

CARCD 72nd Annual Conference
“Dynamic Partnerships, Relevant Results”
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RESOURCE
CONSERVATION DISTRICTS

How Did We Get Here?

CEQA 101

by Wendy Worthey

The logo for DUDEK is positioned at the bottom center of the slide. It features the word "DUDEK" in a bold, white, sans-serif font with a thin black outline. The letter "K" is stylized, with its vertical stem extending downwards and ending in a curved arrowhead pointing to the right. The logo is set against a background of a watercolor-style illustration of a dense forest of green trees.

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Introduction

- M.S. in Biology
- 22+ years working with the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA)
- Public and private projects
- Public projects include land management plans, regional habitat conservation planning, water supply facility conversions/expansions
- 15 years teaching CEQA at USD

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For RCDs

- Creation of baseline documentation for conservation easements
- Site studies: soils, hydrology, plant and wildlife surveys
- Review proposed management plans
- Review properties for potential acquisition/acceptance
- Support for ILFP; Development of mitigation capacity/programming

For “Developers”

- Find mitigation opportunities in coordination with RCDs
- Incorporate into regulated water permitting and CEQA documents



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CEQA Background

- CEQA enacted in 1970 (just after U.S. gov't passed NEPA) as a statewide policy of environmental protection
- Updated annually, primarily based on case law
- Basic purposes involve full disclosure and public involvement

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Terms...

- **Lead Agency** – public agency that carries out or approves a project that may have an adverse impact on the environment; prepares the CEQA document or decides on an exemption
- **Responsible Agency** – public agency that carries out or approves a project but relies on Lead Agency's CEQA document before issuing any approvals (e.g., permit)
- **Significant Effect** – substantial, or potentially substantial, adverse change within the area affected by the project, including land, air, water, minerals, flora, fauna, ambient noise, objects of cultural or aesthetic significance, etc.

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When Does CEQA Apply?

- Applies to “projects”
- A “project”:
 - Involves a public agency (i.e., lead agency)
 - Is a discretionary action (involves some type of decision, permit, etc.)
 - Has the potential to result in a direct physical change or reasonably foreseeable indirect physical change to the environment



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When CEQA Does NOT Apply

- The activity is NOT a project
- Private projects that do not require any approvals, permits, or other actions (decisions) by a public agency
- If Categorical Exemption, there is absolutely no potential to result in a direct or indirect physical change in the environment
- The activity IS a project, but qualifies for an exemption



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So, You Have a Project...

- Lead Agency (e.g., City, County, RCD, etc.) determines if the project is exempt from CEQA (Section 15061)
- Even if exempt, there is still a step or two to be completed BUT at least you wouldn't have to endure the entire lengthy CEQA process and document preparation as you would for a ND, MND or EIR...



Common Statutory Exemptions

(Could potentially cause environmental impacts)

- Ministerial projects
- Feasibility and planning studies
- Emergency projects
- Specified mass transit projects
- Railroad grade separations
- Removal of haz pipeline
- Specific prison facilities
- Olympic Games
- Financial assistance to low/mod income housing
- Projects that are disapproved



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Common Categorical Exemptions

(Minor to no environmental impacts)

- **Class 1 - Existing Facilities**
- **Class 3 - New construction or conversion of small structures**
- **Class 4 - Minor Alterations**
- **Class 6 – Information Collection**
- **Class 7 & 8 – Actions by Regulatory Agencies**
- **Class 13 – Acquisition of Land for Wildlife Conservation Purposes**
- **Class 25 – Transfer of Ownership to Preserve Natural Conditions and Historical Resources**
- **Class 33 – Small Habitat Restoration Projects (NTE 5 ac)**



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Exceptions to Categorical Exemptions

Six circumstances that mean you cannot rely on a Categorical Exemption

- Location exception (only applies to certain CEs)
- Cumulative impact exception
- Unusual circumstances (significant effect) exception
- Scenic resources within scenic highways exception
- Hazardous waste sites exception
- Historical resources exception

If relying on a categorical exemption, best to run through each of the exceptions and document facts showing why none of them apply.



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What happens if you have a Project and none of the Exemptions apply?

- Complete an Initial Study (Appendix G of the CEQA Guidelines) to evaluate all impacts resulting from “construction” and “operation” of the project
- Based on specific thresholds for each impact, determine if project will have a potentially significant or less than significant impact
- Determine if mitigation is needed, and if it can adequately reduce all impacts to less than significant levels

Use the Initial Study to Determine Most Appropriate CEQA Document

- **Negative Declaration (ND):** All potential impacts are less than significant, even without mitigation
- **Mitigated Negative Declaration (MND):** All potential impacts are less than significant, but some require mitigation to get there
- **Environmental Impacts Report (EIR):** Even after incorporating all reasonable and feasible mitigation, some of the impacts will remain potentially significant

Public Review

- ND or MND with NOI = 20-30 days; then NOD and Statute of Limitations (SOL)
- NOP = 30 days; then DEIR with NOC = 45 days; then NOD and SOL



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Back to Exemptions

If project does qualify for an Exemption, prepare a Notice of Exemption (NOE)

- *Documents reasons the agency believes project is not subject to CEQA*
- *Can be (but is not required to be) filed with a County Clerk's office*
- *Benefit of filing: 35-day statute of limitations*
- *Con of filing: Alerts more potential project opponents to the fact the agency is undertaking this activity*
- *If not going to file, can call it a "Memorandum to File" or "Exemption Determination" instead of NOE*

Why prepare an NOE if the agency is not going to file with County?

- *Able to provide documentation of exemption determination to other agencies*
- *If challenged, want to be able to point to a dated record showing that you thoughtfully and in good faith considered whether the action was subject to CEQA*



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Coordination with Regulatory Agencies

- Early involvement is generally beneficial
- Gain credibility with regulatory agencies
- Informal consultation (regulated waters and listed species issues)

Applicant-Sponsored Mitigation at RCDs

- Mitigation feasibility for RCDs
- Not easy for developers to find mitigation (esp. in So Cal)
- Partnering w/ developers – Perception of “Pay and Walk Away” (pass costs onto developers)
- Ultimately establish more broad multi-developer compensatory mitigation opportunities
- Request that mitigation efforts, if known, also be covered in the developer/applicant project CEQA document and permit processing



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“Scenarios”

- Conservation District wants to undertake a study to assess and compare several different habitat conservation scenarios on a large piece of property
- Construction of a small greenhouse for use as a native plant nursery
- Acquisition of 20 acres of land, for future restoration opportunities and ultimately planned for placement under a conservation easement
- Relocation of a native plant community from a parcel slated for development; plants will be replanted within an existing conservation area
- Restoration of CAGN habitat on 16 acres



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ANY QUESTIONS?

Feel free to contact me at (619) 890-2762
or wworthey@dudek.com

Thank you!!



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