Plansplaining CEQA: Explaining the Basics of the California Environmental Quality Act

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Introduction

In recent years, the California Environmental Quality Act (CEQA) has been attributed to the issues faced by many parties within the state of California in terms of development of housing and other important public projects. While the Governor’s Office of Planning and Research (OPR) does have short articles on topics regarding CEQA, there is a lack of non-technical guides which can be comprehended by laypeople. The objective of this project is to transform complex planning topics into accessible explanation videos to those not yet familiar with urban planning practices.

An inflection point in the law’s history happened after the appellate court ruling of Make UC a Good Neighbor v. UC Regents (2023) where a neighborhood group successfully delayed a homeless and student housing project from being built using CEQA’s generous “fair argument” clause. After news agencies covered the story, Governor Newsome intervened in the ruling, requesting the State Supreme Court to allow UC Regents to continue the project (Egelko, 2023). While CEQA litigation is rare (under 1 percent annually), the media has sensationalized large cases such as Good Neighbor v UC Regents as an example of CEQA being “the preferred lever of California’s infamously litigious NIMBYs” (Gray, 2021). This has created a public perception that CEQA is regularly abused and is a wasteful process that harms development, which contributes to the housing crisis. Like many issues, there are many misconceptions about CEQA as it is a very technical law that only planners and related professionals fully understand. While CEQA is fine for planners and related professionals, it is ultimately a public disclosure law and therefore, it is imperative for the public to be well-informed for them to be effectively engaged in the process as CEQA’s heart is within public engagement. One of the many “hats” planners wear
in their field of work includes being a public educator. Therefore, helping the public obtain a solid grasp on CEQA is an important goal and is inline with the role of a planner.

Currently, there is an increase in public exposure to the role planning plays in the public’s daily lives. This trend can be seen on social media sites such as YouTube and Tik Tok with content creators such as Not Just Bikes, City Beautiful, and City Nerd. While these individuals create urban planning content (a still admittedly niche space), the content created by these individuals are based on casual principles such as New Urbanism and other urban design-oriented subjects. With some exceptions like City Beautiful, there is a lack of content that aims to explain policy and how planning works at a local level within this content creator space. To take advantage of the increasing public interest of urban planning and the recent public exposure to CEQA, the YouTube channel “Plansplainer” was created to engage the public on complex planning policy topics such as CEQA in a casual way. My target audience were individuals of my generation from teenagers to young adults which have interest in planning topics. As the videos are targeted towards this demographic on a social media platform, the videos themselves heavily use contemporary comedy associated with the age group of 16 to 25. Comedy on social media is a balance between appropriateness and knowing the audience. While the content is targeted towards a certain age group, my goal is to ensure every age group can be engaged with the final product.

The series itself is separated into 6 episodes: An overview of CEQA (Introduction), a brief history of, and contemporary implementation of the law, the initial study process, the EIR process, a real-life example, and interviews with three different planning professionals on their experience with CEQA. The first 4 episodes cover CEQA and rely heavily on reference texts and thus have more of a conventional script while the last two episodes focus on actual
implementation of the law which also have less of a script as they are filmed in real-time. In preparing and writing the scripts, I consulted with CEQA professionals including Chris Clark, J.D., a professor within the CRP Department. Professional insight and comments helped directed the language of my videos since CEQA is a technical law, the mastery of the English language was important to ensure accurate, yet comprehensible information. Moreover, I also heavily referenced the 2012 *CEQA Deskbook* from Solano Press. There were two reasons why I went for this version compared to a newer version. First, the 2012 version was the only one that I had access to, and second, I was told that there are very few changes between editions. This advice seems to be accurate as Solano Press’s website has not released a full revision of their deskbook since 2012; rather, they have released “Deskbook Updates”, which are complimentary PDFs that highlight changes to specific texts within the book. Since it is still an older title, I have cross referenced this work with the 38th edition of Solano Press’s *California Land Use & Planning Law* (2023), the 2023 CEQA Guidelines from AEP, and Placework’s 2019 CEQA guide. As supplements, I also reviewed the opinions of Good Neighbor v UC Regents and Friends of Mammoth v Mono County to understand these cases before explaining them in the video. Moreover, the fifth episode uses the MMP from Prefumo Creek Commons as a reference to the mitigations seen/unseen on the development.

While the first four episodes would have sufficed in obtaining the goal of explaining CEQA to the public in an engaging way, I opted to add the last two episodes to show an insight into CEQA from a planner’s perspective. The fifth episode serves as a supplement to the examples I show in the first four episodes to convey the abundance of mitigations and influence CEQA has within the built environment. The last episode is meant to convey the insights of CEQA from professionals themselves to show a diverse perspective of the importance of the law.
It also serves as a method of increasing the series’ legitimacy by including experienced professionals’ opinions. When presenting the videos to faculty, there was generally positive feedback. The videos were seen to be accurate yet approachable and successful in their comedic effects (even when the video did not target their age group). When presented to peers that had no occupational relationship to CEQA, the response was similar. All peers that reviewed the first episode understood the main concept of CEQA: it is a public disclosure law. Peer feedback indicated the appreciation of text that reinforce key concepts discussed in the videos as well as the variety of memes.

Given the 10 weeks to complete all six episodes, if I were to have more time, I would increase the quality of visual content seen as most of the time was dedicated to research and script writing. A concern that was brought up with a reviewing faculty member mentioned the risk of the product videos being inappropriate in the future due to how contemporary some of these memes are. As this is a risk for any comedic video on social media, I am prepared to revisit and revise these videos later on. Moving forward, I would like to continue this YouTube channel as a place to discuss planning topics such as the California Coastal Commission, Tribal planning, and other complex planning topics.
Scripts

**Episode 1: Introduction**

Ok, so imagine this.

You’re the head of a major public institution that is known for being a center for research and innovation.

Since it is a major world class institution, lots of students want to go to your school.

Well, therefore, you need to build more housing.

One of these housing projects happens to be placed on a parcel where there is a historical park.

Some neighbors get wind of your project.

They ban together and succeed (to a degree) in delaying it under this silly little law.

This law is called... uh let’s see.. uhh

Ke kwah, cecah?, no. See Kah,

Wait... **CEQA**

CEQA stands for the Californian employment quantity - no wait,

It’s called the California Environmental Quality Act or CEQA.

And it’s a public disclosure law that has been around for over half a century.

Being over 50 years old, CEQA still has a lot of controversy and misconceptions.

Some of these extreme claims include that this intricate piece of legislation is the cause of the current housing crisis by denying every development that meets its deathly gaze,

To it’s the only reason why the state’s diverse ecology still exists ... because it kills every development that meets its deathly gaze.

Of course, these are major and extreme misconceptions because they are not true at all. First off, because CEQA can’t stop a project as, **and this is VERY IMPORTANT**, it DOES NOT DETERMINE WHETHER OR NOT A PROJECT IS APPROVED.

Moreover, out of all the CEQA projects within a given year, only a tiny fraction, less than 1 percent go through litigation (Bass & Ronald, 2012, p. 246).

If you scroll around YouTube or just google “CEQA”, you meet either 3-minute unsubstantial political ads using it to reinforce their political agenda or hour-long boring professional conference slideshows that no average person can understand.

Therefore, I have decided to take on the insurmountable task of trying to simplify this behemoth of a law that affects every Californian’s daily life (some more than others) yet is so mystified, that many people...
Just still don’t care much about it. (Unless a developer comes into town)

All in a...

Multi part series because there’s so much to go over.

But if you stay for all of it, I can assure you that you will be more factually informed about CEQA than your neighborhood/social network NIMBY or YIMBY will ever be, all in a more digestible way as well.

Unless they watched this series too.

I hope you’ll join me on this journey of plansplaining CEQA!

**INTRO**

**End of intro**

**Title Card: Introduction and Overview**

The most important thing to understand about CEQA is it, as stated before, is a Public Disclosure law

Originally, this was meant to be a method of increasing government transparency by informing “decision makers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage” (OPR).

What does that mean?

It means that the law requires the project to disclose any potential substantial effects it may have on the environment (hence the disclosure part).

And it brings science into this decision-making process.

**AGAIN, it DOES NOT MAKE A DETERMINATION OF WHETHER OR NOT A PROJECT IS APPROVED.**

CEQA does the following things:

**Inform**

**Identify**

**Prevent**

**Disclose**

It informs decision makers about the significant environmental effects of a project.

It identifies environmental damage which can be avoided.***

It **ATTEMPTS to** prevent damage by reducing or minimizing avoidable damage (as best as it can) via mitigations, and alternatives. It can only prevent environmental damage outright through contextualizing the project for other environmental laws.

And discloses to the public why the project is approved, even if it leads to environmental damage.

It also:
Lays out the process but does not dictate outcome. In fact, the state has little interference when it comes to the process as the final decision is left to local government.

In fact, different jurisdictions have slight differences on how they carry out CEQA, meaning you can master the process in one county, but become slightly lost if you attempt to do the same project in a different one.

Requires public evolvement and discourse in its statutes.

Of course, all of this only happens if the project is considered “discretionary”.

What counts as “discretionary”? Basically, any project that must go through a decision-making process.

Usually, it is a city council or Board of Supervisors that reviews these projects. (These are the people you elect to local government every election season).

Of course, there is a more technical definition but for now, just think of discretionary projects as ones that must undergo a decision-making process.

The Process(es) Screen Card

CEQA is different from other conventional planning laws.

It is a public disclosure law that overlaps with environmental planning laws.

While laws like zoning address planning issues specifically,

CEQA treats each project as a unique case under environmental issues.

It’s just that planning intersects with how projects affect the environment such as in traffic, land use, housing, etc.

When a project “triggers” CEQA, it goes through a multitude of phases.

While it’s easy to just lump all these phases under “CEQA”, CEQA itself isn’t one single process.

Think of it as a multi-stage group of processes.

To summarize the whole, the project goes through an initial study, which then determines whether the project itself needs to be further looked at or not.

If it does not, it usually means that the project does not affect the environment substantially enough or it does, but the mitigation methods the project proposes to do will in sum not affect the environment substantially.

However, if the initial study finds that the project will create substantial environmental impacts (even with mitigation measures),

Then the project will go through a process known as the Environmental Impact Report (EIR).

This is what many people think when referring to CEQA.
The EIR is comprised of a set of required sections that analyze environmental impacts from typical categories like green house gases to less direct categories like aesthetics and archaeological resources. (SS21082.2)

Depending on the size and scope of the project, the EIR process may take a long time and require a variety of experts from biologists to historians in some cases. However, most CEQA projects last around 6 months at most.

However, unlike what some tend to believe, there is a time limit on everything.

We’ll go more into detail about all of the processes in future videos, but for now, this is as far as I will go in detail.

**Ok, so who is responsible for these processes?**

The regulatory body which is referred to as the “lead agency” is responsible for the coordinating and going through the process.

Under the definition of California Public Resources Code 13.21067, “lead agency” means the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.

... Thanks for that...

Okay, what do I really mean?

So, it’s a bit complicated if we think too hard about it.

As I stated earlier, there are many parties involved with the impact analysis.

But, there is one agency that leads this effort and is referred to as the “lead agency”.

The lead agency does the following things:

Mitigate the reported effects through mitigation or additional conditions and justify them as a result,

And make and decide CEQA determinations (declarations).

The lead agency is a discretionary authority, meaning it’s usually (as stated before) a city, county, LAFCO, APCD, etc.

Conventionally with lead agencies, the staff will prepare the reports, not the actual discretionary members. Often more times than not, the lead agency will hire a consulting firm to perform the work as these discretionary agencies lack the staff to complete the report in a timely manner.

All of this obviously requires money, which the lead agency will bill the applicant for. The applicant has no say in the process when it comes to environmental analysis.

If they did, it would be considered collusion. Which is not good politically and legally if you were wondering...

**Da Rules Screen Card**
Remember, CEQA is just there to disclose any environmental impact. And as a law, there must be an enforcement mechanism.

If it’s not obvious already, these guidelines are binding to local governments, meaning they MUST follow the rules STRICTLY or else...

There’s no CEQA police and since it’s all local government, can’t anyone just try to bypass it?

Well...no.

Okay, so how are these mitigations enforced?

CEQA is enforced by the most scrutinizing governmental group. Angry neigh-

The citizens of Califor-

Actually, it’s specified to the residents of the project’s jurisdiction.

This means that the main enforcement method is through the public commenting process and in extreme cases, litigation.

You’ve probably heard of famous cases of large projects going through cost overshoots and major delays.

Well, these happen when citizens have exhausted all non-legal options, also known as the exhaustion of all administrative remedies. This is a rare case and what gets covered by the news frequently when CEQA comes up.

We’ll go into detail about the litigation process later, but for now, remember that there is a limit as these suits must have standing (a legitimate reason).

On top of citizen litigation, the state Attorney General is able to force compliance in very extreme and rare circumstances.

Some bridge (WIP)

CEQA is like the constitution in many ways,

They both start with the letter “c” and they both are living documents.

This means that the law and its interpretation is always changing.

In fact, CEQA is alive as the constitution with multiple changes every year due to how CEQA’s rules are defined.

The rules are determined by three things:

State Statutes (PRC 21000 – blah blah blah)

Statues are the law, “enacted and modified by the state legislature” (Placeworks, 2019, pg.1).

State Guidelines (CCR Title 14, Div 6, Ch. 3, 15000-15387)
Guidelines are the “primary rules and interpretation of CEQA” (Placeworks, 2019, pg.1). Guidelines (as stated in the name) give direction to public agencies carrying out CEQA which include mandatory and optional directions.

And court rulings (Court rulings change rules through re-examining the interpretation of the statute, hence modifying the guidelines).

However, while courts defer to guidelines in most cases, they do not “carry the same legal authority as the statute” (Placeworks, 2019, pg.1).

A Conclusion

So, if you have learned anything about CEQA from this video (I hope), here are some key points to take away.

CEQA is a public disclosure law that’s purpose is to disclose a project’s environmental impacts. It’s a planning law that intersects with the environmental realm.

It is meant to help decision makers make determinations based on scientific evidence and to act as a form of government transparency when making these decisions.

CEQA itself cannot deny or approve a project. In addition, the project must be considered “discretionary” to trigger CEQA.

In addition, CEQA can only be enforced through civil means via citizen participation and in extreme cases, suits. However, these suits must have legal standing.

The environmental process under which CEQA outlines can either be fast or long depending on the scope of the project and the amount of impact.

There are multiple public agencies and parties involved with CEQA. However, these processes are mainly managed by the lead agency.

Finally, CEQA is a living document, meaning that it is ever-changing based on court rulings, statutes and guidelines.

Outro
Episode 2: History and Implementation  
Intro Card: History and Implementation  

It's 1969 and on a nice June Sunday morning, you wake up in your nice SFH to the sight of dark black plumes in the sky and a horrible industrial smell. Oh, it appears like the Cuyahoga is on fire. Neat...

The Cuyahoga fire was one of the watershed (pun intended) moments that turned the American public towards environmental considerations.

This was summarized in the following year with then President Nixon passing the National Environmental Policy Act (NEPA) into law, which established the EPA (Environmental Protection Agency) and environmental review in federal projects.

Not to be outdone by his future predecessor within the confines of Republican presidencies, Ronald Reagan, then governor of California, passed the California Environmental Quality Act into state law.

Thus, CEQA was born. This was totally the correct and accurate reasoning into why he passed CEQA.

Okay, so that's not why California passed CEQA. The real reason arguably deals with federalism.

To put it briefly, when the federal government passes a law that regulates action, states will usually pass a law that equals or surpasses the standards of the federal law.

When this happens, instead of the federal government regulating the law directly, they can give the power of regulation to the states themselves. Therefore, many states have passed their own version of NEPA to maintain state control of projects.

It should be noted that that no one knows which law was conceived first.

While NEPA was passed first, because of the similarities between CEQA and NEPA, it is possible NEPA might have been based off of a draft of CEQA.

It is important to understand that CEQA is much more substantive than NEPA as not only does it require projects to disclose environmental impacts, "but also to avoid or mitigate impacts when feasible to do so" (Bass, 2012, pg.7)

It is also important to know that some projects fall under only CEQA while others fall under NEPA and CEQA.

For example, if you wanted to establish a nuclear power plant within the state of California, you would need to perform an EIR from CEQA and an EIS per NEPA as both the CPUC and NPC would be lead agencies in project.

Since CEQA in considerations is more stringent than NEPA, if you're meeting CEQA requirements, you're already meeting and sometimes exceeding the federal standards.

However, because of the inter-agency working of having two lead agencies (one for CEQA and another for NEPA), things can get a bit tricky...
Thus, there are guidelines specifically dedicated to scenarios like that one which can be found on the OPR website!

**Title Card: Mono V Mammoth, a MAMMOTH of a legal case!**

Last episode, we touched on how CEQA is a living document; it evolves over time through changes in the statutes and interpretation.

Well, one of these arguably major changes occurred way back in 1972...

Let’s set the scene: 1972

LV millionaire Mike Oliver’s Libertarian paradise of Minerva declares independence and shortly thereafter is dismantled by Tonga through annexation

The Germans beat the soviets at “football”

The F-15 makes its maiden flight

Nixon and Agnew are renominated at the RNC

Oh, and something something watergate. Something something CIA something something FBI, something something obstruction.

Ok, now it’s September of the same year and we find ourselves in the Supreme Court of California.

Why are we here?

They already solved the moral question of whether the death penalty was constitutional, what else is so important to decide?

Well...

Earlier in April, International Recreation, a development company, applied for a conditional use permit within mono county on the site that was next to mammoth lakes.

The CUP was comprised of: two condos, a restaurant and “specialty shops” (whatever that means).

Friends of Mammoth sued the county as they believed the permit to be invalid as an environmental review was required.

Well actually, they got a petition to invalidate the process (which was sent to the wrong court so they had to do it twice), and they appealed it all the way to the state supreme court!

Ahem. anyways,

Remember, this is still the early years of CEQA.

CEQA’s original purpose was to disclose the environmental impact of GOVERNMENT actions (considered projects).

This big law had many different interpretations by different agencies.
Some agencies covered government action as specifically government projects while other agencies believed that it applied to any project that had government funding.

Things like prisons, schools, freeways, were obviously covered under CEQA. However, as the court noted, “nowhere in the act is ‘project’ defined” (which may have been or not, on purpose).

Well, that term was put to the test here where Friends of Mammoth challenged the Mono County Board of Supervisors regarding the BOS’s decision to approve a CUP on the basis that approving the project was a discretionary action, and therefore... was subject to CEQA.

Of course, the defendants (in this case, International and the BOS) argued that CEQA only applied to “public works projects” as that was how the statute was interpreted up until that point in time by the lead agency.

Long story short, the court majority sided with Friends of Mammoth, noting that “the incongruity of [interpreting CEQA as solely for public projects] would be most vivid in the less populous counties, such as Mono, which because of limited economic capabilities might never engage in massive public works projects significantly affecting the environment, but could achieve the same result by permitting, licensing, or partially funding private activities.”

Basically, the court said if CEQA were to continue to be interpreted as just fully government funded projects, less economically gifted areas would be shafted ecologically by private interests as they would have free reign and no environmental oversight.

And that was not the spirit of this law.

The spirit of the law considered government “action”.

This in itself is a broad range of things from direct construction to funding, to (in this case) the action of permitting a private project.

And that case is how now all discretionary projects (whether public or private) now fall under CEQA.

**Implementation**

As a repeat of last time, courts usually abide by the set guidelines and statutes, but will change the interpretation of them if need be.

While statutes are implemented by legislative action (i.e. senate/assembly or initiatives), the ones that write the guidelines are the Natural Resource Board and the Governor’s Office of Planning Research (better known as OPR).

A project is defined by CEQA as any activity which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, Public Resources Code (PRC 21065)

In practical terms, to be a “project” in terms of CEQA, it must be both of the following: “carried out, approved, or funded by the public agency”, and whether “it may cause a change in the physical environment” (PRC 21065).

If it passes both tests, it is a project and therefore is subject to environmental review under CEQA.
Okay, so I talked about this briefly previously.

In more detail, CEQA only applies to projects that require discretionary approvals.

Discretionary means that a public agency exercises judgement in deciding whether to approve or disapprove a proposed project.

Additionally, if an agency has authority to “modify a proposed project or deny approval in response to environmental concerns, its action is discretionary” (Barclay & Gray, 2022, 148).

This is different from a ministerial project where a public agency approves or disapproves a proposed project based on whether the project meets certain standards set by statute (aka law).

If it’s ministerial, it does not require a hearing or review by a commission or board.

Most projects considered by CEQA are the typical development project.

However, cases where more literal forms of action are taken are also common.

**2005 turbine project**

In 2005, PGE decided to update the Diablo Nuclear Power plant by removing its old turbines and replacing it with updated ones. This required an EIR with the CPUC being the lead agency.

For some reason, I’m not sure why, the project was not carried out even with a finished EIR.

CEQA applies to “all government agencies subject to the jurisdiction of California law at all levels, including state agencies, state boards, state commissions, cities, counties, regional agencies, and special districts” (Bass, 2012, pg. 19).

This state law does NOT apply to any non-governmental agency like a tribal authority, nor a federal agency, the governor, or the judiciary.

However, NEPA (the federal version) applies to select discretionary federal projects.

All eligible agencies must adopt CEQA implementation procedures that are consistent with the law.

They should contain the following:

- ID exemptions
- Conducting IS
- Prepping ND
- Consulting with other agencies
- Ensuring adequate opportunities for public review and comment
- Evaluating and responding to comments
- Assigning responsibility for determining the adequacy of environmental documents
- Reviewing and considering environmental documents by decision makers
- Filing environmental documents

**Importance**
Environmental regulation was never that big of a deal before these environmental laws.

However, as science advances, we continue to further our understanding of how important our environment is within the context of many things such as human health and the services it provides to us.

CEQA's role in protecting the environment cannot be understated in this regard. It opens our eyes to the possible impact and methods of mitigating it whereas without it, we wouldn’t think of any of these things.

It is a Public Disclosure Law.

Its main purpose is public transparency of discretionary decisions.

Of course, its area of implementation has reached outward over the decades from strictly government projects to today's ever-changing definitions.

However, its main purpose has stayed true throughout the decades even in the face of judicial and legislative expansion.

Conclusion

To the concerned public, CEQA is one of many laws (looking at you, Brown Act) that holds larger political forces within the context of local government at check from the abuse of power that comes along with it.

To others, it is a way that allows the state to build more environmentally consciously and responsibly.

Whatever the case may be, the law itself has changed character throughout its life and still changes to this day. Even so, its main mission of informing the public is its main objective and remains so.

Next episode, we’ll talk about the CEQA process from start to finish so buckle up for that one! I’ll catch you next time!

Outro
Episode 3: IS and Exemptions

Intro

Okay, let’s go over what the process of reviewing a “project” looks like.

First, we have to determine if it triggers CEQA.

In defining what a project is,

We have 3 questions that guide us:

Does it involve exercising discretionary power by a public agency?

Does it result in a direct or reasonably foreseeable indirect physical change in the environment?

Is the action considered a “project”?

In the “project” question, it includes:

Any action taken directly by a government agency (like student housing established by a public university)

An action supported by a public agency (like Caltrans funding a highway project)

Any action that needs a discretionary permit from a public agency (think of CUPs or any permits that require a hearing)

As you can see, the definition of a project is very broad.

So broad that the state legislature has used its power to define what specific actions are NOT considered projects under CEQA. These include (but are not limited to):

- Proposals for legislation to be enacted by State legislature
- Certain continuing administrative or maintenance activities
- A city council action placing a voter initiative on the ballot
- Etc.

While broad, this part is very important.

So important, in fact, that I’m going to give you an example.

**SOFI EXAMPLE**

So you might also be wondering, is it possible to divide a project into smaller projects, so that it doesn’t trigger CEQA?

No.

In fact, we have a term for it: piecemealing, which isn’t allowed.

CEQA requires the whole intention of the project, and indirect environmental effects are also considered.
However, it should be noted that they must be REASONABLY FORSEEABLE, as a wide variety of things are considered CEQA projects, 

There are some things we don’t want to go through the environmental review for many reasons.  

So, we have an exemption process.  

These exemptions fall under three categories of reasons: political, efficiency, and common sense.  

The first type is a statutory exemption.  

These are exemptions written into the state statute by legislators.  

Things such as air quality permits, ministerial projects, emergency projects, Olympic Games... 

**Olympic GAMES?!**  

So because statutory exemptions are written into law by legislators, some exemptions are purely political.  

Olympic Games and the construction of buildings that facilitate them are one example of this.  

Another type of exemption is the categorical exemption.  

These are for the types of projects that have shown time and time again to have minimal environmental effects.  

Moreover, these types of projects are sometimes carried out so often that rather than going through and taking time to write a whole initial study and ND (which we will get into soon),  

It is classified as an exemption for efficiency.  

While there are less types of categorical exemptions, a common categorical exemption is the class 32 exemption: also known as infill.  

These apply to projects that are within city boundaries, which site has already been significantly altered from the natural landscape.  

Think of converting an old warehouse near downtown into a rave club.  

However, it should be noted that there are some exceptions related to potential effects and they still require noticing and public comments.  

The last type of exemption is the general exemption, also known as the “common sense” exemption  

These are projects “where it can be seen with certainty that there is no possibility that the activity is not subject to CEQA” (Guidelines 15061b).  

Of course, this is difficult to prove and requires a VERY VERY strong case.  

If the project is determined to be an exemption, the lead agency has the option to file a notice called a “notice of exemption” or NOE.  

Wow. Creative, I know.
A NOE is required for specific statutory exemptions.

However, in practice, a NOE is almost mandatory for most exempted projects as it will allow a 35-day period instead of a 180-day period of challenge.

This thereby encourages the lead agency to justify its actions, something that is in line with the spirit of CEQA as a public disclosure law.

The NOE contains:

- A brief description of the project
- The reason for the determination
- Citations backing up the claim

It has to be posted and made available for public viewing, which includes the internet

Appendix E of the CEQA guidelines has a recommended NOE form.

If the project in question does not meet any exemption, then we move on to the next step: the initial study (IS).

This step is to determine whether the environmental effects of the project are potentially significant enough to require an environmental review.

This “environmental review” is known as the environmental impact report (EIR).

If the lead agency believes the project requires an EIR right off the bat, then the IS can be skipped.

The possible outcomes of an IS are the following:

- Negative Declaration
- Mitigated Negative Declaration
- EIR

There is no specific process of conducting an IS

It can be done by the lead agency or another party.

However, if it is done by another party, the lead agency must review it beforehand.

The IS itself uses information from a plethora of sources, including information from the applicant.

Moreover, the IS does not require public circulation, meaning that the public is not required to review the IS.

However, the lead agency may choose to informally circulate a draft, which is very beneficial.

Circulation may further assist in streamlining the process as comments can give insight into the development of mitigation measures to support a MND or identify potential effects ahead of time.

If the IS concludes a negative declaration (either ND or MND), then a notice of determination is circulated.

If it concludes the need for an EIR, a notice of preparation (NOP) is determined
An IS contains the following:
- Project description
- Environmental setting
- Potential env impacts
- Mitigation measures for any significant effect
- Consistency with plans and policies
- Names of preppers

While there is no specific format, for most lead agencies, a good format can be found in the Guidelines.

This document is widely known as “appendix G” and acts like an IS checklist.

If any answer on the appendix is answered as “potentially significant impact”, then it tells the reader that an EIR must be prepared.

While it is a somewhat comprehensive format, it may not address all issues pertaining to the specific jurisdiction.

Assuming that your IS is undisputed, you now must see whether the project meets the requirements of a negative declaration.

A negative declaration (ND) is when there is no substantial evidence of any possible significant impact on the environment.

If there are, then you would need to mitigate it.

But have no fear, and EIR is not required (yet).

If the IS finds significant impact, but the applicant agrees to mitigate it and the mitigation is found to reduce the impact to lower than the determined significance,

Then you can determine it to be a mitigated negative declaration (MND).

Easy right?

Surely, there's no way we can mess this one u-

The IS conclusion can fall under scrutiny if not done thoroughly.

This is from the fair argument clause.

An EIR must be prepared when, according to the public resources code, when “it can be fairly argued, based on substantial evidence, in light of the whole record before the agency, that a project may have a significant effect on the environment” (PRC 21080(d), 21082.2(d)).

This means that if there is “substantial evidence” presented to the agency of a potential significant impact, the lead agency must prepare an EIR.

But what counts as “substantial evidence”?

Well, I’m glad you asked!
“Substantial evidence” can be expert opinion supported by facts.

It can also be sufficient relevant information and reasonable inferences from information given to make a “fair argument”

It does NOT include the following:

- Argument
- Speculation
- Claims not backed up by facts
- Erroneous or inaccurate evidence
- Social or economic impacts that do not contribute to/ not caused by physical impacts on env.

“effect on the environment” is based on the existing environmental setting of the project.

This is known as the “baseline”.

The agency must justify why they used a particular baseline as well.

Even if the lead agency is presented with evidence of the project not having a potential significant impact, an EIR must be prepared if there is a fair argument for a potential significant impact.

Ok, what’s with this term and clause, “fair argument”? It’s quite vague right?

Well, a fair argument clause in this case is a low bar for litigation.

It is purposely set to a low threshold in the name of informing decision makers to the best of their ability.

While that is the spirit of the application of fair argument, it is still highly controversial.

It is no surprise that it favors opponents of projects as they can bump a ND up to an EIR.

It also can be used to discredit mitigations proposed to reduce impacts to below the threshold of significance. (We’ll get to that term soon).

Moreover, it forces the lead agency to take received comments seriously due to potential legal action.

However, it allows the agency to discuss comments and make mitigations that address the received comments to avoid an EIR.

During litigation, the fair argument clause encompasses all information on the administrative record.

This includes comments from the public as well as findings from agencies and even the lead agency’s staff.

Apologies for that rabbit hole of a tangent.

Also, wait, what counts as “significant impact”?

So, the threshold of significance is based on the judgement of an agency.
It must be backed up by scientific and factual data.

Is there a specific definition?
No.

Why?
Because significance varies by setting.

For example, the threshold of significance for traffic is usually a lot higher in an urban downtown than somewhere along a rural county area.

Per guidelines section 15358, a significant effect on the environment “is generally defined as a substantial or potentially substantial adverse change in the physical environment”.

Let’s dissect this sentence a bit.

“environment” encompasses physical conditions that exist within the area affect by the project and can include man-made and natural conditions.

Things like land, air, water, minerals, noise, and even historical and aesthetic resources.

The affected area is determined by the area of which the significant impact affects either directly or indirectly.

These areas differ from impact to impact.

While the findings for impacts are not strictly listed, there are a list of mandatory findings.

Any of these findings (if found to be significant impacts) will trigger an EIR.

Guidelines state the project will significantly impact the environment if...

[show list] (PRC 15065(a)(4))

Of course, there are vague modifiers.

Therefore, these are “somewhat open to interpretation” (Bass, 2012, 65).

Additionally, it isn’t the end of the world (yet) as the lead agency can still apply mitigations in order to reduce the impact (hopefully to below the threshold).

How are thresholds set?

They are done by the lead agency.

They must be identifiable, quantitative, qualitative, or performance level of specific effect.

These thresholds must be adopted through public review (usually and ordinance, resolution, rules, or regulation).

If the lead agency is reviewing a project and does not have any set thresholds on hand, then the specific project can adopt thresholds without needing the formal means I just mentioned.
However, most thresholds are based on existing regulatory agency standards such as air standards from CARB, water thresholds from basin plans, etc.

Actually, appendix G has a list for each question in regard to where to search for a threshold.

Ok, this has been nice, long and all, but why should we care or even implement an IS anyway?

So, the main point of the IS is twofold:

It is used as an inter-agency consultation method.

What I mean by this is it ensures that all affected agencies have a voice in the decision-making process.

Agencies are considered experts in their subject matter and what this means is that should an agency request an EIR to be prepared, the lead agency knows ahead of time.

Moreover, it allows that same agency to collaborate with the lead agency in including possible mitigation measures to avoid significant impact.

Even if an agency outright determines that the project requires an EIR, preparing an initial study helps the project down the road.

An IS can be used to focus the EIR on potential significant effects by identifying them ahead of time.

This allows the lead agency to avoid unnecessary analysis of non-potentially significant effects.

It also is used to support findings that a project will not have significant unmitigated environmental impact.

And finally, sometimes, it can reveal to the lead agency that the project itself can be mitigated to the degree that it can be classified as an MND.

Okay, I know this was a long one.

But you know what else is even longer?

Yup, that’s right.

EIRs.

I’ll see you next time.

Outro
**Episode 4: EIRs**

Ok, we’re here at the **big one**. The EIR.

An environmental impact report, or EIR is a disclosure document in essence. Its main goals are to inform decision makers, which allows for accountability on their decision on the project itself in addition to demonstrating to the public the environmental impacts of development.

While EIRs are a process in itself, depending on the type of EIR, some things may or may not be needed. Yup, you heard me right.

**TYPES of EIRs.**

Like dogs and cats, there are many variants of EIRs; some more utilized than others.

The most basic EIR there is the project EIR.

Like much of planning colloquial, the meaning is in the name.

Project EIRs are EIRs that focus on a specific project.

For projects that are more in line with a general plan or campus development plan or something similar that requires future actions, program EIRs are implemented.

If you have a humongous project like a subdivision that might encompass many different developments, then a master EIR might be right for you.

If you determined during the Initial study that there is only one or only a few issues that need to be addressed, a Focused EIR is the best choice*

*Note that a Focused EIR is different than focused EIRs as a Focused EIR will address a specific stated impact while focusing an EIR is more about knowing what types of impacts will be there.

With that out of the way, let’s move on the best part of this whole series: the process! (It only goes down hill from here jk).

The first step into preparing an EIR is letting EVERYONE KNOW THAT YOU ARE PREPARING AN EIR.

This is called the “Notice of Preparation” (NOP).

The point of the NOP is to let both agencies and interested parties know what part of the process the lead agency is on.

Sorta like the Domino’s pizza tracker in a way.

Within a notice, there must be a description of the project, the potential impacts and subsequent mitigations proposed, and alternatives.

The NOP is one of several documents that must also go to the state Clearinghouse.
Additionally, comments received within 30 days of the NOP being circulated must be addressed in the EIR.

To save time in analysis, many EIRs will have a scoping phase, which is meant to identify what is and isn’t needed to be discussed in the EIR.

Examples of scoping include the IS, NOP comments, and performing “scoping meetings” with the public and involved agencies.

In practice, scoping allows for the limitation of discussion within EIR of nonsignificant environmental effects to a “brief explanation of why those effects are not considered potentially significant” (PRC 21002.1, guidelines 15143).

Since every project is different, some may induce impacts that other projects may not.

For example, a new Costco gas station will create trips, along with degrading air quality because of idling cars. However, while a Home Depot might create trips, it will not degrade the air quality as bad as the gas station as cars are less likely to idle within its parking lot.

Thus, it is quite possible that both EIRs might talk about circulation, but the gas station may also add an additional section about air quality.

After the NOP is circulated, the lead agency may start working on the first iteration of the EIR, known as a Draft EIR, or DEIR.

The DEIR is one of two large writing products (excluding that one MND) CEQA possibly produces with the other one being the Final EIR (FEIR).

The DEIR is also regularly prepared by a third party under the management of the lead agency. This is done as writing EIRs has grown to be so time and resource consuming that many public planning departments and state agencies sometimes lack the personnel to prepare one in an acceptable amount of time.

There is no difference in substantial and procedural requirements in relation to if whether or not it was prepared by the lead agency directly.

The lead agency is still responsible for the final DEIR as it still must reflect the independent judgement of the lead agency.

It is called a draft EIR because it is a draft (sorta).

After the completion of the DEIR, a notice must be sent out to the public, similar to a NOP. This time, it’s called a Notice of Availability (NOA).

A NOA lets everyone know that the DEIR is available for public review. A NOA must either be circulated in the newspaper (largest one), posted on and off the project site, directly mailed to owners and occupants of contiguous property and members of the public who may have asked for the notice (PRC 21092.2).

Additionally, it can also be posted online. HOWEVER, this does NOT substitute print copies.
The NOA must be posted for 30 days through the clerk’s office.

While this is happening, the lead agency also informs the state clearing house by sending a Notice of Completion (NOC), giving a project description, where to find the DEIR, and the length of the public review period of the DEIR.

The public review period is usually 30 – 60 days with an expedition or extension possible pending OPR decision.

Public commenting and involvement in general is the heart of CEQA and therefore should not be forgotten.

I mean, this is the reason why we have CEQA in the first place.

What is this? A regulatory scheme for consulting firms to grift money through billable hours?? Pffft.

Anyways,

Comments received in relation to the DEIR should focus on sufficiency of the document regarding identifying impacts and methods of mitigation and avoidance.

It is the lead agency’s responsibility to respond to comments that point to significant environmental issues raised (as long as they have sufficient evidence to back up their claim).

Commenters themselves are protected from retaliation through anti-SLAPP laws, as I’m sure a developer would like to strangle anyone who pointed out their project was going to wipe out a wetlands.

During this time from the NOC, agencies are also able to respond in regards to the DEIR. Of course, their comments are limited to their area of expertise; you can’t have Cal Trans comment on protected species while FWS comments on impacts to the local freeway.

Additionally, these comments must also be supported by substantial evidence, meaning a concern will also have analysis done by the agency beforehand and sent along within the comment.

If agencies identify an impact, they also must suggest mitigation measures that address these impacts, if they can’t develop any, then they must state this for the administrative record.

*SKIT about Caltrans and lead agency*

Comments can be oral or written.

In terms of oral comments, they’re usually in the form of hearings.

In cases of hearings, a transcription must be made. However, there is no cross-examination of the applicant, and the lead agency is not required to respond to questions or comments raised at the hearing.

Do you hate it when you get a NOA and you have something insightful for the lead agency? Do you just REALLY want to see your comment be responded to by the lead agency even though it has nothing to do with the project or the substantiveness of the DEIR?

Do you ever just… ruminate about it and then forget to ever do it?
Well, late comments are like this for agencies.

While not responding within the timeframe leads to the agency having “no comment”, late comments are still put on the administrative record.

Either way, comments and responses are one of the many things found on the final EIR, or FEIR.

The FEIR and DEIR or sorta false names. FEIRs focus on the responses to comments and any changes to the DEIR that have been made in response to comments.

However, FEIRs only reference the DEIR.

So in practice, just because the FEIR exists, doesn’t mean the DEIR becomes useless.

Here’s the FEIR for a cancelled project on the Diablo Nuclear power plant.

As you can see, it’s divided into two whole volumes the size of 2-inch binders.

You can also notice this EIR is somewhat different as it does have some of the DEIR in it with... redlining???

Yup, FEIRs might be the final product, but it’s easier to show how it changed from the DEIR through editorial methods such as redlining to bring home the points.

One of these binders houses all the comments and lead agency responses.

If you read through them, a lot of the useless ones are just recorded.

However, the ones that are substantive actually have a well-reasoned, good-faith reply to them.

So, as a reminder for commenting:

Great comments are ones that ID other significant impacts, other mitigations, or methods of analysis and have a basis such as data, references, expert opinion, etc.

Bad and annoying comments include: mere opinions.

Also, asking for every possible test under the sun is not helpful as perfection is not required to be adequate.

Finally, if you are going to litigate, look back at the exhaustion doctrine: You can’t hide evidence for just the trial as you should have presented your problem at every possible opportunity to comment.

and have to bring up the specific violation of CEQA

AND Mere objection to the project is not valid.

Ok, the FEIR is done, the dragon is slain. That’s the end right?

Nope, gotta still approve the EIR.

The lead agency’s discretionary body (think city council) still has to decide whether the EIR is compliant with CEQA and if it truly represents the lead agency’s independent judgement and analysis.
If it does, then they will certify the EIR, agreeing with the document’s findings.

The time limit of certification is 1 year, with some exceptions.

Ok, so now we’re done right?

Well ... it’s close.

I’m hopefully driving this home, but CEQA is a disclosure law. It doesn’t approve or deny projects.

Its documents are used as a scientific basis FOR approving or denying projects.

Based on the certified EIR, the discretionary body of the lead agency (recall city councils, etc) can either approve, deny, or require conditions.

Essentially, even with the applicant going through the intense process of an EIR, they can still deny the project.

*I love democracy meme*

If they decide to approve the project with/without conditions, then at the same time, a findings of fact is also written.

The “findings of fact” is a written statement made by the decision-making body that “explains how it dealt with each significant impact and alternative in the EIR” (Bass, 2012, 193).

For each impact/alternative listed in the EIR, there is an explanation as to how it was dealt with and why they did it that way. For alternatives, they also explain why that alternative was not chosen.

For impacts specifically, findings come in 3 tones:

- We changed the project to avoid/reduce the impact
- We can’t change the project to address this impact as it’s under the jurisdiction of a different agency. Therefore, it is not our problem.
- It’s under our jurisdiction but we will not change the project for socio-economic, legal, technical, or other considerations making the mitigation/alternative infeasible.

The last one is known as a “statement of overriding considerations”.

Basically, with disclosed significant impacts (even with mitigations), a project can still be approved by the discretionary board.

However, they must give a reason why the benefits of the project outweighs the potential impacts and why they’re willing to accept them

A statement that overrides environmental considerations if you will (ehh?? You get it now???)

This statement is adopted with the findings.

A lot of projects that go through and EIR will have at least one mitigation attached to its condition of approval.

With those conditions comes an understanding that they have to be followed.
So, there are MMPs (mitigation monitoring programs) that are also written along with the mitigations for a project.

MMPs are not required to be disclosed within the DEIR, but it is a good practice for lead agencies to circulate mitigation measures for the public to comment on.

If there are mitigatable impacts that fall under the jurisdiction of another agency, the lead agency will leave that impact to that agency’s jurisdiction.

In this way, other agencies can also adopt MMPs if necessary.

MMPs can come in two flavors: monitoring and reporting programs.

Reporting “consists of written compliance review” and “may be required at various states of the project” (Bass, 2012, 197).

Reporting programs are usually utilized to address measurable impacts which the lead agency most likely already regulates within its code such as unit occupancy.

A monitoring program is an “ongoing process of project oversight, often involving site visits, and is suited to projects within complex mitigation that exceed the local agency’s expertise, is expected to be implemented over a period of time, or requires careful implementation to assure compliance” (Bass, 2012, 197).

Woah, that was a lot.

In a more simple term, the lead agency monitors a mitigation throughout the project from start to finish when a mitigation method is too complex/delicate for the lead agency to handle or is a long-term implementation.

A great example is right here in San Luis Obispo by this unsuspecting sign.

You can’t really read it because you’re probably too busy trying to get to Los Osos or the 101.

However, if you stop and read the sign, you start to read something…

YUP, this is a mitigation measure as part of the EIR for this shopping plaza you see on screen just up the road.

But why?

Well, because the impact that this mitigation addresses is a big one.

In short summary, the development was projected to take away a significant amount of wetlands.

To offset this, the applicant was conditioned to create a wetland habitat that offset the same amount of wetland it was going to pave over.

This wetland habitat had to actually support life, especially these brown looking plants you see right here.

Because this whole mitigation took a long time to set up and work, it was definitely a monitoring program.
With everything done, and hopefully, the project approved and mitigations adopted, we’re almost there in closing the book.

The final thing needed is a notice of decision (NOD)

This is only needed if the project is approved.

It summarized significant impacts, the conditions put on the project, the findings, MMPs, and the date of approval.

It must be sent out within 5 days of the actual approval.

The NOD must sent to the SCH and interested parties in addition to being posted for at least 30 business days.

Ok, NOW we’re through.

Wait... no, no, no, NO NO NO , WAIT WAIT WAIT
Episode 4.5: MMRs IRL

While I wish I could go through every mitigation for Prefumo Creek,

For time constraints and because some MMPs happen during or before construction, I will show you a few.

Teller machine and postal drop box
- AQ-3d
  - Reduce other trips generated by project

Bike parking
- AQ-3f
  - Reduce trips therefore NoX

Energy Efficient lighting (windows)
- AQ-3g
  - Reduce indirect ghg increase

Rooftop equipment placement
- NO-3a
  - Reduce noise

Hooded light fixtures
- VIS-2a, BIO-3a
  - Reduce lighting onto other places, esp. residential properties
  - Divert lighting the creek and disturbing its species

Native planting
- AQ-4b
  - Reduce impact on climate change

Electric charging 15 percent of parking spaces also near shopping areas
- AQ-4b
  - Reduce impact of climate change

Split rail fencing
- BIO-3c
  - Block humans but allow creatures to move

LID
- HYD-3c
  - Reduce impacts from storm runoff
Noise barriers
- N0-2
- Reduce noise impacts

Traffic improvements
- TT-1a, TT-1c, TT-5c
- Prevent more traffic
Episode 5: Professional Opinions and a Conclusion

1. Name and occupation
2. What is CEQA and how does it relate to your current/previous occupation?
3. How many years have you worked with CEQA?
4. What is the most common misconception about CEQA you hear from people?
5. How do you dispel them?
6. How has CEQA changed/not changed over your career?
7. Can you describe a particularly challenging project you’ve worked on?
8. What could have made it easier?
9. How easy is it in your experience to make a mistake in CEQA compliance?
10. What is the most common pitfall/mistake that has been made in your experience?
11. What mistakes have you made?
12. Do you believe that the Mammoth decision was a mistake?
13. Frequency of litigation
14. What is the most ridiculous project you’ve worked on?
15. Project with most responsible agencies?
16. Anything you would like to see in the future?
17. CEQA, bad or good?

What do I think needs to be changed

I’m not here to try to sell any side of this argument as the purpose of these episodes was to inform you.

But, here is my personal take as a graduating planning student.

CEQA is a public disclosure law.

And a very effective one too.

Whether it’s good or bad really depends on the context of how it’s being utilized.

Without it, it is true that developments wouldn’t attempt to minimize environmental impacts.

However, at the same time, it can be hijacked by special interest groups.

The law itself has become so complicated that you almost need a lawyer to understand it.

While planners do have guidelines, they’re too vague to get clear guidance.

Because of how lean most mid-sized and smaller planning authorities have gotten, there is usually no CEQA planning specialist.

I think what’s important as a planner is that CEQA should be clear in its guidelines and statutes about what is required.

There is currently lots of bloat within CEQA documents because of the fear of litigation due to this.
I think that there should be higher bars to litigation because that would also make the process harder to hijack for special interests.

Overall, CEQA is a good law; it has good roots and bones and its main purpose is still the same as it was 50 years ago.

It’s just that times change, and how the way CEQA has changed, has been not optimal.

More straightforward language and a higher bar of litigation is what I believe is needed to make CEQA an efficient law again.

I want to give my thanks to the many people who helped make this series possible, including the ones you saw today on screen.

I will be back with more content after I move and start my job (as a environmental planner).

Until then, be safe, and have a good night.
References


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Make UC a Good Neighbor v. Regents of the University of California (Court of Appeal of the State of California First Appellate District Fifth Division February 24, 2023).