CEQA Advanced
Shannon George & Mark Teague
League of California Cities
Planning Commissioner’s Academy
March 7th, 2024
Presentation Overview

How CEQA Decisions are Made
Mitigation Measures
Findings
Statements of Overriding Consideration
Testimony at Hearing(s)
Questions?
How CEQA Decisions are Made

- Type of project
- Results of technical studies
- Knowledge of the community
- Previous decisions by decision makers
- Results of litigation
- Public controversy
## What Type of CEQA Analysis?

### Substantial Evidence

**Exemptions**
- Statutory
- Categorical

**Environmental Impact Reports**
- Subsequent
- Supplement
- Master
- Program
- Project

**Addendum to EIR**

### Fair Argument

- Negative Declarations
  - Negative Declaration (No Mitigation Measures)
  - Mitigated Negative Declaration
- Addendum to Negative Declaration
## Technical Studies

<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
</tr>
</thead>
<tbody>
<tr>
<td>Aesthetics</td>
<td>Biological Resources</td>
<td>Air Quality</td>
</tr>
<tr>
<td>Agriculture &amp; Forestry Resources</td>
<td>Cultural Resources</td>
<td>Energy</td>
</tr>
<tr>
<td>Geology/Soils</td>
<td>Population/Housing</td>
<td>Greenhouse Gas Emissions</td>
</tr>
<tr>
<td>Hazards &amp; Hazardous Materials</td>
<td>Public Services</td>
<td>Noise</td>
</tr>
<tr>
<td>Hydrology/Water Quality</td>
<td>Recreation</td>
<td>Cumulative Analysis</td>
</tr>
<tr>
<td>Land Use/Planning</td>
<td>Transportation</td>
<td>Alternatives</td>
</tr>
<tr>
<td>Mineral Resources</td>
<td>Tribal Cultural Resources</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Utilities / Service Systems</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Wildfire</td>
<td></td>
</tr>
</tbody>
</table>
Mitigation Measures

- Project design features
- Measurable changes to a project
- What does feasible mitigation mean?
- What level do we mitigate to?
Mitigation Measures

Requirement to mitigate does not confer to agencies any new legal authority:

◦ “...a public agency may exercise only those express or implied powers provided by law other than this division.” (PRC 21004)

Measures must be enforceable.

◦ Pay particular attention to “fair-share fees”
◦ Difficult to enforce future public behavior

Be linked to an impact – **No nexus, no mitigation**
What are “Mitigation Measures” Supposed to Do?

Changes required of the project to:

- Avoid the impact altogether
- Minimize the degree of magnitude of impact
- Rectify the impact through restoration
- Reduce or eliminate the impact through preservation
- Compensate for the impact
Formulation of Mitigation Measures

Clearly state the required action or level of performance that is necessary to mitigate.

Explain how the measure would mitigate, especially if it is not facially obvious.

Clearly state conclusion of effect after mitigation.

Substantial evidence must support determination that measure will mitigate.
To What Level do we Mitigate?

To a level at or below the threshold

Zero impact is not the goal

Can not - Should not have to mitigate for impacts of others

Important to demonstrate level of impact after mitigation
Elements of the project designed to reduce environmental impact

Included in the project description

Shown on site plans

Should be reflected in the approvals
Impacts that Can’t be Mitigated to Less Than Significant

Sometimes even with mitigation an impact remains significant.

The analysis must include all feasible mitigation.

Substantial evidence is needed to discard a suggested mitigation.

Cost should not be the only reason to discard the mitigation.

The project can still be considered, however.

If you have them you need an EIR.

With an EIR you can still approve the project.
Findings

- Showing your work
- Explaining your reasoning
- Information other than the EIR/IS/MND
- Drafted by Staff, Approved by Council or Commission
AES-2: The proposed project would not substantially degrade the existing visual character or quality of the site and its surroundings nor conflict with applicable zoning and other regulation governing scenic quality in non-urbanized areas.

The proposed General Plan policies ensure that future development and redevelopment would enhance vitality, context, form, and function. These policies support development in the City and seek to establish and/or retain the City’s sense of place. These policies include Policy CDD8H, Policy CDD12A, and Policy CDD14A. Future development under the proposed General Plan would also be subject to the provisions of the City’s municipal code and applicable design guidelines that would help to maintain the City’s existing visual character and resources. The proposed project would result in no change to existing land use designations and therefore would not conflict with applicable zoning and other regulations governing scenic quality.

Finding: The proposed project would have a less than significant direct, indirect, and cumulative impact on the existing visual character or quality of the site and its surroundings. Accordingly, no changes or alterations to the proposed project were required to avoid or substantially lessen any significant environmental impacts under those thresholds.
Statement of Overriding Considerations

Reasons why the project should be approved even though it has significant environmental impacts

Supported by substantial evidence

We need the $$$ isn’t likely to survive challenge

List as many reasons as make sense, only one is needed to support the determination
People can be passionate...
Testimony at Hearings

- Late Hits
- How to balance testimony
- When to Continue the item
- When to decide
Thank You

Shannon George | Vice President/Principal Project Manager

David J. Powers & Associates, 408.454.3402
sgeorge@davidjpowers.com | davidjpowers.com

Mark Teague | Managing Principal, Environmental Services
PlaceWorks, 858.776.5574
mteague@placeworks.com | placeworks.com
Questions?