



## DEPARTMENT OF COMMUNITY DEVELOPMENT

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### PLANNING DIVISION

DATE: January 23, 2014  
TO: Historic Preservation Commission  
FROM: Craig Jimenez, Planning Division Manager  
SUBJECT: **Bricks & Mortar: California Environmental Quality Act (CEQA)**

Last year, the California Court of Appeal rendered judgment on a case regarding the interpretation of the Brown Act's meeting agenda requirements. In the case of *San Joaquin Raptor Rescue Center v. County of Merced*, the Court ruled that the county planning commission violated the Brown Act by taking an action on a Mitigated Negative Declaration (MND) when that matter was not expressly listed on the meeting agenda.

This opinion strictly interprets Government Code Section 54954.2(a)(1), which requires that meeting agendas contain "a brief general description of each item of business to be transacted or discussed at the meeting." In the Court's view, the MND was an item of business distinct from the primary application. The court ruled that the agenda's reference to the subdivision approval was inadequate to alert the public that the MND would also be considered.

The CEQA determination had been customarily included on legal noticing prepared by the City, however it was not standard to include on the agenda. The agenda included only the entitlement requested by the applicant. Based on the *Merced* decision, the City Attorney's Office has advised Staff to take a conservative approach and include all CEQA determinations on the agenda. Last July, the environmental determination was added to the Historic Preservation Commission's agenda based on that advice.

Generally, all decisions made by the Historic Preservation Commission are categorically exempt; however in order to provide additional background on the CEQA process, Staff will provide an overview of CEQA at the next meeting as part of the on-going Bricks & Mortar presentations. This memo is intended to give a very brief overview of CEQA and provide a foundation for the presentation.

#### ***CEQA in a nutshell***

The California Environmental Quality Act (CEQA) was enacted by the state legislature in 1970. The primary purpose of CEQA is to identify and analyze potential significant environmental impacts related to proposed actions of local agencies including the approval of private development projects. CEQA requires California public agencies to avoid or identify mitigation of the significant adverse environmental impacts caused by their actions whenever feasible *before* the agency approves a project. CEQA also provides individuals with the opportunity to participate in all steps of the environmental review process.

#### Key Terms

- **Lead agency** - The public agency with the principal responsibility for approving or carrying out a project. For projects in Monrovia where the City of Monrovia is making the decision, Monrovia would be the **lead agency**.

- **“Significant effect on the environment”** is generally defined as a 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 significance.
- **“Mitigation measures”** are activities designed to minimize or eliminate one or more of the project’s significant adverse environmental impacts.

When does CEQA apply?

In order to determine whether an agency’s action is subject to the CEQA process, there are three questions that need to be answered:

1. **Is the action a project?** This is where it all begins. Under CEQA, an action is a “project” if there is some type of a discretionary action that involves:
  - Activities of public agencies
  - Activities with public agency assistance (e.g. grants, loans)
  - Activities that require an approval or other discretionary permit or approval (as opposed to ministerial/non-discretionary actions)

If the action is determined not to be a project, it is not subject to CEQA.

2. **Is the project exempt?** Even if the action is determined to be a project subject to the CEQA process, the project may be otherwise exempted. There are two types of exemptions under CEQA:
  - **Statutory Exemptions** occur when the legislature passes a bill to exempt particular activities. These are generally very specific such as the Olympic Games or seismic retrofitting of existing bridges.
  - **Categorical Exemptions** apply when a project has no possibility to cause significant adverse environmental effects and fall into certain “categories” as defined by the CEQA Guidelines.
  - In addition to these two types of exemptions, if the lead agency finds that there is no possible significant effects directly related to the project, then the lead agency may determine that the “general rule” applies which states that CEQA does not apply to projects that are determined to have no possible way to cause significant environmental effects.
3. **Is there any possibility that the project will cause significant environmental impacts?** If the action is a project and the project is not exempt, then the next question is whether the project may cause significant environmental impacts. If the answer is yes, then an Initial Study must be completed to determine the appropriate process.

**CEQA Process**

If the lead agency determines that the action is a project and the project is not exempt, then an **Initial Study** is conducted. An Initial Study is a preliminary analysis of the environmental effects of the proposed project or action. The Initial Study is a checklist made up of a series of questions divided into broad categories to focus the evaluation of potential impacts of the project. The purpose of the Initial Study is to provide the lead agency with information to use as the basis for deciding the appropriate environmental process (AKA “environmental document”). This will generally fall into one of three categories:

- **Negative Declaration** (“Neg Dec” or “ND”) - If the response to each category in the checklist is “no impact” or “less than significant impact,” then the lead agency may prepare a negative declaration: a *declaration* that the City has determined that there will be no *negative* significant impacts of the project.
- **Mitigated Negative Declaration** (“Mitigated Neg Dec” or “MND”) – if one or more responses on the Initial Study are “potentially significant unless mitigation incorporated” and mitigation measures are incorporated into the project, then the lead agency may prepare an MND.
- **Environmental Impact Report** (“EIR”) – If one or more responses are “potentially significant unless mitigation measures are NOT incorporated into the project or if there is no feasible way to mitigate an impact, then an EIR must be prepared.

### **CEQA and HPC**

Almost all actions taken by the Historic Preservation Commission will fall under one of three classifications of Categorical Exemptions. Requests that fall into one of the following categories or *classes* can then be determined to be exempt from any further review under CEQA.

**Class 1** – Operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment, or topographical features, involving negligible or no expansion of use beyond that existing at the time of the lead agency’s determination. The key consideration is whether the project involves negligible or no expansion of an existing use.

*Historic Preservation entitlements: Historic Landmark designation, Mills Act Contracts.*

**Class 3** – Construction and location of limited numbers of new, small facilities or structures; installation of small new equipment and facilities in small structures; and the conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure.

*Historic Preservation entitlements: Certificate of Appropriateness (non-contributing structure or feature).*

**Class 31** – Projects limited to maintenance, repair, stabilization, rehabilitation, restoration, preservation, conservation or reconstruction of historic resources in a manner consistent with the Secretary of the Interior’s Standards for the Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings (1995), Weeks and Grimmer.

*Historic Preservation entitlements: Certificate of Appropriateness (contributing structure or feature).*