

City of Brisbane



# Open Space and Ecology Committee

## 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



## Section 2

# THE ENVIRONMENTAL IMPACT REPORT

## One Project, One Document

- The Lead Agency is responsible for preparing the EIR:
  - Makes the key decisions: content, methods, impact significance, alternatives, etc.
  - City Council 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

## 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
- The City Council must explain itself:
  - “Findings” are adopted that describe the disposition of each significant impact and rejected alternatives
  - “Statement of Overriding Considerations” is adopted if any impacts are unavoidable





## Section 3

# PROGRAM EIRS IN GENERAL

## 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

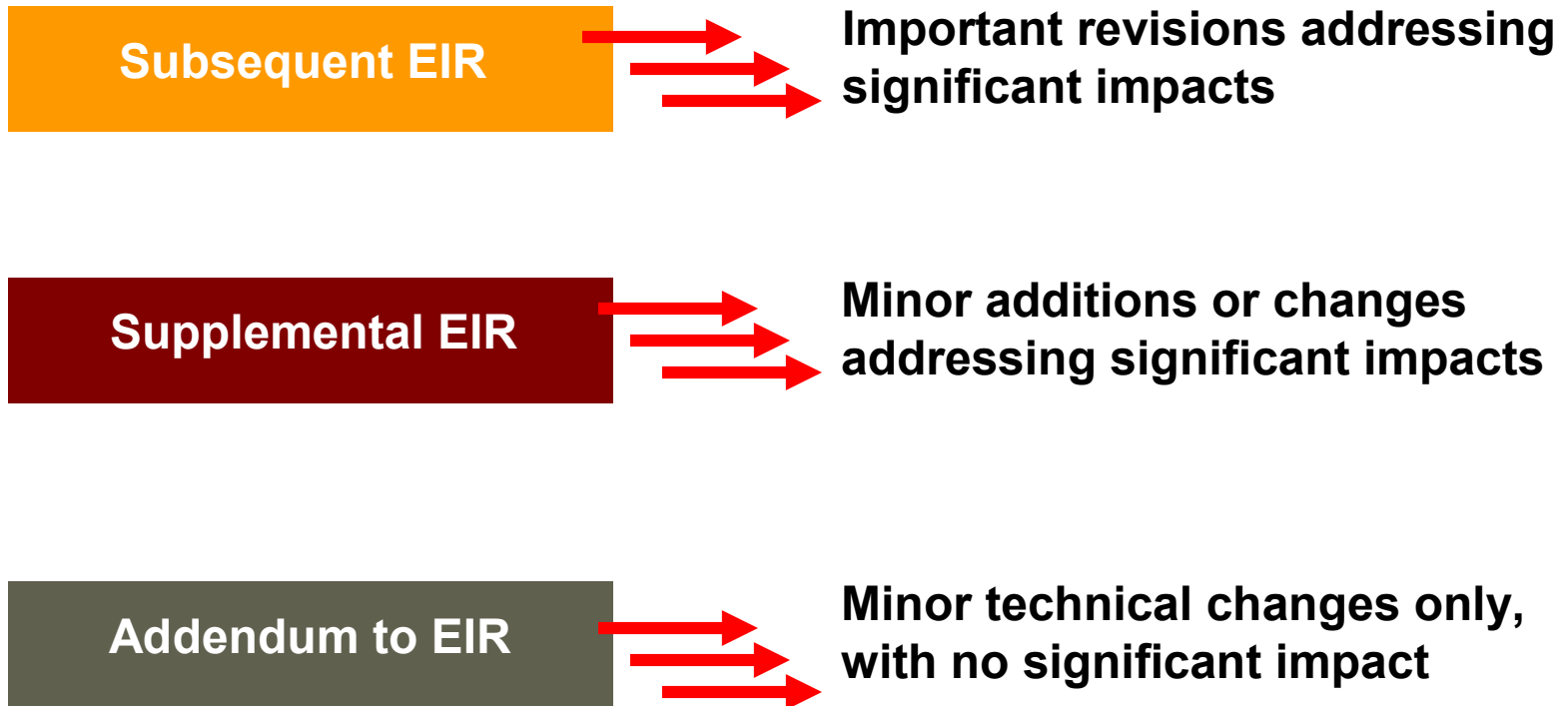
- Program EIR must examine the project and related actions
- Level of detail is commensurate with project's level of detail:
  - Reasonable analysis cannot be deferred
- Mitigation measures cannot be deferred to subsequent CEQA analyses:
  - But, measures may be broad if they include performance standards 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

## CEQA and Later Activities

- 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

# Post-EIR Documents Sections 15162-15164



CEQA Guidelines secs. 15162-15164

## 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

## 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
- Baylands DEIR review period = 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 Content

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



## 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)
- 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

## 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



## A Range of Alternatives

- The EIR must examine the “no-project” alternative and a range of other alternatives
- The alternatives must:
  - Be potentially feasible
  - Meet most or all project objectives
  - Substantially reduce one or more significant impacts
- The EIR will examine three alternatives (incl. no-project)
- Alternatives may be examined at a lower level of detail than the project:
  - The Community Alternative will be examined 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

## 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

## 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

# Issues of Concern



## Open Space

- CEQA has no standard open space requirements
- Open space often helps reduce project impacts
- It can:
  - Provide recreational amenities
  - Protect biological resources
  - Provide setbacks from noise and TAC sources
  - Provide LID-style drainage control
  - Limit contact with hazardous materials



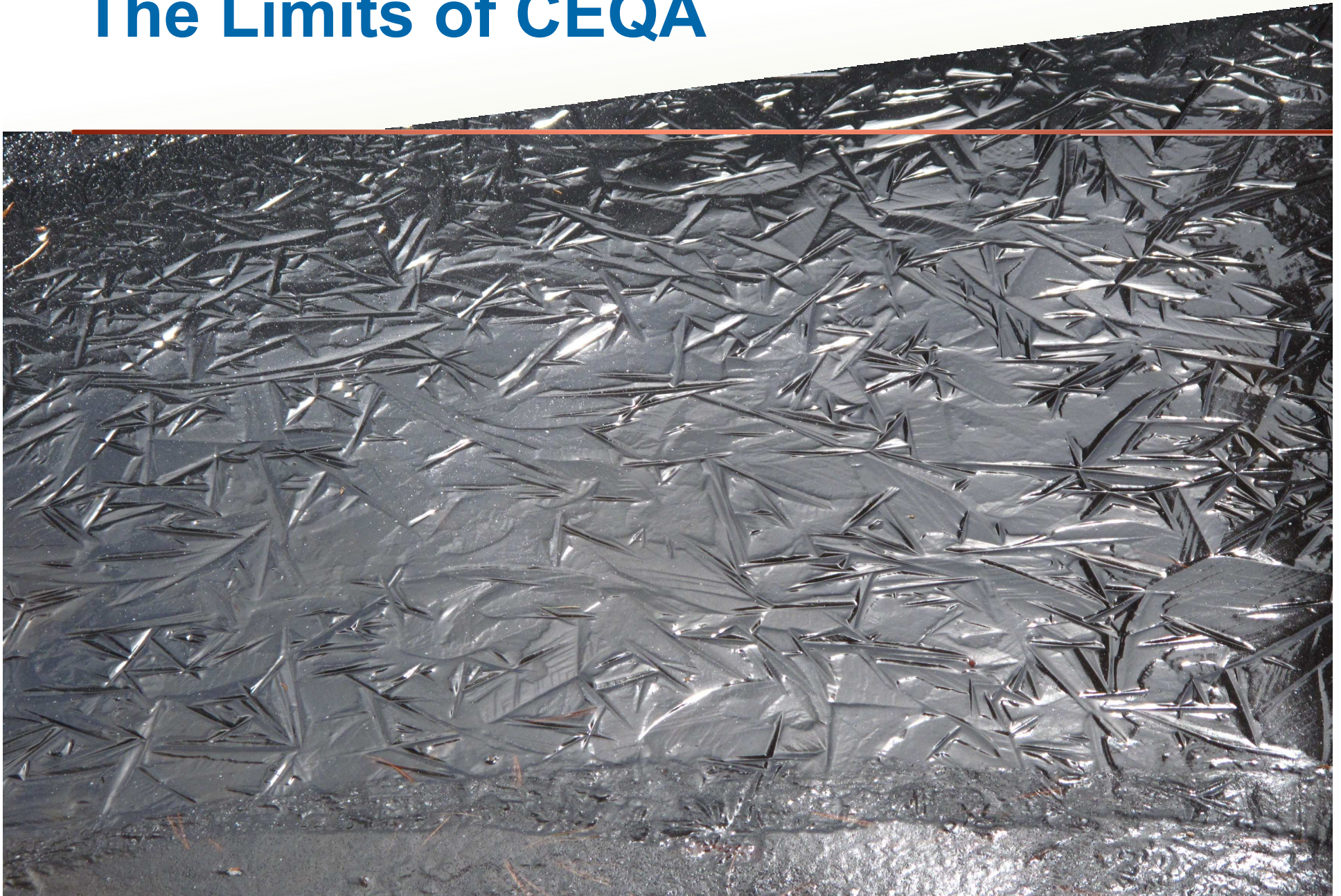
# Sustainability

- CEQA predates the concept of “sustainability”
- Yet, it encourages consideration of long-term viability vs. short-term gain
- EIR can credit the project’s sustainability features that reduce impacts:
  - Transit connections to reduce traffic generation
  - Mixed use and accessibility to reduce internal car trips
  - Solar facility to reduce net electricity use and GHG emissions
  - Open space to reduce biological impacts and/or provide LID stormwater treatment for water quality
  - Etc.

## Sustainability in Mitigation

- Sustainability principles can help guide mitigation measures for:
  - Aesthetics
  - Biological resource impacts
  - Solid waste disposal
  - Energy demand/supply
  - Stormwater drainage/surface water quality
  - Traffic/transportation
  - Water demand/supply
  - Etc.

# 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

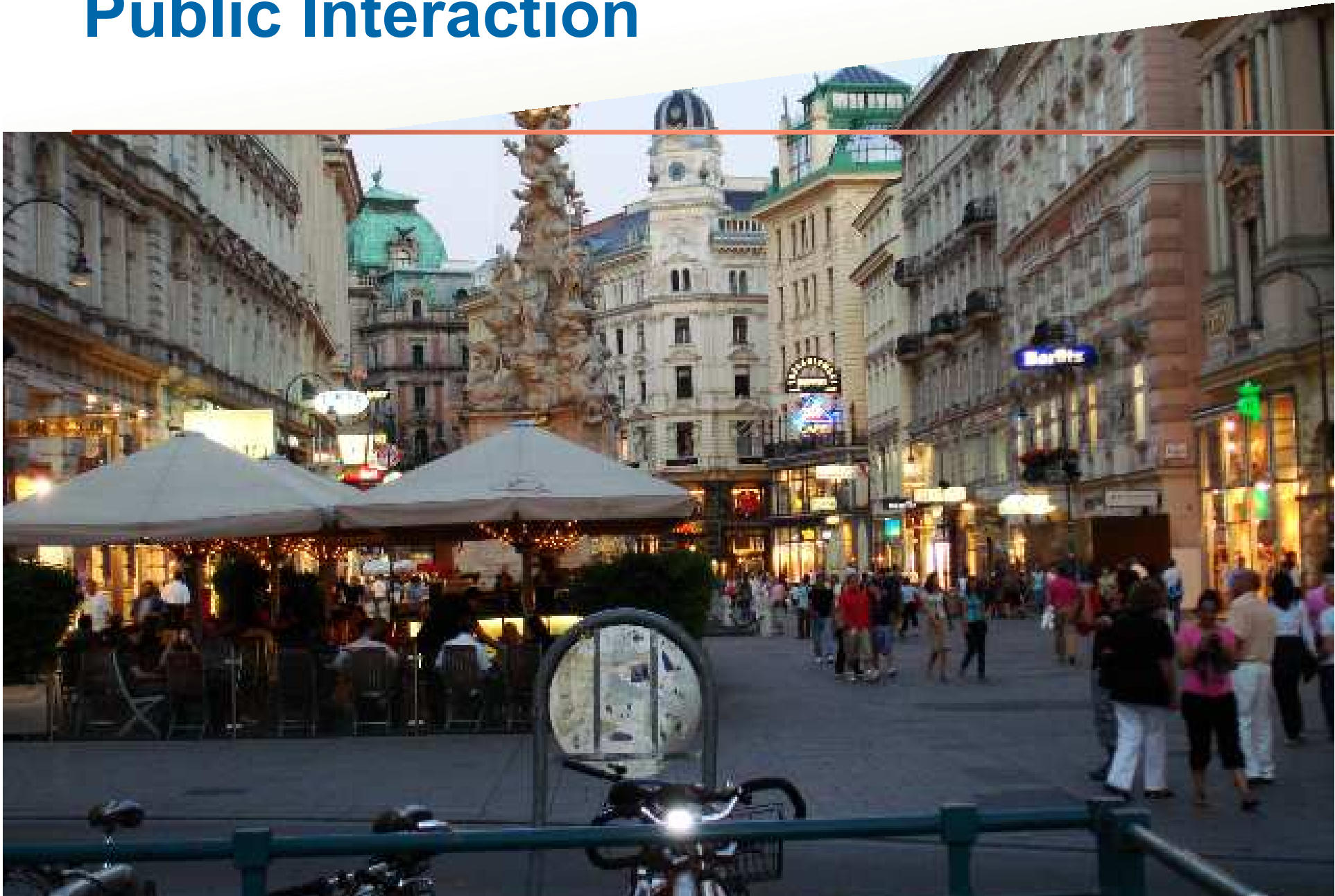
## CEQA Provides no New Powers

- 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:
    - Constitutional “nexus” and fair share limitations

## 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

# Public Interaction



## OS and Ecology Committee's CEQA Role

- The Committee will offer project-related recommendations in its areas of its responsibility
  - Resource analysis
  - Impacts
  - Feasible mitigation
- The Committee meeting is not a venue for receiving comments on the Draft EIR
- The Committee may make comments on the Draft EIR – formal Committee comments are not required by CEQA



**Thank you for attending**

**Open Space and Ecology  
Committee**

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