

# El Dorado County Planning Commission

## Workshop on the California Environmental Quality Act



JUNE 27, 2024

PLANNING AND BUILDING DEPARTMENT - PLANNING DIVISION

# Background of the California Environmental Quality Act (CEQA)



# What is CEQA?

- CEQA was the first state law modeled after the National Environmental Policy Act (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

# Why is CEQA Important?

- A lead agency (such as the City) is **required by law** to consider the potential environmental effects of actions it undertakes or otherwise enables
- CEQA analysis **informs decisionmakers and the public** about the potential environmental effects of proposed activities and helps them consider the cumulative effects of separate, but related actions
- CEQA **helps to minimize environmental impacts** by requiring that decision-makers adopt mitigation measures to reduce significant adverse environmental impacts



# CEQA's Top Objectives

## (State 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

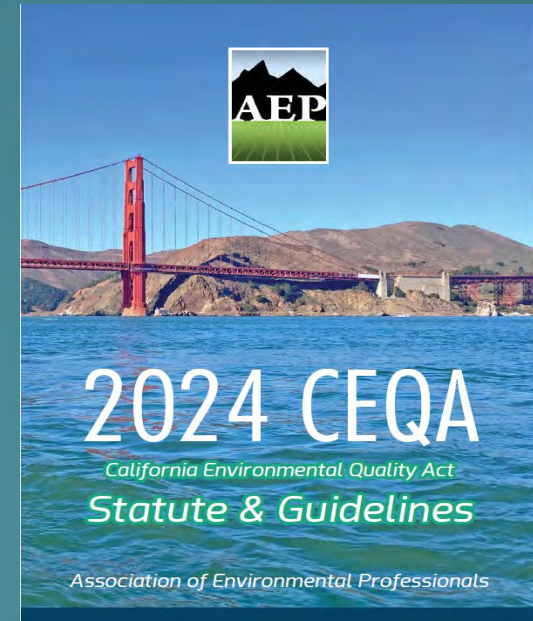
# CEQA Directives

(State 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 1500-15387 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

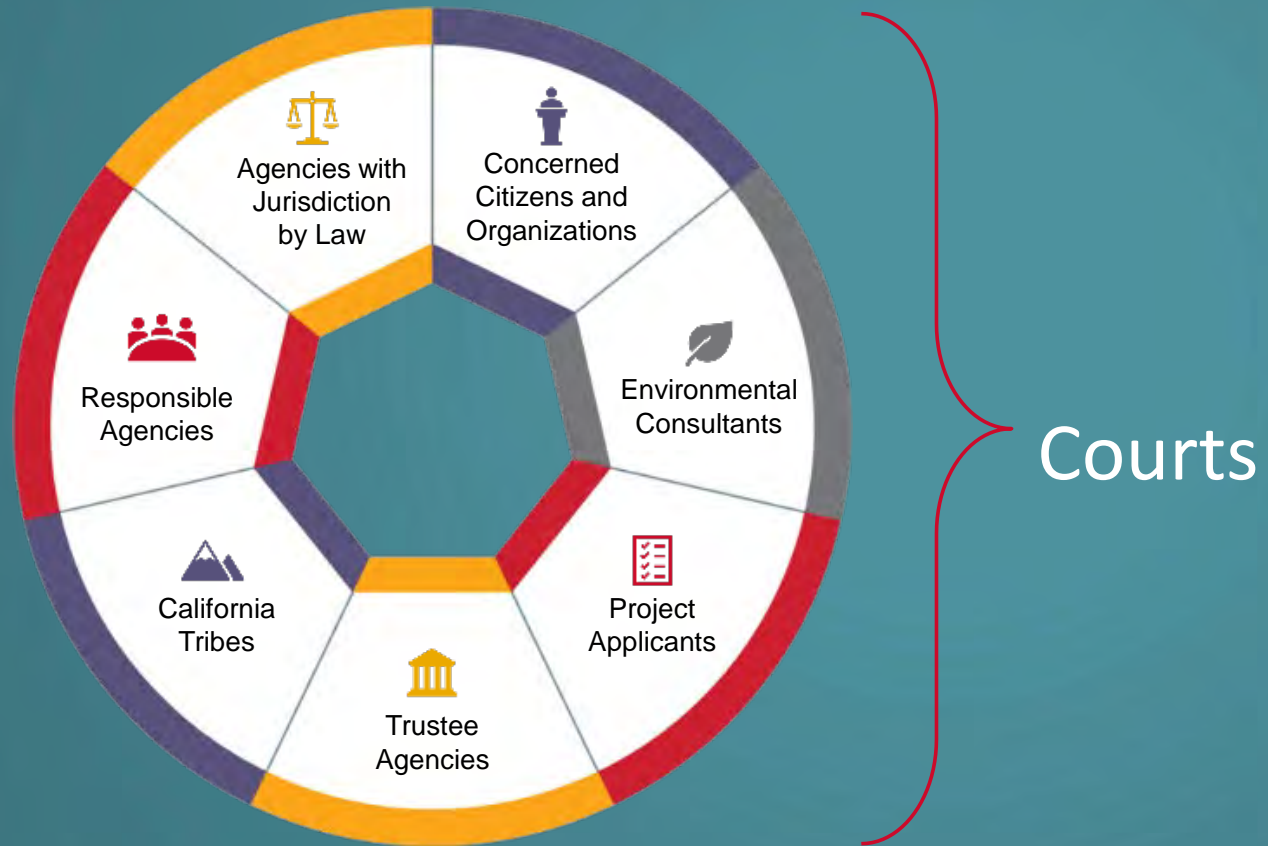


# Key CEQA Terms

- 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



# Participants in the CEQA Process



# Lead Agency

## (State 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

## (State 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

## (State 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



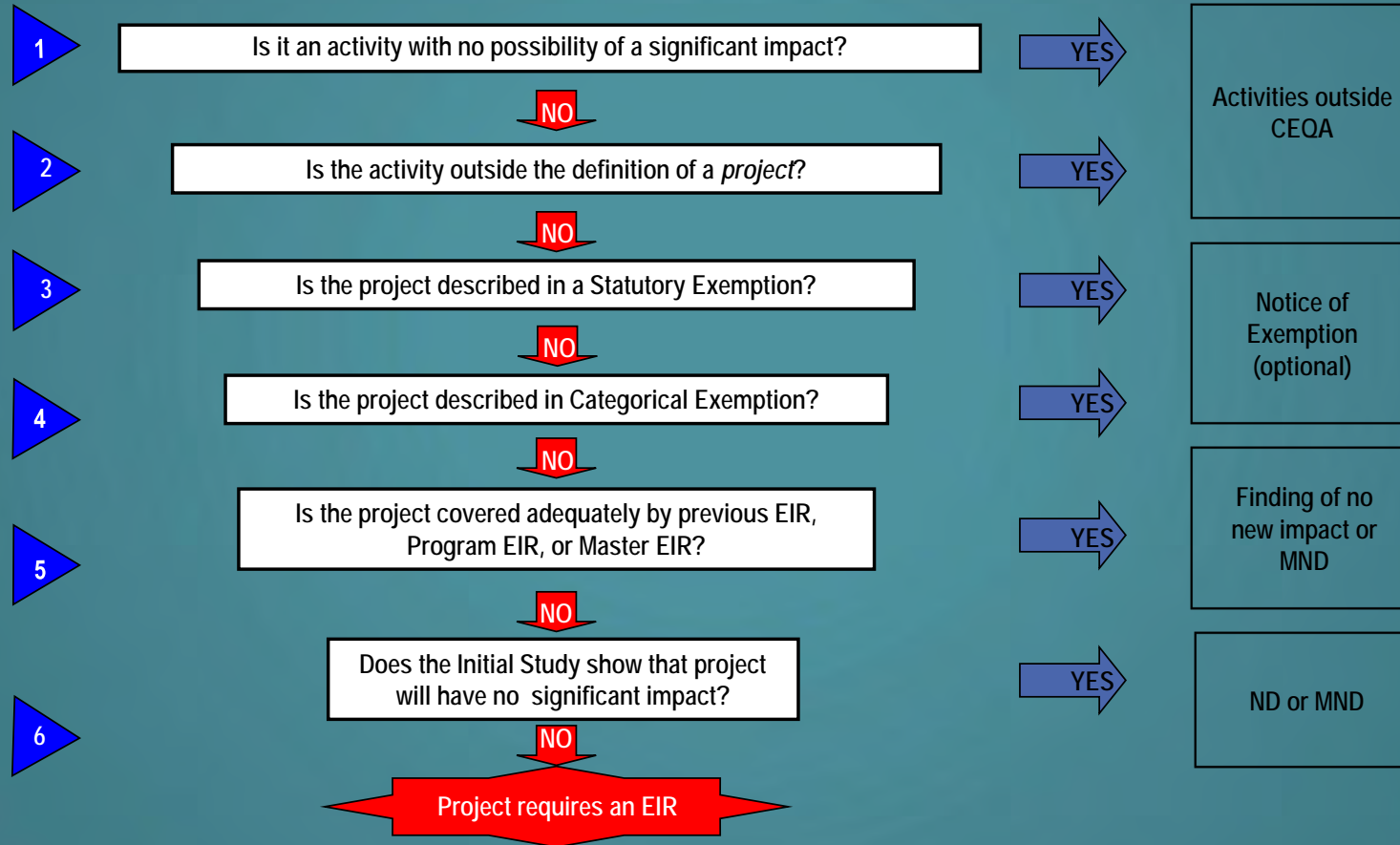
# Preliminary Review



# 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”

(State 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 Project Under CEQA

- 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?

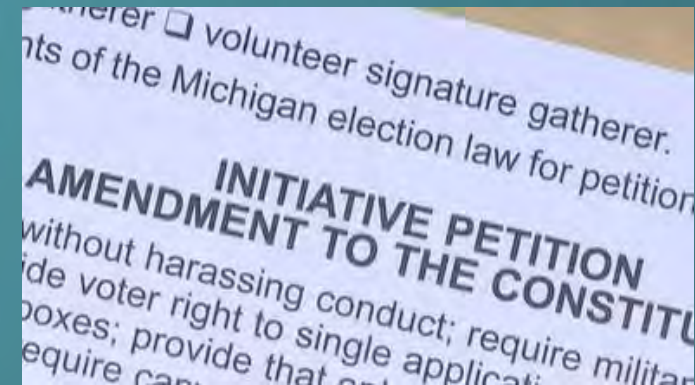
- When the agency has sufficient information about the project to analyze its potential impacts
- When the action would foreclose the consideration of mitigation and alternatives
- When the agency is committing to project approval:
  - i.e., taking an action that will lead to project implementation



*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 (some require public hearings)
  - 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
- **Other Exemptions Outside of CEQA** – listed in OPR Technical Advisory

# Consideration of Environmental Effects Under CEQA



# Definition of Significant Effects

(State 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

(State 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 mitigation measures
- 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
- 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

(State 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

# What is Substantial Evidence?

(State 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

(State 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

# 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

- 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 (State CEQA Guidelines Section 15070[a])
- When tiering from a previously certified EIR (under certain circumstances) (State CEQA Guidelines Section 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

# Mitigation Measure Pointers

## Five Questions for 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

## (State CEQA Guidelines 15074)

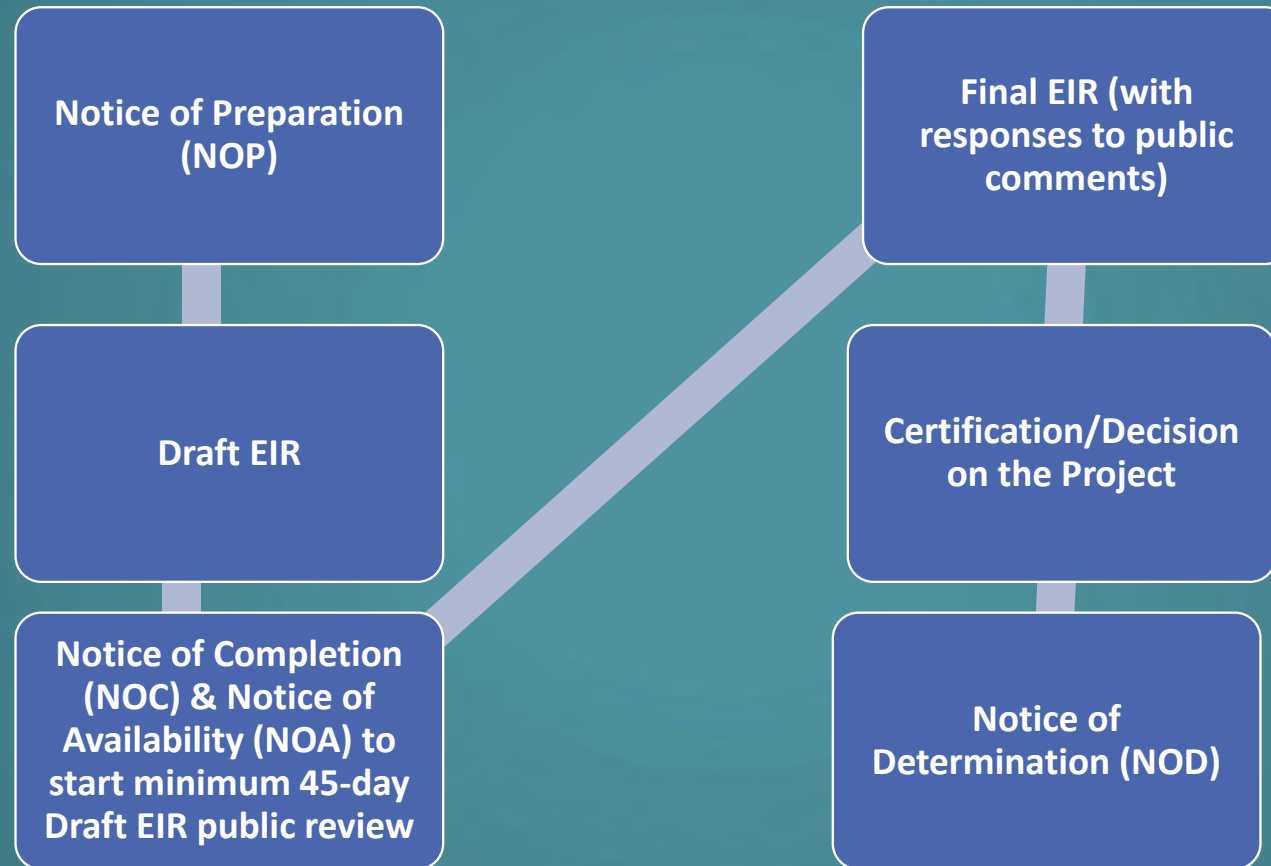
- The decision-makers must consider the proposed ND or MND together with any comments received during the public review process prior to taking action on a project
- The decision-making body shall adopt the proposed ND or MND if it finds on the basis of the whole record that there is no substantial evidence 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



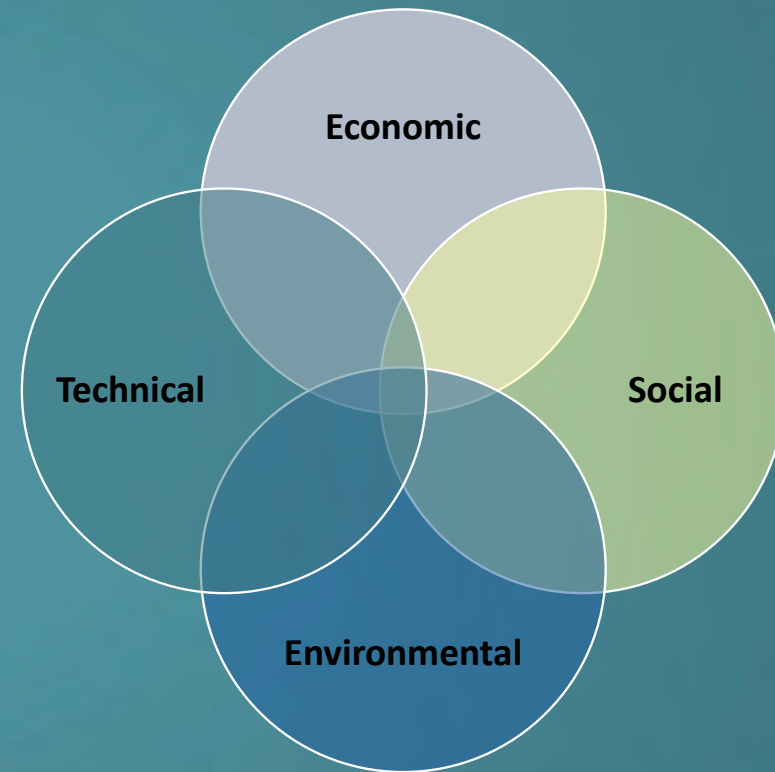
# Impacts/Issues Unique to EIRs

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

# EIR Alternatives

(State 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

(State 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

## (State CEQA Guidelines 15088.5)

- Recirculation 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

## (State 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
- Filing of the Notice of Determination starts the 30-day statute of limitations for challenge

# 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
- A hypothetical, illusory future level of activity IS NOT the baseline:
  - Maximum permitted level if never reached
- Future physical conditions can be a suitable baseline
  - Must be supported by substantial evidence (*Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, 2012*)

# Notable Court Decisions Regarding Baseline

- Rejected use of pollutant emission levels allowed under prior permits, but not reflective of actual existing emissions, as a baseline.
- Upheld use of a traffic baseline that assumed full occupancy of a department store that was vacant on the NOP publication date based on historical occupancy information.
- Upheld use of 5-year average of annual mining volumes instead of the mining volumes from the year the NOP was published as the baseline for determining environmental impacts.
- Lead agencies must evaluate impacts against actual conditions existing at the time of CEQA review and are not required to “turn back the clock” and evaluate impacts compared to a baseline condition that predates the illegal activity.

# Effects of the Environment on a Project

- In 2015, this issue was debated by the Supreme Court with respect to CEQA Guidelines developed by the Bay Area Air Quality Management District

*Under what circumstances, if any, does CEQA require an analysis of how existing environmental conditions will impact future residents or users of a proposed project?*

# Effects of the Environment on a Project (cont.)

## And the Answer is...

- In light of CEQA's text, statutory structure, and purpose, we conclude that agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents. But ...
- ...when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users.

# Effects of the Environment on a Project (cont.)

## Exemptions

- Schools and hazardous materials (Public Resources Code 21151.8)
- Some affordable and infill housing, including hazardous substances, wildland fire risk, landslides, floods (ag housing, low-income housing, infill housing)
- Transit priority areas (Public Resources Code 21151.1(a))
- Airport area hazards (Public Resources Code 21096)

# Effects of the Environment on a Project (cont.)

## Outcome of Supreme Court Decision...

- The practical impact of the decision require that CEQA documents evaluate whether project might or could “risk exacerbating” existing hazardous conditions and, ...
- ... if so, it must evaluate the potential impacts of existing environmental hazards on future occupants or users

# Transportation Impacts

## (State CEQA Guidelines 15064.3)

- Vehicle miles traveled (VMT) is the primary metric per SB 743
- The revision sets forth general principles related to transportation analysis
  - Land use projects: Presumption of less than significant if development near transit or if project reduces VMT
  - Transportation projects: Presumption of less than significant for VMT reducing projects and projects with no impact on VMT
  - Lead agencies may analyze project VMT qualitatively if existing models or methods are not available to estimate VMT for the project being considered
  - Lead agency discretion in choosing appropriate methodology
- County adopted local VMT thresholds of significance on October 6, 2020

# Greenhouse Gases

(State CEQA Guidelines Section 15064.4)

- When determining significance of greenhouse gas (GHG) emissions, the focus is on the project’s “reasonably foreseeable incremental contribution” in a time frame appropriate for the project
- Analysis must reflect evolving scientific knowledge and state regulatory schemes
- Lead agency may consider consistency with the “State’s long-term climate goals and strategies” when supported by substantial evidence of how those address the project’s contribution to climate change
- California Air Resources Board 2022 Scoping Plan Update identifies GHG reduction targets and measures for the State as well as decarbonization measures



# Wildfire and Evacuation

- Add to the State CEQA Guidelines in 2018
- Evaluation of whether a project exacerbate wildfire risk through the introduction of people, infrastructure, and other ignition sources
- Consideration of whether a project would interfere or obstruct emergency response and evacuation efforts
- No set State or local quantified thresholds or standards for determining whether a project would create a significant wildfire or evacuation impacts
  - Determinations are made through modeling, consultation with fire and emergency officials, and evaluation by experts

# Questions?

