

CSU CEQA Training

A Brief Introduction to CEQA



California Environmental Quality Act (CEQA) Workshop

- **Tuesday, April 23, 2019**
- Long Beach Marriott
8:30 AM – 4:30 PM
- Register by Tuesday, April 9th
- [Information webpage](#)





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Overview

- What is CEQA?
- The CEQA Process
- Exemptions
- Negative Declarations
- Environmental Impact Reports
- Analysis Process
- CEQA Guidelines Updates: Transportation
- Resources

What is CEQA?

Section 1



CEQA : California Environmental Quality Act

- Born from the Ecology Movement
- Enacted in 1970 – modeled on NEPA
- Introduced the concept of environmental impact assessment to state and local planning in California
- The cornerstone of environmental policy in California

“The foremost principle under CEQA is that the Legislature intended the act ‘to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.’” *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390, quoting *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259



Who and What Does CEQA Apply to?

- CEQA applies only to the actions of California's public agencies:
 - The state, regional agencies, counties, cities, school districts, other special districts, CSU, etc.
- It does not apply to federal agencies:
 - Federal actions fall under the National Environmental Policy Act (NEPA)
- It does not apply to private activities unless public agency action is required

CEQA's Primary Objectives

- Disclose to decision makers and the public significant environmental effects of proposed activities
- Identify ways to avoid or reduce environmental damage
- Prevent environmental damage by requiring implementation of feasible alternatives or mitigation measures
- Disclose the public reasons for agency approval of projects with significant environmental effects
- Foster interagency coordination in review of projects
- Enhance public participation in planning process

What CEQA is, and what it isn't

- CEQA is a process, not a permit:
 - It neither approves, nor denies a project
 - It informs decision-makers and the public
 - It doesn't prescribe development standards
 - It doesn't prescribe acceptable levels of risk
 - It doesn't specify regulations that projects must follow
 - It doesn't establish study methods



What CEQA is, and what it isn't

- CEQA requires mitigation, but doesn't give an agency mitigation superpowers:
 - Agencies adopt the mitigation that is within their power to implement or require as a condition of project approval
 - CEQA gives no new powers to any agency



What CEQA is, and what it isn't

- CEQA does not prescribe the outcome of the deliberations over a project:
 - A CEQA document does not “approve” a project:
 - The CEQA document provides enough information to enable informed decision-making
 - An CEQA document does not “deny” a project:
 - An agency may approve a project with significant, unavoidable impacts (with an EIR)



What CEQA is, and what it isn't

- CEQA requires reasonable disclosure of project impacts:
 - But, an EIR is not a technical report:
 - It's intended to be accessible to the general public
 - Technical reports are often prepared to inform and provide the basis for the EIR's conclusions
 - Agency must describe the disposition of all significant effects



A Brief CEQA Glossary

- **Project:** A discretionary action with physical effects
- **Lead Agency:** Agency responsible for CEQA
- **Responsible Agency:** Another agency with discretionary power over the project
- **Trustee Agency:** One of four state agencies holding resources in trust for all Californians
- **Categorical Exemption:** Limited “get out of CEQA free” card
- **Initial Study:** Review for potential significant effects
- **Mitigated Neg Dec:** Mitigated Negative Declaration
- **Neg Dec:** Negative Declaration
- **EIR:** Environmental Impact Report

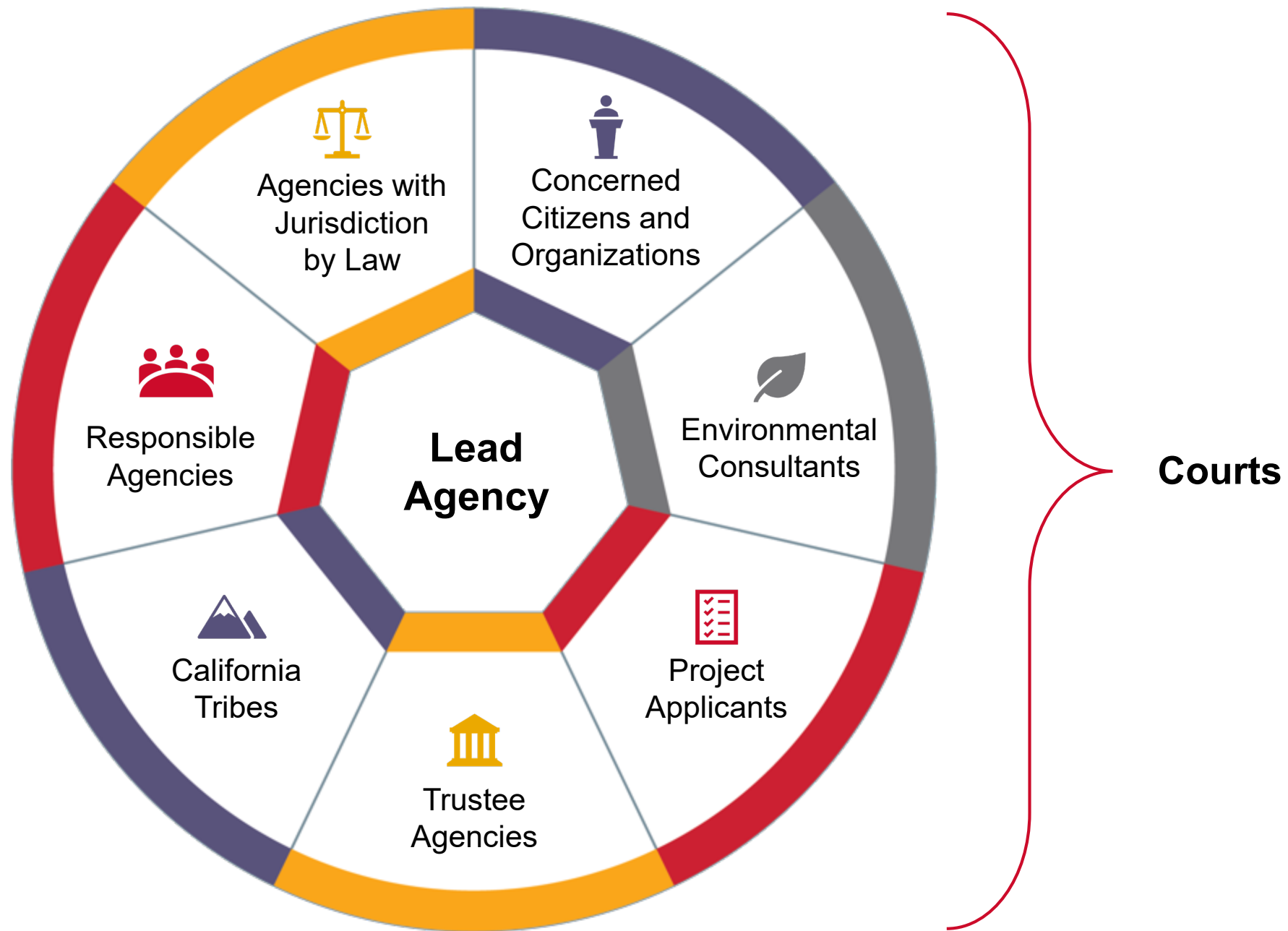


The CEQA Process

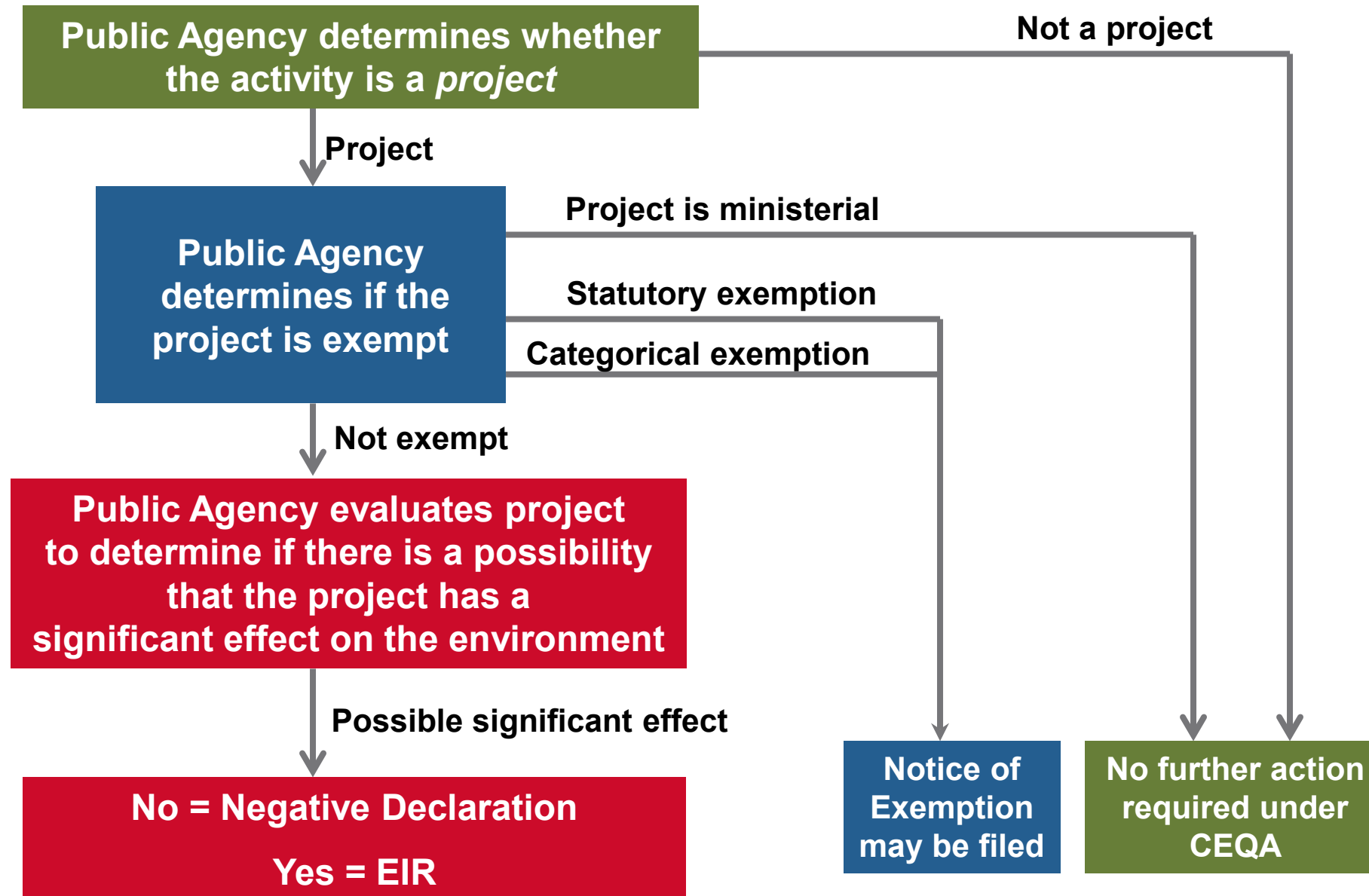
Section 2



Key Participants in the CEQA Process



CEQA Process Flow Chart



Public Agency determines whether the activity
is a *project*

Not a project

Definition of a Project:

An activity undertaken by a public agency, including:

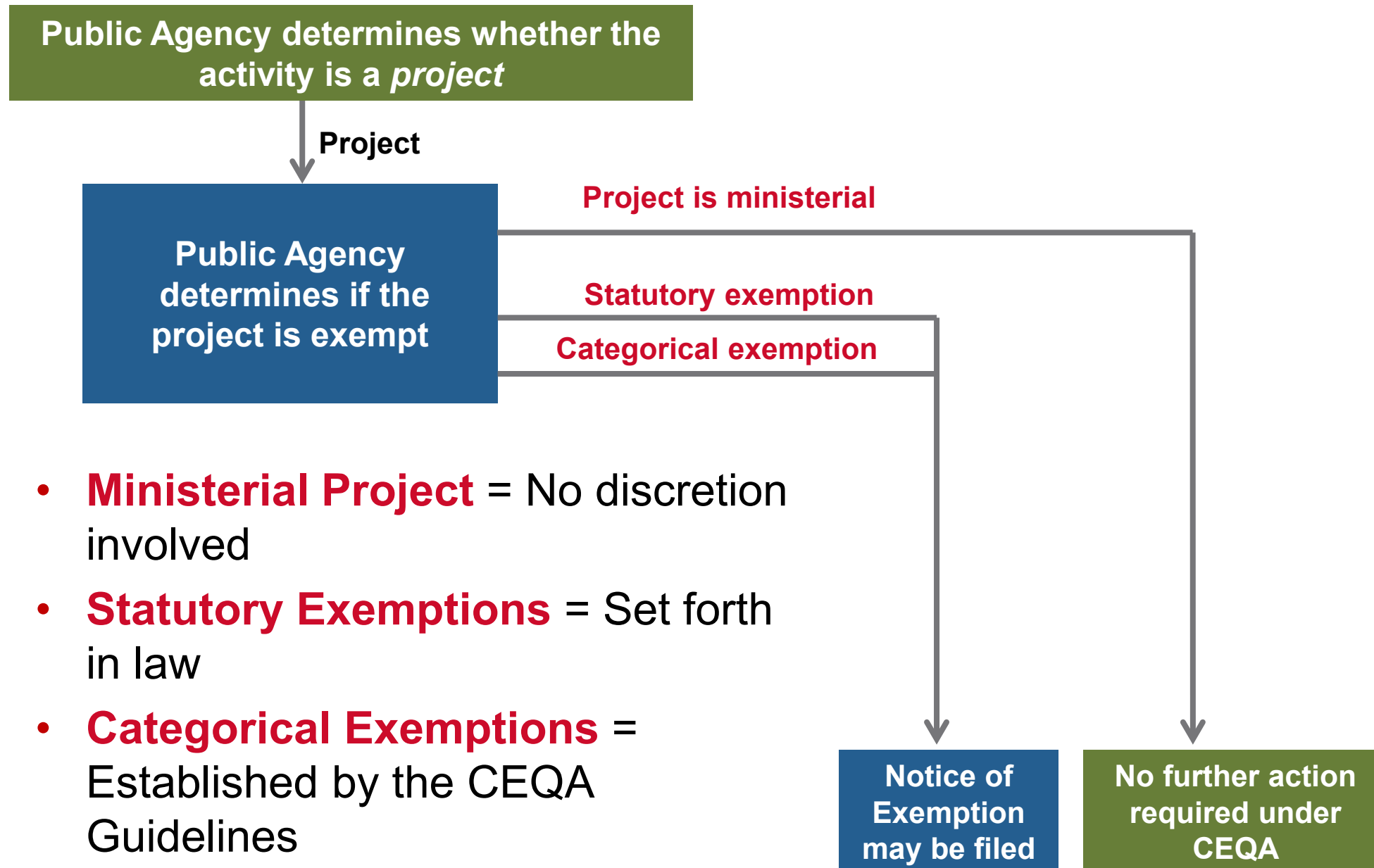
- A discretionary action by a public agency resulting in physical effects
- Activities supported through public agency contracts, grants, subsidies, loans, or other assistance
- Activities involving public agency issuance of a lease, permit, license, certificate, or other entitlement
- The public agency must include the “whole of an action” in the project being analyzed

No further action
required under CEQA

Examples of Discretionary Projects Involving CSU Approval:

- New Campus Master Plans
- Major and Minor Campus Master Plan Revisions
- Schematic Plans





- **Ministerial Project** = No discretion involved
- **Statutory Exemptions** = Set forth in law
- **Categorical Exemptions** = Established by the CEQA Guidelines

- Activity is a Project
- Project is not Exempt



Public Agency evaluates project to determine if there is a possibility that the project has a significant effect on the environment



Possible significant effect

No = Negative Declaration

No with mitigation = Mitigated Negative Declaration

Yes = EIR

Initial Study

- Preliminary analysis prepared by Lead Agency
- Environmental Checklist (Appendix G)
- Determines whether an ND/MND or EIR is required
- Requires each conclusion to be supported

Air Quality (Excerpt from Appendix G)

Significance criteria established by air quality management or air pollution control district may be relied upon. Would the project:

III. Air Quality	New Significant Impact	Less-than- Significant with Mitigation Incorporated	Less-than-Significant	No Impact
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 a nonattainment area for 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"/>

Checklist Translation

- The four possible answers to checklist questions carry specific meanings
 - No impact: the project would not result in any impact
 - Less than significant impact: the impact of the project is not a substantial adverse change in the environment
 - Less than significant impact with mitigation incorporated: any potentially significant impact is reduced to a less-than-significant level by specific mitigation measures
 - Potentially significant impact: the impact cannot be mitigated below a level of significance – an EIR is required

Timing of CEQA Process

- Start as early as feasible in planning process to enable environmental considerations to influence project program and design
- Start late enough to provide meaningful information for environmental assessment
- No action can be taken that gives impetus to a foreseeable project in manner foreclosing alternatives or mitigation measures
- **Consult with CO when determining type of CEQA document to prepare**
- Key Issues:
 - Enough project information
 - CEQA completed prior to action committing to the project

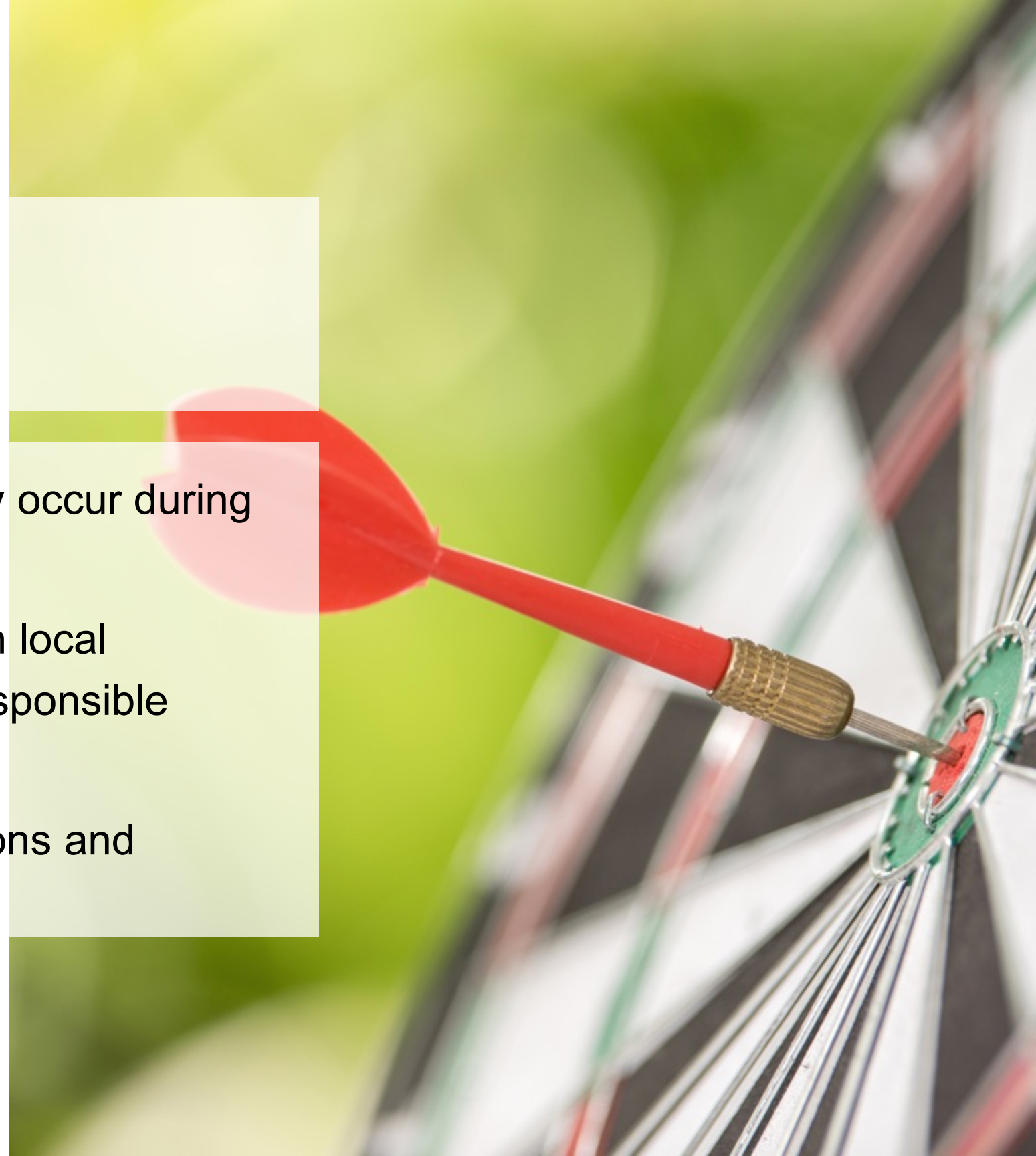
Public Outreach-Project

- Timing:
 - Communicate early, especially about major projects
 - Outreach prior to release of Initial Study recommended
- Format
 - Be clear about the purpose of public meetings
 - Initial outreach meetings are intended to provide project information in early planning stage
 - Meeting regarding CEQA compliance document will be held separately
 - Written materials must be reviewed by CO



Agency Coordination

- Consultation with local public agencies **may** occur during the early stages of project planning
- Consultation should take into account which local jurisdictions (or other agencies) may be Responsible Agencies
- CSU is exempt from local land use regulations and requirements by specific State statute



AB 52 Consultation

AB 52 (2014) establishes requirements for notice, consultation, and consideration of Tribal Cultural Resources (TCR):

- Sites, features, places, cultural landscapes, sacred places, and objects of cultural value to a California Native American tribe:
 - ✓ Listed or eligible for listing on the California Register of Historical Resources, or
 - ✓ Included in a local register of historical resources
- A resource determined to be significant by the Lead Agency under National Register criteria set out in PRC 5024.1(c)
- A cultural landscape meeting the above is a TCR to the extent it is “geographically defined” (PRC Sec. 21074(b))
- Historical and archaeological resources also can be a TCRs
- Sacred Places are catalogued by the NAHC

AB 52 Consultation Process

- Tribes are to request from NAHC a list of all lead agencies within affiliated area
- Tribes will advise lead agencies to notify them of projects
- Lead agencies are obligated to notify such tribes of opportunity to consult on project:
 - Formal notice within 14 days of determining application complete or public agency's decision to undertake project
 - Each tribe has 30 days to request consultation
 - Agency must initiate consultation with 30 days of request
- Consultation to be undertaken “in good faith” and with “reasonable effort”

Exemptions

Section 3



Common Statutory Exemptions from CEQA

- Ministerial projects
- Emergency projects
- Rejected or disapproved projects
- Setting of certain rates or charges
- Feasibility or planning studies



Ministerial Exemption

- CEQA applies to “discretionary” projects, not ministerial ones
- Ministerial means:
 - The public official applies “little or no personal judgment... as to the wisdom or manner of carrying out the project”
 - The public official “merely applies the law to the facts presented”
 - The decision “involves only the use of fixed standards or objective requirements”
- The public official can’t use “personal, subjective judgment in deciding how the project should be carried out”
- Examples:
 - Building permits, in most cases

Categorical Exemptions

- Particular classes of projects that will usually not result in a possible significant environmental effect
- 33 classes have been authorized under the CEQA Guidelines
- Qualifying project must meet all of the requirements of the described class
- Project must not have a significant effect

Note: Statutory exemptions differ in that they may proceed in the face of potential effects (unless the particular statute provides otherwise)

Exceptions to Use of a Categorical Exemption

- Reasonably possible the activity may have a significant environmental impact due to unusual circumstances
- Cumulative impacts would be significant
- Certain specified sensitive environments would be affected
- A project affects scenic resources within official state scenic highways
- A project is located on a listed hazardous waste site maintained by the California EPA
(<http://www.calepa.ca.gov/SiteCleanup/CorteseList/>)
- A project causes substantial adverse changes in significant historic resources
- Mitigation is necessary to avoid impacts [SPAWN v. County of Marin (2005) 125 Cal.App.4th 1098]

Class 1 - Existing Facilities

- “... operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment ... involving negligible or no expansion of use ...”
- Examples:
 - Existing facilities of both investor and publicly owned utilities used to provide electric power, natural gas, sewerage, or other public utility services
 - Additions to existing structures not exceeding: 50% of the floor area of the structures before the addition, or 2,500 square feet, whichever is less; or 10,000 sq. ft. if public services and facilities are available and the area in which the project is located is not environmentally sensitive
 - Addition of safety or health protection devices for use during construction of or in conjunction with existing facilities, or equipment

Class 3 - Small New Construction or Conversion

- Construction and location of limited numbers of new, small facilities or structures;
 - Installation of small new equipment and facilities in small structures; and
 - Conversion of existing small structures from one use to another where only minor modifications are made in the exterior of the structure
- Examples:
 - Accessory structures
 - Utility extensions to serve small structures
 - Commercial structure not involving the use of significant amounts of hazardous substances, and not exceeding 2500 square feet in floor area. In urbanized areas, the exemption also applies to up to four such commercial buildings not exceeding 10,000 sq. ft. in total area

Contents of a Notice of Exemption

- A brief description of the project
- A finding that the project is exempt
- Citations to the applicable exemption in the law or State CEQA Guidelines
- A brief statement of reasons supporting the finding
- File with State OPR following approval of project

Agencies are encouraged to post their notices on agency Web sites

Negative Declarations

Section 4



Negative Declaration/Mitigated Negative Declaration

- Negative Declaration (**ND**) or Mitigated Negative Declaration (**MND**)
 - There is no factual evidence that the project may have a significant effect (Negative Declaration)
 - All potential significant effects can be mitigated (Mitigated Negative Declaration)
- Requires public notice and review prior to adoption

Basis for an MND

- Initial Study shows potentially significant impacts but:
 - Revisions in project plans agreed to by the applicant before public review would mitigate to below level of significance
 - There is no substantial evidence in record of a significant effect from the revised project
- MND must identify feasible, fully enforceable mitigation measures:
 - Mitigation cannot be deferred until later
- The measures must be made a part of the project approval

When Not to Adopt a ND or MND

- Fair argument that project may have significant effect (EIR required)
- Substantial adverse impact on historic resource
- For an MND:
 - Applicant has not agreed to mitigation measures
 - Impact cannot be reduced to a less than significant level
 - Fair argument that mitigation measures are insufficient



Contents of an ND/MND

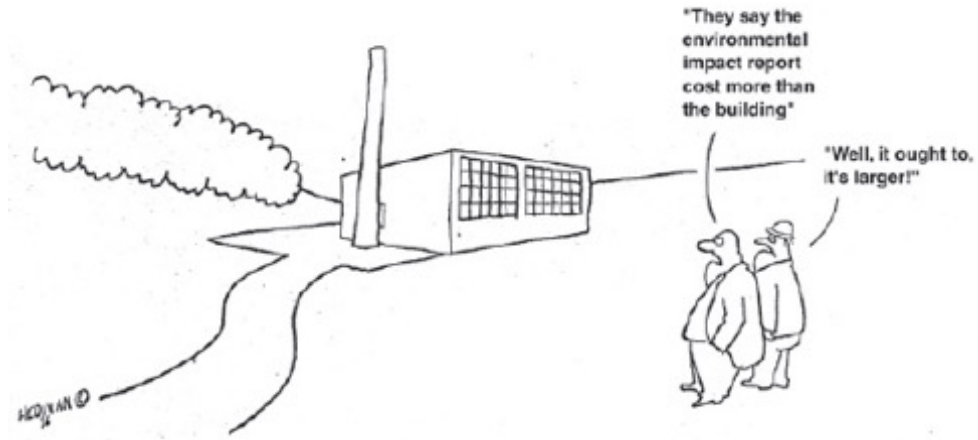
- Project description
- Project location
- Identification of project proponent
- Proposed finding of no significant effect
- Attached copy of Initial Study justifying finding:
 - The “Negative Declaration” is a couple pages long; the IS can be 100 or more pages long
- For MNDs, mitigation measures that will avoid significant effects

Public Review of ND or MND

- Proposed ND or MND (and associated IS and tech studies) must be circulated for public review and comment before it is adopted:
 - 30-day review for CSU projects
- Public notice announces availability for review:
 - Copies must be sent to responsible agencies and to the State Clearinghouse (30-day review)
- Lead Agency must consider the comments before adoption
- Fair argument may be raised in the comments

Notice of Determination

- When an ND or MND is adopted, the Lead Agency must file an NOD to start the statute of limitations on legal challenges
- The NOD will:
 - Identify project and its location
 - Describe project
 - Indicate date of project approval
 - Show determination that project will have no significant environmental effect, or
 - State that an ND or MND has been prepared to avoid significant effects
 - List address where copy of the ND or MND is located
- File with State OPR and pay DFW fee
- The statute of limitations is 30 days



Environmental Impact Reports

Section 5



The Environmental Impact Report

- An objective analysis of the project, its significant impacts, and feasible alternatives and mitigation measures to reduce or avoid the impacts
- Purposes:
 - Inform decision makers and public about a project's significant environmental effects and ways to reduce them
 - Demonstrate to public that environment is being protected
- An EIR informs, but neither approves nor denies a project

Who Prepares the EIR?

- One project, one document
 - The EIR prepared for a project by CSU must also be used by the Responsible Agency(ies)
- CSU must exert its “independent judgment” over the public Draft EIR and Final EIR
 - It is responsible for calling the shots regarding scope, format, mitigation, etc.
- Review of Draft EIR by CO prior to release for public review

EIR Process for CSU Projects: 12-18 months (or longer)

- Notice of Preparation sent to responsible and trustee agencies
- Responses to Notice of Preparation sent to CSU (time limit of 30 days from issuance of NOP)
- Draft EIR prepared
- Notice of Completion and Availability
- Draft EIR Submission to Clearinghouse
- Public Notice and Review of Draft EIR (45-day minimum)
- Public Hearing on Draft EIR (Optional)

EIR Process for CSU Projects (cont.)

- Written comments received
- Responses to comments prepared/Revisions to Draft EIR
- Responses sent to public commenting agencies (minimum of 10 days before certification)
- Findings, Mitigation Monitoring and Reporting Program prepared
- Final EIR certified by CSU
- CSU Decision on project, adoption findings and MMRP
- Notice of Determination filed with Clearinghouse (within 5 days of project approval)

Key Steps in the EIR Process: Advance notice of EIR

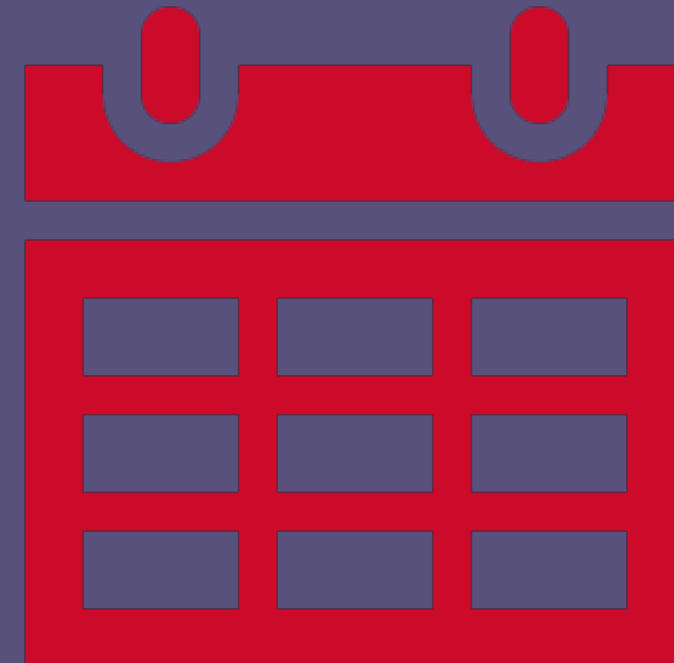
- Notice of Preparation (NOP):
 - Initial Study can “scope out” some issues
 - Minimum 30-day review period
 - Comments on NOP considered in preparing the Draft EIR
 - Public meeting recommended



Key Steps in the EIR Process:

Draft EIR

- Draft EIR:
 - Analyzes project's potential impacts on the environment:
 - Incorporates available information and studies
 - Discloses significant impacts
 - Identifies feasible mitigation
 - Identifies potentially feasible alternatives
 - Minimum review period for CSU EIRs: 45 days



DEIR Contents (typical)

- Table of Contents
- Executive Summary
- Project Description
- Impact Chapters:
 - Environmental setting, impact analysis, impact conclusion, mitigation measures
- Project Alternatives
- Cumulative and Growth-Inducing Impacts
- Lists of Preparers and References
- Technical Appendices

Key Steps in the EIR Process: Final EIR

- Final EIR:
 - Responds in writing to comments received on the DEIR
 - Incorporates DEIR revisions if needed
 - Lists commenters
 - Includes the DEIR
- The FEIR must be “certified” before a project may be approved:
 - FEIR meets CEQA requirements
 - Reflects “independent judgment”

Key Steps in the CSU EIR Process: Notice of Determination

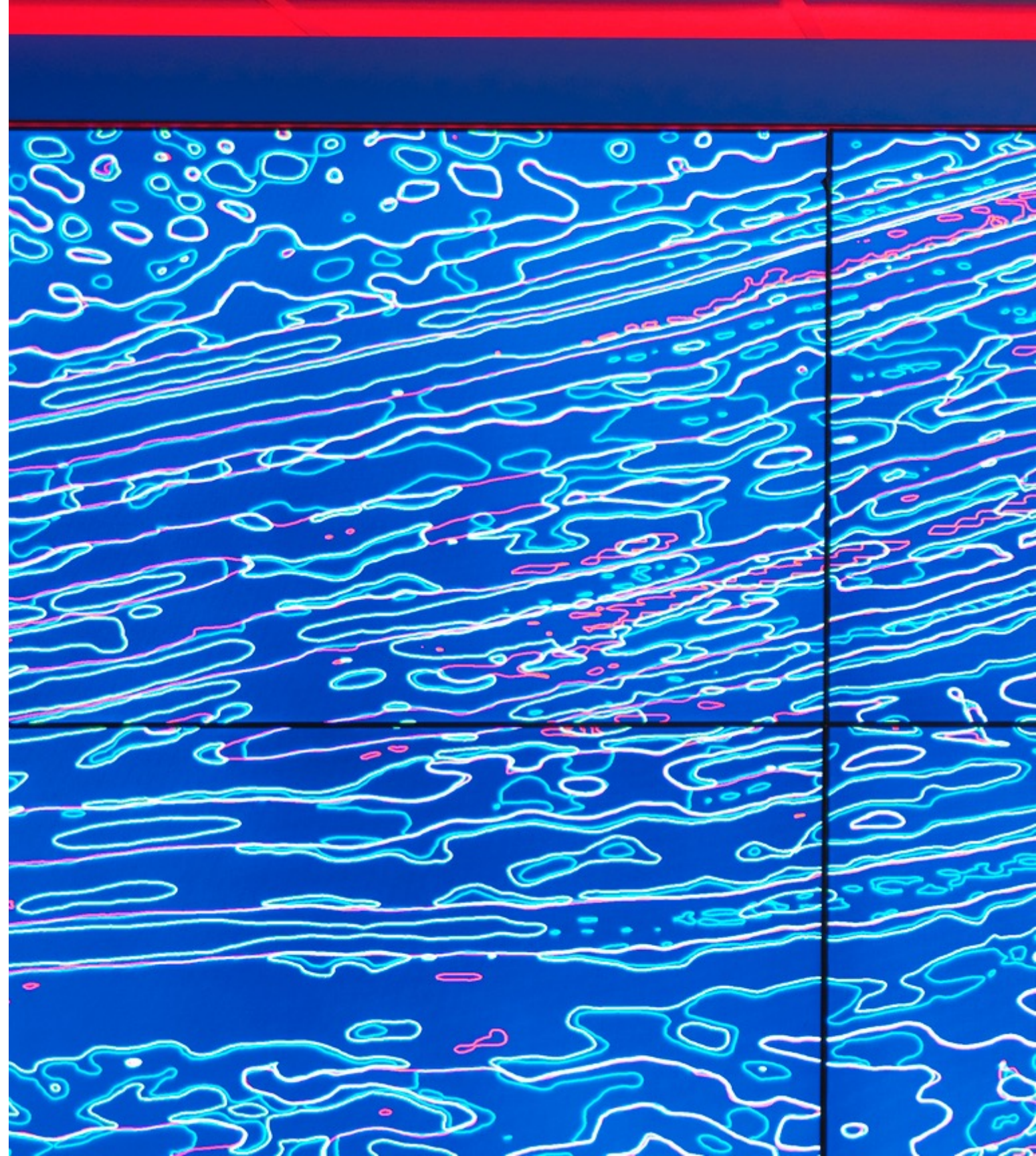
- No NOD is filed if project is denied
- NOD filed with State Clearinghouse
- Pay DFW fees when the NOD is filed with State Clearinghouse
 - DFW fee (2019): \$3,271.00
- NOD must be posted for 30 + 1 days

“Tiering:” When is a Later EIR Required?

- An EIR has been certified
- A later, related project is being considered:
 - Later project may cause significant effect not adequately addressed in prior EIR
 - The project would make considerable contribution to new significant cumulative impact
- Guidelines Section 15162 describes one type of tiering: there are at least 6 distinctive methods of tiering, each with its own requirements

Analysis Process

Section 6

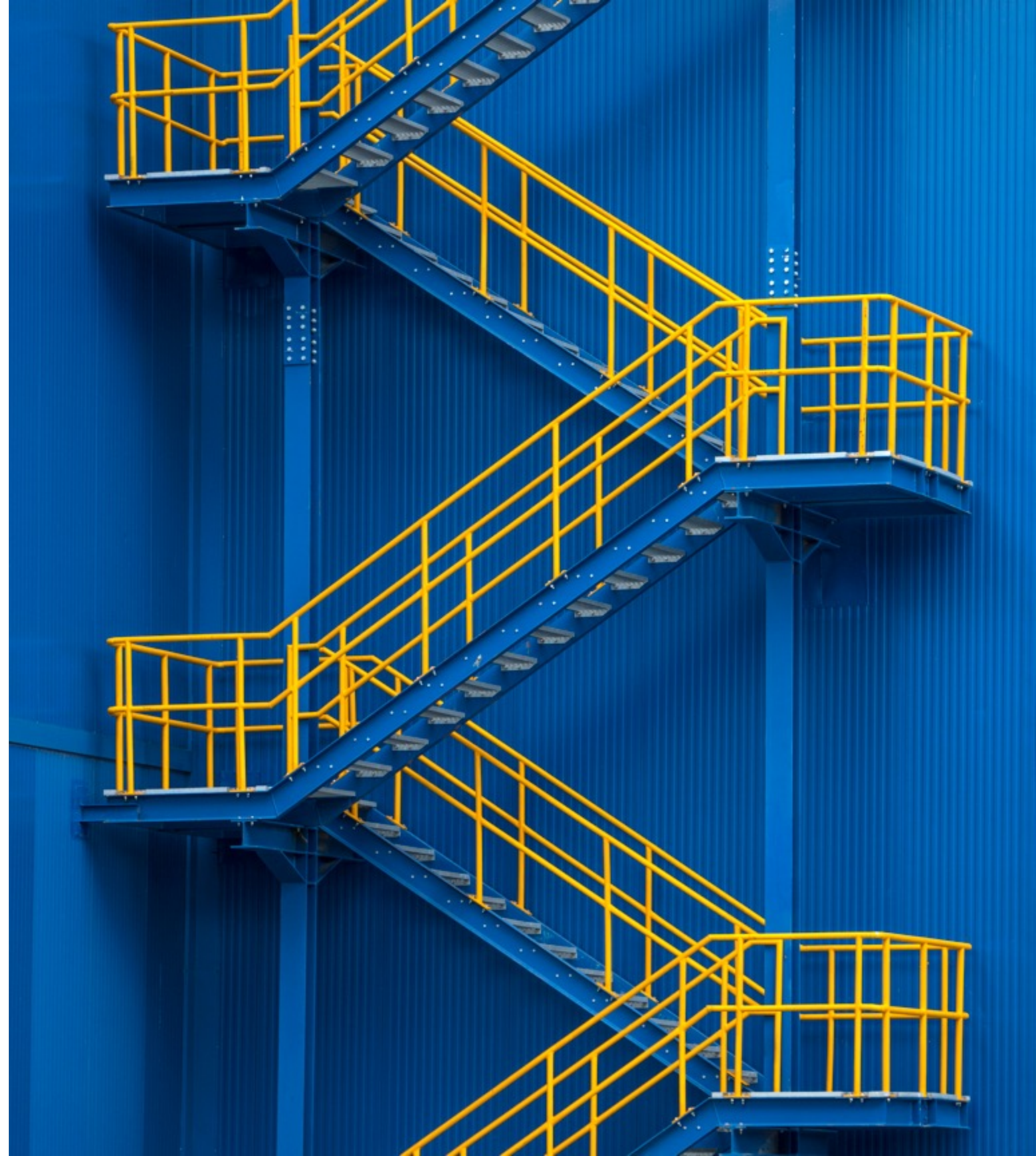


Analysis – Basic Steps

Setting

Impacts

Mitigation



Environmental Setting

- The EIR must describe the environment in the vicinity of the project as it exists before commencement of the project
- The setting will vary with the resource being examined
- The regional setting can be crucial to assessing impacts, especially for rare or unique resources, or resources that have a regional aspect (air quality, for example)
- Environmental setting is the physical environmental conditions at time of NOP release

Baseline for Analysis

- Environmental setting is normally the baseline for determining significance of impacts
 - “Normally” provides flexibility to consider fluctuations in conditions
 - The baseline is very seldom past conditions
- Future baseline can be used, either in addition to or instead of existing conditions baseline, if supported by substantial evidence
 - The baseline cannot be “hypothetical future” conditions
 - It may be reasonable projected future conditions

Regulatory Setting

- Discuss the regulatory setting as well as the physical setting
- Include detailed description of regulation with which the project will comply
- Provides context for impact analysis

Project Description

- Crucial starting place for environmental analysis:
 - Be comprehensive
 - Try to minimize changes to description during CEQA process
- Statement of project objectives:
 - Objectives are important: They help define range of alternatives (in an EIR)
- Project location:
 - Regional map
 - Detailed local map
 - Site boundaries
 - Listed toxic sites from California EPA

Project Description (cont.)

- Project Characteristics:
 - Narrative explanation of project concept
 - Proposed buildings and activities
 - Buildout assumptions
 - Diagrams/conceptual drawings
 - Supporting public services
- Reasonably foreseeable future phases:
 - The description must include the “whole of an action” – include related activities
- Other required approvals

Impacts

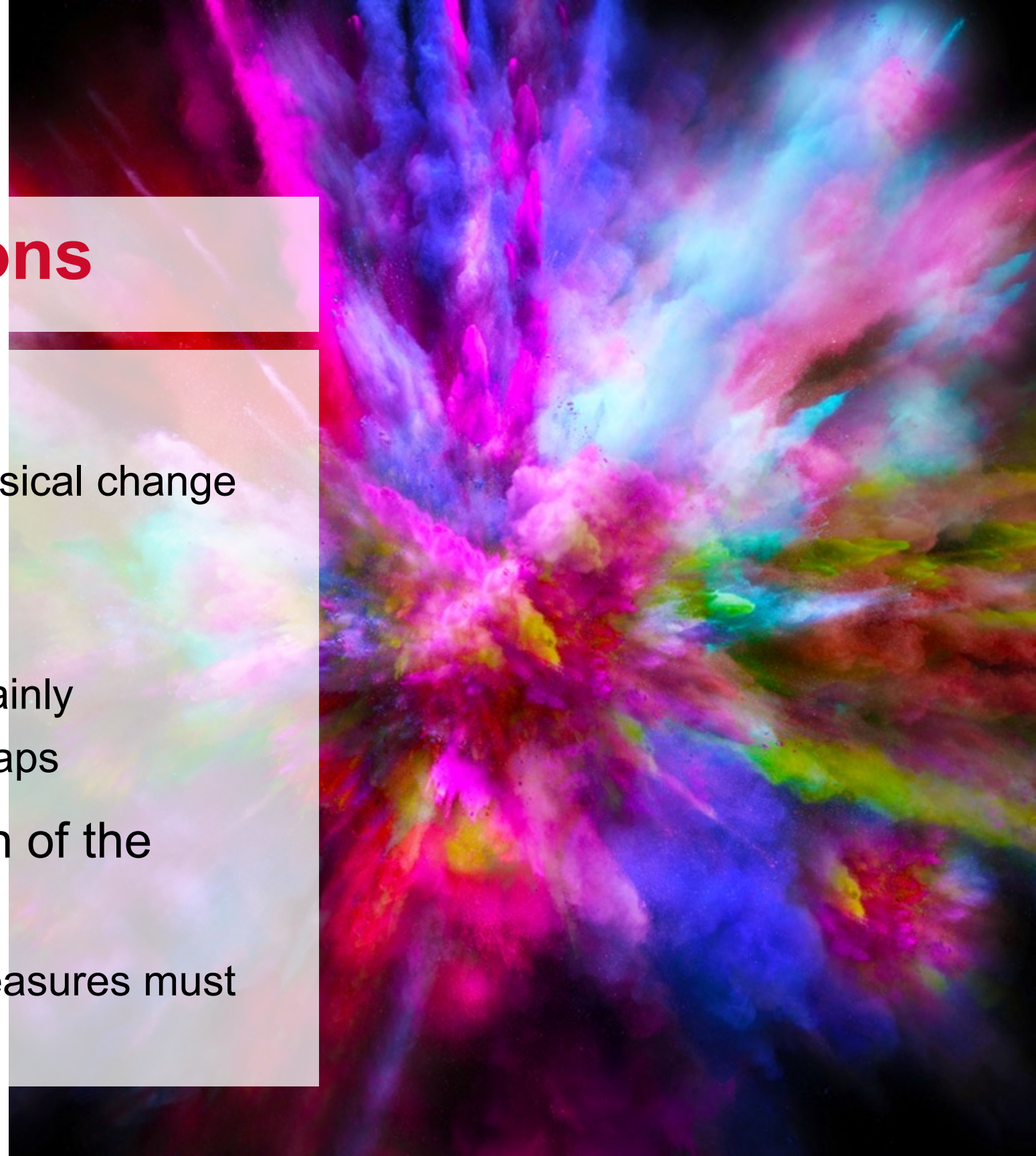
- Compare the conditions with the project to baseline (what changes?)
- Consider all aspects of the project
 - Construction/Short-term: occurs only during construction
 - Operational/Long-term: occurs after construction, permanent
 - Direct vs. indirect
 - Cumulative
 - Impacts of mitigation

Impacts (cont.)

- Discuss any inconsistencies between the proposed project and applicable land use plans (i.e., Campus Master Plan)
- Where the proposed project is compared with an adopted plan, the analysis shall examine existing physical conditions as well as potential future conditions

Significance Determinations

- Is the project's impact "significant?"
 - "Significant" = a substantial adverse physical change in the environment
- What makes an impact significant?
 - Exceeding a threshold or standard, certainly
 - Conflicting with community values, perhaps
- EIR discloses the significance of each of the project's impacts:
 - Feasible, fully enforceable mitigation measures must be adopted for each significant impact



Cumulative Impacts

- Some significant impacts result from the collective contributions of past, present, and foreseeable future actions
- The EIR describes the cumulative impacts to which the project will contribute:
 - List method
 - Plan or projections method
- The EIR determines whether the contribution is “considerable” in the cumulative context:
 - Even a less-than-significant individual impact may be considerable in the cumulative context

Requirements for Mitigation Measures

- For each potential significant impact, the CEQA document must identify one or more feasible mitigation measures that will avoid, minimize, reduce or eliminate, rectify, or compensate for a significant impact :
 - If no mitigation is feasible, explain why
 - If mitigation is infeasible, an EIR is required
- Mitigation measures must be fully enforceable
- The Lead Agency cannot defer its obligation to adopt feasible mitigation measures
- Mitigation measures are not limited to the lead agency's jurisdiction:
 - Off-site mitigation measure may be required
 - Measures may be undertaken by another agency
- Participation in an existing mitigation program counts

Mitigation Measures

- Cannot defer mitigation, only details of the mitigation measure
- Where permitting is not yet completed or project design is not sufficiently advanced, and detailed mitigation measures cannot be prepared, mitigation measures must include:
 - A commitment to mitigate;
 - Performance standards that will ensure that adequate mitigation is implemented, or a menu of effective mitigation measures; and
 - Objective criteria for measuring success
- If the measure requires future study, that study must lead to specific actions taken to mitigate the impact

Mitigation: Template for Success

Mitigation Template		
WHY?	In order to...	<i>State the impact to be mitigated</i>
WHEN?	...during/before/after...	<i>State the trigger for the mitigation</i>
WHO?	...the agency/designer/contractor...	<i>State the party responsible for carrying out the mitigation</i>
WHAT & HOW?	...will...	<i>State the action the mitigation requires, and if necessary, how it is to be done</i>
WHERE?	...at/near/in...	<i>State the location where the mitigation is required</i>
& sometimes PROVE IT!	...until/to be checked by...	<i>State the standard or criteria that will describe success (performance standard, monitoring requirements)</i>

Mitigation: Template for Success

Mitigation Template	
WHY?	In order to prevent particulate matter emissions from trucks hauling loose material (Impact AIR-1),
WHEN?	during construction,
WHO?	the contractor
WHAT & HOW?	will ensure that load covers are installed and secured on all trucks hauling loose materials such as construction debris or excess soil materials
WHERE?	when leaving the site.
& sometimes PROVE IT!	The contractor will maintain a check-out log for truck drivers leaving the site. All truck drivers will be required to sign out when leaving the site, attesting to whether or not they are hauling loose materials and, if so, that load covers are installed.

Mitigation Monitoring and Reporting Program

- The Lead Agency must adopt a MMRP that will ensure the mitigation measures imposed by the agency will be implemented
- Each Responsible Agency must adopt its own MMRP to ensure that the mitigation that it imposes will be implemented

Technical Data

- An EIR is intended to be accessible to the average reader
- Technical data may be summarized and studies included as appendices:
 - Typical technical appendices include traffic, noise, air quality/GHG analyses, biological surveys, cultural resources assessments, hazardous materials assessments, etc.
- A Lead Agency is not expected to undertake original research in preparing an EIR:
 - It is expected to analyze potential impacts and employ technical experts as may be necessary to study the impact mechanisms

Alternatives

- EIR must analyze the “no-project” alternative
- EIR must analyze a reasonable range of feasible alternatives to the project:
 - May include alternative approaches, alternative project sites, or both
 - Alternatives expected to be “potentially feasible;” feasibility not expected to be extensively analyzed
- Alternatives may be analyzed at lesser detail than project:
 - Must identify significant effects and mitigation measures
- Must compare relative effects of the alternatives
- Importance of project objectives

Alternatives (Cont.)

- The EIR need not examine every possible alternative:
 - The “rule of reason” governs
- The EIR must identify the “environmentally superior” alternative:
 - The Lead Agency is not obligated to select that alternative over the project
- The EIR must identify any alternatives that were considered and rejected from further analysis

CEQA Guidelines Updates: Transportation Section 7



SB 743: Legislative Intent

- Ensure that the environmental impacts of traffic, such as noise, air pollution, and safety concerns, continue to be properly addressed and mitigated through CEQA.
- More appropriately balance the needs of congestion management with statewide goals related to:
 - Infill development
 - Promotion of public health through active transportation (e.g., walking, biking)
 - Reduction of GHG emissions

SB 743: What Does it Do?

- Eliminates Level of Service (LOS) as a CEQA Metric
- Replaces LOS with VMT
- Provides methods and thresholds guidance
- Changes where significant impacts occur
- Changes mitigation focus

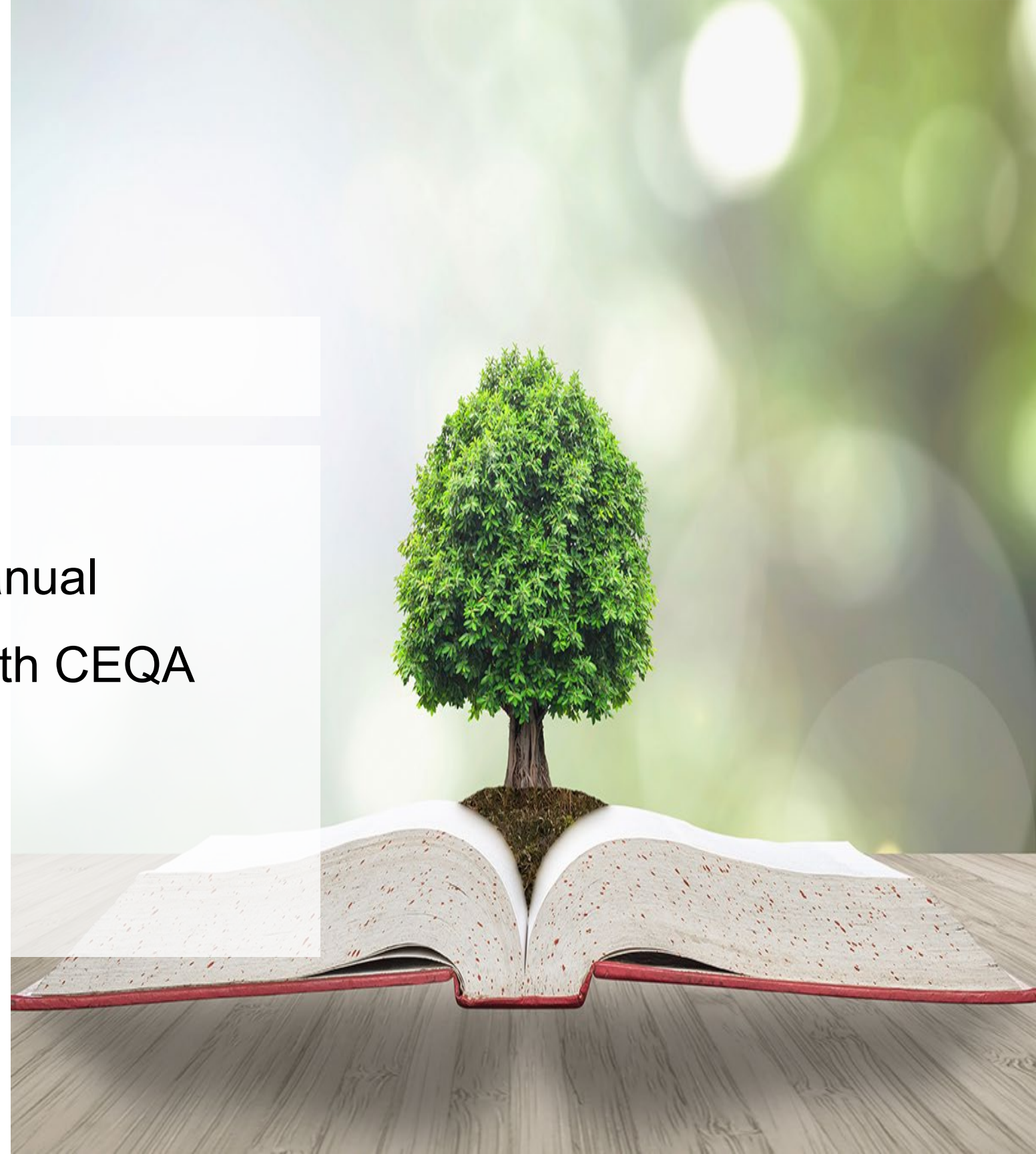


CSU 2019 TISM Manual

- 2019 CSU Transportation Impact Study Manual addresses:
 - Change in impact threshold from (LOS) / Delay to VMT
 - Other recent changes to the CEQA Guidelines

CSU CEQA Resources

- CSU CEQA Handbook
- CSU Transportation Study Impact Manual
- CSU Master Enabling Agreements with CEQA Consultants



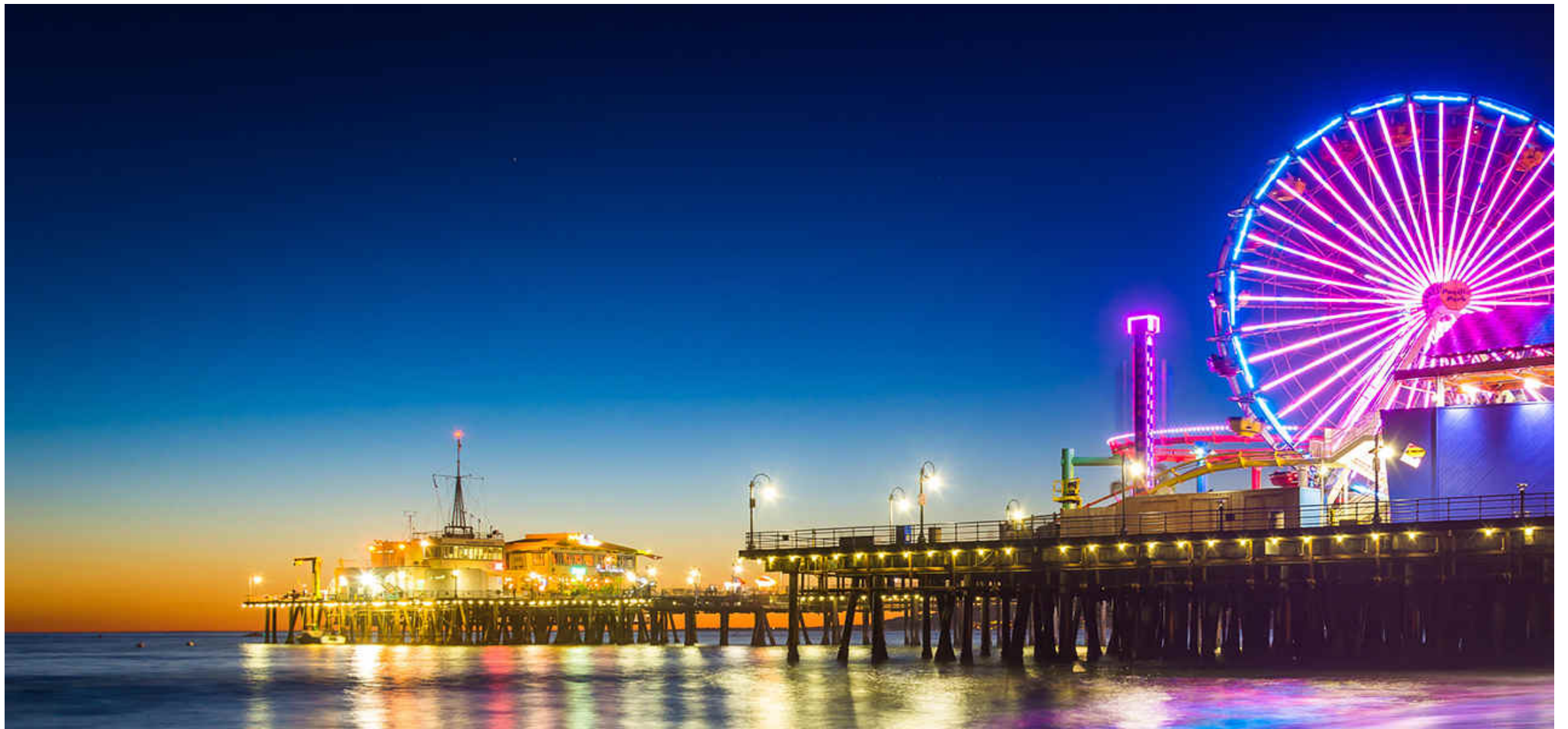
CSU Master Enabling Agreements

- It is recommended that consultants with a master enabling agreement (MEA) be selected to prepare CEQA documents
- Consultants should be selected and involved early in the process
- When consultants prepare a CEQA document on behalf of CSU, campus staff oversees, reviews, and directs their work



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