

CEQA WORKSHOP

# Trinity County Board of Supervisors/ Planning Commission

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**Presented by:**

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# Background of CEQA

# What is CEQA?

- “California Environmental Quality Act”
- CEQA was the first state law modeled after NEPA – and California is one of only 16 states with a “Little NEPA”
- CEQA introduced the concept of environmental impact assessment to state and local planning in California
- CEQA is 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.’ [citing *Friends of Mammoth*]”
    - *Laurel Heights Improvement Assoc. v. The Regents of the University of California* (1988) 47 Cal.3d 376

# CEQA's Top Objectives

(CEQA Guidelines 15002)

- Process, not a permit
- Disclose/focus on significant environmental effects of proposed activities
- Identify ways to avoid or reduce environmental damage
- Require 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, but it not a planning act
- CEQA **neither approves, nor denies** a project

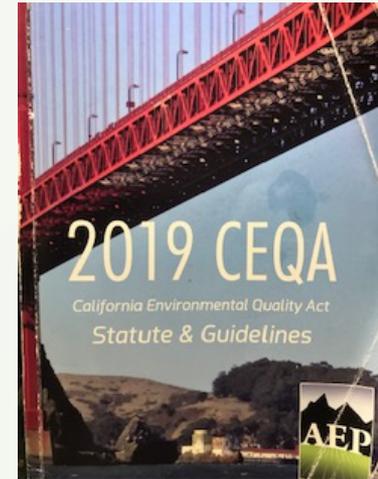
# CEQA Directives

(CEQA Guidelines 15041 - 15045 and 15204)

- CEQA authorizes agencies to:
  - Require changes in a project to lessen or avoid significant effects, when feasible
  - Disapprove a project to avoid significant effects
  - Approve a project with unavoidable significant effects if project's benefits outweigh those effects
  - Comment on CEQA documents prepared by other agencies
  - Impose fees from project applicants for CEQA implementation
- CEQA does not alter an agency's powers

# CEQA Legal Authorities

- CEQA Statute (Public Resources Code, Sections 21000–21177)
- CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000-15387 and Appendices A-K)
- Agency CEQA Guidelines
- CEQA court decisions
  - Superior Court decision – applies only to the case at hand
  - Appellate Court decision – if “published”, becomes law of the land
  - Supreme Court decision – law of the land
- OPR technical advice series
  - Non-regulatory advice, carries no force of law



# Key CEQA Terms

- Project: A discretionary action with physical effects
- Categorical Exemption/CE: For specific categories actions not causing significant effects (subject to limitations)
- Initial Study/IS: Review for potential significant effects
- Neg Dec/ND: Negative Declaration
- Mitigated Neg Dec/MND: Mitigated Negative Declaration
- EIR: Environmental Impact Report
- Lead Agency: Agency with primary approval authority
- Responsible Agency: Another agency with discretionary power over the project
- Trustee Agency: State agencies with jurisdiction over natural resources held in trust for all Californians

# Lead Agency

(CEQA Guidelines 15051)

The public agency that has the primary responsibility for:

- Carrying out or approving a project. Must have discretionary authority over the proposed project.
- Determining what level of CEQA review is required for a project and for preparing and approving the appropriate CEQA document.
- Consultations with other agencies.

# Responsible Agency

(CEQA Guidelines 15381)

- A public agency with some (subsequent) discretionary authority over a project or a portion of it.
- Can rely on a Lead Agency's CEQA document to meet their own CEQA compliance requirements.
- Must independently review and approve the CEQA document.

# Trustee Agency (CEQA Guidelines 15386)

- A State agency having jurisdiction by law over natural resources that are held in trust for the people of California
- CEQA identifies four Trustee Agencies:
  - CA Department of Fish and Wildlife
  - State Lands Commission
  - State Department of Parks and Recreation
  - University of California



# Key Points for Timing of CEQA

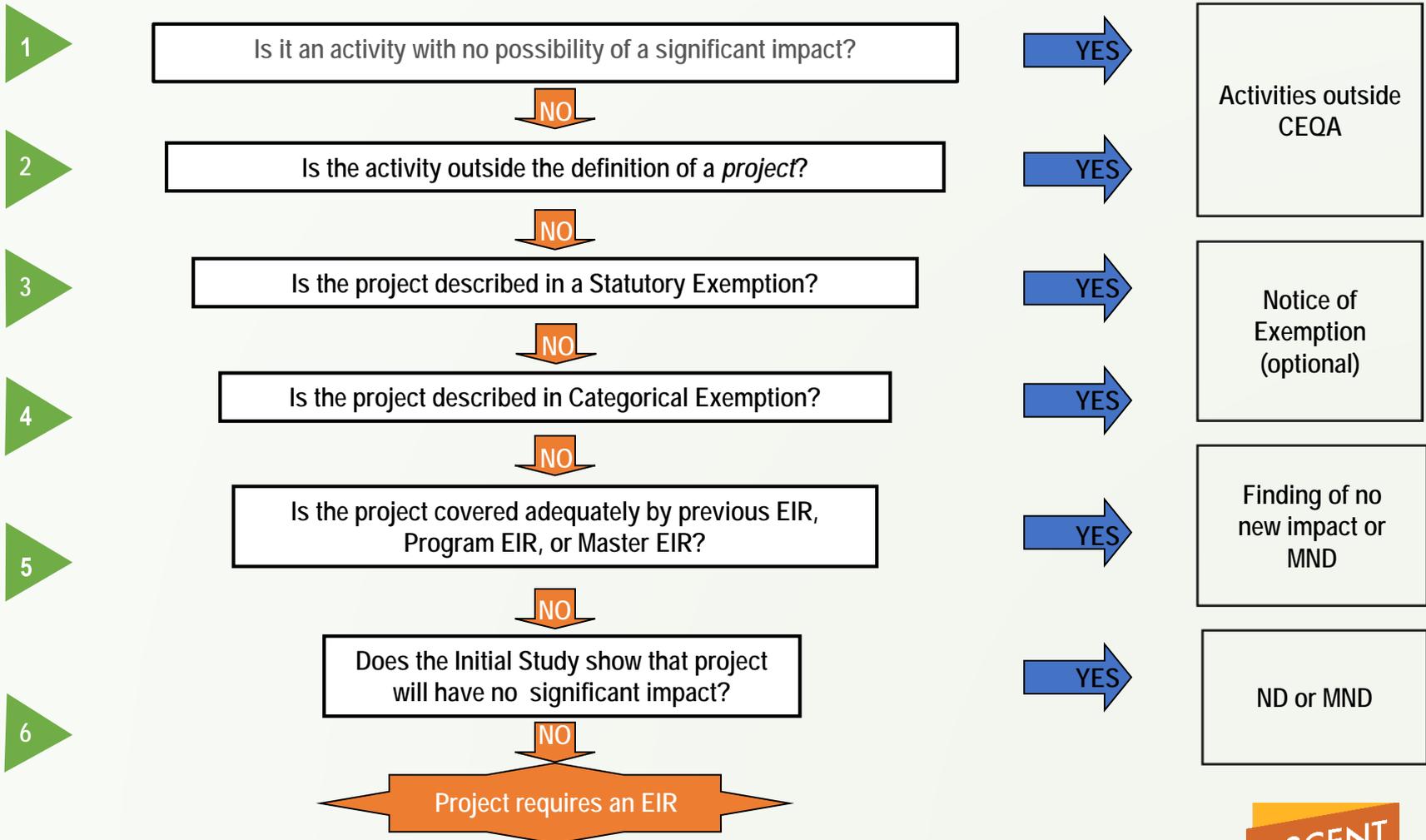
- Prior to a public agency's project approval
- Start as early as feasible in planning process to enable environmental considerations to influence project program and design
- Start late enough to provide meaningful information for environmental assessment
- CEQA compliance should be completed prior to acquisition of a site intended for a defined public project
- No action can be taken that gives impetus or commits to a foreseeable project in manner foreclosing alternatives or mitigation measures

# Preliminary Review

# Purpose of Preliminary Review

- The Lead Agency undertakes preliminary review:
  - This is usually a quick and informal step
- Determining whether:
  - This action is a “project” under CEQA (CEQA Guidelines Section 15060[c])
  - The project is subject to a CEQA exemption
- If the project is subject to an exemption:
  - Selecting the exemption
  - Documenting the project’s “fit”
  - Filing the optional Notice of Exemption

# Screening for CEQA Applicability



# Definition of CEQA “Project”

(CEQA Guidelines 15357, 15378)

- Project:

- the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment

- Discretionary:

- requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity

# Activities that Constitute a CEQA Project

- Activities directly undertaken by public agency:
  - public works construction and related activities clearing or grading of land, improvements to existing public structures
- 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



# Defining your Project

- Consider all direct and related activities
- Do not separate activities to avoid impacts. This is considered “Piecemealing” and is **not allowed** under CEQA.
- Examples of piecemealing:
  - Activity A and B are part of the same project when:
    - Activity B is a reasonably foreseeable future consequence of Activity A,
    - Activity B is a future phase of Activity A,
    - Activity B provides essential public services need to implement Activity A, or
    - Activity A and B are integral parts and lack independent utility.

# When Does CEQA Kick In?

- When the agency has sufficient information about the project to analyze its potential impacts
- When the action would foreclose the consideration of mitigation and alternatives
- When the agency is committing to project approval:
  - i.e., taking an action that will lead to project implementation

*Save Tara v. City of West Hollywood* (2008) 45 Cal.4<sup>th</sup> 116

# Examples of Nonprojects

- Activities for which “it can be seen with certainty” that no environmental effect will occur
- Activities specifically exempt by state law
- Proposals for state legislation
- Certain continuing administrative or maintenance activities
- Ballot initiatives—initiated by citizen petition
- Government fiscal activities that do not involve any commitment to any specific project
- Organizational or administrative activities

# CEQA Exemptions

- **Statutory Exemptions** – defined in law
  - Qualifying projects must fit the definition in the statute
  - No public review is required
  - File a Notice of Exemption for a 35-day statute of limitations
  
- **Categorical Exemptions** – established by the CEQA Guidelines
  - 33 classes
  - Qualifying project is not subject to CEQA
  - No public review is required
  - File a Notice of Exemption for a 35-day statute of limitations
  - Restrictions
    - Must fit one or more classes of exemptions
    - No “exceptions” can apply
    - Can not require mitigation

# When Does a Categorical Exemption Not Apply?

## Unusual Circumstance Exception (15300.2)

- Applies to all Categorical Exemptions
- Criteria:
  - Location (Classes 3, 4, 5, 6, and 11)
  - Significant cumulative impacts
  - Significant effect on the environment
  - Scenic highways – damage to resources
  - Hazardous waste sites
  - Historical resource

# What is an “Unusual Circumstances” Exception?

(Cont.)

- Steps for considering unusual circumstances:
  - First step: are there “unusual circumstances?”
    - Something that sets the project apart from similar development in the area
    - Lead agency determination is based on substantial evidence
  - Second step: if unusual circumstances exist, is there potential for significant impact?
    - “Fair argument” standard applies – may the project result in a significant impact?

Berkeley Hillside Preservation v. City of Berkeley (2015) \_\_ Calif. Supreme Court (S201116)

# Consideration of Environmental Effects Under CEQA

# Definition of Significant Effects

(CEQA Guidelines 15382)

“Substantial, or potentially 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 or aesthetic significance. A social or economic change by itself shall not be considered a significant effect on the environment.”

# Thresholds of Significance

(CEQA Guidelines 15064.7)

(a)...A threshold of significance is an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant.

# Environmental Impact Topics

- Aesthetics
- Agriculture and forests
- Air quality
- Biological resources
- Cultural resources
- Energy
- Geology and soils
- Greenhouse gases
- Hazards and hazardous materials
- Hydrology and water quality
- Land use and planning
- Mineral resources
- Noise
- Population and housing
- Public services
- Recreation
- Transportation and traffic
- Tribal cultural resources
- Utilities and service systems
- Wildfire
- Growth inducement

# Consideration of Environmental Effects

## What CEQA does...

- Discloses information about the effects a project could have on the environment
- Identifies and requires feasible mitigation of significant effects
- Describes feasible alternatives to the proposed project
- Solicit agency and public input throughout process

## What CEQA doesn't do...

- Require mitigation for existing environmental conditions even if illegally created
- Advocate for the project under evaluation
- Require project denial due to significant environmental impacts
- Address economic and social issues (e.g., property values)

# Fair Argument Standard

(CEQA Guidelines 15064[a])

- When must an EIR be prepared?
  - When it can be fairly argued, based on **substantial evidence**, in light of the whole record, that a project may have a significant environmental effect
- This is purposely a low threshold for EIRs
- “Fairly argued” means that there is evidence of the potential for impact in the administrative record before the agency
- Impacts = direct, indirect, and cumulative contribution impacts
- “May have” means that the evidence need not be absolute or unequivocal
- Makes MNDs and NDs vulnerable to challenge

# What is Substantial Evidence?

(CEQA Guidelines 15384[a])

## ▀ It is:

- Facts
- Reasonable assumption predicated on facts
- Expert opinion supported by facts

## ▀ It isn't:

- Argument
- Speculation
- Unsubstantiated opinion or narrative
- Clearly inaccurate or erroneous information
- Socioeconomic impact not linked to physical environmental impact

# Tools for Determining Significant Environmental Effects for CEQA

- Initial Study
- Mandatory findings of significance
- Consultation with other agencies
- Agency thresholds of significance
- Local and regional planning documents
- Certain regulatory standards (e.g., water quality, air quality)
- Regardless of the tools used, support significance thresholds with substantial evidence)

# Mandatory Findings of Significance

(CEQA Guidelines 15065)

- Substantially degrade environmental quality
- Substantially reduce fish or wildlife habitat
- Cause a fish or wildlife habitat to drop below self-sustaining levels
- Threaten to eliminate a plant or animal community
- Substantially reduce numbers or restrict range of a rare, threatened, or endangered species
- Eliminate important examples of major periods of California history or prehistory

# Mandatory Findings of Significance

(Cont.)

- Project would achieve short-term environmental goals to detriment of long-term goals
- Project has possible cumulative impacts
- Project would cause substantial adverse effects on humans
- (Incorporate the influence of adopted mitigation measures before considering mandatory findings)

# Options when Evidence Shows Significant Effect

- Prepare EIR
- Reuse EIR prepared for earlier project
- Use tiering or other CEQA streamlining from previous EIR to limit scope of environmental review
- Mitigate significant impacts and prepare Mitigated Negative Declaration:
  - Note: The fair argument also applies to an MND's mitigation measures. So, if an MND is to be adopted there must be no substantial evidence that its mitigation is infeasible

OVERVIEW

# Environmental Document Types Under CEQA

# Overview of Negative Declaration and Mitigated Negative Declaration Process

Negative Declaration	Time Limitation
Initial Study prepared	▪ 30 days
Mitigation measures identified and agreed upon by project proponent	
Negative Declaration prepared	
Proposed Negative Declaration issued for public notice and review	▪ 20–30 day minimum
Comments considered	
Negative Declaration adopted	▪ 180 days
Mitigation reporting and monitoring program adopted	
Lead Agency takes action on project	▪ 60 days from ND adoption
Notice of Determination filed	▪ 5 days from project approval
Notice of Determination posted	▪ 24 working hours from filing
Responsible agency makes decision on project	▪ 180 days from Lead Agency

# Remember - Fair Argument Standard....

- Preparation of an Environmental Impact Report is required, if a fair argument exists that a project may have a significant effect on the environment (after mitigation)
- Fair argument must be backed by substantial evidence
- Once a fair argument exists, it generally does not matter how much evidence supports the opposite conclusion of a less-than-significant effect

# Prepare a Negative Declaration When...

- When there is no substantial evidence that a significant effect may occur (15070[a])
- When tiering from a previously certified EIR (under certain circumstances) (15152)

# Prepare a Mitigated Negative Declaration When...

When the initial study has identified potentially significant effects, but

- **(1)** revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect would occur, and
- **(2)** there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment

# Required Contents of an ND/MND

(CEQA Guidelines 15071)

- Project description
- Project location
- Identification of project proponent
- Proposed finding of no significant effect
- Attached copy of Initial Study justifying finding
- For MNDs, mitigation measures included in the project description to avoid significant effects

# Mitigation Measures for MNDs

- Feasible measures required for significant effects
- Must be included before public review
- Consider significant effects of mitigation measures
- Measures must be fully enforceable
- Takings clause is a constraint
  - Must be **essential nexus** (Nollan v. CCC), and **roughly proportional** to impacts (Dolan v. Tigard)

# Mitigation Measure Practice Pointers

## Five Questions for Drafting Effective Mitigation Measures

### ▪ **Why?**

- What is the objective of the mitigation measures/why it is recommended

### ▪ **What?**

- Explain the specifics: how it will be designed and implemented
- What are the measurable performance standards for determining the success of the mitigation
- Identify a contingent mitigation if monitoring reveals that the success standards are not satisfied

### ▪ **Who?**

- Identify the agency, organization, or individual responsible for the measure

### ▪ **Where?**

- Identify the specific location where the mitigation measure will be applied

### ▪ **When?**

- Develop a schedule for implementation

# Findings and Noticing for Adoption of ND or MND

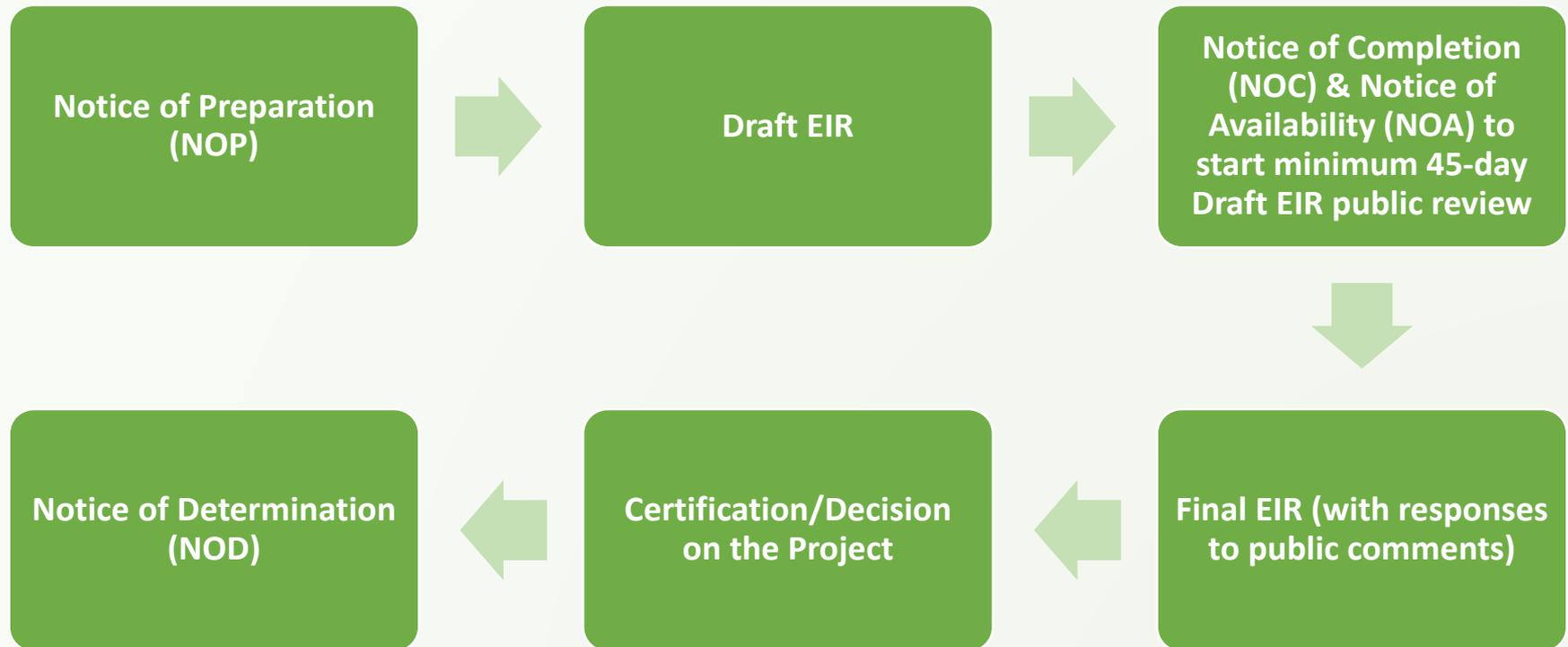
(CEQA Guidelines 15074)

- The decision-makers must consider the proposed ND or MND together with any comments received during the public review process prior to taking action on a project
- The decision-making body shall adopt the proposed ND or MND if it finds on the basis of the whole record that there is no substantial evidence that the project will have a significant effect on the environment and that the ND or MND reflects the lead agency's independent judgment and analysis
- When adopting a MND, the lead agency shall also adopt a program for reporting on or monitoring the changes which it has either required in the project or made a condition of approval to mitigate or avoid significant environmental effects
- File Notice of Determination within 5 working days of project approval

# When is an EIR Required?

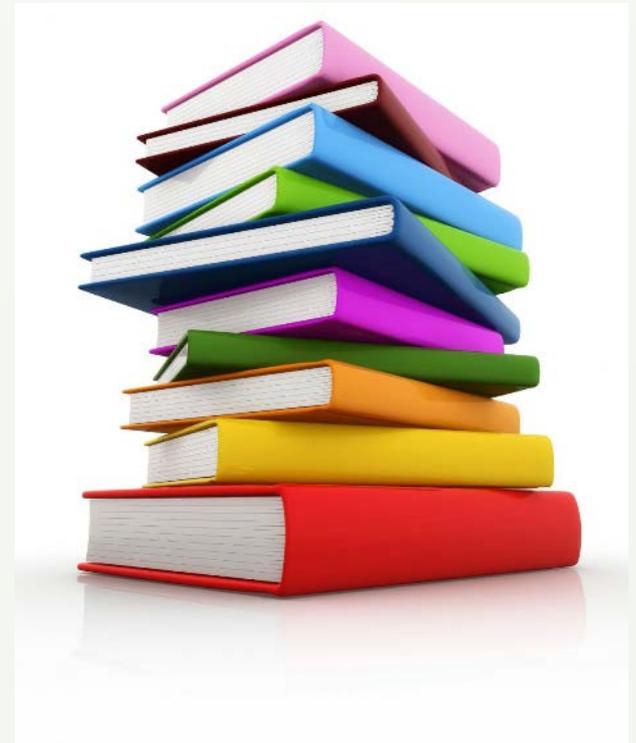
- If a fair argument exists that a project may have a significant effect on the environment
  - Fair argument must be backed by substantial evidence
  - Once a fair argument exists, it generally does not matter how much evidence supports the opposite conclusion of a less-than-significant effect
- Certain projects, mandated by Statute
- When project triggers “Mandatory Findings of Significance”

# Overview of the EIR Process



# Types of EIRs

- Project EIR (15161)
- Subsequent EIR (15162)
- Supplement to an EIR (15163)
- Addendum to an EIR (15164)
- Program EIR (15168)
- Master EIR and Focused EIR (15175)
- Others
  - Staged, Redevelopment, Base Reuse, General Plan



# Notice of Preparation (CEQA Guidelines 15082)

- Contents: Information provided must be sufficient to enable meaningful response:
  - Description of project
  - Location of project (by map or street address)
  - Probable environmental effects of the project
- Agencies must be given 30 days to review and comment
- All NOPs must be sent to the State Clearinghouse
- NOPs must be sent to responsible and trustee agencies by lead agency
- Scoping meeting for projects of statewide, regional or areawide significance

# Contents of a Draft EIR

- Table of contents
- Summary
- Project description
- Environmental setting
- Consideration and discussion of impacts
- Significant effects
- Mitigation measures
- Alternatives
- Cumulative impacts
- Significant irreversible changes
- Growth inducing impacts
- Effects found not to be significant
- Organizations and persons consulted

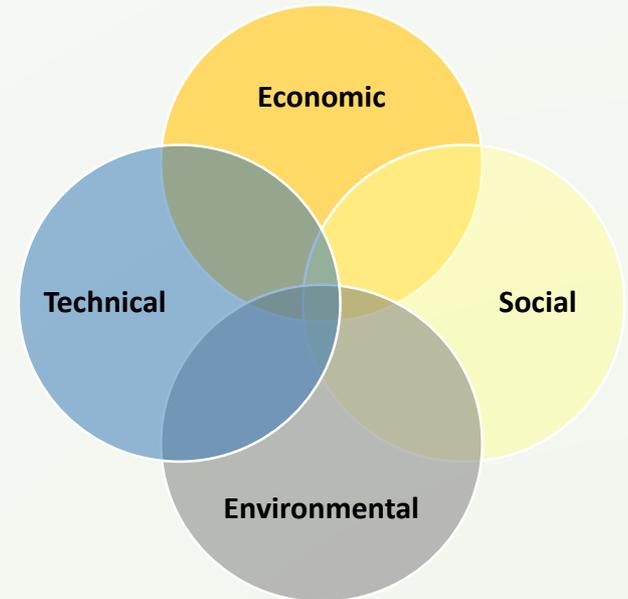
# Impacts/Issues Unique to EIRs

- Significant effects that cannot be avoided
- Irreversible environmental changes
- Growth-inducing impacts
- Cumulative impacts
- Alternatives

# EIR Alternatives

(CEQA Guidelines 15126.6)

- Avoid or substantially lessen significant effects of the proposed project, even if they impede to some degree the attainment of the project objectives
- Feasible alternatives:
  - “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.”



# Final EIRs

(CEQA Guidelines 15089)

- List of commenters
- Text revisions to Draft EIR
  - embedded in responses, in an errata chapter, or track changes in full text discretionary
- Responses to comments on Draft EIR
  - Good-faith, explain rationale behind responses (use substantial evidence, refer to Draft EIR coverage)
  - Respond to significant environmental points
- No separate review/comment period for Final EIR
- Written responses provided to commenting public agencies
  - At least 10 days prior to certification

# Recirculation of a Draft EIR

(CEQA Guidelines 15088.5)

- Recirculation (after Draft EIR is circulated) is required when new information reveals any of the following:
  - Significant new impact
  - Substantial increase in severity of an impact—unless mitigated
  - New feasible alternative or mitigation measure that lessens significant impact but that project proponent declines to adopt
  - Draft EIR so fundamentally and basically inadequate and conclusory that meaningful public review and comment were precluded
- May recirculate entire EIR or a portion of the EIR in order to make it adequate

# Findings and Actions Involving an EIR

(CEQA Guidelines 15090 - 15093)

- Findings for Certification of the Final EIR Prior to Project Approval
  - Final EIR is in compliance with CEQA and reflects lead agency's independent judgement
- Findings for Significant Effects
  - Impact is mitigated or avoided
  - Mitigation of impact is the responsibility of another agency
  - Mitigation/alternatives are infeasible
- Adoption of Mitigation Monitoring or Reporting Program
- Statement of Overriding Considerations
  - Specific economic, legal, social and/or technological benefits outweigh the significant unavoidable impacts
- File Notice of Determination within 5 working days of project approval

CEQA STREAMLINING? MORE PLEASE....

# CEQA Streamlining Tools

# Program EIRs: Process for Subsequent Activities

(CEQA Guidelines 15168)

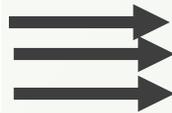
- If subsequent activity is within Program EIR scope:
  - No new CEQA document required, unless significant impact not addressed in Program EIR
  - Environmental Checklist should be used to document determination
  - Feasible mitigation measures must be incorporated into activity
- If subsequent activity is not within Program EIR scope:
  - New Initial Study is required
  - Either EIR, ND, or MND is prepared

# Program EIRs: Projects Within the Scope

- For activities within the scope of the PEIR, CEQA Guidelines (Sections 15162-15164) limit the need to prepare new EIR
- Within the scope:
  - An activity within the same project as analyzed in the PEIR
  - An activity within the same geographic area encompassed by the PEIR

# Post-EIR Documents - Supplemental Review (CEQA Guidelines 15162-15164)

**Subsequent EIR**



**Important revisions that address significant impacts**

**Supplemental EIR**



**Minor additions or changes addressing significant impacts**

**Addendum to EIR**



**Minor technical changes only, with no significant impact**

# When Is a Subsequent EIR or Supplement to an EIR Required?

(CEQA Guidelines 15162 and 15163)

- An EIR has been certified or Neg Dec adopted for a project
- An agency has additional discretionary authority over the project
- The later action is for essentially the same project
- One of the following circumstances occur:
  - Substantial changes in project would result in new or worsened significant environmental impacts
  - Substantial changes in circumstances would result in new worsened significant impacts

# When Is a Subsequent EIR or Supplement to an EIR Required? (Cont.)

- New information of substantial importance shows:
  - The project will have new or worsened significant effects
  - Mitigation measures or alternatives previously infeasible are now feasible, but project proponent declines to adopt them

# Projects Consistent with General Plan, Zoning, and Community Plan - CEQA Guidelines 15183

- First Tier = EIR certified for general plan, community plan, zoning action
- Project is consistent with the adopted plan or zoning
- Further CEQA review is limited to effects that are “peculiar to the project” or its site and not addressed previously
- Consider existing provisions in determining the project’s impact:
  - Pertinent mitigation measures from the certified EIR that apply to the later project
  - Uniformly applicable development policies and standards (UADPS) that reduce its impact

# Important Analysis Considerations

# Environmental Setting as Baseline

- Environmental setting is existing physical environmental conditions at time of NOP or when environmental analysis begins (also applies to Initial Studies)
- Environmental setting is “normally” the baseline for determining significance of impacts
- There is some flexibility in determining what is the baseline:
  - Average conditions
  - Maximum actual activity level

Questions?

Thank You!