

# Mandatory and Voluntary Emissions Reductions and CEQA

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# CEQA's Dual Roles

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- Role 1: Information Disclosure

*CEQA requires public agency decisionmakers to document and consider the environmental implications of their actions*

- Role 2: Mandate to Avoid Environmental Impacts

*Public agencies must refrain from approving projects with significant impacts if there are feasible alternatives or mitigation measures that can substantially lessen impacts*

# Determining Impacts

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- What is the project's impact?
  1. Establish the baseline conditions
  2. Identify the changes resulting from the project, considering:
    - Project characteristics that minimize impact
    - Regulatory requirements that minimize impact
  3. Compare impact to threshold of significance
  4. Determine significance of impact
    - If less than significant, CEQA provides no authority for imposing mitigation
    - If significant, mitigate to below threshold

# Thresholds of Significance

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- Thresholds of Significance
  - The point at which an adverse change becomes “substantial”
- Where do these come from?
  - Regulatory standards
  - Adopted thresholds (e.g., Air District CEQA guidelines)
  - Professional judgment
- If an impact exceeds the threshold, mitigation is required, **if feasible**, to reduce the impact to below the threshold

# Mitigation Basics

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## Types of Mitigation

- Avoid
  - Minimize
  - Rectify
  - Reduce
  - Compensate (e.g., in-lieu fees, VERA)
- Must be enforceable through conditions or otherwise
  - Must state the time at which the agency will ensure the mitigation is met
  - Must adopt a Mitigation and Monitoring Program, which summarizes all mitigation and tracks its completion

# The Feasibility Concept

**fea-si-ble** /f•zYbYl/ *adjective*

1. *capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.*



# Compliance with Law

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## Mitigation and Compliance with Law

### Typical Approach:

- Compliance with law considered part of the project description and accounted for when determining impact
- For example, compliance with ISR Rule not mitigation

### Alternative Approach: Regulatory Compliance as Mitigation

- Case law has upheld noting compliance of law as mitigation for an impact

# Compensation as Mitigation

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- Payment into a fund to be used for projects to address impact
  - E.g., VERA, carbon credits, certain fee programs
  - Legal standard: Must have a program in place to actually utilize fees to effectuate mitigation
- Most Useful When:
  - No further modifications to the project are feasible
  - Off-site impacts that require broader solution (e.g., traffic)
- Feasibility and Compensatory Mitigation
  - With program in place, mitigation usually feasible

# CEQA and ISR Rule

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- ISR requires that Project reduce NOX / PM10 emissions
  - Percentage reduction or pay a fee
- CEQA impact Determined *after* emission assuming ISR reductions
- If impact remains significant, may further reduce, or enter into a “Voluntary” Emissions Reduction Agreement (VERA) to mitigate to less than significant
  - Is VERA really “voluntary”?
  - Is mitigation always “feasible”?

# CEQA Only (No ISR)

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- Without ISR, CEQA may be primary tool for mitigating air impacts from indirect sources
- May lead to the same result
- Greater reliance on lead agencies (usually cities)
- Greater variation
- Smaller projects less regulated