

TO: CHAIRMAN AND MEMBERS OF THE PLANNING COMMISSION  
FROM: ED GALLAGHER, COMMUNITY DEVELOPMENT DIRECTOR  
SUBJECT: PLANNING COMMISSIONER ACADEMY PROCEEDINGS  
DATE: MARCH 12, 2013

Planning Commissioners attended the League of California Cities' Planning Commissioner Academy in Pasadena between February 27 and March 1, 2013. Commissioners expressed a desire to devote the regularly-scheduled Planning Commission meeting of March 12 to discuss the topics presented at the Academy.

The topics discussed at the Academy were:

- Ethics
- Planning Commissioners' Roles and Responsibilities
- How to Run a Meeting
- Serving Your City
- Inspiring Teamwork and Collaboration at Work ("Ubuntu")
- CEQA Basics
- CEQA Application of Knowledge
- Essential Planning Tools
- Complete Streets and Capital Projects (offered concurrently with the next item)
- Future of Public Engagement in Planning
- Legal and Legislative Updates

Attached are handouts from some of the above sessions.

The Planning Commission may discuss any matters directly-related to the above topics. However, it is important that discussion not venture substantially into development projects that are pending (e.g. Arjun Apartments, allocation of unassigned dwelling units in the General Plan). Commissioners may make recommendations for further investigation and research keeping in mind that staff resources are limited.



# Planning Commission Academy

Chris Esther  
City of Waterford  
Planning Commission Chairman  
May 27, 2013

# Responsibilities of Commissioners

- Advisory or Decision Making
  1. Variances
  2. CUP
  3. Lot Line Adjustments
  4. General Plan Update or amendments
  5. Zoning Update
  6. Housing Element

# Responsibilities of Commissioners

- General Plan Updates
  1. Recommend areas for growth
  2. Keep sections current
- Zoning Updates
  1. Recommend zoning for future growth areas

# Responsibilities of Commissioners

- Review of Documents
  1. Mark them, prepare questions
- Applying Laws & Ordinances
  1. Agree or disagree – Apply what is on the books
  2. Every applicant has a right to be judged by the laws in place at that time
- Personal Site Review
  1. Visit the proposed site/Walk it
  2. Speak with the applicant

# Responsibilities of Commissioners

- Drive around your City – Know the Areas
  1. Be familiar with roads, buildings, zoning & future growth areas
  2. Look for things that need fixed
- Know the surrounding Communities
  1. Attend Planner workshops
  2. Meet other Planner Commissioners

# Role of Commissioner

- Staff
  1. Your Commission & Your City
  2. Drive the Agenda
  3. Make changes/additions/suggestions
  4. Keep in contact

# Role of Commissioner

- Council
  1. Express your opinion
  2. Recommend policies for further consideration
  3. Does not have to be at a meeting to suggest



# Role of Commissioner

- Public
  1. Speak with people about your City
  2. Attend City events to interact with them
  3. Encourage their input
  4. Attend fundraisers put on by local organizations
  5. Be Seen

# Role of Commissioner

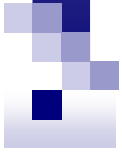
- Personally
  1. Attend council meetings
  2. Know what is going on
  3. You are a role model
  4. You are a liaison between council and citizens



**LEAGUE OF CALIFORNIA  
CITIES  
PLANNING COMMISSION  
ACADEMY**

**PLANNING COMMISSIONER'S ROLES AND  
RESPONSIBILITIES**

Jolie Houston, Esq.  
Berliner Cohen  
Los Altos City Attorney  
Gilroy Assistant City Attorney



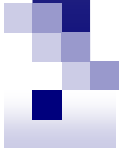
# Planning Commissioners

- Per State law - appointed by the City Council (Govt. Code 65100)
- Powers, duties and method of appointment established by the Council
- Authorized by ordinance or resolution
- Clearly define authority



# Planning Commissioners

- City Council selection
- Serve at pleasure of Council
- Per Brown Act – appointment and removal must be made in public meeting
- Bylaws helpful- not required
- Meeting decorum- promotes fairness



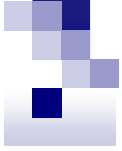
# Types of Decisions

- Quasi- judicial
  - Discretionary permit, license, map, appeal
  - Findings required
  - Decisions based on substantial evidence
  - Impartial decision-maker
  - Courts will “scrutinize” local agency decisions



# Types of Decisions


- Legislative
  - Adoption of Zoning and General Plan
  - Cannot be arbitrary or capricious or entirely lacking evidentiary support - or
  - Failed to follow procedures
  - Courts give “deference” to the local agency



# Findings

- Bridge the “analytical gap” between the evidence presented and the decision
- State “how” or “why” the decision was made
- Explain the basis of the Commission’s decision to the Council and public





# Conditions of Approval

- Included in staff report
- Standard conditions
- Special conditions
- Necessary for project compliance



# Conflicts

- FPPC Conflicts (Political Reform Act)
  - Government Code sections 87100 *et seq.*
  - FPPC Regulations
    - (Title 2, sections 181700 *et seq.* of the California Code of Regulations
  - Decision-makers should refrain from “participating” in a governmental decision in which they have a financial interest



# Conflicts

- 500 foot rule
  - Maps are useful
- Source of Income
- Recusal



# Conflicts

- Common law
- Based on “due process” protection
  - Strong personal bias or opinion
  - Appearance of prejudice



# Conflicts

- Personal interest in decision's outcome
- Personal bias, animosity or loyalty
- Discrimination
- Campaign contribution
- Project bias



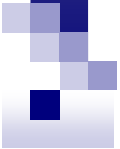
# Conflicts

- Does not mean a Commissioner cannot have an opinion or strong feelings about an issue and/or project
- More critical in quasi-judicial approvals than legislative actions
- Decision may be set aside



# Brown Act


- Open Meetings Law
  - Government Code sections 54950 *et seq.*
- Applies to Planning Commissioners
- Notice
- Agendas



# Brown Act

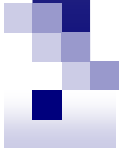
- Serial meetings
- Emails
- Public comment
- *Ex parte* contacts





# Public Records Act

- Part of Open Meetings / Government
  - Government Code sections 6520 *et seq*
- Provides “access” to state and local records
- Must be related to the official business of the local agency

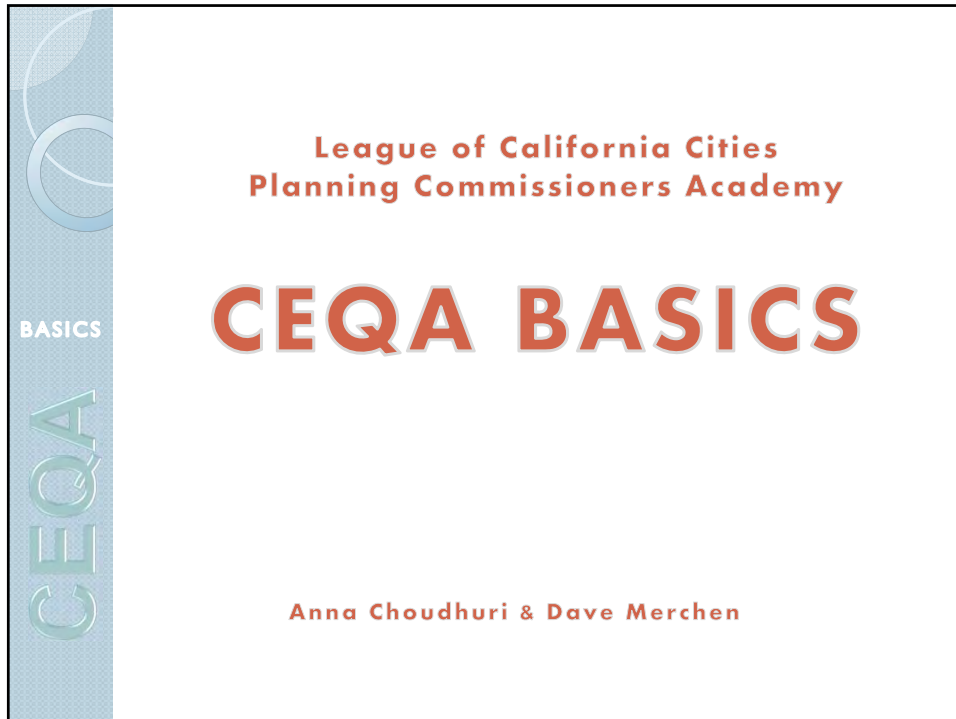


# Public Records Act

- Writings
  - Broadly defined
- Emails
  - Do Not Reply All
  - Consider them public



# Questions?



## What is CEQA? (The Background)

- Adopted by Legislature in 1970
- Applies to all governmental agencies
- Relationship to NEPA

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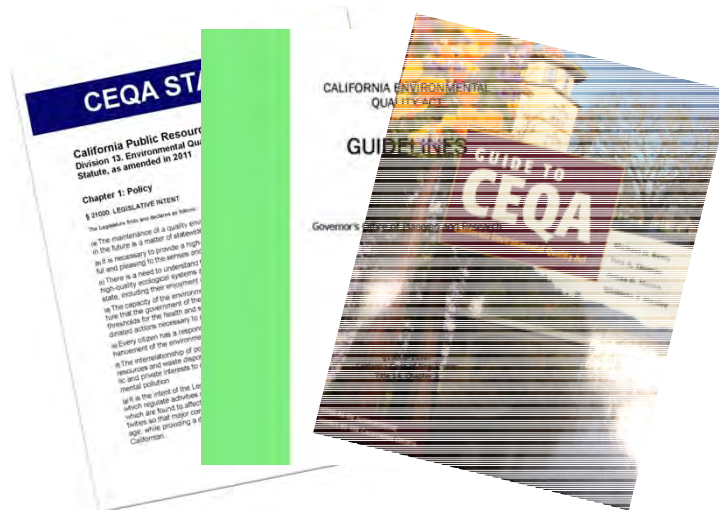
# What is CEQA? (Basic Purpose)

## Basic Purpose of CEQA

- Primarily for disclosure:
    - Inform decision makers about environmental effects
    - Involve public participation in the planning process
    - Identify and incorporate feasible means of reducing environmental damage
- (SUBSTANTIVE MANDATE)

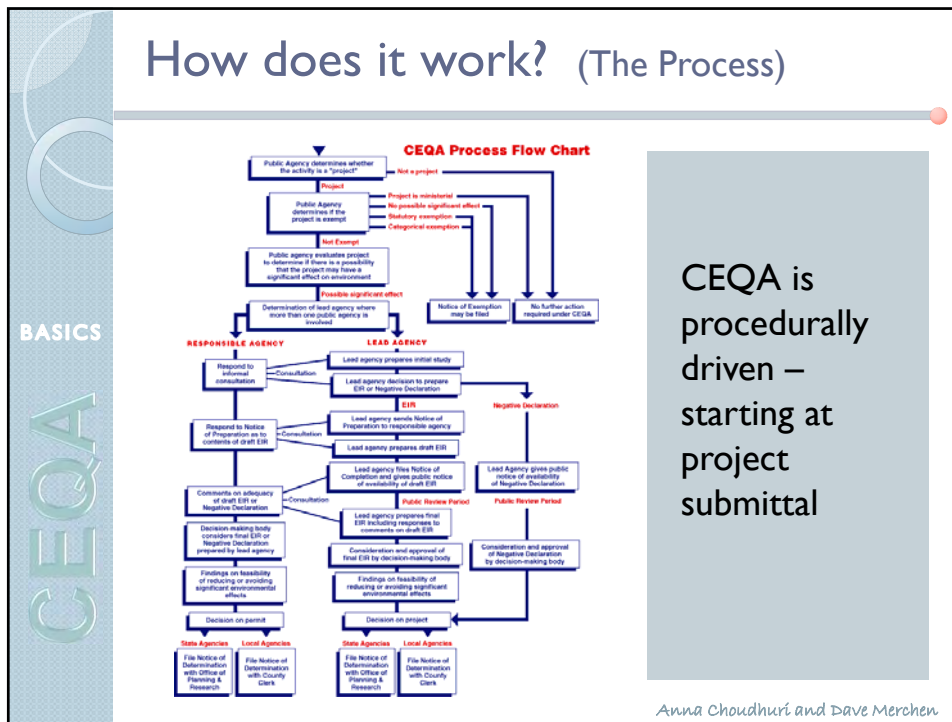
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# What is CEQA? (The Law, Guidelines, etc.)



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## How does it work? (The Process)



## How does it work? (Exemptions)

### Is the project subject to CEQA?

- CEQA only applies to discretionary projects that may have significant effect on environment
- When a discretionary project is being considered, certain exemptions specified in CEQA may apply:
  - Statutory Exemptions
  - Categorical Exemptions

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## How does it work? (The Initial Study)

	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<b>V. CULTURAL RESOURCES</b> Would the project:				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c) Destroy or substantially destroy a unique paleontological resource or site or unique prehistoric feature?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d) Destroy any human remains, including those interred outside of formal cemeteries?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>VI. GEOLOGY AND SOILS</b> Would the project:				
a) Expose people or structures to potential potential adverse effects, including the risk of loss, injury, or death involving:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
i) Exposure of a known earthquake fault, as delineated on the most recent Alameda-Pringle Earthquake Fault Census Map issued by the State Geologist for the site or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publications 42	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ii) Strong seismic ground shaking?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iii) Seismic-related ground failure, including liquefaction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
iv) Landslides?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
b) Result in substantial soil erosion or the loss of topsoil?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in erosion, liquefaction, lateral spreading, subsidence, liquefaction or collapse?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

The initial study is the preliminary analysis used to determine whether a Negative Declaration/Mitigated Negative Declaration can be prepared or if an EIR is required.

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## How does it work? (The Initial Study)

- Requires consultation with external agencies that have some oversight of resources affected by project
- May incorporate and/or rely on technical studies (traffic, noise, biological, etc.)
- Forms factual basis supporting a negative declaration
- If EIR is required, helps identify potential impacts to be analyzed

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## How does it work? (The documents)

### Negative Declaration

- Prepared when there is no “fair argument” that significant effects will occur as the result of the project.

**DETERMINATION:** (To be completed by the Lead Agency)  
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.

*Anna Choudhuri and Dave Merchen*

## How does it work? (The documents)

### Mitigated Negative Declaration

- Initial study indicates that potentially significant effects may occur, but...
- Effects can be reduced to less than significant levels by incorporating changes into project – referred to as mitigation measures
- Prepared when no “fair argument” exists that the project as modified by the mitigation measures will result in significant adverse effects

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## How does it work? (The documents)

### Mitigation Measures

- Mitigation measures must be feasible and enforceable and supported by evidence
- Avoid conditions which call for mitigation measures to be developed and implemented at a later date
- Mitigation measures must be agreed to by applicant
- A Mitigation Monitoring Program required

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## How does it work? (The documents)

### EIR

- Required when there is a fair argument that project may cause significant effects
- Different types of EIRs are used in different situations
- EIRs focus on environmental categories where significant effects may occur

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## How does it work? (The documents)

### EIR

- Frequently prepared by a consultant engaged by the lead agency
- Draft EIR circulated for public review
- Final EIR prepared with responses to comments
- Generally expensive and time intensive process

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## When does the PC get involved?

- Reviewing environmental documents
- May conduct public meetings to accept public input on more significant environmental documents – generally EIRs
- Considering adoption/certification of environmental documents before project is considered
- Commission may take final action or make recommendation to legislative body

*Anna Choudhuri and Dave Merchen*

## What is PC expected to do?

- Review environmental documents provided
- Ask questions or request more information when you need it
- Make decisions on the basis of the information in the record
- When acting as the decision making body – the environmental document reflects the Commission’s “independent judgment and analysis”

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## What is PC expected to do?

- Make findings
  - Negative Declaration & Mitigated Neg. Dec.
  - Environmental Impact Report
    - Statement of Overriding Considerations

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## What about making changes?

BASICS

CEQA

### Changes allowed after document is circulated

- Substitute one mitigation measure for equal or more effective measure
- Revise project to address an issue other than new, avoidable significant effect
- Add new measure that is not required to mitigate an unavoidable effect and does not create one
- Other changes require recirculation

*Anna Choudhuri and Dave Merchen*

## What else?

BASICS

CEQA

- CEQA is really pretty easy  
(Except when its really hard)
- CEQA isn't meant to bury us in paper or eat time.
- Different agencies may generate different outcomes for the same or similar projects

*Anna Choudhuri and Dave Merchen*

## How can I learn more?

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- Your City Staff
- Ceres ([www.ceres.ca.gov](http://www.ceres.ca.gov))
- AEP publications
- APA Planning Commissioners Training
- CELSOC
- CEQA Deskbook

BASICS

CEQA

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# CEQA Application of Knowledge

Thursday, February 28; 1:45 pm - 3:00 pm

Moderator: Brian Smith, Senior Urban/Environmental Planner, URS

Speakers:

Patricia E. Curtin, Land Use Attorney and Planning Commission Chair, Wendel, Rosen, Black & Dean

David Snow, Shareholder, Richards Watson & Gershon; City Attorney- City of Yucaipa, Assistant City Attorney- Beverly Hills and Rancho Palos Verdes

## Session Materials:

1. Hypothetical Project – general description of a project that will serve as the vehicle to discuss various CEQA issues.
2. State CEQA Guidelines - Statutory Exemptions Excerpt
3. State CEQA Guidelines - Categorical Exemptions Excerpt
4. New Streamlining for Infill Projects Documents – new CEQA Guideline Section 15183.3 and appendices

## Tab 1:

Hypothetical Project – general description of a project that will serve as the vehicle to discuss various CEQA issues.

## HYPOTHETICAL PROJECT

- 100 unit complex on 5 acres with 20% low – moderate affordable units; 3 stories in height.
- Consistent with General Plan, Specific Plan and Zoning residential designations.
- Adjacent to a major freeway, mass transit station and bus stops.
- Property is vacant other than a 100- year old structure.
- Seasonal creek traverses along one side of the property.
- Property is located in the downtown core adjacent to retail and other commercial uses.
- Property is located within ½ mile of an elementary school and high school.



**2013 Planning Commissioners Academy, League of California Cities**  
Hilton Pasadena Hotel  
March 1, 2013

**Session:** “The Future of Public Engagement in Planning”  
Public engagement is an increasingly important part of planning in California cities. Bringing more residents, businesses, and other interested parties to the planning table can result in more productive meetings and more innovative ideas. Working with community partners, and connecting through social media and other interactive approaches, can encourage the participation of a broader array of view and voices and add to the likelihood of planning and economic development projects going forward with community support.

March 1, 2013 9:00-10:15 am

**Moderator:** Jennifer Armer, AICP, Program Coordinator, Institute for Local Government

**Presenter:** Susan Stuart Clark, Director, Common Knowledge

**Presenter:** Donna Kerger, Planning Commissioner, City of San Ramon

**Presenter:** Keith Bergthold, Assistant Director, Planning and Development Department, City of Fresno

**Proposed Outline:**

- ✓ 2-3 minute introduction: Jennifer Armer
  - Ø Goal of this session is to help commissioners and planners understand current public engagement methods and future trends
  
- ✓ 10 minute presentation: Susan Stuart Clark
  - Ø Public Engagement Overview
  
- ✓ 10 minute presentation: Donna Kerger
  - Ø Planning Commissioner perspective and relevant experiences in the City of San Ramon
  
- ✓ 10 minute presentation: Keith Bergthold
  - Ø Planning staff perspective and experiences with recent general plan update in the City of Fresno
  
- ✓ 30 minutes: Questions and sharing of audience experiences, suggestions and ideas.
  
- ✓ 10 minute: Panelist final thoughts