

Overview of CEQA and the EIR Process – and how **you** can participate



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Introduction to CEQA

- ▶ 1969 – Nixon signs National Environmental Protection Act
- ▶ 1970 – Governor Regan signs California Environmental Quality Act (CEQA)
- ▶ CEQA (the Statute): Established by the Legislature
 - ▶ And continuously modified by the Legislature
 - ▶ . . . And “interpreted” by the Courts
- ▶ Initially intended to apply to publicly-sponsored projects only
 - ▶ 1972 *Friends of Mammoth v. Board of Supervisors*:
 - ▶ CEQA applies to “all” projects subject to public discretionary action

Basic Purposes of CEQA

1. Inform decision makers and the public about the potential significant environmental impacts of proposed activities.
2. Identify ways that potential significant environmental impact(s) can be avoided or significantly reduced
3. Prevent significant avoidable damage to the environment by requiring changes in the project through alternatives and mitigation
4. Disclose to the public the reason that an agency approved a project notwithstanding its environmental impacts
5. It is not a marketing or advocacy document

Who is “in charge” of CEQA?

- ▶ Lead Agency
- ▶ CEQA is a “self-executing statute” meaning that the Lead Agency is responsible for determining what is and what is not subject to CEQA and to follow the process
- ▶ Public can go through the legal process to challenge decisions

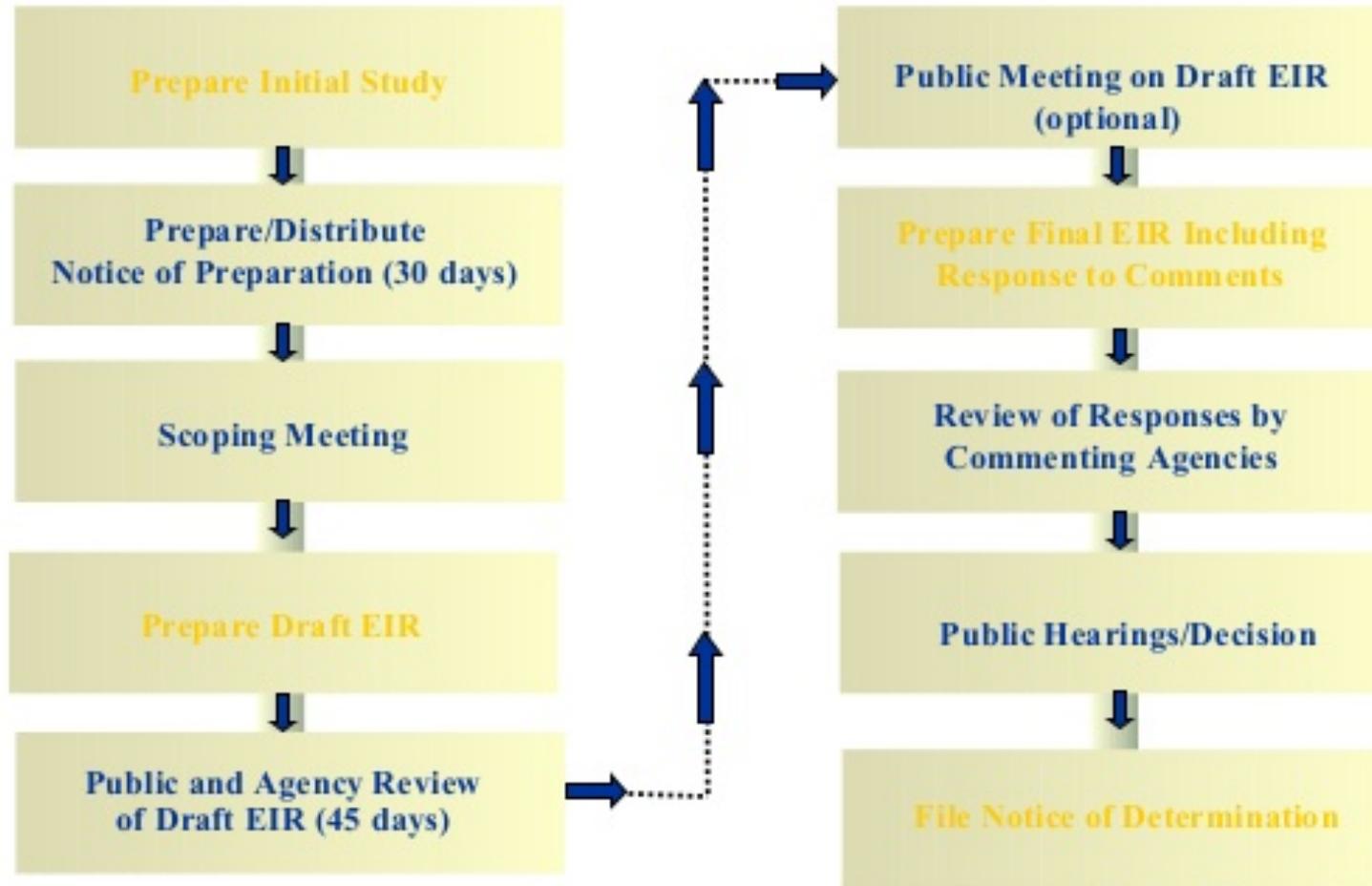
CEQA Abbreviations

- ▶ CEQA: California Environmental Quality Act
- ▶ IS: Initial Study
- ▶ ND: Negative Declaration
- ▶ NOP: Notice of Preparation of EIR
- ▶ EIR: Environmental Impact Report
- ▶ DEIR: Draft EIR
- ▶ FEIR: Final EIR
- ▶ NOC: Notice of Completion
- ▶ NOD: Notice of Determination
- ▶ NOA: Notice of Availability

Overview of CEQA Process

- An action is brought forth to the Lead Agency
- Is it a “project” or is it “exempt”?
- If subject to CEQA, what are the potential impacts?
(prepare an Initial Study)
- Based on initial study, what type of CEQA document do you need? (Neg Dec, MND, EIR?)
- Prepare appropriate environmental document
- Public reviews and comments on document
- Decision and findings made on the project

Overview: CEQA EIR Process



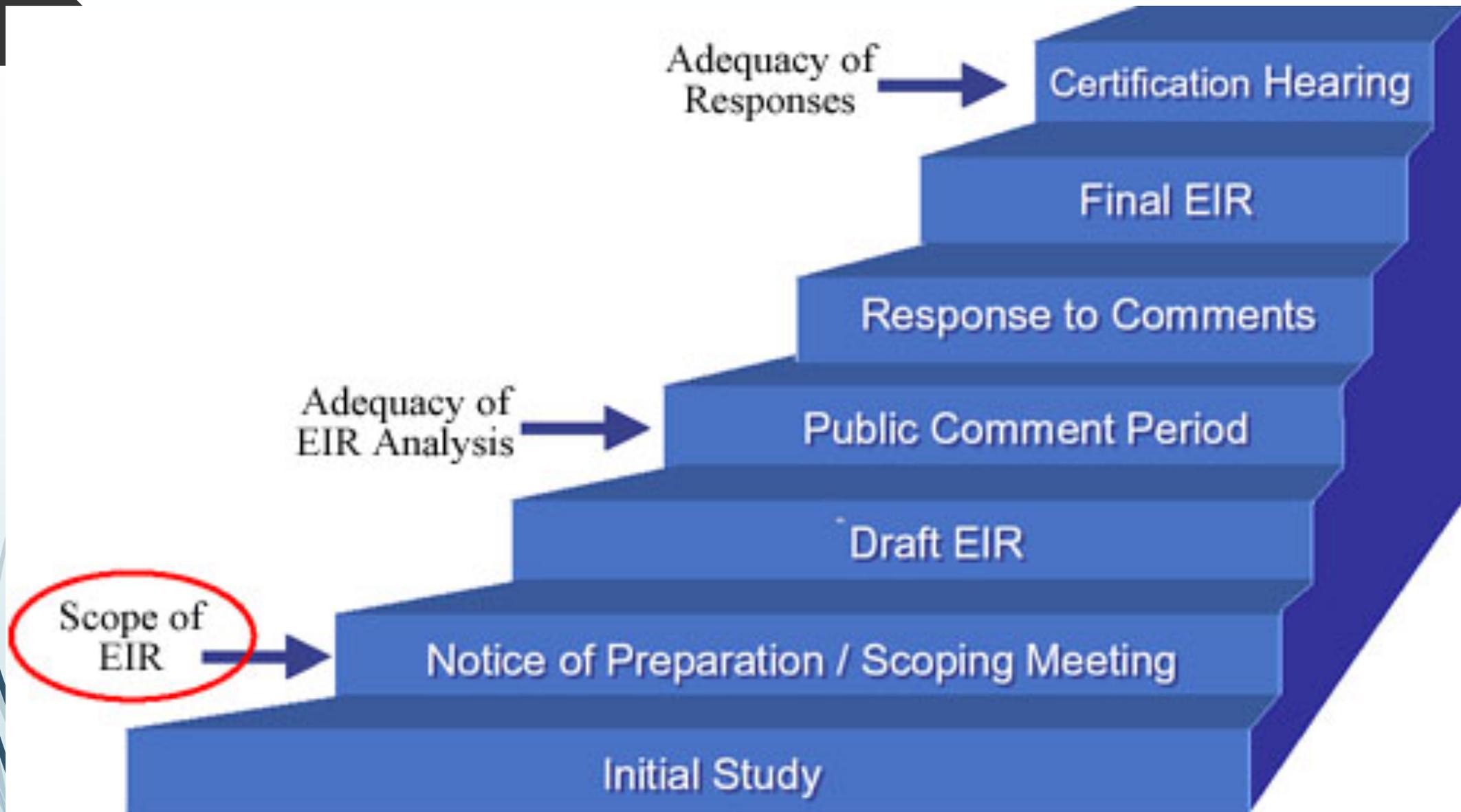
 = Opportunities for Public/Agency Input

What is a “project” under CEQA?

Project: activity undertaken by a public agency or a private activity which may cause a change in the environment and must receive *discretionary* approval from a government agency.

Discretionary vs. Ministerial Projects

- **Discretionary project:** Requires the exercise of judgement or deliberation by a public agency in determining whether the project will be approved, or if a permit will be issued
- **Ministerial project:** Requires only conformance with a fixed standard or objective measurement and requires little or no personal judgment by a public official as to the wisdom or manner of carrying out the project.



Step 1: Initial Study

Purpose:

- ▶ Complete a project description
- ▶ To decide between a Negative Declaration, Mitigated Negative Declaration, or EIR
- ▶ Refine issues to be addressed in an EIR

Initial Study is not required if it is known an EIR will be prepared

Initial Study contains

- Project description - location, project objectives and characteristics
- Environmental setting
- Discussion of environmental impacts using Appendix G checklist
- Mitigation measures if necessary
- List of preparers

Checklist topics- Will the project have a significant impact on the environment?

- ▶ Aesthetics
- ▶ Agriculture
- ▶ Air Quality (GHG)
- ▶ Biology
- ▶ Cultural
- ▶ Geology
- ▶ Hazards
- ▶ Hydrology
- ▶ Land Use
- ▶ Minerals
- ▶ Noise
- ▶ Population/Housing
- ▶ Public Services/Utilities
- ▶ Recreation
- ▶ Transportation/traffic
- ▶ Urban decay



What is a “significant impact on the environment?”

- Substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. A social or economic change by itself shall not be considered a significant effect on the environment (CCR § 15382)

After the checklist . . .

- ▶ The Initial Study checklist will help determine what type of CEQA document the lead agency will need to prepare (or have prepared for them)

When to prepare an EIR?

Substantial evidence in the record supports a fair argument that significant impacts may occur.

Fair Argument – Very Low Threshold

- If there is any substantial evidence to support a fair argument that project may have significant environmental impacts, an EIR must be prepared
- There is a presumption in CEQA in favor of preparing EIRs instead of Neg Decs

EIR Process Overview

- **Notice of Preparation (NOP) released for 30 days**
- **Scoping meeting**
- Notice of Completion (NOC) and Notice of Availability
- (NOA) to start minimum **45-day Draft EIR public review –**
- **Responses to comments sent to responding public agencies 10 days before EIR certification**
- **Public hearing generally held for discretionary approval**
- EIR certification, project approval, CEQA findings, statement of overriding considerations
- File Notice of Determination (NOD)



CEQA Process (Schedule)

Publish Notice of Preparation (NOP)	December 12, 2010
Scoping Meetings	January 2011
Public Draft EIR and Draft Delta Plan	June 2011
Public Review of Draft EIR and Draft Delta Plan	June 2011-August 2011
Draft Final EIR and Delta Plan submitted to Office of Administrative Law	September 2011
Final EIR and Delta Plan	November 2011

According to statute, the Delta Plan must undergo an Environmental Impact Report (EIR) to fulfill the requirements of the California Environmental Quality Act (CEQA). Listed above are the various milestones the Council is charged with, along with the target dates for each accomplishment.

Notice of Preparation (NOP)

- Includes: Description, location, and a discussion of the probable environmental effects.
- EIR can be initiated while waiting for comments
- **Responsible agencies and public have 30 days to comment on an NOP.**
- The comments should to be addressed in the EIR.
- EIR cannot be released for public review until 30 days after distribution of the NOP.

Scoping Process

- ▶ During these 30 days, a scoping meeting may be held to identify key environmental concerns and issues
- ▶ Identify possible impacts
- ▶ Encourage inter-agency consultation
- ▶ Consult with recognized experts
- ▶ Involve public at an early stage of the review process (though not required)

What needs to be in the EIR?

- Project description
- Environmental Setting
- Significant environmental effects
- Unavoidable significant adverse effects
- Growth-inducing impacts
- Cumulative impacts
- Mitigation measures
- Alternatives
- FEIR contains response to comments

Mitigation Measures

- Required for all potentially significant impacts if possible
- Should identify who, what, where and when
- Be legally, technically, socially, politically and economically feasible
- Should avoid the impact altogether or minimize impacts by limiting the magnitude
- May rectify by repairing, rehabilitating, restoring
- May reduce or eliminate over time
- May compensate by replacing or providing substitute resources



Technical Studies

- ▶ Help provide supporting evidence for the
- ▶ CEQA documents
- ▶ Specific project design features, often to comply with mitigation measures
- ▶ Technical experts often called to give testimony at public hearing

When the DEIR is Complete:

- Issue Public Notice of Availability (NOA)
- Mailed to those previously requesting notice and,
- General circulation newspaper or,
- Posting in the project area or,
- Direct mailing to owners/occupants of contiguous parcels

Tips for EIR Comments

- ▶ Effective comments are **substantive**
 - they address specific impacts, point out errors, inconsistencies, omissions of data or analyses, conclusions not based on evidence, or failures to provide discussion required by CEQA
- ▶ Comments should be backed by factual support
- ▶ **Agency must respond adequately to substantive comments prior to certification of the EIR – failure to do so provides basis for legal challenge**

How to write an effective EIR comment:

- **1. Objectively evaluate the project and be VERY specific. Generalities can be dismissed with generalities**
- **2. Separate your concerns into clearly identifiable paragraphs or headings and keep a tight focus on each separate issue. Don't mix topics.**
- **3. Avoid saying "I support X Project, but..." – just list your concerns or you run the risk of having your letter be classified as a letter of support instead of addressing your concerns.**
- **4. Consider ways to avoid impacts or enforceable ways to reduce the severity of impacts. Quantify your objections whenever possible.**



5. Whenever possible, present facts or expert opinions. If not, provide personal experience or your personal observations. Don't just complain.

➤ 6. Include suggestions for making it better or offer specific alternatives and describe how they meet the requirements of the project.

➤ 7. Point out any inconsistencies in the document or the data. Point out outdated information or errors in logic. Focus on the sufficiency of the EIR in identifying and analyzing the possible impacts of the project on the environment.

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- ▶ **8. Write a comment that includes a valid name, address and your segment name. Submit it before the deadline. KEEP A COPY OF YOUR COMMENTS. Send a copy to your city.**
 - ▶ **9. Reviewing agencies or organizations should include the name of a contact person, who would be available for questions or consultation, along with their comments.**
 - ▶ **10. Send your comments in early, so they have time to consider your concerns.**

Notice of Completion (NOC)

- Sent to SCH
- Brief description of project
- Location
- Address where environmental document is available
- Notice of hearings (if one is scheduled)
- **Begins the 45-day public review period**

Final EIR

- Includes text revisions to Draft EIR
- Includes responses to comments
- No separate public review period
- Written response to commenting agencies 10 days prior to certification

Final Decision Process

1. Consider and Certify EIR
2. Approve or Deny Project
 - Make Findings
 - Adopt Mitigation, Monitoring Program
 - Adopt Statement of Overriding Considerations (if necessary)

Findings of Fact

- Explicit Requirements to projects with significant environmental impacts
- Agency should not approve projects if feasible alternatives or mitigation measures that would lessen significant environmental effects unless:
 1. Changes or alterations are made to mitigate significant environmental impacts
 2. Such changes responsibility of another agency
 3. Specific economic, social, or other considerations make the mitigation measures or alternatives infeasible
- Must adopt findings identifying the specific considerations that make infeasible the environmentally superior alternative

Statement of Overriding Considerations

- Approval of projects with significant environmental impacts
- Economic, social, or other considerations make it infeasible to fully mitigate
- Must adopt statement of overriding considerations, although adverse impacts, specific overriding economic, legal, social, technological, or other considerations outweigh project's significant, un-mitigated impacts
- Often tied to project objectives in the EIR
- Supported by substantial evidence in the record



Final CEQA Step: Notice of Determination (NOD)

- ▶ Filed within 5 working days after project approval
- ▶ **Posted with the county clerk and State Clearinghouse for at least 30 days**

Notice of Determination (NOD)

- Project description
- Location
- Date of approval
- Determination whether will have a significant effect on the environment
- That ND/MND or EIR was prepared/certified pursuant to CEQA
- Whether mitigation measures are a condition and whether Statement of Overriding Considerations was adopted
Address of where **ND/MND or EIR** and certification can be examined



More information:

CEQA Statute and Guidelines

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

How to write an EIR comment

<http://calhsr.com/environmental-review/how-to-write-an-eir-comment/>