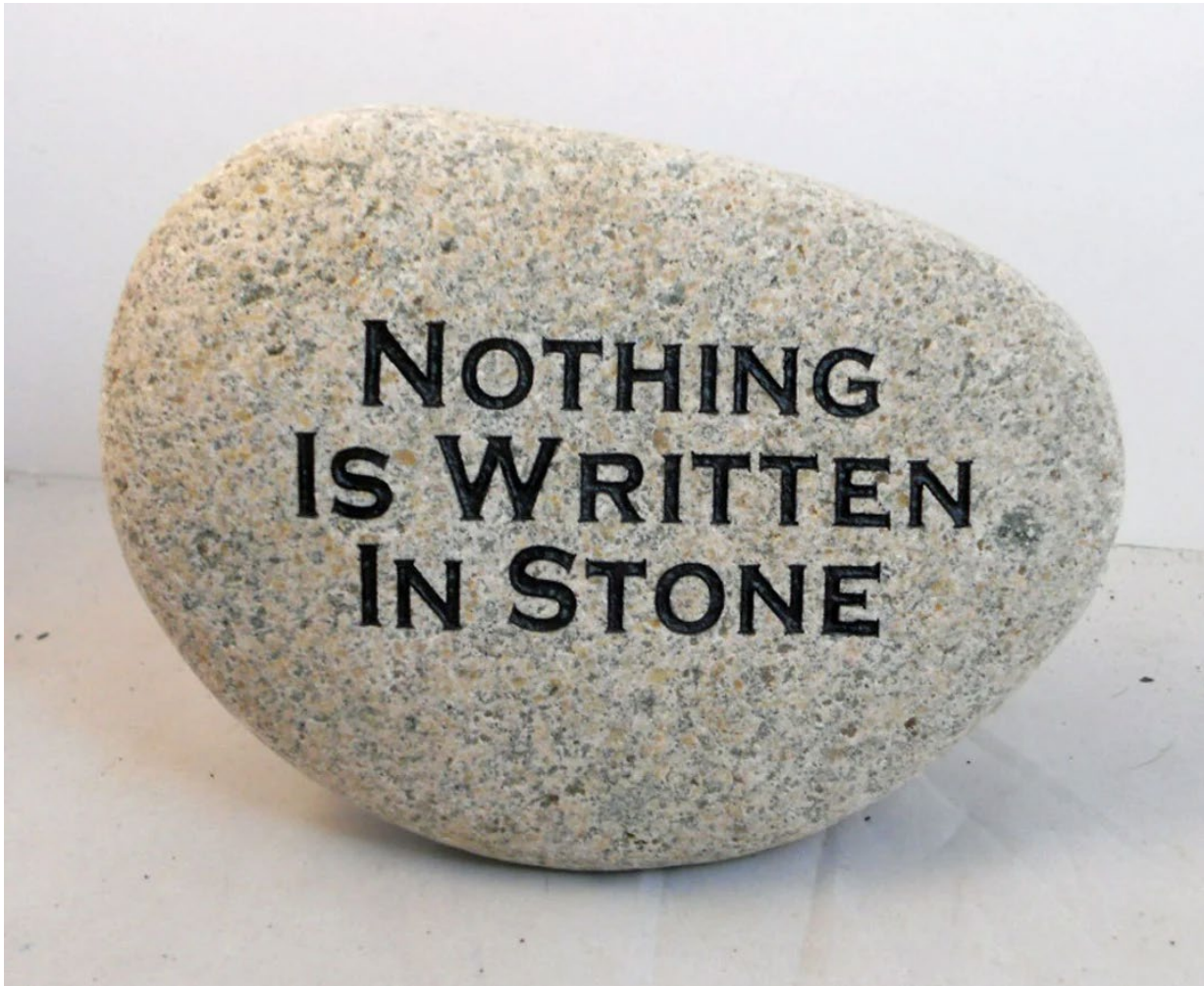
Not all in favor show up...and not all who oppose comment

Beware hurrying up at the very end

Late hits and document dumps are part of the process

Let staff guide you, delaying a meeting is not the end of the world





## It's done by the time I get it, what can I do?

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CEQA is not done until the project is approved

You are the last set of eyes before the decision is made

Give staff time a heads up if you have a question

Add your reasoning to the record

# What to Read First...

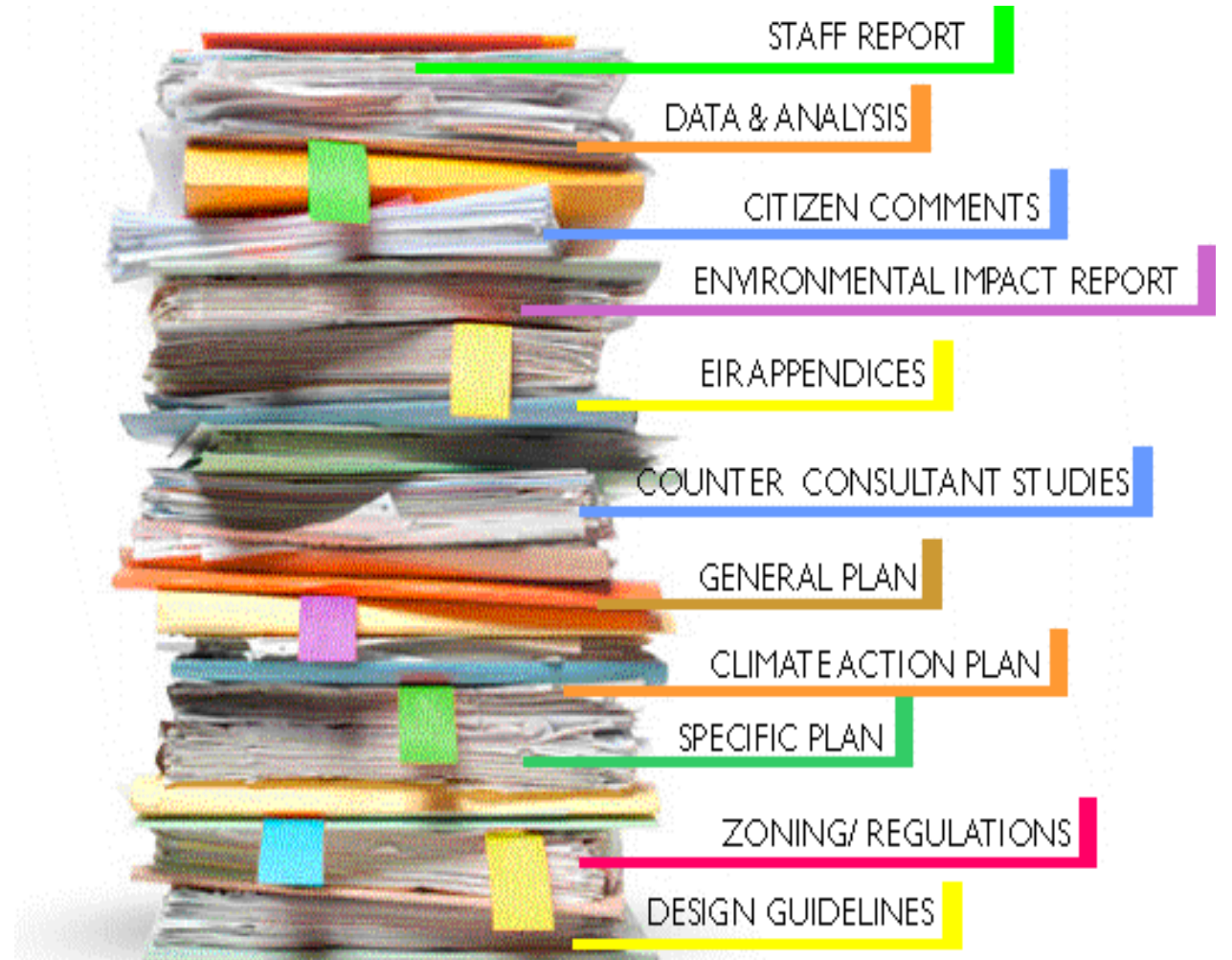
Final EIR & Errata  
Project Description  
Comment Letters &  
Responses

## *Findings*

Staff Report

## What to Skim

Introduction & Setting  
Methodology & Thresholds



# EIR Myths

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The EIR will stop the project.

The EIR will tell me how to vote on the project.

The EIR will be more expensive than a mitigated negative declaration.

The EIR will take longer and than a mitigated negative declaration.

The EIR will be more thorough than a ND/MND.

The EIR will be bulletproof.

# What CEQA isn't...

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Perfect

An advocate for a project

The project itself

A chance to fix existing problems

An encyclopedia of everything everywhere

The analysis of 'worst case'

A decision maker



# Sources for more information

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Office of Planning and Research (OPR)

<https://opr.ca.gov/ceqa/technical-advisories.html>

<https://opr.ca.gov/>

<https://ceqanet.opr.ca.gov/>



**All recent CEQA documents downloadable in PDF**

HCD Housing Planning Hub Site

<https://experience.arcgis.com/experience/b52bcd2cd9734f02b1c0502bbbe5028d/>

California Legislative Information <https://leginfo.legislature.ca.gov/faces/home.xhtml>

CEQA Portal (Court cases and topic papers)

<https://ceqaportal.org/>

Western Riverside Council of Governments (WRCOG) <https://www.wrcog.us/>



THANK YOU

The word 'THANK' is rendered in large, bold, block letters. Each letter is filled with a different, vibrant color and has a thick black outline. The colors include purple, yellow, green, blue, orange, and pink. The word 'YOU' is also in large, bold, block letters, but it is filled with a colorful floral pattern in shades of blue, yellow, orange, and pink, with a thick black outline. There are three small black hearts to the left of the 'Y' and three to the right of the 'U'. The background features a repeating watermark of the text 'FRIENDLY TREE ART' in a light grey font.

## That's it...

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CEQA evaluates how the project changes environment

The evaluation is circulated for public review

If the change is above an adopted threshold then an agency must take action to:

- Adopt measures (mitigation) to reduce the impact below the threshold; or,
- Make findings of overriding consideration to approve the project anyway

The agency must consider the changes as reported in the analysis before taking action

# Questions?

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