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## **Public Law 101 Conference**

*Planning and Land Use (CEQA)*

Wednesday, November 15, 2023  
1:00 p.m. – 2:00 p.m.

Speakers:

Leslie Walker, Senior Deputy City Attorney  
City of Sacramento

### Conference Reference Materials

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# California Environmental Quality Act “CEQA”

Leslie Z. Walker, November 15, 2023

# What is CEQA and why does it matter?

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- California Environmental Quality Act
- Enacted in 1970
- Modeled after the National Environmental Policy Act
- Requires public agency consider the environmental impacts of their action and prevents agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that can substantially lessen or avoid those effects. (Pub. Resources Code, §§ 21000, 21001, 21002.)
- Applies to all state and local government.
- Big source of litigation – about 40-50 appellate cases per year

# Types of Activities Challenged Under CEQA

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- Capitol Annex Project
- Resort at Palisades Lake Tahoe
- Adoption of a Marijuana Ordinance
- Lights on a Baseball Field
- Light Rail Extension in LA
- Homeless Siting Plan
- Bike Path through Sacramento

## The Law

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- Pub. Resources Code, § 21000 et seq.
- CEQA Guidelines - California Code of Regulations, title 14, § § 15000-15378  
Promulgated by the California Resources Agency
- Case Law
- Local Agency Guidelines – CEQA Guidelines, § 15022
- California Rules of Court and Local Rules
- Other Resources: Association of Environmental Professionals; CEB Practice Under the California Environmental Quality Act by Stephen Kostka and Michael Zischke; blogs

# Purpose

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CEQA was enacted to advance four related purposes:

- Inform the government and public about a proposed activity's potential environmental impacts
- Identify ways to reduce, or avoid, environmental damage
- Prevent environmental damage by requiring project changes via alternatives or mitigation measures when feasible
- Disclose to the public the rationale for governmental approval of a project that may significantly impact the environment

*California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 382

# Purpose

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- Does not prohibit government from ultimately approving environmentally damaging projects
- Requires the agency to consider the impact, mitigate or avoid them where feasible, and where they cannot be mitigated or avoided, the public agency can still approve the project if it makes a fully informed and publicly disclosed decision that:
  - (a) There is no feasible way to lessen or avoid the significant effect; and
  - (b) Specifically identified expected benefits from the project outweigh the policy of reducing or avoiding significant environmental impacts of the project

CEQA Guidelines, § 15043

## Step 1: Discretionary Project

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CEQA applies to “*discretionary projects* proposed to be carried out or approved by *public agencies*, including, but not limited to, the enactment and amendment of zoning ordinances, the issuance of zoning variances, the issuance of conditional use permits, and the approval of tentative subdivision maps unless the project is exempt from this division.”

Public Resources Code, § 21080(a)



## Discretionary

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- “Discretionary project” means a project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, regulations, or other fixed standards. The key question is whether the public agency can use its subjective judgment to decide whether and how to carry out or approve a project.

CEQA Guidelines, § 15357

- Does the public agency have the power to shape the project in ways that are responsive to environmental concerns?

*Friends of Juana Briones House v City of Palo Alto* (2010) 190 Cal.App.4th 286, 302

## Discretionary v. Ministerial

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- “Ministerial’ describes a governmental decision involving little or no personal judgment by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgment in reaching a decision.”

CEQA Guidelines, § 15369

- Does the public agency have the power to shape the project in ways that are responsive to environmental concerns?

*Friends of Juana Briones House v City of Palo Alto* (2010) 190 Cal.App.4th 286, 302

# Project

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“Project” is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

- (a) An activity directly undertaken by any public agency.
- (b) An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies.
- (c) An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

Public Resources Code, § 21065; CEQA Guidelines, § 15378

# Project

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- “Project” is an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.
- “Environment” means
  - The physical conditions which exist within the area which will be affected by a proposed project includes land, air, water, minerals, flora, fauna, ambient noise, and objects of historical or aesthetic significance
  - The area in which significant effects would occur either directly or indirectly as a result of the project
  - Includes both natural and man-made conditions

Public Resources Code, § 21060.5; CEQA Guidelines, § 15382.

## Project

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“A proposed activity is a CEQA project if, by its general nature, the activity is capable of causing a direct or reasonably foreseeable indirect physical change in the environment. . . a ‘reasonably foreseeable’ indirect physical change is one that the activity is capable, at least in theory, of causing. . . . Conversely, an indirect effect is not reasonably foreseeable if there is no causal connection between the proposed activity and the suggested environmental change or if the postulated causal mechanism connecting the activity and the effect is so attenuated as to be ‘speculative.’”

*Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1199.

# Public Agency

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- CEQA applies to “*discretionary projects* proposed to be carried out or approved by *public agencies* ...”
- “Public agency” includes any state agency, board, or commission and any local or regional agency. Public Resources Code, § 21063; CEQA Guidelines, § 15379
- “Local agency” means any public agency other than a state agency, board, or commission. Local agency includes but is not limited to cities, counties, charter cities and counties, districts, school districts, special districts, redevelopment agencies, local agency formation commissions, and any board, commission, or organizational subdivision of a local agency when so designated by order or resolution of the governing legislative body of the local agency. CEQA Guidelines, § 15368

## Step 2: Is the “Project” Nevertheless Exempt from CEQA

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- Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA

CEQA Guidelines, § 15061(a)

- Is it the type of project that either the legislature or the Resources Agency has said should not be subject to CEQA?

## Three Types of Exemptions

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- Statutory
  - Absolute exemptions
  - CEQA Guidelines, §§15260–15285
  - Examples: Emergency projects; Olympic games; certain residential projects
- Categorical
  - Subject to exceptions that can defeat the exemption. CEQA Guidelines, § 15300.2
  - CEQA Guidelines, §§ 15300-15333
  - Examples: Existing facilities, minor alterations to land, certain habitat restoration
- Common Sense
  - Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.
  - CEQA Guidelines, §15061(b)(3)



# Practice Pointers for Exempt Projects

- Note on the Agenda that the Project is Exempt
- File a Notice of Exemption to shorten the timeframe to file a legal challenge

Public Resources Code, § 21152(b)  
CEQA Guidelines, §15062

Print Form

**Notice of Exemption** **Appendix E**

To: Office of Planning and Research  
P.O. Box 3044, Room 113  
Sacramento, CA 95812-3044

From: (Public Agency): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(Address)

County Clerk  
County of: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Project Title: \_\_\_\_\_  
Project Applicant: \_\_\_\_\_  
Project Location - Specific: \_\_\_\_\_  
\_\_\_\_\_  
Project Location - City: \_\_\_\_\_ Project Location - County: \_\_\_\_\_  
Description of Nature, Purpose and Beneficiaries of Project:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Name of Public Agency Approving Project: \_\_\_\_\_  
Name of Person or Agency Carrying Out Project: \_\_\_\_\_

Exempt Status: (check one):  
 Ministerial (Sec. 21080(b)(1); 15268);  
 Declared Emergency (Sec. 21080(b)(3); 15269(a));  
 Emergency Project (Sec. 21080(b)(4); 15269(b)(c));  
 Categorical Exemption. State type and section number: \_\_\_\_\_  
 Statutory Exemptions. State code number: \_\_\_\_\_

Reasons why project is exempt:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Lead Agency  
Contact Person: \_\_\_\_\_ Area Code/Telephone/Extension: \_\_\_\_\_

**If filed by applicant:**  
1. Attach certified document of exemption finding.  
2. Has a Notice of Exemption been filed by the public agency approving the project?  Yes  No

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Title: \_\_\_\_\_

Signed by Lead Agency  Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code. Date Received for filing at OPR: \_\_\_\_\_  
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Revised 2011

## Step 3: Initial Study

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- Perform an Initial Study to determine whether there is substantial evidence that the project may have a *significant effect on the environment*.

CEQA Guidelines, § 15063.

- “Initial Study” means a preliminary analysis prepared by the Lead Agency to determine whether an EIR or a Negative Declaration must be prepared or to identify the significant environmental effects to be analyzed in an EIR.

CEQA Guidelines, § 15365.

## Initial Study

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### “Significant effect on the environment”

- A substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.
- An economic or social change by itself shall not be considered a significant effect on the environment.
- A social or economic change related to a physical change may be considered in determining whether the physical change is significant.
- Public Resources Code, § 21151; CEQA Guidelines, § 15382

# Step 3: Initial Study

APPENDIX G  
ENVIRONMENTAL CHECKLIST FORM

NOTE: The following is a sample form that may be tailored to satisfy individual agencies' needs and project circumstances. It may be used to meet the requirements for an initial study when the criteria set forth in CEQA Guidelines have been met. Substantial evidence of potential impacts that are not listed on this form must also be considered. The sample questions in this form are intended to encourage thoughtful assessment of impacts, and do not necessarily represent thresholds of significance.

1. Project title: \_\_\_\_\_
2. Lead agency name and address: \_\_\_\_\_  
\_\_\_\_\_
3. Contact person and phone number: \_\_\_\_\_
4. Project location: \_\_\_\_\_
5. Project sponsor's name and address: \_\_\_\_\_  
\_\_\_\_\_
6. General plan designation: \_\_\_\_\_
7. Zoning: \_\_\_\_\_
8. Description of project: (Describe the whole action involved, including but not limited to later phases of the project, and any secondary, support, or off-site features necessary for its implementation. Attach additional sheets if necessary.)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Surrounding land uses and setting: (Briefly describe the project's surroundings)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED:

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact," as indicated by the checklist on the following pages.

<input type="checkbox"/> Aesthetics	<input type="checkbox"/> Agriculture / Forestry Resources	<input type="checkbox"/> Air Quality
<input type="checkbox"/> Biological Resources	<input type="checkbox"/> Cultural Resources	<input type="checkbox"/> Energy
<input type="checkbox"/> Geology/Soils	<input type="checkbox"/> Greenhouse Gas Emissions	<input type="checkbox"/> Hazards and Hazardous Materials
<input type="checkbox"/> Hydrology/Water Quality	<input type="checkbox"/> Land Use / Planning	<input type="checkbox"/> Mineral Resources
<input type="checkbox"/> Noise	<input type="checkbox"/> Population / Housing	<input type="checkbox"/> Public Services
<input type="checkbox"/> Recreation	<input type="checkbox"/> Transportation	<input type="checkbox"/> Tribal Cultural Resources
<input type="checkbox"/> Utilities / Service Systems	<input type="checkbox"/> Wildfire	<input type="checkbox"/> Mandatory Findings of Significance

DETERMINATION

On the basis of this initial evaluation:

I find that the proposed project COULD NOT have a significant effect on the environment, and a NEGATIVE DECLARATION will be prepared.

I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by or agreed to by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.

I find that the proposed project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.

I find that the proposed project MAY have a "potentially significant impact" or "potentially significant unless mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standards, and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.

I find that although the proposed project could have a significant effect on the environment, because all potentially significant effects (a) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and (b) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the proposed project, nothing further is required.

\_\_\_\_\_  
Signature Date

Issues	Potentially Significant Impact	Less Than Significant With Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>I. AESTHETICS.</b> Except as provided in Public Resources Code Section 21099, would the project:				
a) Have a substantial adverse effect on a scenic vista?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) In nonurbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>II. AGRICULTURE AND FORESTRY RESOURCES.</b> In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment project, and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:				
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code Section 12220(g)), timberland (as defined by Public Resources Code Section 4526), or timberland zoned Timberland Production (as defined by Government Code Section 51104(g))?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in the loss of forest land or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>III. AIR QUALITY.</b> Where available, the significance criteria established by the applicable air quality management district or air pollution control district may be relied upon to make the following determinations. Would the project:				
a) Conflict with or obstruct implementation of the applicable air quality plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
c) Expose sensitive receptors to substantial pollutant concentrations?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
d) Result in other emissions (such as those leading to odors) adversely affecting a substantial number of people?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

# Initial Study

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The Initial Study will show one of three things:

- There is substantial evidence of a fair argument that the project may have a significant effect on the environment regardless of whether the overall project is adverse or beneficial.
- There is no substantial evidence that the project will cause a significant effect on the environment.
- There is substantial evidence of a fair argument that the project may have a significant effect on the environment regardless of whether the overall project is adverse or beneficial, but mitigation measures are available to reduce those impacts to less than significant.

# Initial Study

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The Initial Study will show one of three things:

1. There is no substantial evidence that the project will cause a significant effect on the environment. → **Negative Declaration**
2. There is substantial evidence of a fair argument that the project may have a significant effect on the environment regardless of whether the overall project is adverse or beneficial, but mitigation measures are available to reduce those impacts to less than significant. → **Mitigated Negative Declaration**
3. There is substantial evidence of a fair argument that the project may have a significant effect on the environment regardless of whether the overall project is adverse or beneficial → **Environmental Impact Report**

## Initial Study – Negative Declaration

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1. There is no substantial evidence that the project will cause a significant effect on the environment. → Negative Declaration

A Negative Declaration is a written statement by the lead agency describing the reasons a proposed project will not have a significant effect on the environment and therefore does not require preparation of an EIR.

Public Resource Code, § 21064; CEQA Guidelines, § 15371

## Initial Study – Mitigated Negative Declaration

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2. There is substantial evidence of a fair argument that the project may have a significant effect ... but mitigation measures ... reduce those impacts to less than significant. → Mitigated Negative Declaration

A negative declaration prepared when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project 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.

Public Resources Code, § 21064.5; CEQA Guidelines, § 15369.5



## Initial Study – Mitigated Negative Declaration

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2. There is substantial evidence of a fair argument that the project may have a significant effect ... but *mitigation* measures ... reduce those impacts to less than significant. → Mitigated Negative Declaration

“Mitigation” includes:

- Avoiding the impact
- Minimizing impacts
- Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment - Reducing or eliminating the impact over time by preservation and maintenance
- Compensating for the impact by replacing or providing substitute resources

## Initial Study - EIR

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3. There is substantial evidence of a fair argument that the project may have a significant effect on the environment regardless of whether the overall project is adverse or beneficial → Environmental Impact Report
  - Environmental Impact Report (“EIR”) = the heart of CEQA
  - An EIR is detailed statement prepared under CEQA describing and analyzing the significant environmental effects of a project and discussing ways to mitigate or avoid the effects.

Public Resources Code, § 21061; CEQA Guidelines, § 15362

# Environmental Impact Report

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## Substantive Components

- Project Description
- Environmental Setting
- Discussion of Environmental Impacts and Identification of Significant Environmental Impacts
- Mitigation Measures
- Alternatives
- Responses to Comments

CEQA Guidelines, §§ 15122–15131

# Environmental Impact Report

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## Procedural Highlights

- Notice to and consultation with Native American Tribes
- Input from other agencies and the Public – NOP, NOA
- Response to Comments

Public Resources Code, §§ 21080.3.1(b), 21050.4(b), 21092; CEQA Guidelines, §§ 15082, 15087, 15088

# Environmental Impact Report

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## Procedural Highlights – Certification of the EIR

- The final EIR has been completed in compliance with CEQA
- The decision-making body reviewed and considered the information in the final EIR
- The final EIR reflects the lead agency's independent judgment and analysis

Public Resources Code, §§ 21082.1; CEQA Guidelines, § 15090

# Environmental Impact Report

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## Procedural Highlights – Project Approval

- No public agency shall approve or carry out a project for which an EIR has been certified which identifies one or more significant environmental effects of the project unless the public agency makes one or more written findings for each of those significant effects:
  - (1) The impacts have been mitigated
  - (2) The mitigation is in the jurisdiction of another agency
  - (3) Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make mitigation measures or alternative infeasible

Public Resources Code, § 21081; CEQA Guidelines, § 15091

## CEQA Litigation

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- Short Statute of Limitations if NOD/NOE is filed
- Administrative Mandamus – Code of Civil Procedure, § 1094.5
- Based on the Administrative Record
- Abuse of Discretion
- Substantial Evidence v. Fair Argument

Public Resources Code, §§ 21167, 21167.6, 21168, 21168.5

# Questions

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