



ACCELERATING HOUSING PRODUCTION



# Planning Commissioner Training

## California Environmental Quality Act



ACCELERATING HOUSING PRODUCTION | TECHNICAL ASSISTANCE SERVICES

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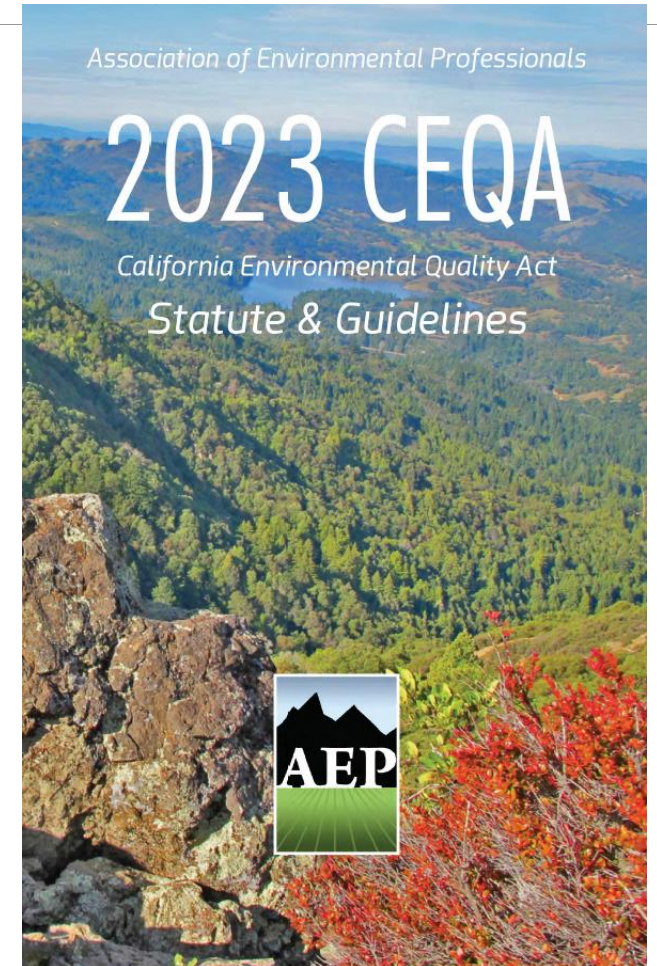


URBAN MATH



# OVERVIEW OF CEQA

- 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 CEQA amendments in 1972, 1976, 1978, 1984, 1989, 1993, 2010, and 2019
- Process, content, and details are amended regularly by the legislature, courts, and local jurisdictions
- Above all CEQA is a *process* to inform the decision makers and the public about the possible environmental impacts of a decision



# 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>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 ONLY APPLIES TO DISCRETIONARY PROJECTS

## **Ministerial:**

Little personal judgment, use of fixed or objective standards

## **Discretionary:**

Requires exercise of judgment or deliberation

## **Mixed Decision Projects:**

Considered discretionary



# ONCE YOU HAVE A PROJECT, THEN...

We must determine the level of environmental review.

Three basic levels of environmental review:

- Exempt (Statutory or Categorical)
- Negative Declaration or Mitigated Negative Declaration
- Environmental Impact Report

# 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



# EXEMPTIONS

- 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))



# NEGATIVE OR MITIGATED NEGATIVE DECLARATION

- The difference is whether mitigation is required
- Based on a checklist (See Appendix G of the Guidelines)
- Conclusions based on fact in the record
- Circulated for 30 Days
- No requirement to respond to public comments, but to consider them before action
- Considered “draft” until adopted





# ENVIRONMENTAL IMPACT REPORT (EIR)

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Several different types

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Most follow the same basic format

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Gold standard of environmental review

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Circulated for 30-days and then 45-days

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All comments from the 45-day period must have a reasoned response

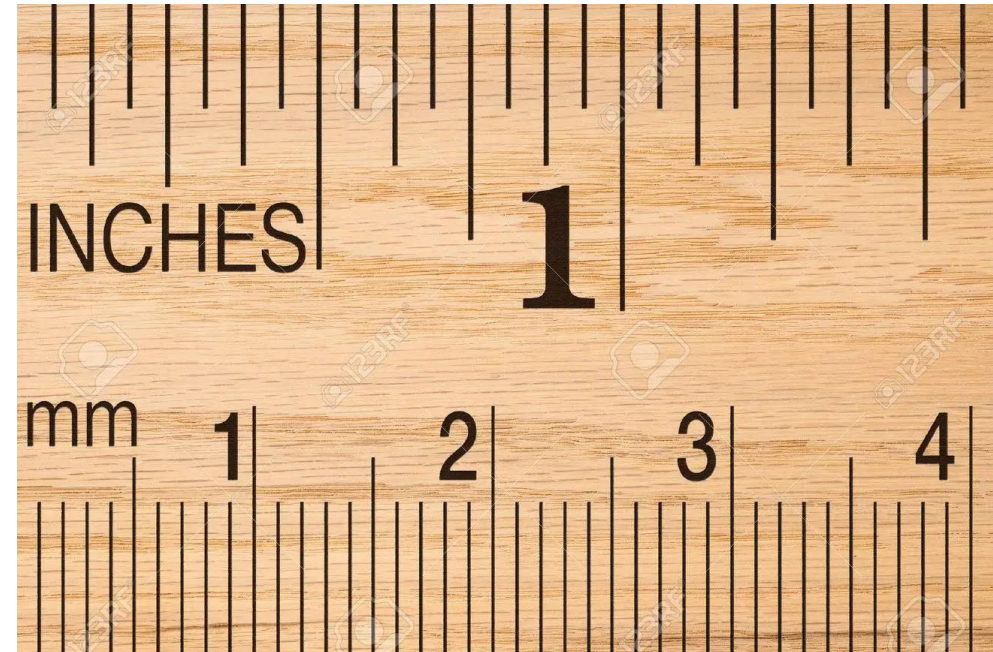
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Considered “draft” until certified

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# BASELINE

- [A] baseline is simply a measure of some situation before it changes. There is no “true,” “normal,” or “natural” baseline. You decide what you want to measure, and then you select a baseline appropriate to your goal. What one wants to measure is a policy question, as is the choice of a baseline.
- The Court observed that one’s “analytical objective determines [one’s] choice of a baseline method”; that “baselines” are *human* constructs that “did not exist in the pre-human natural world”; and that “humans determine which of the various baselines – peak or average – will better accomplish the specific objective at hand.”



# THRESHOLDS OF SIGNIFICANCE

- Roots in Appendix G of CEQA Guidelines
- Also included in:
  - General Plan
  - Municipal Code
  - Adopted Development Standards
- Varies by agency
- Can vary by location



# MITIGATION MEASURES



Requirement to mitigate does not confer to agencies any new legal authority:

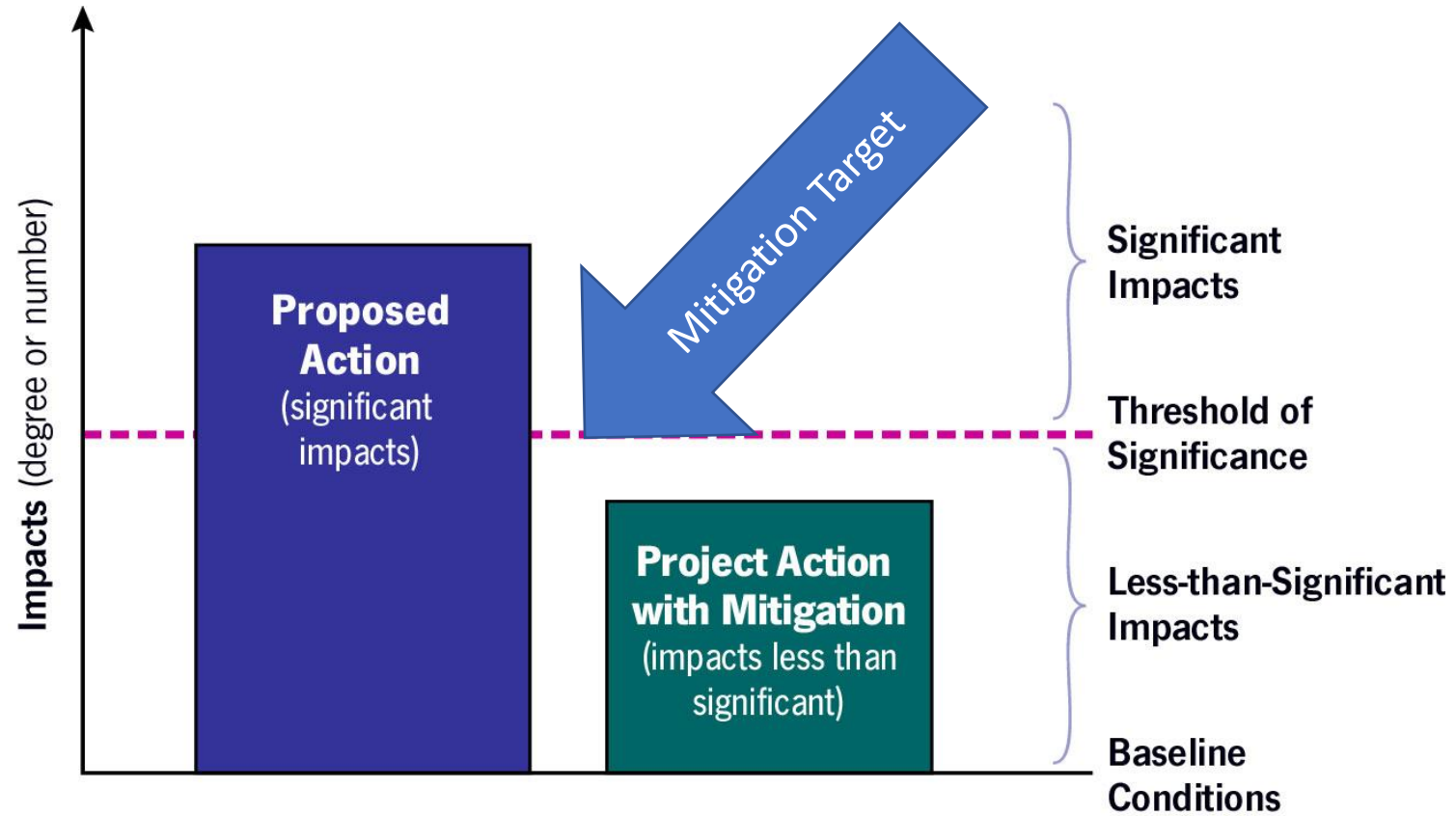
- “...a public agency may exercise only those express or implied powers provided by law other than this division.” (PRC 21004)

Measures must be enforceable.

- Pay particular attention to “fair-share fees”
- Difficult to enforce future public behavior

Be linked to a significant impact – No significant impact, no mitigation

# UNDERSTANDING THRESHOLDS





# TECHNICAL STUDIES

**A**

**B**

**C**

Aesthetics	Biological Resources	Air Quality
Agriculture & Forestry Resources	Cultural Resources	Energy
Geology/Soils	Population/Housing	Greenhouse Gas Emissions
Hazards & Hazardous Materials	Public Services	Noise
Hydrology/Water Quality	Recreation	Cumulative Analysis
Land Use/Planning	Transportation	Alternatives
Mineral Resources	Tribal Cultural Resources	
	Utilities / Service Systems	
	Wildfire	



# PROJECT DESIGN FEATURES

Elements of the  
project designed to  
reduce environmental  
impact

Included in the project  
description

Shown on site plans

Should be reflected in  
the approvals



# WHAT IS A MITIGATION MEASURE?



<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




# IMPACTS THAT CAN'T BE MITIGATED TO LESS THAN SIGNIFICANT

- Sometimes even with mitigation an impact remains significant
- The analysis must include all feasible mitigation
- Substantial evidence is needed to discard a suggested mitigation
- Cost should not be the only reason to discard the mitigation
- If you have them you need an EIR
- With an EIR you can still approve the project
- Significant impacts *do not* (necessarily) stop a project

# EXAMPLE OF A FINDING



The project will result in a significant increase in noise on adjacent road.



Compliance with the noise mitigation measure will construct a wall of sufficient density to reduce the noise level by 5 dBA.



With completion of the mitigation measure, the resulting noise level is below the 65 dBA threshold and therefore less than significant.



# STATEMENT OF OVERRIDING CONSIDERATION

Reasons why the project should be approved even though it has significant environmental impacts

Supported by substantial evidence

We need the \$\$\$ isn't likely to survive challenge

List as many reasons as make sense, only one is needed to support the override

# ADDITIONAL RESOURCES



**Housing and Public Engagement Toolkit:**  
[www.ILGHousingToolkit.org](http://www.ILGHousingToolkit.org)



**Housing Planning Hub Site**  
<https://experience.arcgis.com/experience/b52bcd2cd9734f02b1c0502bbbe5028d/>



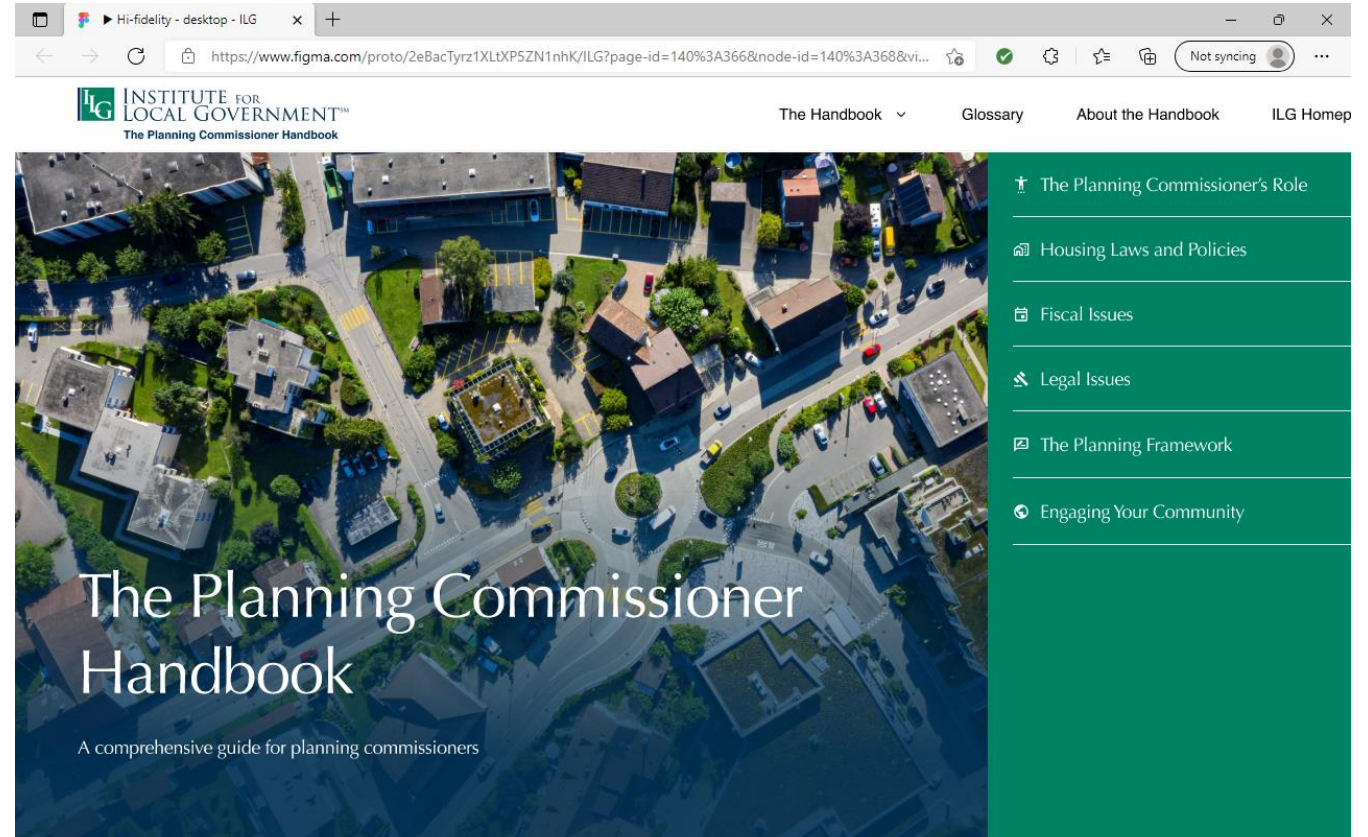
**Statewide Housing Plan**  
<https://statewide-housing-plan-cahcd.hub.arcgis.com/>



**Housing Element Video**  
<https://hcd.wistia.com/medias/9mr2gli886>

# PLANNING COMMISSIONER HANDBOOK

- New digital toolkit for planning commissioners
- Updated content on:
  - CEQA
  - Community Engagement
  - Legal Issues
  - Housing Laws
  - Financing
  - & More!



ILGPlanningHandbook.org

# ADDITIONAL RESOURCES

- California Office of Planning and Research (OPR)
  - <https://opr.ca.gov/planning/general-plan/guidelines.html>
- California Environmental Quality Act (CEQA)
  - <https://opr.ca.gov/ceqa/>
- Environmental Court Decisions
  - <https://ceqaportal.org/>
- California Legislative Information Code Search (laws)
  - <http://leginfo.legislature.ca.gov/faces/codes.xhtml>
- League of California Cities
  - [www.cacities.org/](http://www.cacities.org/)
  - Planning and Community Development Department  
[www.cacities.org/Member-Engagement/Professional-Departments/Planning-Community-Development](http://www.cacities.org/Member-Engagement/Professional-Departments/Planning-Community-Development)
- CalEnviroScreen
  - <https://oehha.ca.gov/calenvirosc>
- Housing and Community Development (HCD)
  - [www.hcd.ca.gov/](http://www.hcd.ca.gov/)
- State Department of Finance (DOF)
  - [www.dof.ca.gov/Forecasting/Demographics/](http://www.dof.ca.gov/Forecasting/Demographics/)
- CEQAnet
  - <https://ceqanet.opr.ca.gov/>



**Thank you  
for joining us!**