



Mariposa County

MINUTES of the Planning Commission

ACTION SUMMARY MINUTES

MEETING DATE: May 7, 2021
TIME: 9:00 AM
LOCATION: Board Chambers
Mariposa County Government Center
5100 Bullion Street, Second Floor, Mariposa, CA 95338

1. CALL TO ORDER

Meeting called to order by Chair Walls at 9:01 AM

Attendee Name	Title	Status	Arrived
Ed Walls	District I Planning Commissioner	Present	9:00 AM
Jack Wilmeth	District II Planning Commissioner	Present	9:00 AM
Mick Herman	District III Planning Commissioner	Present	9:00 AM
Deni Smith	District IV Planning Commissioner	Present	9:00 AM
John McCamman	District V Planning Commissioner	Excused	

2. PLEDGE OF ALLEGIANCE

The Pledge was led by Commissioner Wilmeth.

3. MINUTES APPROVAL

A. Planning Commission – Regular Meeting – April 23, 2021 9:00 AM

It was noted that Commissioner Walls name was misspelled, and correction was made.

Motion made by Commissioner Herman, second by Commissioner Wilmeth, the minutes for April 23, 2021 were approved as corrected.

Motion was carried by the following vote:

RESULT: ADOPTED [4-0]
AYES: Walls, Wilmeth, Herman, Smith

4. PUBLIC ADDRESS

Persons wishing to speak on any item of interest within the subject matter or jurisdiction of the Commission that is not on the agenda. None.

5. INFORMATION ITEMS

A. Planning Commission Training-CEQA Fundamentals (ID # 11779)

Planning Director Sarah Williams gave a training session accompanied by a power point presentation.

After presentation there was a question and answer session.

6. PLANNING COMMISSIONER INFORMATION

Information was received by Commissioner Walls and Planning Director Williams.

7. ADJOURN

There being no further business the meeting was adjourned at 10:07 a.m.

Ed Walls, Chair
Mariposa County Planning Commission

Carol Suggs, Secretary
Mariposa County Planning Commission

Note: Full audio recordings of the minutes are available from the Planning Department by request or on line:

<http://mariposacountyca.iqm2.com/citizens/calendar.aspx?view=list>.



Mariposa County

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TIME: 9:00 AM
LOCATION: Board Chambers
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 5100 Bullion Street, Second Floor, Mariposa, CA 95338

1. CALL TO ORDER

Chair Wall called the meeting to order at 9:00 AM

Attendee Name	Title	Status	Arrived
Ed Walls	District I Planning Commissioner	Present	9:00 AM
Jack Wilmeth	District II Planning Commissioner	Present	9:00 AM
Mick Herman	District III Planning Commissioner	Present	9:00 AM
Deni Smith	District IV Planning Commissioner	Present	9:00 AM
John McCamman	District V Planning Commissioner	Present	9:00 AM

2. PLEDGE OF ALLEGIANCE

Commissioner McCamman led the pledge.

3. Minutes Approval

A. Planning Commission – Regular Meeting – February 26, 2021 9:00 AM

Correction: item #7, insert period at the end of the first sentence instead of a colon.

Motion made by Commissioner McCamman, seconded by Commissioner Herman, the Minutes for February 26, 2021 were approved as amended.

Motion was carried by the following vote:

RESULT: ADOPTED [3-0]
AYES: Walls, Herman, McCamman
ABSTAIN: Wilmeth, Smith

B. Planning Commission – Regular Meeting – April 9, 2021 9:00 AM

Motion made by Commissioner Wilmeth, seconded by Commissioner Smith, the Minutes of April 9, 2021 were approved as presented.

Motion was carried by the following vote:

RESULT: ADOPTED [4-0]
AYES: Walls, Wilmeth, Smith, McCamman
ABSTAIN: Herman

Minutes Acceptance: Minutes of Apr 23, 2021 9:00 AM (Minutes Approval)

4. PUBLIC ADDRESS

Persons wishing to speak on any item of interest within the subject matter or jurisdiction of the Commission that is not on the agenda. None.

5. PUBLIC HEARINGS

A. PUBLIC HEARING: Resolution Approving Variance Application No. 2021-008 with Findings and Conditions, including a Finding that the Project is Exempt from Environmental Review; Eric Desplinter, Applicant. Project is Located at 1233 Cedar Avenue, Fish Camp APN 010-373-0040 2021-PCRES-7

Planner: Kaitlyn Casner

Walls announced that a public comment, revised site plan and a response memo was received after the publication of the Planning Commission packet of which the Commissioners all acknowledging receiving. Copies are available for the public and will be made part of the archived packet.

Kaitlyn Casner, Planner II, gave the project presentation (including a power point). She acknowledged the public comment and the amended site plan.

No Public Comments were received.

Motion was made by McCamman seconded by Herman, the Planning Commission adopted a resolution finding that the project is exempt from environmental review, and Approved Variance No. 2021-008 with the recommended findings and conditions including the amended site plan that addressed the rock structure.

Motion was carried by the following vote:

RESULT: ADOPTED [5-0]

AYES: Walls, Wilmeth, Herman, Smith, McCamman

B. PUBLIC HEARING: Resolution Approving Time Extension Application No. 2021-027 for Land Division Application No. 2017-090, and Finding that No Further Environmental Review is Required; Lemuel Bryce Green and Alma Green, Applicants. APN 011-310-220. Location: 3013, 3013A, and 2996 Trower Road, Catheys Valley. 2021-PCRES-8

Planner: Steve Engfer

Herman questioned if he should recuse himself because of knowing the applicants. Discussion. There being no financial or material interest in the matter Herman elected not to recuse himself.

Steve Engfer, Senior Planner gave the project presentation (including a power point).

There was no Public Comment received.

Motion was made by Herman, seconded by Smith, the Planning Commission adopted a resolution approving Time Extension 2021-027 with findings, including a finding that the previously adopted Mitigated Negative Declaration for LDA No. 2017-090 satisfies the requirement for environmental review pursuant to the California Environmental Quality Act (CEQA) and no further environmental review is required.

Motion was carried by the following vote:

RESULT: ADOPTED [5-0]

AYES: Walls, Wilmeth, Herman, Smith, McCamman

6. PLANNING COMMISSIONER INFORMATION

Information was received by Commissioner Walls.

7. INFORMATION ITEMS

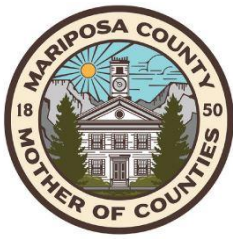
Information was received by Planning Director, Sarah Williams.

8. ADJOURN

There being no further business the meeting was adjourned at 9:41 AM

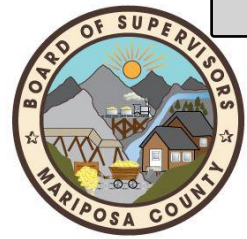
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MARIPOSA COUNTY

Planning Commission • 209-966-5151



5.A

MEETING: May 7, 2021

TO: The Mariposa County Planning Commission

FROM: Sarah Williams, Planning Director

RE: Planning Commission Training-CEQA Fundamentals

Staff will provide training on CEQA Fundamentals.

ATTACHMENTS:

210507 CEQA Training for Planning Commission-Packet for Agenda (PDF)

RESULT: INFORMATION RECEIVED

California Environmental Quality Act - CEQA

Fundamentals

Planning Commission Meeting of 5/7/21

Purpose of Presentation

- Give Planning Commission a basic overview of the California Environmental Quality Act (CEQA)
- State law which Planning staff uses every day – processing of projects and permits
- Staff prepares documents and findings pursuant to CEQA for Planning Commission consideration at each meeting

What is CEQA

California Environmental Quality Act (CEQA) is California's most *important* environmental law.

It requires state, local, and other agencies subject to California's jurisdiction to evaluate the environmental implications of their actions.

CEQA Foundations

- **CEQA Statute**

Public Resources Code (PRC) 21000-21177

- **CEQA Guidelines**

CA Code of Regulations (CCR) Title 14,
§15000 et seq.

- **Case law**

Published Appellate Court decisions
interpreting and applying statute and
guidelines to specific cases

- **Public Agency Implementation**

Planning Commission's Interest

- Type of CEQA document prepared for project
- Content of CEQA document prepared for project
- Conclusions of CEQA document prepared for project

Planning Commission's Interest

■ Type of CEQA document:

Different levels of CEQA review for projects:

- ❑ Not subject to CEQA
- ❑ Exempt from CEQA (*LISTED* Statutory or Categorical exemption)
- ❑ Initial Study – Negative Declaration (ND) or Mitigated Negative Declaration (MND)
- ❑ Environmental Impact Report (EIR)

CEQA - PURPOSE

- **Disclose** to decision makers and public the potential significant environmental effects of proposed activities
- To **inject environmental considerations** into how public agencies consider and take action upon applications, permits and other approvals
- Creates series of **procedural and substantive obligations** for lead agencies (it is easy to make a CEQA error)
 - area for litigation – opponents of projects

CEQA – PURPOSE cont.

- **Disclose** to the public reasons for agency approval of projects with significant environmental effects
- **Foster interagency coordination** in review of projects
- Enhance **public participation** in planning process

CEQA – Goals

- **Identify** significant environmental effects of actions
- **Avoid** those significant environmental effects where feasible or
- **Mitigate** those significant environmental effects where feasible

CEQA does NOT

- Does **NOT** address policy aspects of project
 - does not address whether the project is “good or bad” for the community
- Does **NOT** dictate whether a project should be approved or denied
- Disclosure document

CEQA Directives (Authority)

CEQA authorizes agencies (Planning Commission) to:

- Require changes in a project to lessen or avoid significant effects, when feasible (mitigation measures)
- Disapprove a project to avoid significant effects
- Approve a project with unavoidable significant effects if a project's public benefits outweigh those effects (only through EIR process)

CEQA Directives (Authority)

CEQA authorizes agencies to:

- Comment on CEQA documents prepared by other agencies
 - County DPW comment on project processed in Tuolumne County, if project would create significant traffic impacts on road maintained by Mariposa County
- Impose fees from project applicants for CEQA implementation

Key Participants in the CEQA Process



Lead Agency

- Means the public agency which has the principal responsibility for carrying out or approving a project:
 - **Private projects** requiring governmental approval, the **lead agency** is the **agency with general governmental powers** (for example, the county)
 - PC is **lead agency** for a land division application, a variance application, a conditional use permit application
 - BOS is **lead agency** for a GP/Zoning amendment
 - **Public Projects** – the **public agency** is the **lead agency** for its own projects (BOS approving construction of a new fire station or a skate park)

Lead Agency

- Responsible for implementing CEQA
- Subject to litigation for error related to implementing CEQA
- Example:
 - ❑ Board of Supervisor approved SilverTip Lodge project - certified an EIR for CEQA implementation
 - ❑ Mariposa County was sued for various issues related to the EIR

Key Participants in the CEQA Process



Responsible Agency

- Means a Public Agency that also has to approve a project for which a Lead Agency is preparing a CEQA document
- Includes all state or local agencies other than the Lead Agency with a discretionary approval power over a project
 - (Caltrans is Responsible Agency for a Land Division project accessing a State Highway – Caltrans would issue an encroachment permit for the project)
- Responsible Agency – serve in advisory capacity to lead agency for preparing CEQA document

Key Participants in the CEQA Process



Trustee Agency

Means a state agency having jurisdiction by law over natural resources held in trust for people of California

- Trustee Agency:
 - Department of Fish and Wildlife (has jurisdiction over fish and wildlife of the state, rare and endangered plants)
- Trustee Agency – serve in advisory capacity to lead agency for preparing CEQA document
- DFW would review and comment on biological resources study prepared for land division application

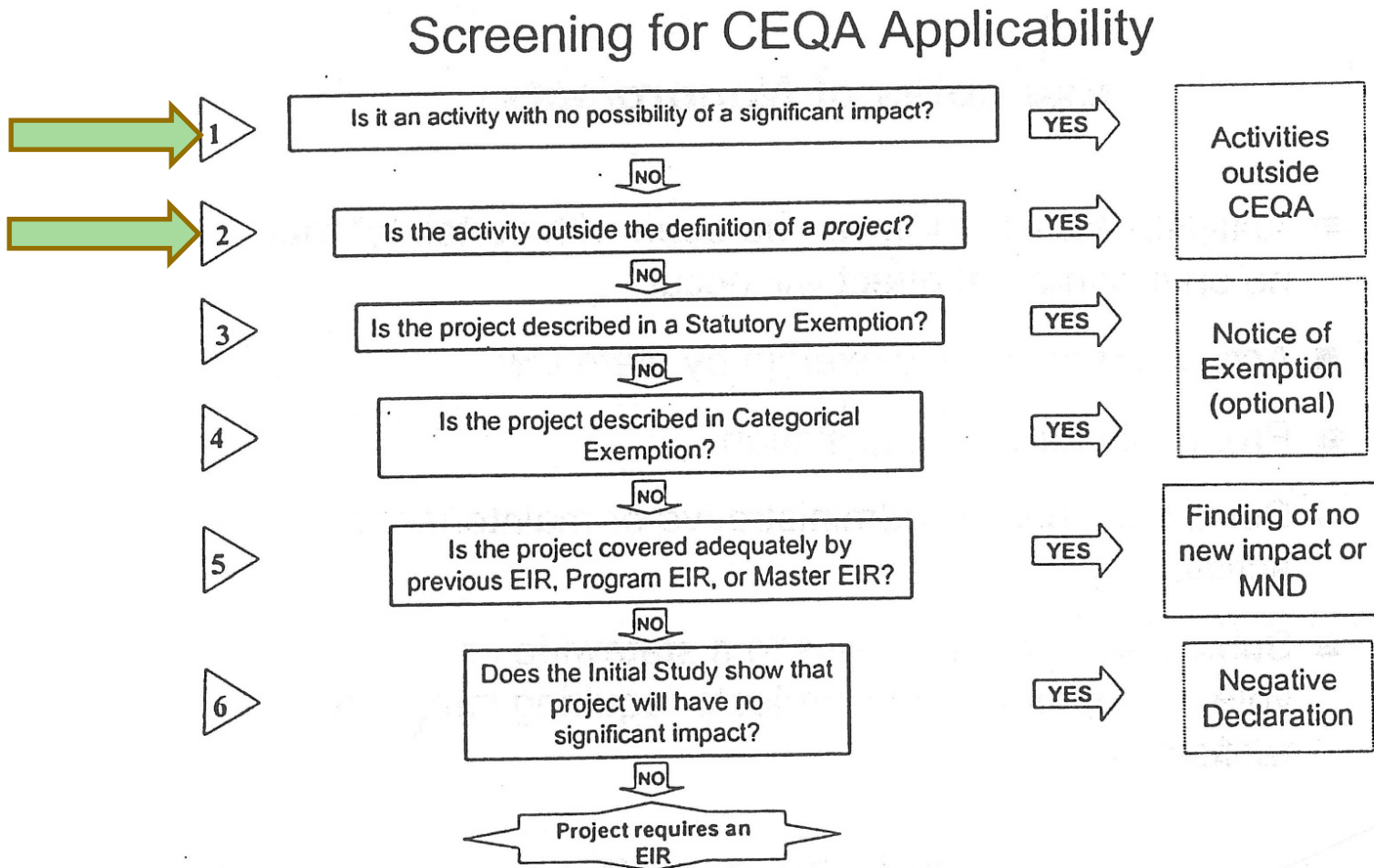
Preliminary Review – what does staff do when project submitted?

- Review application for completeness
- Determine whether project is subject to CEQA
- Determine if we need additional information for the CEQA review
 - Biological study
 - Cultural resources study
 - Traffic study
 - Greenhouse gas study
 - Hydrogeologic study (well production and impacts)

Planning Commission's Interest

- Different levels of CEQA review for projects:
 - ❑ **Not subject to CEQA**
 - ❑ Exempt from CEQA (Statutory or Categorical exemption)
 - ❑ Initial Study – Negative Declaration or Mitigated Negative Declaration
 - ❑ Environmental Impact Report (EIR)

Screening for CEQA Applicability



CEQA Definition of PROJECT

- Activity involving public agency issuance of lease, permit, license, or other entitlement
- Activity directly undertaken by public agency (construction project or general plan / ordinance adoption)
- Activity supported through public agency contracts, grants, loans or other assistance

PROJECT continued

- Means the “whole of an action”, which has potential to result in either direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment
 - Example - land division - the “whole of an action” would include all potential impacts resulting from the “project” including road construction, new encroachments, drainage crossings, oak tree removal, new grading, increased traffic, new residences, new septic systems and wells, etc.

PROJECT continued

- The “whole of the project” includes both on-site and off-site impacts
 - ❑ A major traffic generating project may be required to study its impacts on an off-site intersection
 - ❑ **Example:** When Rite Aide in Mariposa was proposed (Joe Howard Street), Caltrans requested that the project’s impacts to the intersection of Highway 49 N and Highway 140 be evaluated

Examples of Activities not subject to CEQA

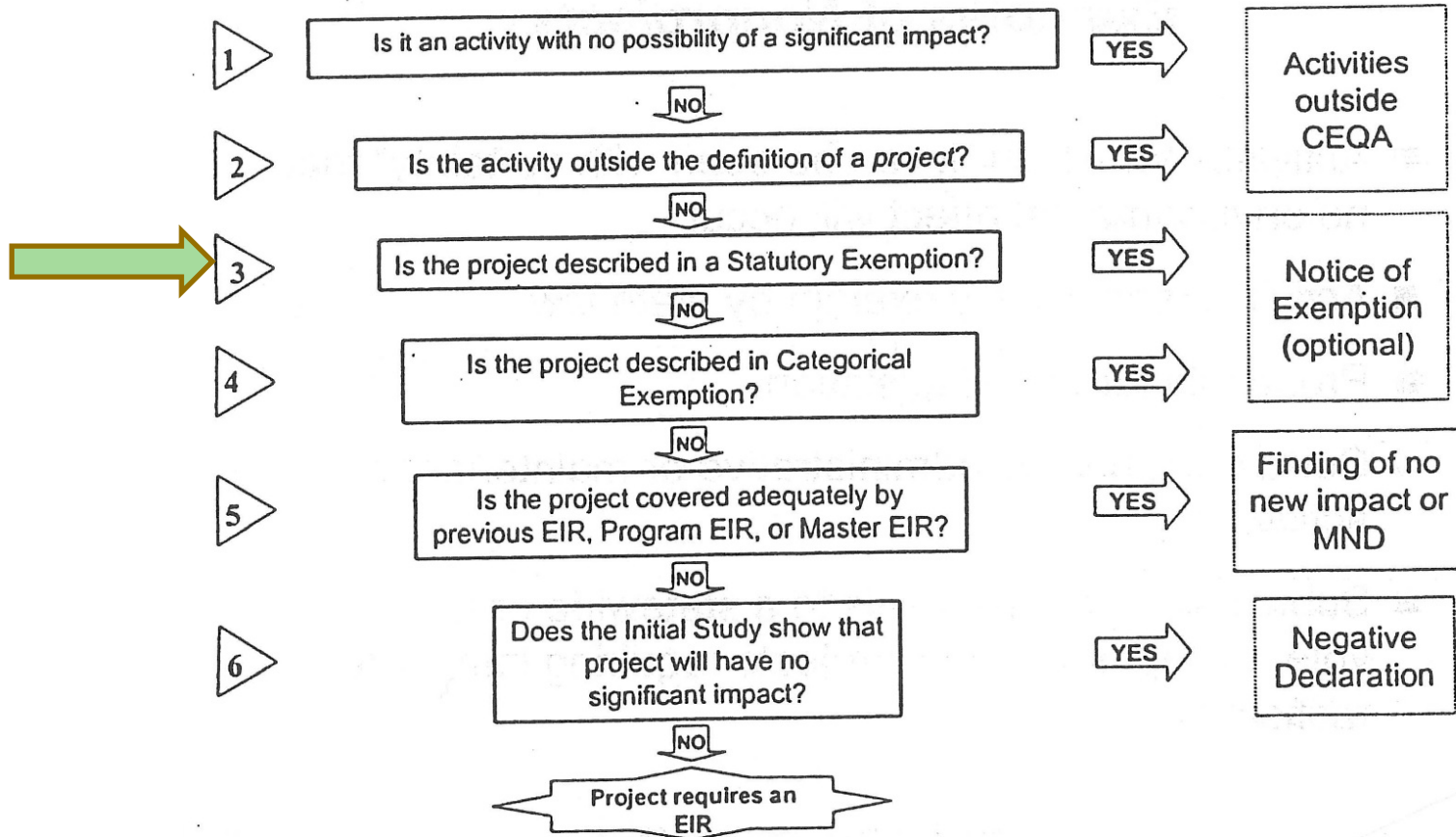
- Activities for which “it can be seen with certainty” that no environmental effect will occur
 - **Example:** Ordinance changing the membership numbers for the Historic Sites and Records Preservation Commission (from 9 to 7)
- Activities specifically exempt by State Law
- Proposals for state legislation
- Certain continuing administrative or maintenance activities

Planning Commission's Interest

- Different levels of CEQA review for projects:
 - ❑ Not subject to CEQA
 - ❑ **Exempt from CEQA (listed Statutory or Categorical exemption)**
 - ❑ Initial Study – Negative Declaration or Mitigated Negative Declaration
 - ❑ Environmental Impact Report (EIR)

Screening for CEQA Applicability

Screening for CEQA Applicability

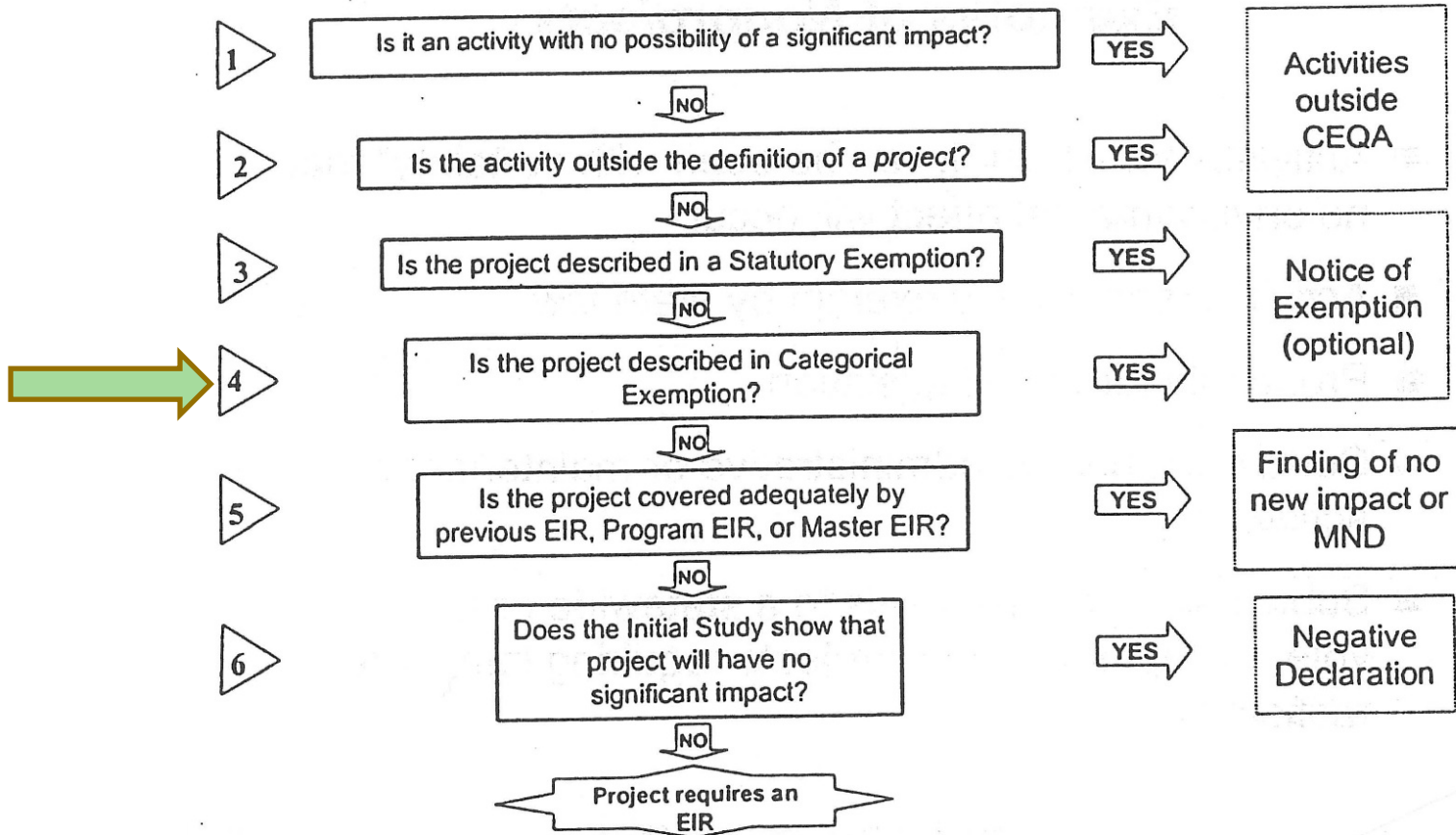


Statutory Exemptions (CEQA lists statutory exemptions

- **Ministerial projects** government decision involving little or no personal judgment by the public official carrying out the project
 - **Example:** issuing dog license or residential building permit or vacation rental permit
 - If project meets specific listed requirements, the permit is issued
- **Emergency projects** – flood repair or fire repair work
 - After 3/2018 Floods – DPW work to repair roads
 - After Detwiler Fire – PG&E work to repair lines
- **Disapproved projects** – Project is denied, no CEQA

Screening for CEQA Applicability

Screening for CEQA Applicability



Categorical Exemptions (CEQA lists categorical exemptions)

- Operation, repair, or maintenance of existing structures (Class 1)
 - Maintenance work on county roads
- Replacement or reconstruction of existing structures (Class 2)
 - Reconstruction of JCF hospital to make it earthquake resistant
- Construction or conversion of small new facilities (Class 3)
 - MPUD water main extension

Categorical Exemptions (CEQA lists categorical exemptions)

- Minor alterations to Land (Class 4)
 - Grading on land with slope of less than 10%
- Minor alternations in land use limitations (Class 5)
 - Lot Line Adjustment or Setback Variance Application
- Minor land divisions (Class 15)
 - 4 or fewer parcels in urbanized area with available services

When does a Categorical Exemption not apply?

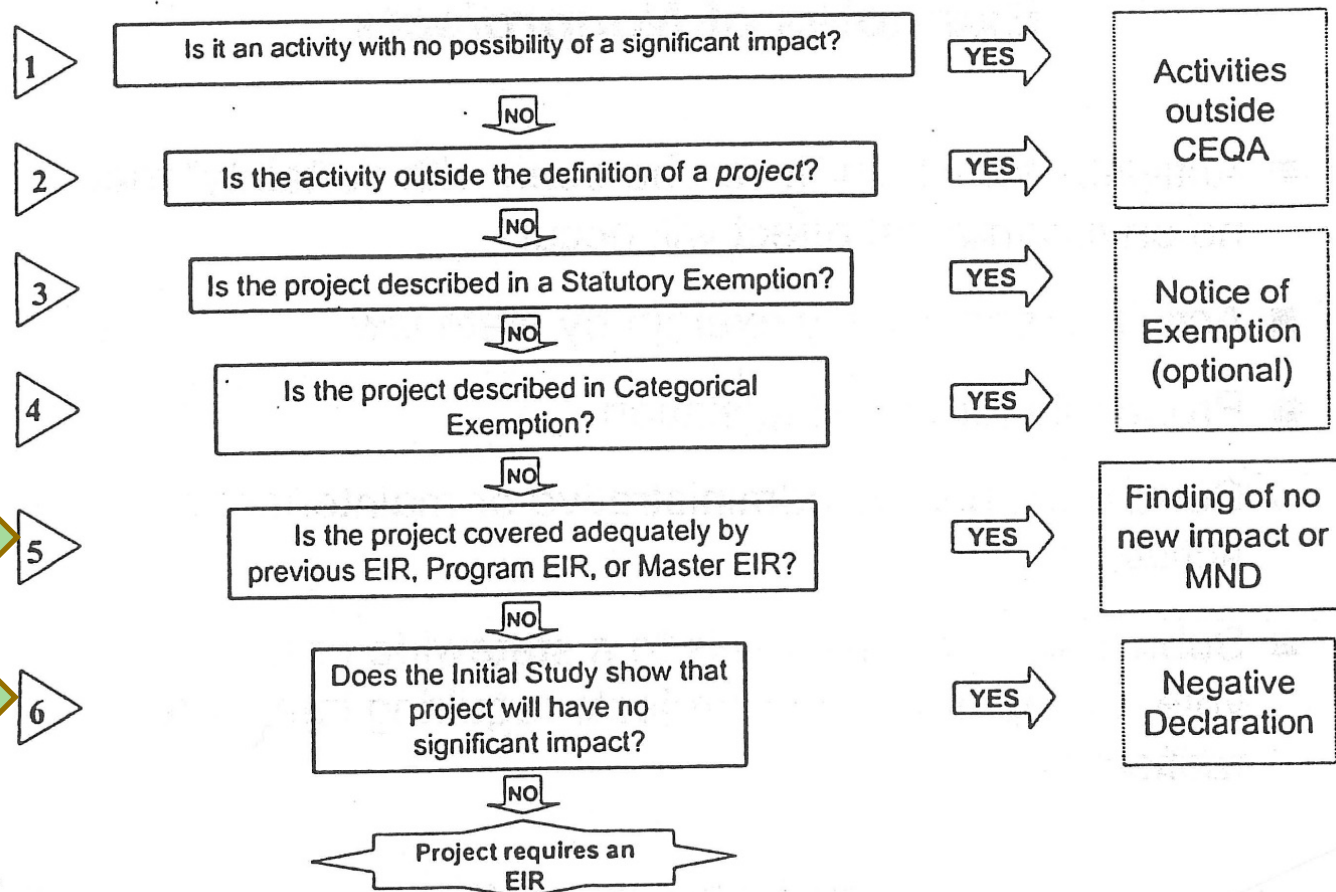
- A reasonable possibility exists that the activity may have a significant environmental impact because of **unusual circumstances**
- **Cumulative impacts** would be significant (consider other projects in area)
- Project proposed within a **sensitive environment**
 - Grading on slopes less than 10%, but runoff is direct into significant wetland area
- Project affects scenic resource within designated state **scenic highway**
 - Grading on slopes less than 10%, but in Scenic Highway Overlay District
- Project causes substantial adverse change in significant **historic resource**
 - Grading on slopes less than 10%, but in area with known historic resources

Planning Commission's Interest

- Different levels of CEQA review for projects:
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 - ❑ **Initial Study – Negative Declaration or Mitigated Negative Declaration**
 - ❑ Environmental Impact Report (EIR)

Initial Review – Determine project not exempt from CEQA

Screening for CEQA Applicability



Project covered by previous EIR

Examples:

- Amended conditions for Tenaya Cabins Project
 - Applicant needed to amend highway encroachment
- Amended conditions for SilverTip Project
 - Applicant needed to amend parking layout (in area previously identified for parking)

Purposes of Initial Studies

Initial Study – document which evaluates environmental impacts of project

- Decide whether to prepare an EIR or Negative Declaration (most projects in Mariposa County are processed with adoption of a Negative Declaration)
- Avoid unnecessary EIRs through mitigation
- Focus the EIR on significant effects
- Facilitate early environmental assessment
- Support Negative Declarations and Mitigated Negative Declarations

What does CEQA require be Studied?

- Physical changes in the environment

Types of Environmental Impacts

- Direct effects
- Reasonably foreseeable indirect effects
- Growth-inducing effects
- Cumulative effects

What does CEQA require be Studied?

- Checklist of Items

CEQA – Environmental Impacts

“Checklist”

- Aesthetics
- Agriculture & Forestry Resources
- Air Quality
- Biological Resources
- Cultural Resources
- Geology / Soils
- Hazards & Hazardous materials
- Hydrology / Water Quality
- Greenhouse Gas Emissions
- Land Use / Planning
- Mineral Resources
- Noise
- Population / Housing
- Public Services
- Recreation
- Transportation
- Utilities / Service Systems
- Tribal Cultural Resources
- Energy
- Wildfire
- Mandatory Findings of Significance

Evaluating impacts - how to do that?

- The “**Baseline**” – the Environmental Setting
 - The physical environmental conditions in the vicinity of the project as they existed at the time the environmental analysis is started
- The impacts of a “project” are evaluated against the “baseline” conditions

What is “Significant”, when evaluating impacts?

- No ironclad definition
- CEQA Guidelines provide some criteria for lead agencies
 - Impacts to historic resources
- Mariposa County General Plan Certified EIR provides thresholds staff rely on

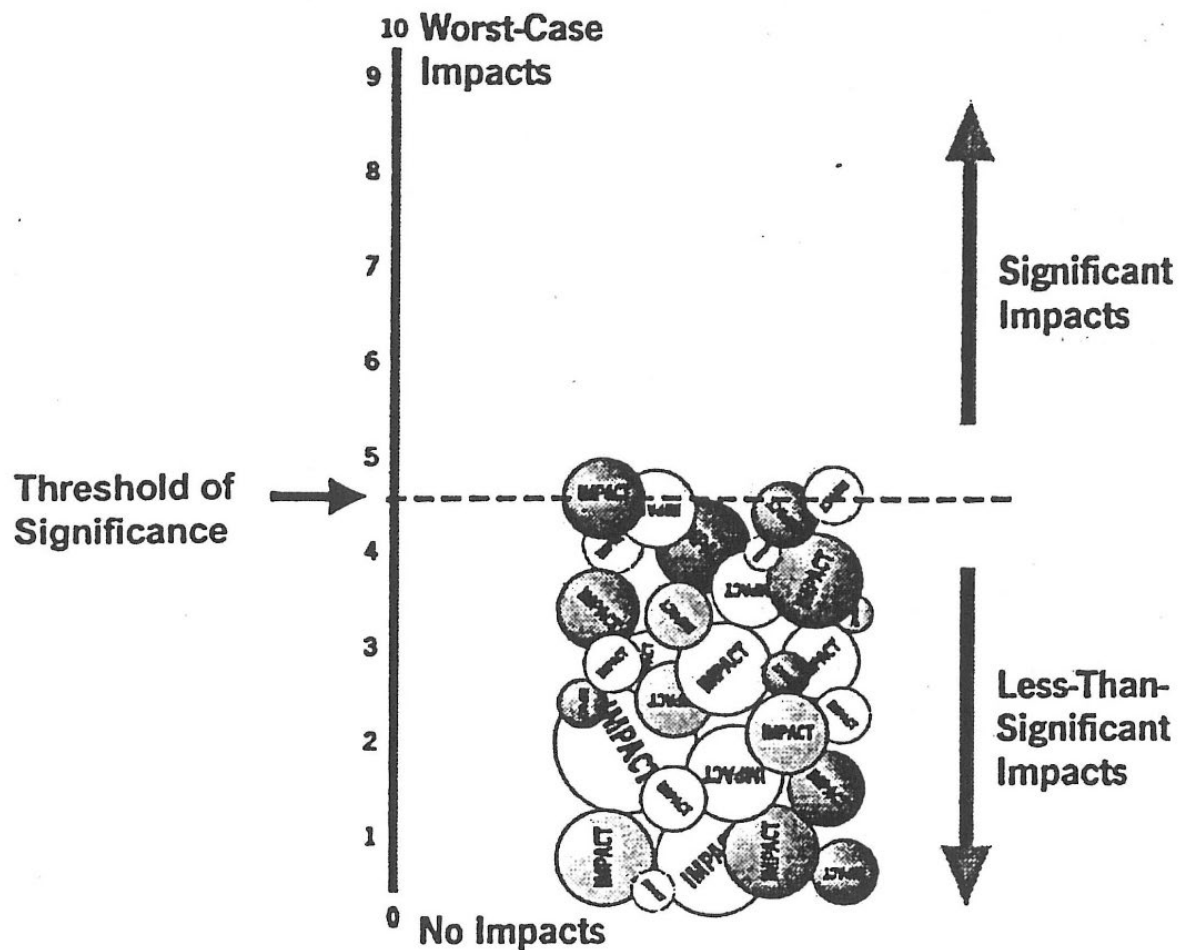
Agency Thresholds of Significance

- CEQA Guidelines encourage agencies to adopt local **thresholds of significance**
- Thresholds must be developed through public review process and supported by substantial evidence
- Thresholds are **quantitative, qualitative, or performance** level - noncompliance with which normally means an effect will be found significant

Informal vs. Formal Thresholds

- Mariposa County does not have formally adopted thresholds of significance
- Mariposa County reviews each project on a case-by-case basis
- Rely on General Plan Certified EIR
 - Thresholds do not trump fair argument standard

Significance of Impacts



How to Mitigate Identified Impacts?

- **Avoid** the impact (redesign or project amendment)
 - **Example:** Proposed road goes through cultural resource site or wetland – move proposed road to avoid the cultural resource site or wetland
- **Minimize** the impact (limit the action or magnitude of the action) (redesign or project amendment)
 - **Example:** Outside amplified noise from project (wedding venue) would impact surrounding residential neighborhood – mitigation measure might establish maximum noise levels for amplified music a property lines and establish restriction for no amplified noise after 9 p.m.
- **Rectify** the impact by **repairing or rehabilitating or restoring** the impacted environment

How to Mitigate Identified Impacts?

- Pay **impact fees** (“mitigating” off-site)
 - Mariposa County hasn’t adopted program
 - Other jurisdictions – fees used to protect resource
- **Defer mitigation** – if to occur at later time, then must establish performance standards for the mitigation
 - **Example** – Initial Study (prepared October) identifies potentially significant impacts to nesting raptors – mitigation measure establishes options:
 - Work occurs outside of nesting season (season limits identified) OR
 - Requirements for biologist survey to locate active nests on-site – survey occur immediately prior to site work and grading activities; if nest(s) found, MM establishes timeline for and boundary within which no work can be conducted

Mitigation Measures

- **Feasible** – “able to be accomplished in successful manner within reasonable period of time, considering economic, environmental, legal, social and technological factors”
 - **Example** – project exceeds dead end road length.
 - If there is an easement – MM require improvement of easement to mitigate impact.
 - If there isn't an easement, County can't require easement (may not be able to be accomplished)

Mitigation Measures

- “Nexus” – must be connection or link between the impacts of the “project” and the established mitigation (cannot require mitigation of impacts which are not a result of the project)

Example – Minor Subdivision Application (4 parcels)

- ❑ Proposed near end of 2-mile-long narrow county-maintained road (less than 2-lanes wide [14 feet wide] - not sufficient for daily traffic or emergency response based on County and CALFIRE standards). IS identified potentially significant impact on public safety.
- ❑ Road already serves 62 parcels (already substandard).
- ❑ County could not require applicant to improve (mitigate) the substandard 2 miles of road – not be nexus (or connection) between the project to create 4 parcels and the mitigation

Mitigation Measures – how do we ensure compliance?

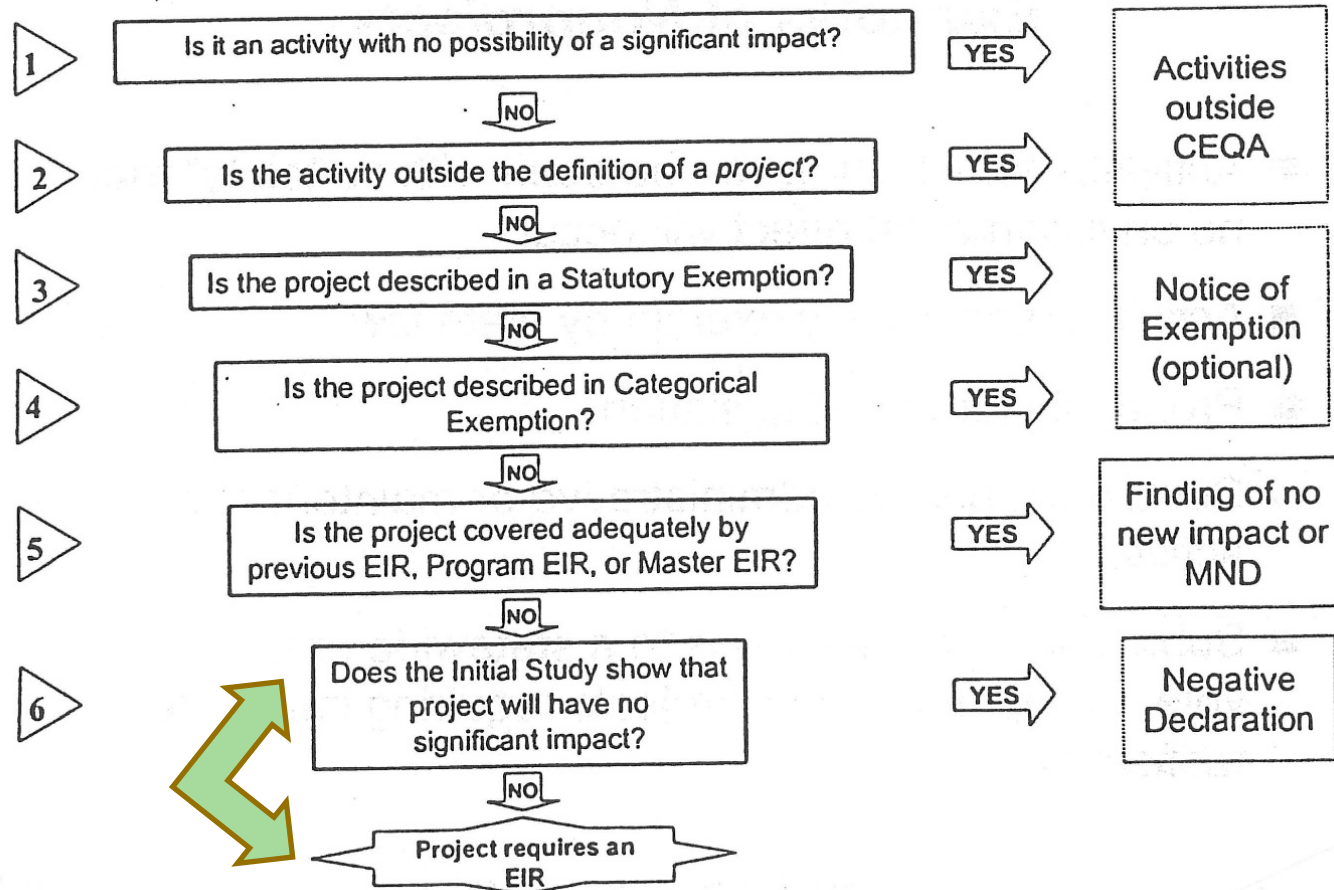
- Mitigation Measure Reporting Program (MMRP) – each mitigation measure must have:
 - ❑ Someone who will ensure that the measure will be implemented
 - ❑ A certain time that measure will be implemented (permit issuance or map filing)
 - ❑ How will be implemented (mechanism)

Planning Commission's Interest

- Different levels of CEQA review for projects:
 - ❑ Not subject to CEQA
 - ❑ Exempt from CEQA (Statutory or Categorical exemption)
 - ❑ Initial Study – Negative Declaration or Mitigated Negative Declaration
 - ❑ **Environmental Impact Report (EIR)**

Initial Review – Determine project not exempt from CEQA

Screening for CEQA Applicability



Threshold for Preparing EIRs:

“**Fair Argument Standard**”

An EIR must be prepared if:

- It can be **fairly argued**,
- based on **substantial evidence**,
- in light of the **whole record**,
- that a project may have a significant environmental effect.
- “Significant” is evaluated in comparison to the “Baseline”.

What is ****Substantial Evidence****?

It is:

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

It is NOT:

- Argument
- Speculation
- Unsubstantiated opinion or narrative
- Clearly inaccurate or erroneous information
- Socioeconomic impact not linked to physical environmental impacts

When to use Negative Declaration (result of initial study)?

- Appropriate when there is no substantial evidence of a fair argument of a potentially significant impact
- Can be used when implementing a plan for which an EIR was adopted (either program or master EIR)

EIR – Environmental Impact Report

- Must be prepared if it is found that a project may have a significant effect on the environment
- Decision typically made through preparation of an Initial Study (mandatory findings of significance)
- If it is clear that EIR will be necessary at beginning of project processing, may skip Initial Study phase

Types of EIRs

- **Project EIR (SilverTip Project)
- **Program EIR (General Plan)
- Tiered EIR
- Subsequent EIR
- Addendum EIR
- Master EIR

Can a project be approved if it has significant unmitigable environmental impacts?

- Yes – IF:
 - ❑ An **EIR** is prepared and certified for the project AND
 - ❑ A **Statement of Overriding Considerations** is adopted for the project
 - Lead Agency finds that the economic, legal, social, technological or other **benefits** of a proposed project **outweigh the unavoidable environmental impacts** of the project and the adverse environmental effects are considered “acceptable”

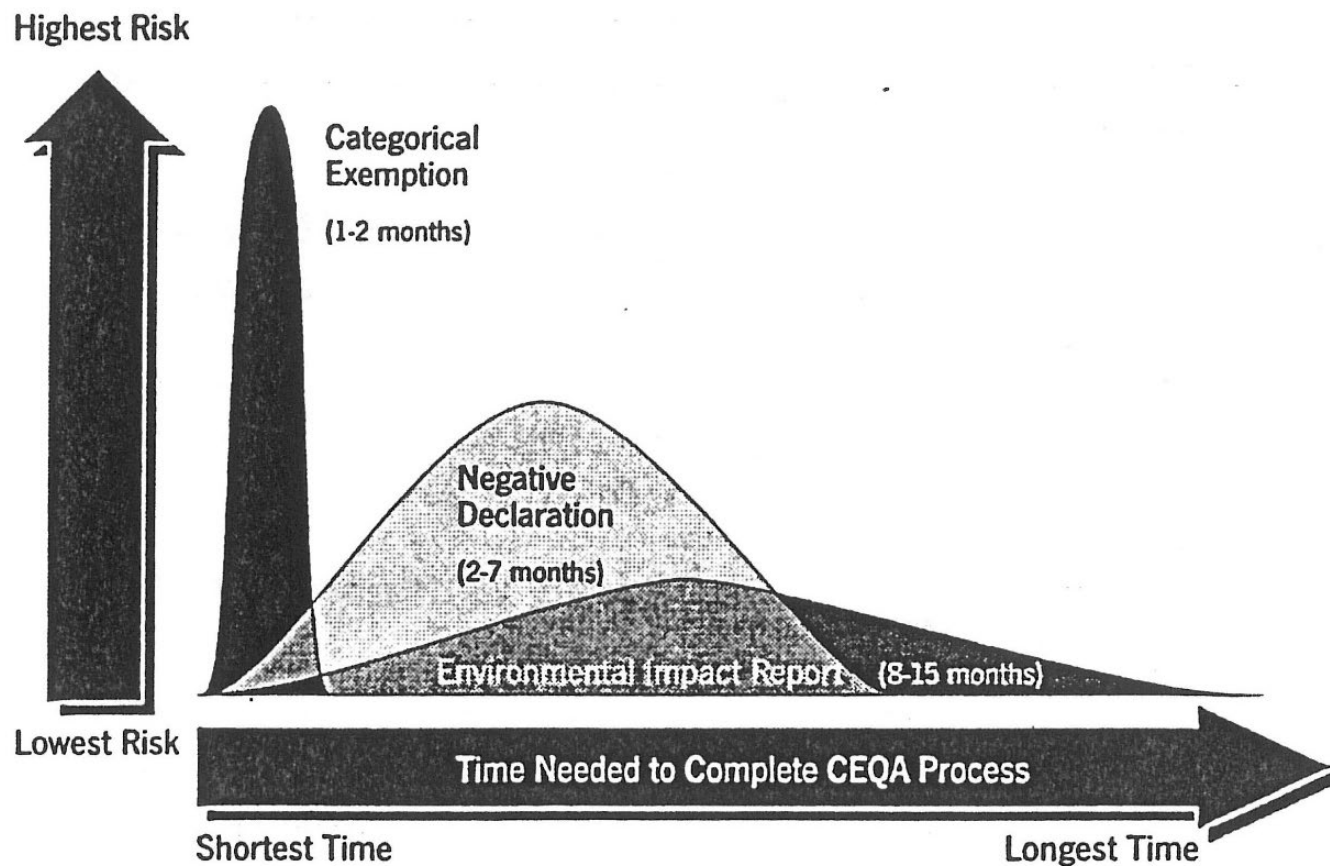
Role of Courts in CEQA Process

- CEQA is essentially enforced through litigation
- Access to courts - avenue for citizen enforcement of CEQA
- Judiciary plays important role in CEQA interpretation
 - Published appellate level case – enforceable (like statute and guidelines)
- Potential legal challenge encourages agency compliance

Typical Litigation Issues - CEQA

- Definition of the Project
- Use of categorical exemptions
- Failure to prepare an EIR
- EIR adequacy (environmental settings, impact analysis, cumulative analysis, mitigation measures, alternatives)
- Procedural requirements of CEQA

Risk v. Time in the CEQA Compliance Process



California Environmental Quality Act - CEQA

Fundamentals

Planning Commission CEQA Training

Attachment: Excerpt from Mariposa County General Plan Certified Environmental Impact Report (EIR)

This excerpt provides an example of:

1. Program EIR analysis
2. Points of Significance (in Table 4.5-1) (staff uses these to determine whether or not other projects will have significant impact)

**COUNTY OF MARIPOSA GENERAL PLAN – VOLUME IV
ENVIRONMENTAL IMPACT REPORT**

considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policy 9-2a requires maintenance of an effective transit system under the County's Transit Plan. Policy 9-3a and Implementation Measures 9-3a(1) and 9-3a(2) require that the County update the Bicycle, Pedestrian, and Equestrian Facilities Plan. These policies would result in plans and policies that would eliminate conflicts resulting in a less than significant impact.

2.5.3.4 PUBLIC SERVICES AND UTILITIES

Impact PS-1. Build-out of the proposed General Plan would increase demands for public services and utilities. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policies that serve as mitigation include: Policy 5-2a and its implementation measures; Policy 9-5a and Implementation Measure 9-5a(1); Policy 9-6a and Implementation Measure 9-6a(1); Policies 12-1a, 12-1b, and 12-5a; and Policy 16-1a, 16-3a, 9-9a and Implementation Measures 9-9a(1) and 9-9a(2). These policies would result in plans and policies that would eliminate conflicts resulting in a less than significant impact.

2.5.3.5 BIOLOGICAL RESOURCES

BIOLOGICAL RESOURCES

Impact BR-1. Build-out under the proposed General Plan could cause significant adverse impacts to special status species. If these species occur in development areas there could be loss of individuals and habitat, which would result in a significant impact.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Draft General Plan Policies 11-2d and 11-4a call for the conservation of a diverse and sensitive range of species and habitats from incompatible uses. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County.

Other Mitigation Measures

The County will work with the California Department of Fish and Game (CDFG) and United States Fish and Wildlife Service (USFWS) to include appropriate mitigation measures during project approval to prevent the loss of individuals and occupied or designated habitat.

**COUNTY OF MARIPOSA GENERAL PLAN –VOLUME IV
ENVIRONMENTAL IMPACT REPORT**

Implementation of proposed policies identified above reduce the impact to a less than significant level.

Impact BR-2. Build-out of the proposed General Plan has the potential to cause loss of plant species contained on CNPS Lists 2, 3 and 4, resulting in a significant adverse impact. A significant impact would occur if development would result in the loss of more than 15 percent of the known occurrences of the populations in the County.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Draft General Plan Policies 11-2d and 11-4a call for the preservation of a diverse range of species and vegetation types from the intrusion of incompatible uses. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County.

Implementation of the policies identified above reduce the potential impacts to CNPS species to a level less than significant.

Impact BR-3. Build-out of the proposed General Plan could cause a significant impact to nesting raptors and migratory birds if active nests occur within a development area. This impact would be significant.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County. Implementation of the policies above reduce impacts to a level of less than significant.

Impact BR-4. Build-out of the proposed General Plan could cause the permanent loss of habitat for sensitive wildlife species, which would be a significant impact.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Draft General Plan Implementation Measure 11-4a(1) would minimize the loss of habitat for sensitive species. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant

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communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County. Implementation Measure 11-4a(8) requires compliance with regulations and requires measures that protect endangered species, rare wildlife and plant species, breeding raptors, migratory birds, sensitive native plant communities, wildlife migration or travel corridors and jurisdictional wetlands or other waters of the U.S.

Implementation of the policies above reduces the impact to a less than significant level.

Impact BR-5. Build-out of the proposed General Plan could result in a loss of sensitive native plant communities from development activities. This would be a significant impact.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Draft General Plan Implementation Measure 11-4a(1) calls for the preservation of a diverse range of species and habitats, and the protection of significant and sensitive habitats from incompatible uses. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County. Implementation Measure 11-4a(8) requires compliance with regulations and requires measures that protect endangered species, rare wildlife and plant species, breeding raptors, migratory birds, sensitive native plant communities, wildlife migration or travel corridors and jurisdictional wetlands or other waters of the U.S.

Implementation of the policies above reduces the impact to a less than significant level.

Impact BR-6. Build-out of the proposed General Plan could cause a significant impact from blocking or disrupting wildlife migration or travel corridors. This would be a significant impact.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Draft General Plan Policy 11-2d calls for the conservation of water sources for water-dependent species and riparian habitats. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County. Implementation Measure 11-4a(8) requires compliance with regulations and requires measures that protect endangered species, rare wildlife and plant species, breeding raptors, migratory birds, sensitive native plant communities, wildlife migration or travel corridors and jurisdictional wetlands or other waters of the U.S.

Implementation of the above policies reduces the impact to a less than significant level.

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Impact BR-7. Build-out of the proposed General Plan would not conflict with any habitat conservation plans.

Plan Policies that Serve as Mitigation

Draft General Plan Implementation Measure 11-4a(1) states the Mariposa County Planning Department would review the preparation of a Mariposa County Environmental Conservation Program during the intermediate-term planning period. This Program would include development standards, conservation programs, and mitigation measures for impacts on sensitive biological resources. The draft General Plan would not conflict with the provisions in the Mariposa County Environmental Conservation Program because the Program would be developed and subsequently reviewed by the County after the adoption of the General Plan. This would result in a less than significant impact.

Impact BR-8. Build-out of the proposed General Plan could result in the net loss of wetlands, vernal pools, or other waters of the U.S. from development activities. This loss would be a significant impact.

Plan Policies that Serve as Mitigation

Compliance with Federal and State regulations serve to mitigate the loss of special status species. Draft General Plan Policies 11-2d, 11-4a, and 16-6a conserve water sources for water-dependent species and riparian habitats; conserve the diversity of native ecosystems, plant communities, wildlife habitat, and plant and animal species; and retain flood plains within project design in such a way as to ensure that no net change occurs upstream or downstream. Implementation Measure 11-4a(1) requires the implementation of a County Environmental Conservation Program that includes standards and programs to protect sensitive habitat, breeding and nesting areas, special status species, riparian habitat, and sensitive plant communities. Implementation Measure 11-4a(6) requires site surveys in compliance with Federal and State regulations as part of the environmental review. Implementation Measure 11-4a(7) requires the County to record the data collected from the site surveys, a comprehensive map of environmental resources in Mariposa County. Implementation Measure 11-4a(8) requires compliance with regulations and requires measures that protect endangered species, rare wildlife and plant species, breeding raptors, migratory birds, sensitive native plant communities, wildlife migration or travel corridors and jurisdictional wetlands or other waters of the U.S.

If there is a significant impact potential to jurisdictional wetlands or waters of the U.S., the project proponent would work with the Army Corps of Engineers and the California Regional Water Quality Control Board to develop appropriate actions. Implementation of the above policies serve to reduce the impact to a less than significant level.

2.5.3.6 GEOLOGY AND SEISMICITY

Impact GS-1. Build-out of the proposed General Plan would include structures that could be damaged by ground surface rupture. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policies that serve as mitigation include Policy 16-8a and Implementation Measures 16-8b(1) and 16-9a(1), which require that new development near fault zones be

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discouraged or designed to minimize or eliminate risks, that public facilities be sited and constructed to meet state and UBC guidelines, and that development in geologic hazard areas be reviewed to avoid building sites in areas subject to secondary seismic effects. Implementation of these policies would result in a less than significant impact.

Impact GS-2. Build-out of the proposed General Plan could result in damage from earthquake-induced ground shaking. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policies that serve as mitigation include Policy 16-8a and Implementation Measures 16-8b(1) and 16-9a(1), which are described under Impact GS-1 above. Implementation of these policies will mitigate impacts from ground shaking to a level of less than significant.

Impact GS-3. Build-out of the proposed General Plan could result in damage from co-seismic ground deformation. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policies that serve as mitigation include Policy 16-8a and Implementation Measures 16-8b(1) and 16-9a(1), which are described under Impact GS-1 above. Implementation of these policies will mitigate impacts from co-seismic ground deformation to a level of less than significant.

Impact GS-4. Build-out of the proposed General Plan could result in damage from liquefaction or settlement during an earthquake. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policies that serve as mitigation include Policy 16-8a and Implementation Measures 16-8b(1) and 16-9a(1), which are described under Impact GS-1 above. Implementation of these policies will mitigate impacts from liquefaction and settlement to a level of less than significant.

Impact GS-5. Build-out of the proposed General Plan could result in damage to facilities from unstable slope conditions including landslides and rockfalls. This is considered to be a less than significant impact as proposed plan policies would minimize impact potential.

Plan Policies that Serve as Mitigation

Draft General Plan Policies that serve as mitigation include Policy 16-7a, which enforces the County grading code, Policy 16-7b and its implementation measures, which requires additional inspections and engineering studies in geologic hazard areas, and Policy 16-8a and Implementation Measure 16-8a(1), which discourages development in geologic hazard areas or requires additional mitigation design. Implementation of these policies will mitigate impacts from unstable slope conditions to a level of less than significant.

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basis for this evaluation of biological resources impacts may be found in Section 10.1 of Volume III. This section provides information on plant communities, wildlife habitats, and special-status species that occur within Mariposa County.

4.5.2 EVALUATION CRITERIA WITH POINTS OF SIGNIFICANCE

The evaluation criteria for Biological Resources are presented in Table 4.5-1. These criteria are drawn primarily from local plans and CEQA requirements.

**Table 4.5-1
Evaluation Criteria with Points of Significance
Biological Resources**

Evaluation Criteria	As Measured by	Point of Significance	Justification
BR-1. Will the Project cause a net loss of individuals, occupied habitat, or restrict the reproductive capacity of endangered, threatened, or rare wildlife or plant species?	a. Number of individuals of a plant or wildlife species that would be lost.	a. No net loss of endangered, threatened or rare wildlife or plant species.	FESA, CESA (Sections 2062 and 2067). CEQA (Article 5, Section 15065). CEQA Checklist Item IV (a).
	b. Acres of occupied or designated critical habitat.	b. No net loss of occupied or designated endangered, threatened or rare species habitat.	CDFG Code Sections 1900-1913.
BR-2. Will the Project cause a net loss of individuals of CNPS List 2, 3, or 4 plant species?	Number of plant species or populations that would experience a loss of individuals.	Net loss of greater than 15 percent of known occurrences of populations in Mariposa County.	CDFG Code Sections 1900-1913. CEQA (Article 5, Section 15065). CEQA Checklist Item IV (a).
BR-3. Will the Project cause a net loss of active raptor nests, migratory bird nests, or native wildlife nursery sites?	Number of potential active nesting or breeding sites.	No net loss of raptor nests, migratory bird nests, or native wildlife nursery sites.	CEQA (Article 5, Section 15065). CEQA Checklist Item IV (d). CDFG Wildlife Habitat Relationships model - (Version 5.2). Fish and Game Code - (Section 3503.5).
BR-4. Will the Project cause a permanent net loss of habitat for sensitive wildlife species?	Acres of sensitive wildlife habitat lost.	Loss of greater than 25 percent of each habitat type on site.	CEQA (Article 5, Section 15065). CEQA Checklist Item IV (b). CDFG Wildlife Habitat Relationships model - (Version 5.2).

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**Table 4.5-1
Evaluation Criteria with Points of Significance
Biological Resources**

Evaluation Criteria	As Measured by	Point of Significance	Justification
BR-5. Will the Project cause a permanent loss of sensitive native plant communities? ³	Acres of sensitive native plant community lost.	Loss of greater than 25 percent of each sensitive native plant community on site.	CEQA (Article 5, Section 15065). CEQA Checklist Item IV (b). CDFG (Fish and Game Code, Sections 1900-1913). CDFG Interim Wildlife/ Hardwood Management Guidelines (February 1, 1989). CDFG (CNDDDB 1994, 1995).
BR-6. Will the Project substantially block or disrupt wildlife migration or travel corridors? ⁴	Number of corridors substantially blocked or disrupted.	No corridors blocked more than 50%.	CEQA Checklist Item IV (d).
BR-7. Will the project conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, state or federal habitat conservation plan?	Number of plans under which a conflict would result.	Any such conflicts.	CEQA Checklist Item IV (e).
BR-8. Will the project result in a net loss of wetlands, vernal pools, or other waters of the U.S. or State of California?	Acreage of permanent discharge to or placement of fill in potential jurisdictional wetlands or other waters of the U.S. or State of California	No net loss of wetlands, vernal pools, or other waters of the U.S.	Clean Water Act, 40 CFR 230 Section 404(b)(1), U.S. Army Corps of Engineers, U.S. EPA, and State of California no net loss policies. CEQA Checklist Item IV (c).

Source: Parsons, 2005.

Biological Resources Notes:

CDFG	California Department of Fish and Game	CNPS	California Native Plant Society
CEQA	California Environmental Quality Act	FESA	Federal Endangered Species Act
CESA	California Endangered Species Act	USFWS	United States Fish and Wildlife Service
CNDDDB	California Natural Diversity Data Base		

Planning Commission CEQA Training

Attachment: Example of Appellate Level Court Cases that Affect CEQA Implementation in California



Key Steps in Preparing Negative Declarations ("ND"):

- The "project" includes all onsite and offsite supporting infrastructure. *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818.
- Avoid relying upon a "naked" checklist. *Citizens Assn. for Sensible Development v. County of Inyo* (1985) 172 Cal.App.3d 151.
- Contact Native American tribes that have requested notification of projects regarding consultation. Pub. Res. Code, §§21080.3.1, 21080.3.2.
- When referring to independent documents, be specific in citation practice. Guidelines, § 15152.
- Maintain written documentation of consultation with responsible and trustee agencies.
- Explain how existing regulations avoid or mitigate impacts to a less-than-significant level.
- Do not rely on future studies alone as mitigation. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296.
- Use Guidelines § 15152 wherever possible as a streamlining tool.
- The applicant must agree to the mitigation measures before it is released for public review. Guidelines, § 15075.
- File the NOI and ND with all trustee and responsible agencies. *Fall River Wild Trout Foundation v. County of Shasta* (1999) 70 Cal.App.4th 482.
- The NOI must include the review period, hearing schedule if known, address of where the ND and all documents can be viewed. Guidelines, § 15072. Failure to maintain proof of posting can be fatal. *Burrtec Waste Industries, Inc. v. City of Colton* (2002) 97 Cal.App.4th 1133.
- Specify the location and custodian of documents which constitute the record of proceedings. Guidelines, § 15072.
- File and post the NOD. Pay the Fish and Game fee. Fish & G. Code, § 71104. CEQA Filing Fees can be found at: www.dfg.ca.gov/habcon/ceqal/

CALIFORNIA LAND DEVELOPMENT GUIDES CEQA Tips

Impact Fees as CEQA Mitigation Government Code sections 66000-66022:

- Funding strategy, including fees, which provides incomplete funding fails as full mitigation. *Napa Citizens for Honest Government v. Board of Supervisors* (2001) 91 Cal.App.4th 342.
- Pre-existing fee program used in conjunction with ad hoc fees for projects that will have a later impact can constitute effective mitigation. Even though improvements may not be built until after project construction, the fee serves as effective mitigation. *Save Our Peninsula Committee v. Monterey County Bd of Supervisors* (2001) 87 Cal.App.4th 99.
- A fee program to mitigate traffic impacts may be insufficient mitigation when the record shows only a planned study to identify needed improvements, instead of a firm improvement plan. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.
- A fee program to mitigate traffic impacts can be sufficient mitigation if the fees are a reasonable, enforceable part of an improvement plan that will actually mitigate the cumulative effects. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173.
- Fee programs adopted without CEQA compliance may have limited CEQA benefits for later projects. *California Native Plant Society v. County of El Dorado* (2009) 170 Cal.App.4th 1026.
- State agencies are required to mitigate off-site impacts, usually by paying funds towards the construction of offsite improvements, whenever feasible. *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945.
- A lead agency is not required to impose inter-jurisdiction traffic mitigation if the affected agency does not have a fee program in place. *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912. Guidelines, § 15126.2.
- For more information see "Impact Fee Programs as Effective Tools for CEQA Mitigation: An Update" available at <http://blog.aklandlaw.com>

SELECTED CEQA PROCEDURES & PRACTICES

Preliminary

- CEQA does not apply to project denials. Pub. Resources Code, § 21080(b)(5); Guidelines, § 15061; *Las Lomas Land Co., LLC v. City of Los Angeles* (2009) 177 Cal.App.4th 837.
- An advisory body may make recommendations based upon a draft ND or EIR. Guidelines, § 15051. A decisionmaking body cannot delegate duty to consider the ND/EIR & adopt findings. Guidelines, § 15051.
- As good practice, environmental documents should declare from the outset the relationship of the project to earlier CEQA documents and include all documentation. *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288; *Gilroy Citizens for Responsible Planning v. City of Gilroy* (2006) 140 Cal.App.4th 911; *Mani Brothers Real Estate Group v. City of Los Angeles* (2007) 153 Cal.App.4th 1385; *Latinos Unidos de Napa* (2013) 221 Cal.App.4th 192.

Is It A Project?

- A loan by the city to an applicant in advance of CEQA review did not result in an impermissible commitment to a project in violation of CEQA. *Neighbors for Fair Planning v. City and County of San Francisco* (2013) 217 Cal.App.4th 540.

Is It Exempt?

- Exemption for infill projects. Pub. Resources Code, § 21159.24, Guidelines, § 15062.

Baseline

- Generally, the lead agency must use the existing physical conditions as the baseline for impact analysis, but may use a future baseline if it can show an existing conditions analysis would be misleading or without informational value. Guidelines, § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439.

Thresholds of Significance

- Under 2018 Guidelines, a threshold of significance may assist lead agencies in determining a project's significant impact. However, compliance with the threshold by itself is not dispositive and does not relieve a lead agency of the obligation to consider the project's environmental affect.

Impact Analysis

- Only the impact of the project on the environment must be analyzed under CEQA, unless the project "exacerbates" the effects associated with an existing physical condition. *California Building Industry Assn. v. BAAQMD* (2015) 62 Cal.4th 369. The court acknowledged specific circumstances where CEQA requires evaluation of existing hazardous conditions: airports, school construction and some housing projects. (See Guidelines, § 15126.2(a).)

Mitigation Measures

- Payment of school impact fees doesn't mitigate all indirect school related impacts. *Chawanakee Unified School District v. County of Madera* (2011) 196 Cal.App.4th 1016.

Alternatives

- Economic information in record insufficient to justify rejection of alternative. *Center for Biological Diversity v. County of San Bernardino* (2010) 184 Cal.App.4th 1342.

Recirculation

- Recirculation of the DEIR is required when any of the following occurs:
 - identification of new avoidable impact resulting from the project or a mitigation measure.
 - substantial increase in the severity of an impact.
 - identification of a feasible MM or project alternative which would clearly lessen the project impacts, and the applicant elects not to implement this strategy.
 - original DEIR was fundamentally flawed.
 - recirculation is not required when amplifying or clarifying an EIR. Guidelines, § 15088.
- Recirculation of ND required when a new avoidable impact is discovered or impacts cannot be mitigated to a less than significant level. Recirculation is not required when substituting equally effective mitigation measures. Guidelines, § 15075.

Notice

- Not every notice defect is prejudicial. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949.

Litigation

- Post the NODs for the full time period in order to utilize the shorter statutes of limitation. *Latinos Unidos de Napa v. City of Napa* (2011) 196 Cal.App.4th 1154.
- If court finds CEQA document is deficient, the court has the discretion to fashion a remedy. PRC § 21168.9; *Anderson First Coalition v. City of Anderson* (2005) 130 Cal.App.4th 1173; but see *Land Value 77, LLC v. Bd of Trustees of CSU* (2011) 193 Cal.App.4th 675.
- Last minute document dump by opponents may not constitute exhaustion of administrative remedies. *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515.

GHG

- Lead agencies must consider feasible means to mitigate the significant effects of greenhouse gas. Guidelines, § 15064.4.
- A qualifying plan for the reduction of greenhouse gas emissions may be used in later cumulative impact analysis. Guidelines, § 15126.4(c)(5).
- Lead agency may consider a project compliance with Statewide climate adaption planning or climate goals where supported by substantial evidence. Guidelines, § 15064.4(b)(3).
- Cal. Supreme Court identified three options for adequately analyzing GHG impacts:
 - Using data from Scoping Plan to establish relationship w/ specific project;
 - Tiering or streamlining through a Climate Action Plan or SCS; or
 - Using an appropriate numerical threshold. *Ctr. for Biological Diversity v. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204.
- The Court of Appeal held that insufficient evidence supported the use of the "efficiency metric" as a threshold of significance for evaluating impacts from greenhouse gas and climate change. *Golden Door Properties, LLC v. County of San Diego* (2018) 27 Cal.App.5th 892.

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