

# The Environmental Review Process

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# What is CEQA ?

- **California Environmental Quality Act:**

- state law passed in 1970
- a process triggered by a discretionary action to identify the environmental effects of a project



# Purpose of CEQA

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- Inform decision-makers and the public about the possible environmental effects of projects
- Identify ways environmental impacts can be avoided or reduced
- Prevent or avoid impacts to the environment through alternatives or mitigation



# City's CEQA Responsibility

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# Reviews are required to

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- Maintain independence and objectivity while conducting an unbiased impact analysis
- Produce a legally defensible document
- Avoid any recommendation to approve or deny a project



# Areas of potential impact\*

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- Land Form Alteration & Visual Quality
- Transportation & Circulation
- Hydrology & Water Quality
- Health & Human Safety
- Air Quality
- Geology & Soils
- Archaeology
- Noise
- Cumulative Effects

Biology

Energy

Paleontology

Land Use

\*Partial list



# We Analyze a Project to

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- Identify potential environmental effects
- Determine the type of environmental document to be prepared:
  - Exemption
  - Negative Declaration
  - Mitigated Negative Declaration
  - Environmental Impact Report



# Initial Determination Review

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- Review submitted plans and related material
- Begin the Initial Study Checklist using in-house resources
- Visit the project site
- Review potential findings against the Significance Criteria
- Complete the Initial Study Checklist





# Significance Thresholds

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- Adoption by council not required by CEQA
- Thresholds provide staff with guidance on determining the significance of an impact
- Thresholds provide consistency
- If an impact is determined to be significant, mitigation or an Environmental Impact Report is required
- Updated from time to time based on changes in CEQA and court cases



# EAS Coordinates With:

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- Within DSD (Regulator)

- fire prevention officer
- transportation engineers
- hydrology/water quality engineers
- geologists
- biologists
- historical resources specialists
- noise experts
- permit planners
- landscape planners

- Planning Department

- long range planners
- Multiple Species Conservation Program staff

- Other Regulators

- U.S. Fish and Wildlife Service
- Army Corps of Engineers
- California Department of Fish and Game
- Regional Water Quality Control Board
- County Environmental Health
- County Air Pollution Control District



# Exemptions

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- **Statutory Exemptions (Granted by the State)**
  - Used to exempt ministerial building permits)
  - emergency projects
  - pipelines less than a mile regardless of impacts
  - feasibility and planning studies.
- **Categorical Exemptions**
  - Used to exempt certain types of discretionary projects where there is no “reasonable possibility” for a significant impact (e.g., existing facilities, information collection and In-fill development).

# Examples of Exemptions:

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- A liquor license in an existing convenience store
- Evening educational classes in an existing commercial building
- Converting an apartment to a condo
- Adding a second story guest quarters above an existing garage



# Potential Impacts Identified

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- Request technical reports
- Reports should indicate whether an impact would result or not
- Reports should include mitigation
- Reports should indicate whether the mitigation would reduce the impact to below a level of significance



# No significant environmental impacts identified

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- Negative Declaration prepared



# Environmental impacts identified - but can be mitigated

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- Mitigated Negative Declaration (MND) prepared
- MND includes mitigation measures



# Completing the document

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- Initial Study Checklist
- Initial study
- Negative Declaration (no impacts)
- Mitigated Negative Declaration (impacts)
- Public review
- Response to comments
- Final





# Drafting mitigation

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- Trigger: Prior to the issuance of a building permit
- Contact: the applicant
- Requirement: shall mitigate for one acre of Tier I coastal sage scrub by .....



# Significant environmental impacts – but they cannot be mitigated

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- Environmental Impact Report (EIR) prepared
- EIR includes mitigation measures



# Preparation of an EIR

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- Notice of Preparation with attached Scoping letter
- Scoping meeting
- Staff prepares EIR (or) consultant prepares
- Consultant prepared-screen checks
- Public review
- Response to comments
- Final



# Cumulative Impacts

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- **Effects that would worsen existing significant impacts**
- **Analysis includes research into closely related past, present and reasonably foreseeable future projects**



# Significance of Cumulative Impacts

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- **Cumulative impacts may not be significant if the project complies with a previously approved plan or mitigation program's requirements**
- **Specific mitigation measures may reduce an impact, but not to below a level of significance**



# Findings

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- **Must be included in all EIRs where there is a significant unmitigated impact**
- **Must make at least one of three findings found in CEQA Section 15091**
- **Not required until EIR is finalized (not part of public review)**



# STATEMENT OF OVERRIDING CONSIDERATIONS

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- Requires the decision making agency to balance the economic, legal, social, technological or other benefits of the project against the unavoidable environmental impacts of the project



# Comparison: EIRs and MNDs

## EIRs

- project may be approved with significant unmitigated impacts
- project alternatives are analyzed
- Cumulative impacts are separately analyzed
- Findings and Statement of Overriding Considerations must be adopted

## MNDs

- all significant impacts mitigated through conditions of project approval
- no project alternatives are analyzed
- Cumulative impact analysis required but no separate, explicit discussion required
- Findings and Statement of Overriding Considerations not required

## Similarities:

Same technical reports and level of analysis

Same mitigation measures: adoption, nexus, and rough proportionality





# Public Review

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- 20-30 days for ND or MND
- 30-45 days for EIR
- Environmental document revised if necessary
- Final document distributed 14 days before first public hearing



# Recirculation....

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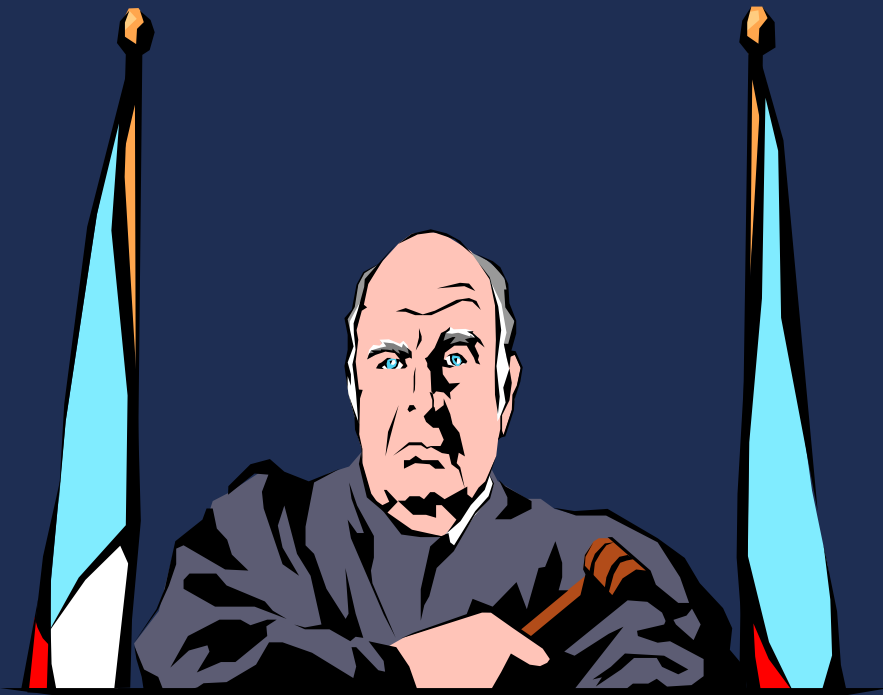
## Conditions under which we would recirculate an environmental document:

- A new significant impact requiring new mitigation is identified.
- Change in circumstances occur which would result in a new or significantly increased impact.



# Public Hearing

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- **Certify/adopt environmental document**
- **Adopt Mitigation, Monitoring and Reporting Program (MMRP)**
- **Adopt EIR Findings and Statement of Overriding Considerations**
- **Approve or deny project**





# Environmental Appeals Regulations



# Environmental Appeals Regulations Why?

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**CEQA amended to require the City to facilitate appeals to Council of:**

- Exemptions
- Negative Declarations
- Mitigated Negative Declarations
- Environmental Impact Reports



# Environmental Appeals Regulations Scope

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- **Does not allow appeals of:**
  - Actions deemed to be “not a project” as defined in CEQA
  - CEQA actions not listed in the legislation:
    - Including use of previously-certified documents, addenda
  - Decisions already subject to Council approval or appeal to Council:
    - Including Process 4 and 5 decisions and decisions outside of the Land Development Code permit process



# Environmental Appeals Regulations Appeal Hearings

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- **Public Noticing Required**
- **By a majority vote, the Council may:**
  - Deny the appeal and uphold the determination
  - Grant the appeal and make superseding environmental determination or CEQA findings
  - Grant the appeal, set aside the determination, and remand for re-consideration by DSD Director or Planning Commission



# NOTICE OF DETERMINATION

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- **Must be filed within 5 days of the end of the appeal period**
- **Must include the appropriate filing fee for the County (exemption or Fish and Game No Effect Determination Form for documents)**
- **Must include the appropriate fee for the California Department of Fish and Game**





# Questions?

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**Article 8: Implementation Procedures For The California Environmental Quality Act and the State CEQA Guidelines**

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**Division 2: Procedures for Determination of Exemption or Type of Environmental Document Required**

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§128.0201 Purpose of Procedures for Determinations of Exemption or Type of Environmental Document Required**

The purpose of these procedures is to implement CEQA and the State CEQA Guidelines within the City of San Diego, to identify the types of actions that are exempt from environmental review, consistent with the requirements of CEQA and the State CEQA Guidelines, and for nonexempt actions, to provide procedures for determining the type of environmental document that is required.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§128.0202 Incorporation of CEQA by Reference Actions That Require Compliance with CEQA**

Except as otherwise provided, CEQA and this article shall apply to the following discretionary activities located within the City of San Diego:

- (a) Activities directly undertaken by the City such as construction of *streets*, bridges, or other public *structures* or adoption of plans and zoning regulations;
- (b) Activities financed in whole or in part by the City of San Diego; and
- (c) Private activities that require approval from the City of San Diego such as adoption and amendment of *land use plans* and the *Local Coastal Program*, zoning and rezoning actions, *development* agreements, *subdivision* activities, *development* and use permits, and variances.

*(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)*

**§128.0203 Actions Exempt from CEQA**

An action or activity may be exempt from CEQA if it meets any of the following conditions:

- (a) The activity is not a project as defined in the State CEQA Guidelines, Section 15378;
- (b) The project has been granted an exemption by statute (State CEQA Guidelines, Article 18, commencing with Section 15260) or by categorical exemption (State CEQA Guidelines, Article 19, commencing with Section 15300).
  - (1) CEQA exempts ministerial actions by statute. City approval decided in accordance with Process One is a ministerial action, including issuance of a *construction permit*. The following are *construction permits*: Building Permits, Plumbing Permits, Electrical Permits, Mechanical Permits, Grading Permits, Public Right-Of-Way Permits, Demolition Permits, Removal and Relocation Permits, and Sign Permits.
  - (2) Activities within the City of San Diego that typically are exempt by statute or categorical exemption from CEQA are provided in the CEQA Administrative Guidelines of the Land Development Manual.
- (c) The activity is covered by the general rule in the State CEQA Guidelines, Section 15061(b)(3), that states that CEQA applies only to projects that have the potential for causing a significant effect on the environment.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

**§128.0204 Environmental Review for Extensions of Time**

An application for an extension of time to a previously approved *development permit* or other discretionary action is subject to environmental review. A previously certified environmental document may be reused in accordance with Section 128.0209. The extension of time shall be evaluated in accordance with State CEQA Guidelines, Sections 15162 through 15164 to determine the appropriate environmental document, if any, necessary to address the issues. An extension of time to a final *subdivision map*, authorized pursuant to the *Subdivision Map Act*, Section 66452.6(a), is a ministerial action and is exempt from the requirements of CEQA.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

**§128.0205 How to Apply for Environmental Review**

An application for a *development permit* made in accordance with Section 112.0102 also serves as the application for environmental review. A separate application for an Environmental Initial Study may be required for a discretionary action that does not require a *development permit*.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

**§128.0206 Establishment and Collection of Fees or Deposits**

Fees and deposits may be charged for environmental review in accordance with Section 112.0201. Any party proposing a project subject to the provisions of this article shall be required to submit the required fees or deposit in accordance with Section 112.0202.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

**§128.0207 Review for Exemption from the Requirements of CEQA**

(a) As part of the preliminary review of an activity proposed within the City of San Diego, the Development Services Director shall determine whether the proposed activity is exempt from CEQA as described in Section 128.0203 and in the State CEQA Guidelines, Section 15061 and shall file a Notice of Right to Appeal Environmental Determination in accordance with Section 112.0310.

(b) A determination by the Development Services Director that a project is exempt from CEQA, as described in State CEQA Guidelines section 15061(b)(2) or (3), shall be subject to the appeal procedures in section 112.0510.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

*(Amended 7-26-2004 by O-19303 N.S.; effective 8-25-2004)*

**§128.0208 Determination of Type of Environmental Document**

(a) After an application for a discretionary permit or action is *deemed complete*, the Planning and Development Review Director shall take one of the following actions:

(1) Determine that the project is exempt from CEQA as described in the State CEQA Guidelines, Section 15061;

(2) Conduct an Environmental Initial Study to determine what type of environmental document will need to be prepared as described in the State CEQA Guidelines, Section 15063; or

- (3) Omit the Environmental Initial Study and proceed directly to the preparation of an Environmental Impact Report (EIR) if it is clear that an EIR will be required for the project, consistent with the State CEQA Guidelines, Section 15060.
- (b) The following types of environmental documents may be required consistent with CEQA, depending on the specific circumstances:
  - (1) A Negative Declaration;
  - (2) A Mitigated Negative Declaration;
  - (3) An Environmental Impact Report, including a Supplement; or
  - (4) An Addendum to a previously certified environmental document.
- (c) The Planning and Development Review Director shall notify the *applicant* of the scope of the required environmental document and the additional information required, if any, in accordance with the State CEQA Guidelines, Section 15060.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

**§128.0209 When a Previous Environmental Document May Be Used**

- (a) A previously certified EIR or Negative Declaration, including any supplement or addendum, may be used when changes in the project or circumstances have occurred, unless the Planning and Development Review Director determines that one or more of the situations identified in the State CEQA Guidelines, Section 15162, exist.
- (b) If a previously certified document is to be used, the Planning and Development Review Director shall provide the decision-making body with an explanatory cover letter stating that none of the conditions specified in the State CEQA Guidelines, Section 15162, exists.
- (c) An EIR prepared in connection with an earlier project may be used for a later project, if the circumstances of the projects are essentially the same and are consistent with the State CEQA Guidelines, Section 15153.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*

**§128.0210 When a National Environmental Policy Act (NEPA) Document or Joint Document May Be Used**

- (a) NEPA applies to projects that are carried out, financed, or approved in whole or in part by federal agencies. If a project will require compliance with both CEQA and NEPA, the Planning and Development Review Director should use the NEPA document rather than preparing a separate CEQA document if the following two conditions exist:
- (1) The NEPA document would be prepared before the CEQA document would otherwise be completed for the project; and
  - (2) The NEPA document complies with the provisions of the State CEQA Guidelines. Because NEPA does not require separate discussion of mitigation measures or growth inducing impacts, these points of analysis would need to be added, supplemented, or identified before an Environmental Impact Statement (EIS) could be used as an EIR.
- (b) If the NEPA document would not be prepared by the federal agency by the time the City of San Diego would need to consider an environmental document consistent with this article, the Planning and Development Review Director should try to prepare a combined NEPA-11 CEQA document. Preparation of this joint environmental document shall involve the federal agency to avoid the need for the federal agency to prepare a separate document for the same project.

*(Added 12-9-1997 by O-18451 N.S.; amended 12-6-1999 by O-18728 N.S.; effective 1-1-2000.)*