

City of Brisbane



# BBCAG CEQA Training

## A Brief Introduction to CEQA

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## Section 1

# BACKGROUND AND POLICY OF CEQA

## CEQA in 25 Words or Less

- 1970 vintage – predates many environmental protection laws
- California public agencies’ must “look before they leap”
- Disclose, consider, and mitigate impacts
- A magnet for land use litigation

## CEQA's Guiding Policies

- 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

CEQA Guidelines Sec. 15002

## What CEQA is, and What it Isn't

- CEQA is a process, not a permit:
  - It doesn't prescribe development standards
  - It doesn't prescribe acceptable levels of risk
  - It doesn't specify regulations that projects must follow (local, state, and federal codes apply)
  - It doesn't prescribe study methods
- It *does* require analysis and disclosure of the project's potential impacts, mitigation when feasible, and discussion of those impacts through a public process
- CEQA places primary responsibility in the hands of the Lead Agency
- CEQA is enforced through litigation – there are no “CEQA police”



## Section 2

# THE ENVIRONMENTAL IMPACT REPORT

## What is the EIR's Purpose?

- Examine the project's potential adverse effects on the environment:
  - Direct effects and indirect effects
- Disclose the significant effects to decision-makers and the public
- Specify feasible mitigation measures to reduce the significant effects
- Analyze project alternatives

## How Does an EIR Influence Decision-making?

- The Lead and Responsible Agencies must consider the information in the EIR before taking final action on the project
- Feasible mitigation must be incorporated into the approval, reducing the project's environmental impacts:
  - Mitigation becomes conditions of approval or other requirements enforced by the agency



## Disclosing the Reasons Behind the Decision

- “Findings” are adopted that describe the disposition of each significant impact:
  - Mitigated, the responsibility of another agency to mitigate, or infeasible to mitigate
  - Why the alternatives are infeasible
- “Statement of Overriding Considerations” if any impacts are unavoidable:
  - Specific benefits that outweigh the impacts

## One Project, One Document

- The Lead Agency is responsible for preparing the EIR:
  - Makes the key decisions: content, methods, impact significance, alternatives, etc.
  - It also certifies the EIR's adequacy
- The Responsible Agencies are obligated to use that EIR for their decisions:
  - Limited exceptions to this rule
- A responsible agency may still deny the project if it so chooses:
  - It will also apply conditions of approval



## Section 3

# PROGRAM EIRS IN GENERAL

## Who Prepares the EIR?

- The Lead Agency decides to either:
  - Prepare it in-house,
  - Hire a consultant to prepare it, or
  - Allow the developer to submit a preliminary draft and help on the final EIR
- The Lead Agency 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.

## Program EIRs

- Program EIRs typically analyze activities that are:
  - Linked geographically or
  - Parts of a chain of planned events
- A program EIR is the foundation for additional CEQA analysis of later actions on the project
- The level of detail is commensurate with the project's level of detail
- Similarly, mitigation may lack details pending further expected refinement



CALFED  
BAY-DELTA  
PROGRAM

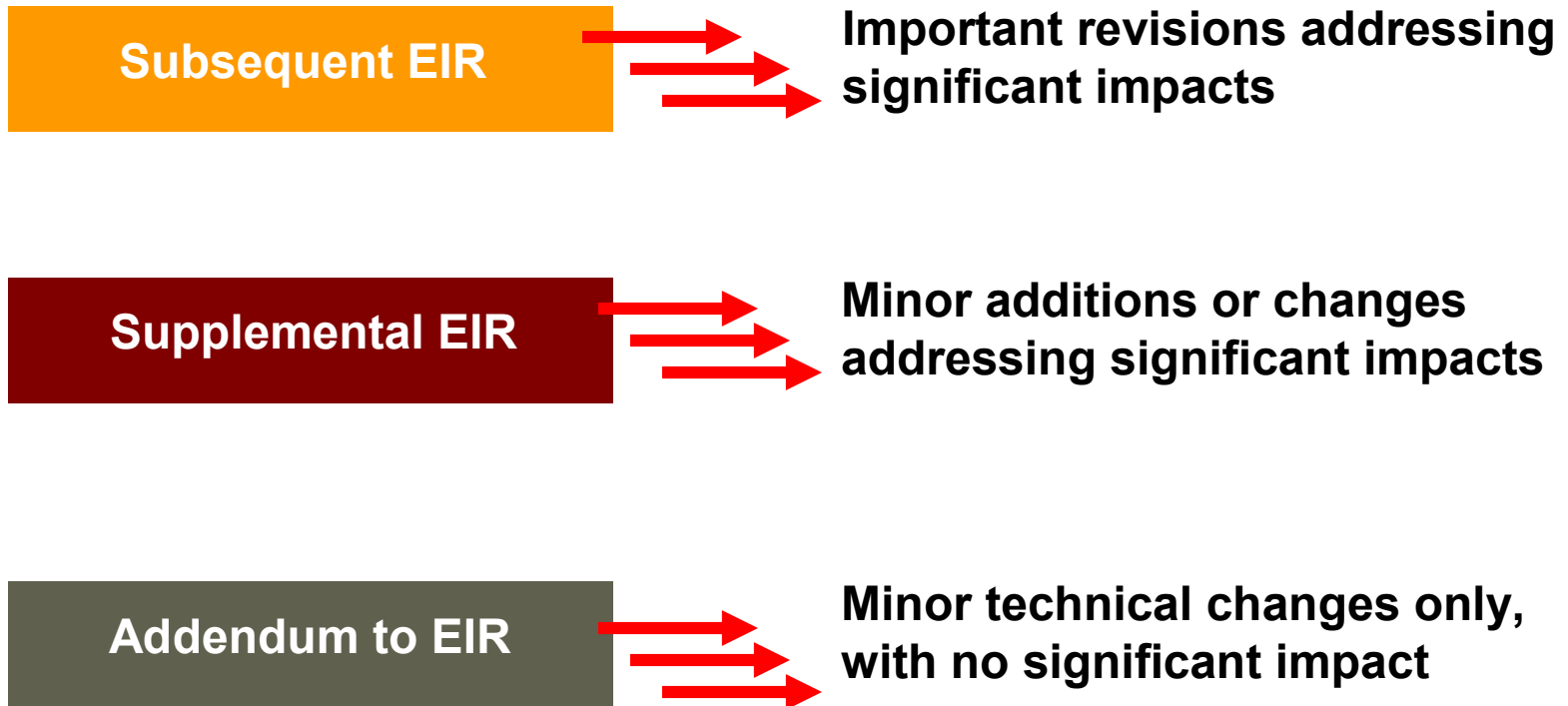
Final Programmatic Environmental  
Impact Statement/Environmental  
Impact Report

CEQA Guidelines sec. 15168

## PEIR Scope and Level of Detail

- Program EIR must examine the project and related actions
- Level of detail is commensurate with project's level of detail:
  - Reasonable analysis cannot be deferred
- Mitigation measures cannot be deferred to subsequent CEQA analyses:
  - But, measures may be broad if they include performance standards for specific application and measures of effectiveness
- Each later discretionary action to implement the project will be examined for its potential environmental impact
- That examination may result in a subsequent EIR, supplement to the EIR, or addendum

# Post-EIR Documents Sections 15162-15164



CEQA Guidelines secs. 15162-15164

# Program EIRs: Process for Subsequent Activities

- A subsequent activity within the PEIR's scope:
  - Doesn't require a new EIR, unless Sections 15162-15164 apply
  - PEIR mitigation measures must be incorporated into the activity
- A subsequent activity not within PEIR's scope:
  - New Initial Study is required
  - Either EIR, ND, or MND is prepared

CEQA Guidelines sec. 15168



## Program EIRs: Subsequent Documents

- Within the PEIR's scope:
  - An activity within the same project as analyzed in the PEIR
  - An activity within the same geographic area encompassed by the PEIR
- Analysis of later activities is limited to what's new:
  - The original PEIR is not open for re-analysis
  - The need for subsequent analysis is limited to specific situations
- A PEIR does not become outdated
  - However, as time passes and things change, the potential increases that later activities will need a subsequent EIR

## When Is a Subsequent EIR Required?

- One of the following circumstances occurs:
  - Substantial changes in project would result in new or worsened significant environmental impacts,
  - Substantial changes in circumstances would result in new worsened significant impacts, or
  - 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
- The subsequent or supplemental EIR will focus on the new or worsened effects – it need not re-examine other parts of the PEIR

CEQA Guidelines secs. 15162 and 15163

## PEIR Streamlines Later Approvals

- Courts have held that the interest of finality limits the preparation of a subsequent or supplemental EIR unless the above have occurred:
  - Decision whether to prepare a subsequent/supplemental EIR is subject to “substantial evidence” standard – not “fair argument” standard
- Any litigation over the subsequent document focuses on the Section 15162 process, not the original PEIR

CEQA Guidelines secs. 15162 and 15163



## Section 4

# TYPICAL EIR PREPARATION PROCESS

## The Key Steps -- NOP

- Notice of Preparation:
  - Advance notice of EIR
  - “Scoping” of issues of interest
  - Minimum 30-day review period
  - Comments considered in preparing the Draft EIR
- Brisbane has completed this step

## The Key Steps -- DEIR

- 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 of 45-days (City will provide 120 days)

## The Key Steps -- FEIR

- Final EIR Contents:
  - Comments
  - Written responses to comments
  - List of commenters
  - DEIR and any revisions to the DEIR
- Often a two-part document
  - FEIR with comments, responses, list of commenters, DEIR revisions
  - DEIR
- The FEIR must be “certified” before a project may be approved:
  - FEIR meets CEQA requirements; it reflects “independent judgment;” and is familiar to the decision-makers

## Typical DEIR Contents

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



## Public Involvement

- Comment during the NOP review period:
  - This stage is already completed
- Comment on the DEIR:
  - Submit written comments by mail or by e-mail
  - The Baylands DEIR review period will be 120 days
- Participate in any meetings on the DEIR:
  - Submit written or verbal comments
- Participate in the City's hearings on the project:
  - Submit written or verbal comments

The City must consider all written and verbal comments on the EIR before it takes action on the project



## Section 5

# EIR CONSIDERATIONS

## Environmental Setting/Baseline

- The EIR must describe the physical 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)

CEQA Guidelines sec. 15125

## Environmental Setting/Baseline

- Discuss any inconsistencies between the proposed project and applicable land use plans (general and regional):
  - Where the proposed project is compared with an adopted plan, the analysis shall examine existing physical conditions as well as potential future conditions
- Good practice: discuss the regulatory setting as well as the physical setting:
  - Provides context for impact analysis

CEQA Guidelines sec. 15125

## Environmental Setting/Baseline

- 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
  - The baseline cannot be “hypothetical future” conditions
  - It may be reasonable projected future conditions
    - Reliable traffic projections for the year the project opens, perhaps
- Example:
  - Existing contamination is a baseline condition in the Baylands
- Impact = Difference between baseline and project

CEQA Guidelines sec. 15125

## A Range of Alternatives

- The EIR must examine a range of reasonable, potentially feasible alternatives and the “no-project” alternative
- The alternatives must:
  - Meet most or all project objectives
  - Substantially reduce one or more significant impacts
- The Lead Agency chooses whether to examine alternatives at the same level of detail as the project

## Alternatives (Cont.)

- The EIR need not examine every possible alternative
  - The “rule of reason” governs
- The EIR must identify any alternatives that were considered and rejected from further analysis
- The EIR must identify the “environmentally superior” alternative:
  - The Lead Agency is not obligated to select that alternative over the project
- The City may approve an alternative rather than the project, if it chooses to do so

# Significance Determinations

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



## Study Methods

- CEQA does not specify or require any particular study method
- Analyses from air quality to utilities, and everything in between:
  - Methods based on professional practice
  - Methods recommended by responsible agencies
  - Methods required/indicated by other laws
- Lead agency selects study method:
  - EIR will disclose any competing studies

## Cumulative Impacts

- Significant impacts that 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

## Mitigation Measures

- Mitigation - An action that will avoid, minimize, reduce or eliminate, rectify, or compensate for a significant effect
- Mitigation must be feasible and fully enforceable
- Measures must be sufficiently detailed to be effectively implemented
- An EIR is not required to mitigate every impact below the level of significance
- The Lead Agency cannot defer its obligation to adopt feasible mitigation measures

## Mitigation Measures

- Where permitting is not yet completed or project design is not sufficiently advanced, detailed mitigation measures cannot be prepared
- In those situations, the 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

## Technical Data

- An EIR is intended to be understandable to the average resident
- Technical data may be summarized and studies included as appendices:
  - Typical technical appendices include traffic, noise, and air quality analyses, and hazardous materials assessments
- A Lead Agency is not expected to undertake original research in preparing an EIR:
  - It is expected to present available information, including conflicting expert opinions, if any

## 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 Issues of Concern



## Brownfield Reuse

- Regulated by laws other than CEQA
- EIR discloses potential impacts from proposed development project
- EIR may specify mitigation measures in addition to regulatory requirements:
  - If the mitigation is within the agency's power to impose
  - City cannot *require* other agencies to take specific actions through CEQA



## Brownfield Reuse – Thresholds

- CEQA does not set thresholds of significance
- The Lead Agency generally sets thresholds based on:
  - Regulatory standards
  - Acceptable level of risk (as may be defined by standards)
- Agency may properly rely on technical experts to recommend thresholds
- Agency may rely on regulatory agencies too

## Brownfield Reuse – Typical Analytical Methods

- CEQA prescribes no specific analytical method
- Desired outcomes of analysis:
  - Characterization of existing contamination
  - Change resulting from the project:
    - Human health risk characterization
    - Environmental risk characterization
  - Recommended mitigation (acceptable risk)
- Screening for health and environ risk:
  - CalEPA and SF Bay RWQCB

## Brownfield Reuse – Responsible Agency Roles

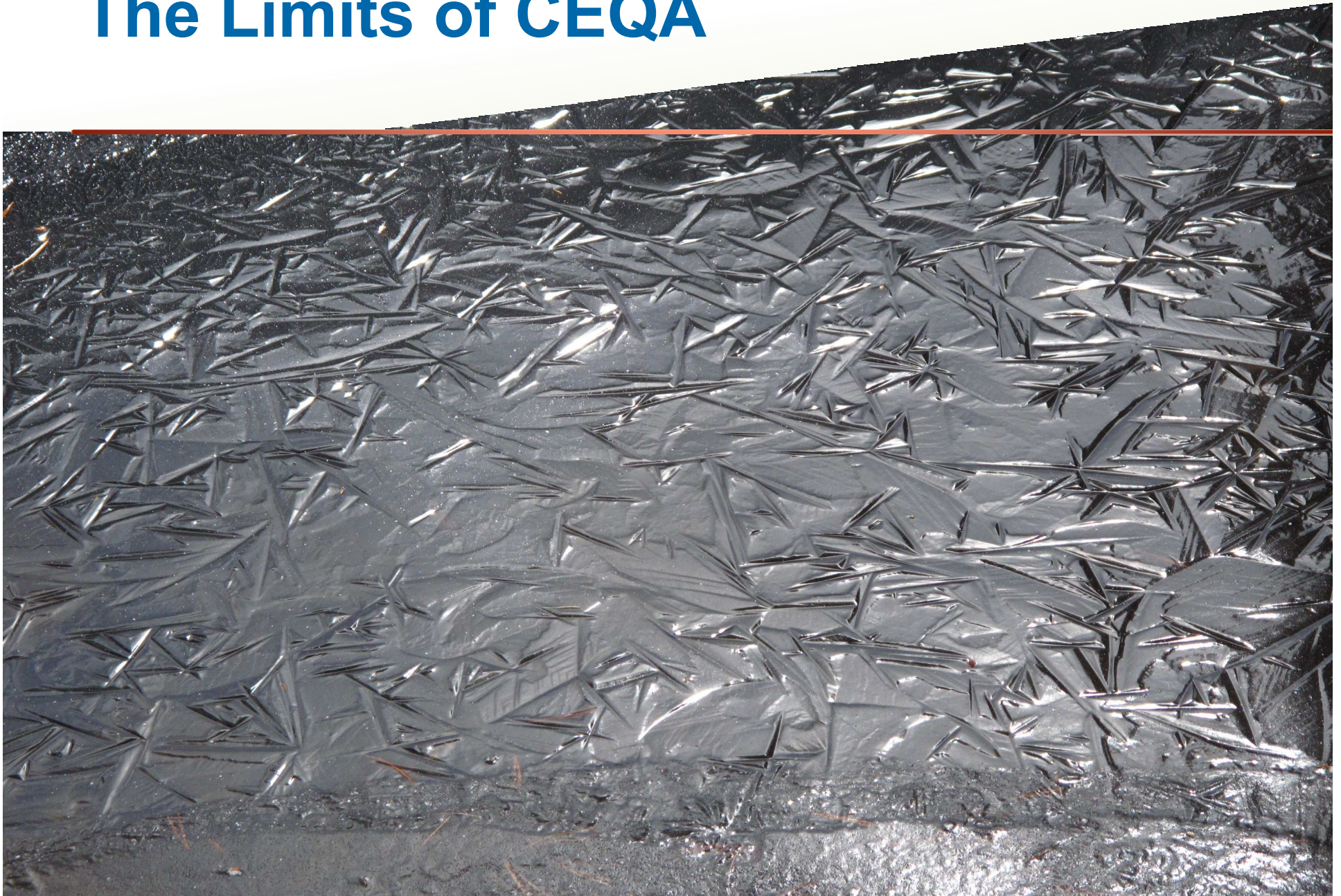
- Considering permits/approvals for clean-up appropriate to the proposed project:
  - SF Bay Regional Water Quality Control Board:
    - Remedial Action Plans, Site Clean-up Order
  - Department of Toxic Substances Control:
    - Remedial Action Plans
  - San Mateo County:
    - Final closure plan for landfill

## “Rule of Reason”

- Level of detail in impact analysis
- Range of alternatives considered
- Deferring mitigation details:
  - Insufficient information to develop detailed mitigation measure?
    - Mitigation still required
    - Mitigation must include performance standards or menu of approaches and measures of effectiveness



# The Limits of CEQA





## CEQA Doesn't Approve or Deny the Project

- CEQA does not prescribe the outcome of the deliberations over a project:
  - An EIR does not “approve” a project:
    - The EIR provides enough information to enable informed decision-making
    - The Agency may choose to deny
  - An EIR does not “deny” a project:
    - An agency may approve a project with significant, unavoidable impacts
    - If so, it must make a fact-based “statement of overriding considerations”
    - The statement describes the economic, social, legal, technological or other benefits of the project that outweigh its significant, unavoidable impacts

## CEQA Provides no New Powers

- CEQA requires mitigation, but doesn't give an agency new powers
  - Agencies adopt the mitigation that is within their power to implement or require as a condition of project approval:
    - Limited by Constitution
    - Limited by feasibility
- Feasible: “capable of being successfully accomplished in a reasonable period of time...” – economic, legal, practical issues
  - CEQA *does* authorize the agency to impose an implementation fee on the applicant
  - Financing long-term mitigation requires other sources of funding
- Projects are subject to all state and federal codes

## CEQA Proceeds in Advance of Project Design

- Timing of CEQA analysis:
  - Early enough to influence project design
  - Not so late that the agency has already committed to the project
- CEQA doesn't require a project to be fully designed before analysis begins



## The Program EIR's Not the End of the Story

- Subsequent discretionary actions will require CEQA analysis (discussed earlier)
- For actions within the scope of the PEIR, this will be limited to new or substantially more severe impacts
- As RAPs are developed, additional CEQA review may be needed:
  - Mitigation refinements may also require additional CEQA review
- A PEIR does not become outdated
  - But, each new discretionary action to implement the project must be examined to determine whether a subsequent EIR is needed

**Thank you for attending**

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