

**Sierra Club Angeles Chapter  
Conservation Legal Committee & Loyola  
Law School Environmental Law Society's  
Workshop for Environmental Activists**

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**Land Use, CEQA, and NEPA**

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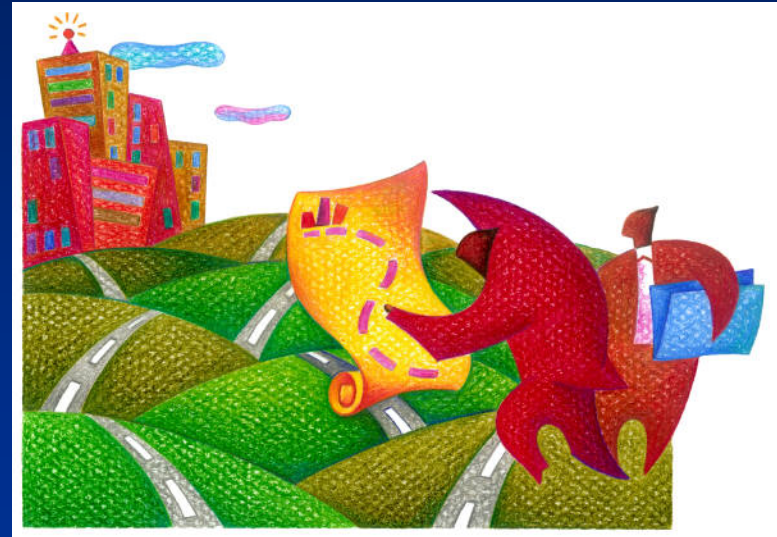
- General Plans
- Specific Plans
- Zoning
- Subdivision Map Act
- CEQA
- NEPA



# General Plans

# Adequate General Plan

- Comprehensive
- Long-term
- Internally Consistent
- Mandatory Elements
  - Land use
  - Circulation
  - Housing
  - Conservation
  - Open Space
  - Noise
  - Safety



- General plan is the constitution for development
- All other land use/development approvals must be consistent with the general plan
- To be consistent, must further objectives and policies of general plan

- Cities have significant discretion to determine whether a project is consistent
- Projects cannot be inconsistent with fundamental, mandatory and specific policies
  - Examples:
    - Specific transition between land uses
    - Use a specific traffic analysis method
    - Complete road before allowing development

# Amendment of General Plans

- Update of general plan
  - Public meetings
  - CEQA review is required
- General plan amendment may be included as part of a specific project
  - regional policies should not be revised on a case-by-case basis

# Litigation

- Other land use approvals are inconsistent
- General plan is internally inconsistent
- General plan does not have mandatory elements
- CEQA document prepared for adoption of general plan is inadequate

# Exhaustion of Administrative Remedies

- Issue exhaustion
- Appeal exhaustion



# Short timelines

- Litigation: within 90 days of approval
- Referendum: petition with signatures within 30 days of approval



# Specific Plans

- Implement the general plan in a particular location
- Must be consistent with general plan
- CEQA review

# Zoning

- Zoning divides cities and counties into land use zones
- Regulations for each type of land use



# Zoning Ordinance Requirements

- Reasonably related to public interest
  - Consistent with general plan
  - Public notice and hearing
- 
- Note: Charter cities exempt from zoning laws and consistency of zoning with general plan requirement

- Zoning ordinances can be created by initiative or overturned by referendum
  - Cannot create inconsistency with general plan



# Variance

- Relief from regulations for land use zone but cannot be used to change land use
- Must show hardship that is unique
- Cannot adversely affect public interest

# CUP

- Permits specific uses not generally allowed in land use zones if certain conditions are met
- Each city decides the criteria

# Subdivision Map Act

- Under Subdivision Map Act, cities regulate the division of property into smaller units for sale or lease
  - City can put conditions on map
  - Must be consistent with general plan

# Types of Maps

- Parcel Map: 4 units or less
- Tentative Map: 5 units or more, discretionary approval, required before final map, 2 year life (can be extended)
- Final Map: substantial compliance with tentative map, then no additional conditions

# Vesting Tentative Map

- Locks in ordinances/policies at time application completed
- Non-vesting tentative maps must comply with ordinances passed after application

# Opposition to map approval

- Appeal to city council
- Litigation
  - Exhaust administrative remedies
  - 90 day statute of limitations
- Not subject to referendum



# Development Agreements

- Negotiated agreement between city and developer
- Locks in ordinances in effect when executed
- Can have longer life
- Subject to referendum

CEQA

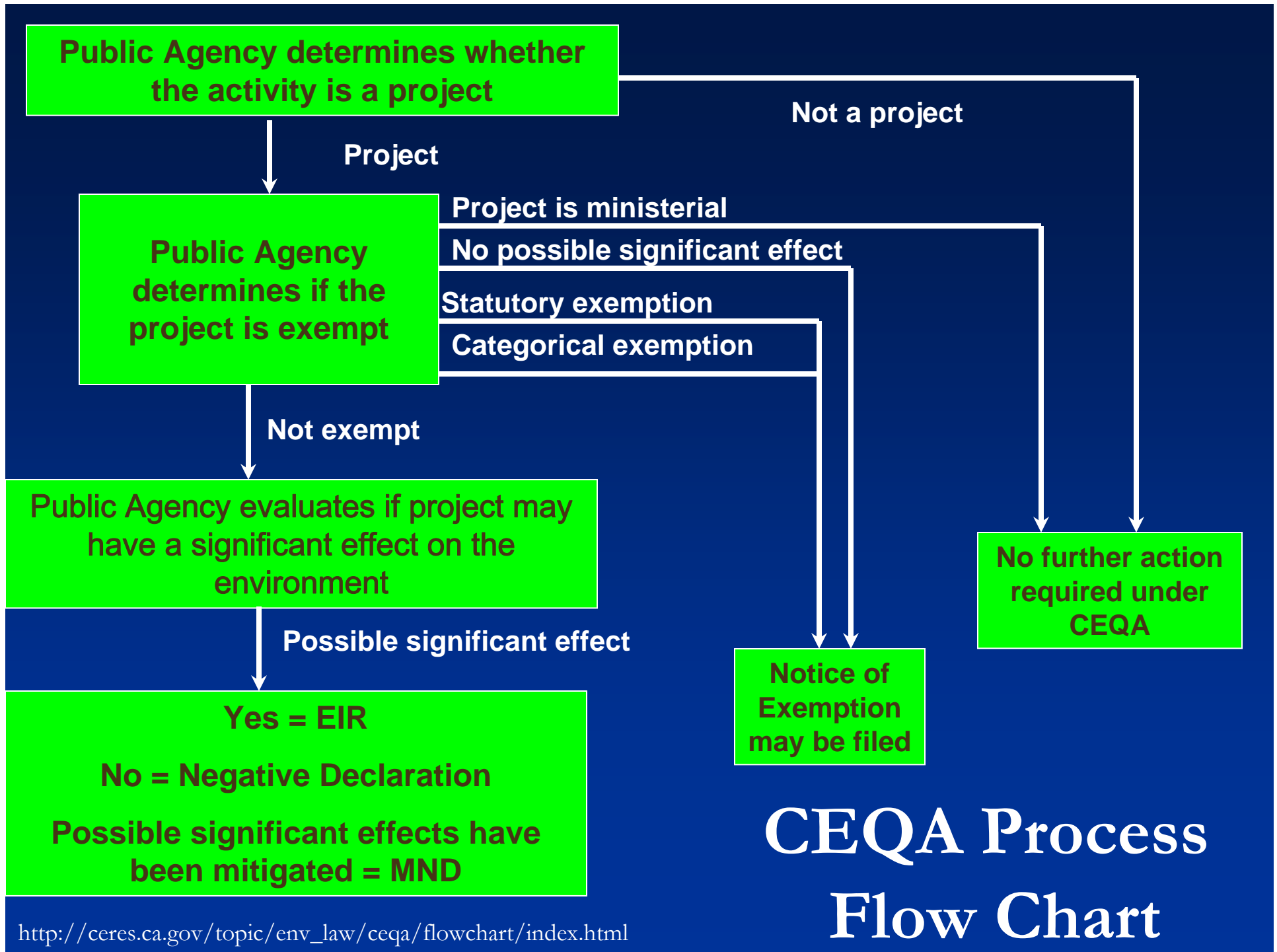
# CEQA Review

- Process, not a permit
- CEQA's goal – look before you leap
  - Disclosure: analysis, significance, mitigation
  - Public involvement



# Basic CEQA Requirements

- Analyze project impacts
- Identify significant impacts of project
- Mitigate significant impacts
  - Direct and indirect
  - On-site and off-site
- Mitigation must be enforceable
- Support findings with “substantial evidence”



# Negative Declaration Contents

- Project description
- Project location
- Identification of project proponent
- Proposed finding of no significant effect
- Attach copy of Initial Study justifying finding
- For MNDs, mitigation measures included in the project description to avoid significant effects

# Public Participation- Negative Declaration

- Negative Declaration/MND public review period 20-30 days
- Notice of intent to adopt
- Hearing is not required
- Appeal to elected body (Public Resources Code 21151)

# Comments should contain substantial evidence

- Facts
- Fact-related reasonable assumptions
- Expert opinion, but the basis for that opinion must be given
- Lay opinion can be substantial evidence when it is a matter that does not require expertise to draw a conclusion (such as aesthetic impacts), but the basis for the opinion must also be stated
- Courts give considerable weight to the comments of other agencies

# EIR Contents

- Table of contents
- Summary
- Areas of known controversy
- Project description
- Environmental setting
- Discussion of significant environmental impacts
- Organizations/persons consulted
- Effects not found significant
- Mitigation measures
- Alternatives
- Growth-inducing impacts

# EIR Process

- Notice of preparation
  - 30 days for scoping comments
  - Scoping hearing if areawide issues
- Notice of availability Draft EIR
  - Request notice
  - 30-45 days for comments

# EIR Process (cont.)

- Final EIR
  - Must respond to comments
  - Public hearing common, not required
- Agency considers EIR and associated approval, decides whether to adopt statement of overriding considerations if necessary

# Statement of Overriding Considerations

- An agency may find that specific overriding economic, legal, social, technological, or other benefits of project outweigh significant effects on environment.
- Used when approving a project with unavoidable significant impacts.
- Includes specific, written statement of reasons supporting approval – economic, legal, social, technological, or other benefits.
- Cannot use if *feasible alternatives and mitigation measures* are available that would substantially lessen the project's significant environmental impacts
- Must be supported by substantial evidence in the record

# Commenting on EIR

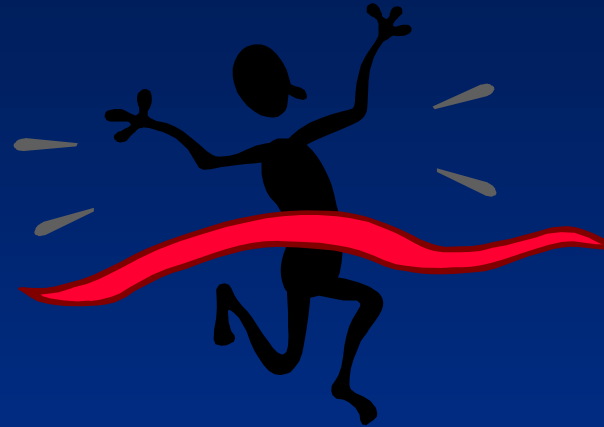
- Substantial evidence, not opinion
- Suggest feasible mitigation and alternatives
- Impacts that were not studied
- Deferred mitigation measures

# IMPORTANCE OF MAKING A RECORD

- Enlist experts to comment on the need for an EIR or the adequacy of an EIR
- Local residents or interested groups may have expertise
- Local university professors may be willing to comment
- Helpful information may be available from the internet
- Photos and video (include declaration of date and location)

# Possible CEQA Results

- project denied
- project redesigned
- project withdrawn
- project approved
  - no mitigation necessary
  - mitigation necessary
  - environmentally superior alternatives chosen
  - Statement of Overriding Considerations (*only if* mitigation measures & alternatives infeasible; agency must adopt feasible mitigation measures and project alternatives *before* considering overriding public benefit)



# Notice of Determination

- After approval of project a NOD is filed within 5 days
  - Local agency, file NOD with county clerk
  - State agency, file NOD with Office of Planning and Research
- This starts statute of limitations

# LITIGATION

## SHORT STATUTE OF LIMITATIONS

### CEQA LITIGATION MUST BE COMMENCED WITHIN:

- **35 days** after an agency has filed and posted Notice of Exemption
- **30 days** after an agency has filed and posted Notice of Determination (for either ND or EIR)
- **180 days** after an agency decides to carry out or approve a project, or from commencement of a project without formal decision

# KNOW WHEN THE NOTICE OF DETERMINATION IS FILED

- local project: NOD filed with the County Clerk
- state project: NOD filed with the State Clearinghouse
- Make a written request for notice of when the NOD is filed
- Get a copy from the agency or the County showing the date of filing

# CONSIDERING LITIGATION?

- Determine early in the administrative process what your goal is, and if you may be prepared to litigate
- Identify others who may want to join you
- Consider forming a group
- Consider retaining counsel to assist you in the administrative process if possible

# Exhaustion of Administrative Remedies

- Must have objected on any grounds
  - Can be by members of later formed group
- Grounds on which others objected can then be used
- If an appeal is available to a higher administrative body, must pursue prior to litigation

NEPA

- National Environmental Policy Act, enacted in 1969, CEQA (and similar acts in other states) modeled after NEPA
- NEPA applies to discretionary actions a federal agency intends to carry out, fund, or approve
- Each federal agency adopts its own regulations for implementing NEPA

# NEPA terminology

## NEPA      CEQA

categorical exclusion

→ categorical exemption

EA

→ Initial Study

FONSI

→ Negative Declaration

Mitigated FONSI

→ MND

EIS

→ EIR

ROD

→ Findings and NOD

# Environmental Assessment

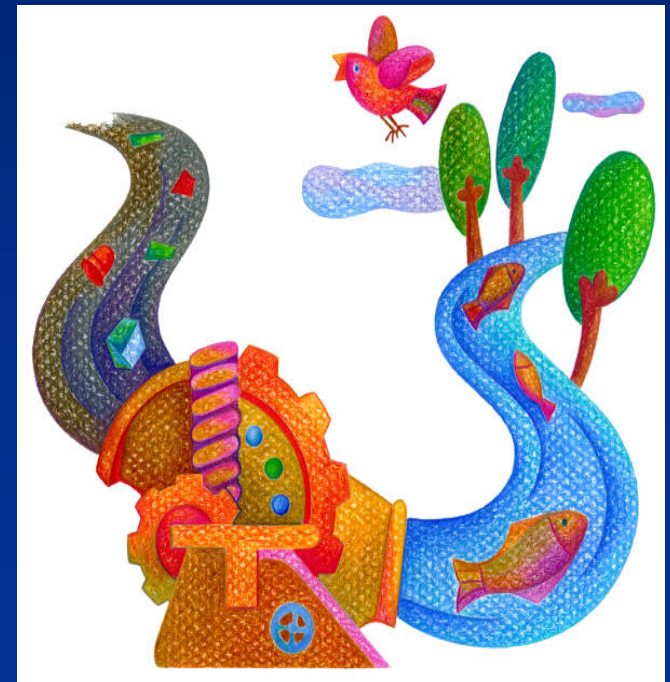
- Contains statement of need, alternatives, probable impacts, consultation
- Public notice of availability of EA according agency regulations
- Public can comment on EA

# Finding of No Significant Impact

- Prepared if EA shows no significant impact
- Prepared after public comment period on EA
- FONSI briefly explains why action would not have significant impact
- Mitigated FONSI when mitigation is required
- Public notice of availability

# Environmental Impact Statement

- EIS is required when there is a “major federal action significantly affecting the quality of the human environment”
  - EA finds significant impact
  - Do not need to prepare EA when sure an EIS will be prepared



# EIS Process

- Notice of intent begins scoping period
- Draft EIS is prepared, public notice of availability
- Circulation of Draft EIS (45 days)

# Commenting on Draft EIS

- Must comment in NEPA process to exhaust administrative
  - Does Draft EIS sufficiently identify and analyze action's impacts?
  - Use specific evidence, facts, expert reports and data
  - Suggest solutions
  - Expand upon comments from other agencies

# Final EIS

- Contains response to comments on Draft EIS
- Circulated for 30 days before agency decides whether to adopt
- After adoption, a record of decision (ROD) is prepared



# Differences between CEQA & NEPA

- CEQA, but not NEPA, *requires* agencies to "mitigate or avoid the significant effects on the environment of projects . . . whenever feasible"
- NEPA has more detailed requirements for alternatives analysis.

# NEPA Litigation

- Can be brought by those injured by action that exhausted administrative remedies
- No statute of limitations in NEPA
  - 6 year federal limit
  - laches
- Basis of NEPA action is administrative record

# For more information:

- CERES website of the California Resources Agency: <http://ceres.ca.gov/ceqa> and <http://ceres.ca.gov/planning>
- The Planning and Conservation League Foundation has a Citizens Guide to CEQA. Go to [www.pcl.org.pclf](http://www.pcl.org.pclf)
- CEQA Net: [www.ceqanet.ca.gov](http://www.ceqanet.ca.gov)
- Council on Environmental Quality's NEPA Guide: [www.nepa.gov/nepa/Citizens\\_Guide\\_Dec07.pdf](http://www.nepa.gov/nepa/Citizens_Guide_Dec07.pdf)
- Federal Register: <http://www.gpoaccess.gov/fr/index.html>
- Cases and Codes: <http://www.findlaw.com/casecode/>

