

DESK ITEM

ENVIRONMENTAL

REVIEW

COMMITTEE

8-1-2019

Overview of the California Environmental Quality Act August 1, 2019

CARMEN J. BORG, AICP

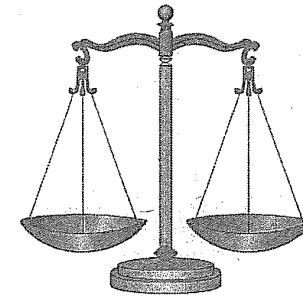
JOSEPH PETTA

SHUTE, MIHALY & WEINBERGER LLP

Objectives of CEQA

Environmental Protection

- Avoid/Minimize Effects
- Mitigation



Disclosure

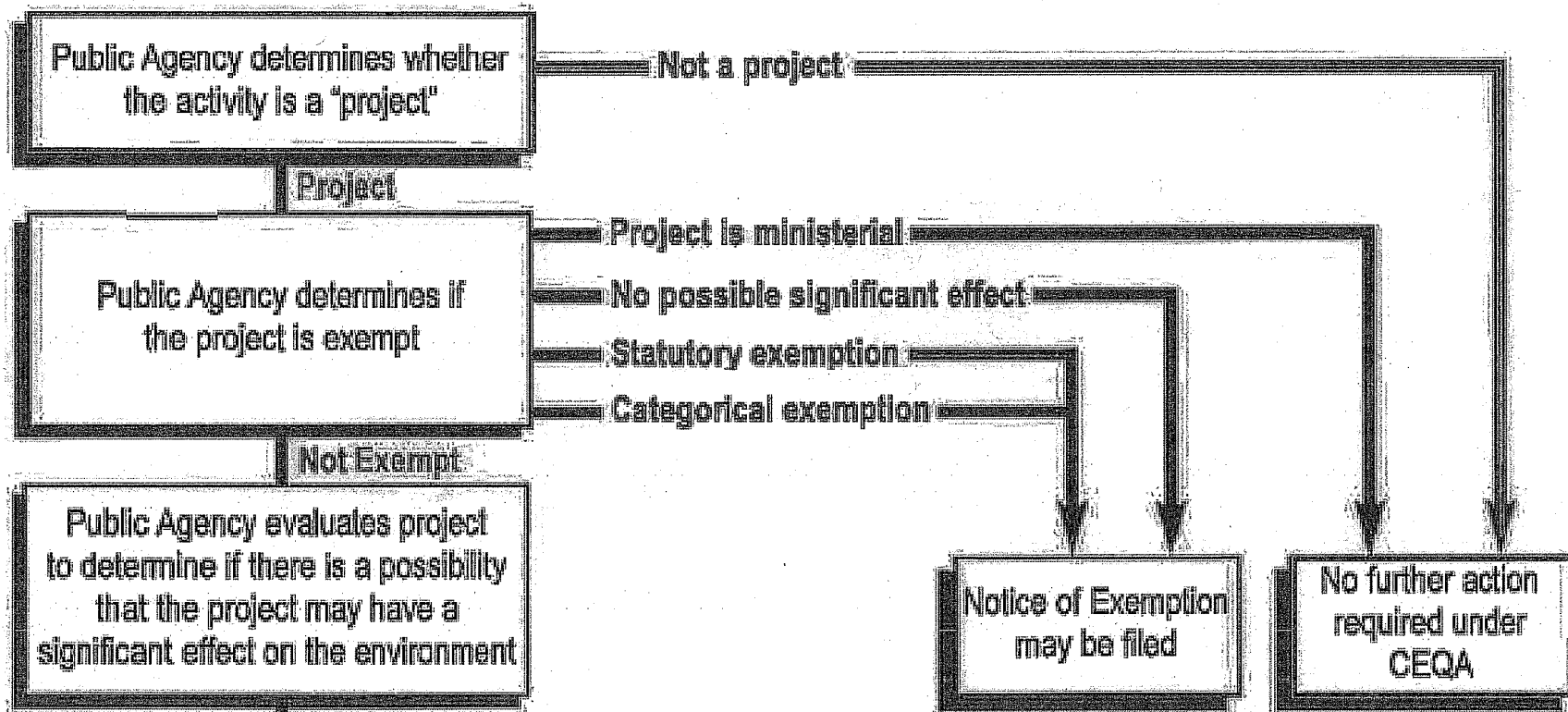
- Inform decision makers about environmental consequences
- Disclose to the public why decisions were made

Public Participation

Interpreting CEQA

- CEQA Statute
- CEQA Regulations and Guidelines
- Local CEQA Guidelines
- Court Cases
- Governor's Office of Planning and Research

When does CEQA apply?



Types of CEQA Documents

- Exemptions
- Initial Study (IS) a.k.a. “the CEQA Checklist”
- Negative Declaration (ND)/Mitigated Negative Declaration (MND)
- Environmental Impact Report (EIR)

Streamlining Provisions

- CEQA mandates that projects consistent with existing zoning or general plan for which an EIR was certified shall not require additional environmental review, except as required to look at specific significant effects peculiar to the project or its site. § Guidelines 15183.
- Infill projects – limits topics subject to review at the project level where effects of infill development were addressed at the planning level.
§ Guidelines 15183.3

Initial Study (IS)

CEQA Guidelines

§ 15063. Initial Study

An “Initial Study” is a preliminary analysis prepared to determine if the project may have a significant effect on the environment.

- An IS must be prepared prior to issuing a Negative Declaration or a Mitigated Negative Declaration.
- Must be based on facts not argument, speculation, unsubstantiated opinion, or erroneous information.

Negative Declaration

CEQA Guidelines

§ 21064. NEGATIVE DECLARATION

“Negative declaration” means a written statement briefly describing the reasons that a proposed project *will not* have a significant effect on the environment and does not require the preparation of an environmental impact report.

Negative Declaration

PREPARED WHEN:

(1) There is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.

(2) An initial study identifies potentially significant effects on the environment, but:

(A) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and

(B) there is no substantial evidence, in light of the whole record before the lead agency, that the project, as revised, may have a significant effect on the environment.

Mitigated Negative Declaration (MND)

CEQA GUIDELINES

§ 21064.5. MITIGATED NEGATIVE DECLARATION

“Mitigated negative declaration” means a negative declaration prepared for a project when the initial study *has* identified potentially significant effects on the environment, but

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and

(2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.

Mitigated Negative Declaration (MND)

PREPARED WHEN:

The lead agency, based on the initial study, determines that there is substantial evidence in the record that the project may have a significant effect on the environment but:

- revisions in the project plans or proposals would avoid or mitigate the effects to a point where clearly no significant effect on the environment would occur and
- there is no substantial evidence in light of the whole record that the project, as mitigated, may have a significant effect on the environment.

Environmental Impact Report (EIR)

An informational document to inform regarding environmental impacts, ways to minimize impacts, and alternatives.

Prepared when:

When there is substantial evidence, in light of the whole record, that the project may have a significant effect on the environment.

- EIR conclusions must be based on substantial evidence (e.g., technical studies)
- Much more detailed than an IS
- Includes evaluation of alternatives to the project

MND or EIR?

ND/MND -

“Fair Argument Standard”: whether it can be fairly argued, based on substantial evidence, that project may have a significant effect on the environment. (Initial Study/ND/MND)

EIR -

“Substantial Evidence Test”: means enough relevant information to support a conclusion. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. (EIR)

MND or EIR?

“Fair Argument Standard”

Whether it can be fairly argued, based on substantial evidence, that the project may have a significant effect on the environment.

- *any* substantial evidence showing potential for significant effects
- burden on the lead agency to provide evidence

MND or EIR?

“Substantial Evidence”

“Enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. Whether a fair argument can be made that the project may have a significant effect on the environment is to be determined by examining the whole record before the lead agency. Argument, speculation, unsubstantiated opinion or narrative, evidence which is clearly erroneous or inaccurate, or evidence of social or economic impacts which do not contribute to or are not caused by physical impacts on the environment does not constitute evidence.” Pub. Resources Code, 21082.2, subd. (c); CEQA Guidelines 15384.

- burden is on challenger to provide evidence
- courts defer to lead agencies

Initial Study

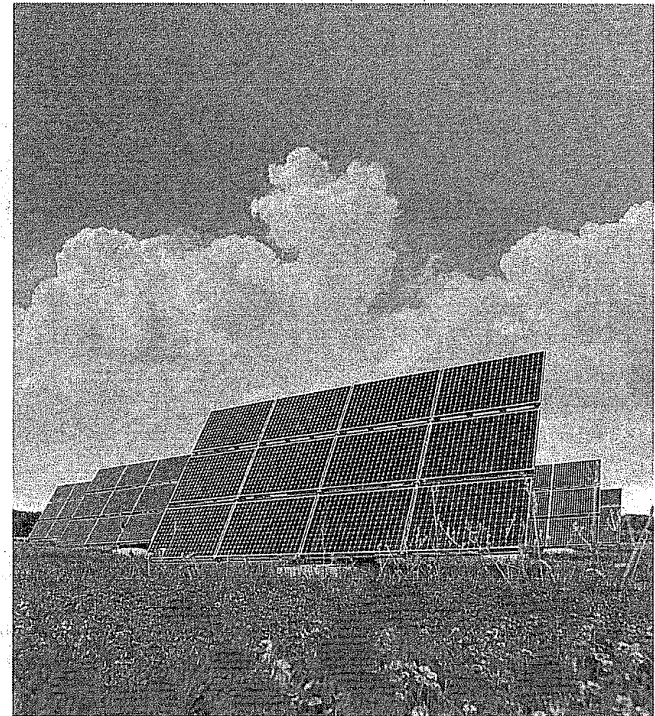
CONTENTS

- Table of Contents/Summary
- Project Description
- Environmental Setting
- Thresholds of Significance
(usually Appendix G of CEQA Guidelines)
- Discussion of Cumulative Impacts
- Discussion of Mitigation Measures
- Mitigation and Monitoring Program

Initial Study/MND

Mitigation Measures

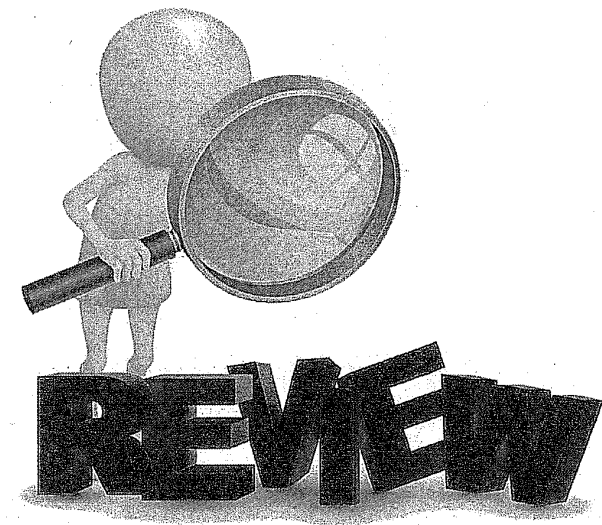
- Evidence of feasibility
- Cannot be deferred
- Fully enforceable
- Essential nexus
- “Roughly proportional”



Initial Study/MND

PROCESS

- Publication and Notice of Intent to Adopt (NOI)
- Public review period (20 – 30 days)
- Lead agency review of IS/MND and any public comments
- Adoption of MMRP
- Notice of Determination (starts statute of limitations).



Initial Study Pitfalls

Watch for:

- Deferred Analysis
- Deferred Mitigation
- Cumulative Impacts

Online Resources

Governor's Office of Planning and Research (OPR)

<http://www.ca.gov/>

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

Statutes, Guidelines, Appendix G/Initial Study Checklist

<http://resources.ca.gov/ceqa/guidelines/>

<http://resources.ca.gov/ceqa/flowchart/>

Thank You!

Carmen J. Borg, AICP

Joseph Petta

smwlaw.com

SHUTE, MIHALY
& WEINBERGER LLP

