CEQA
In the Weeds

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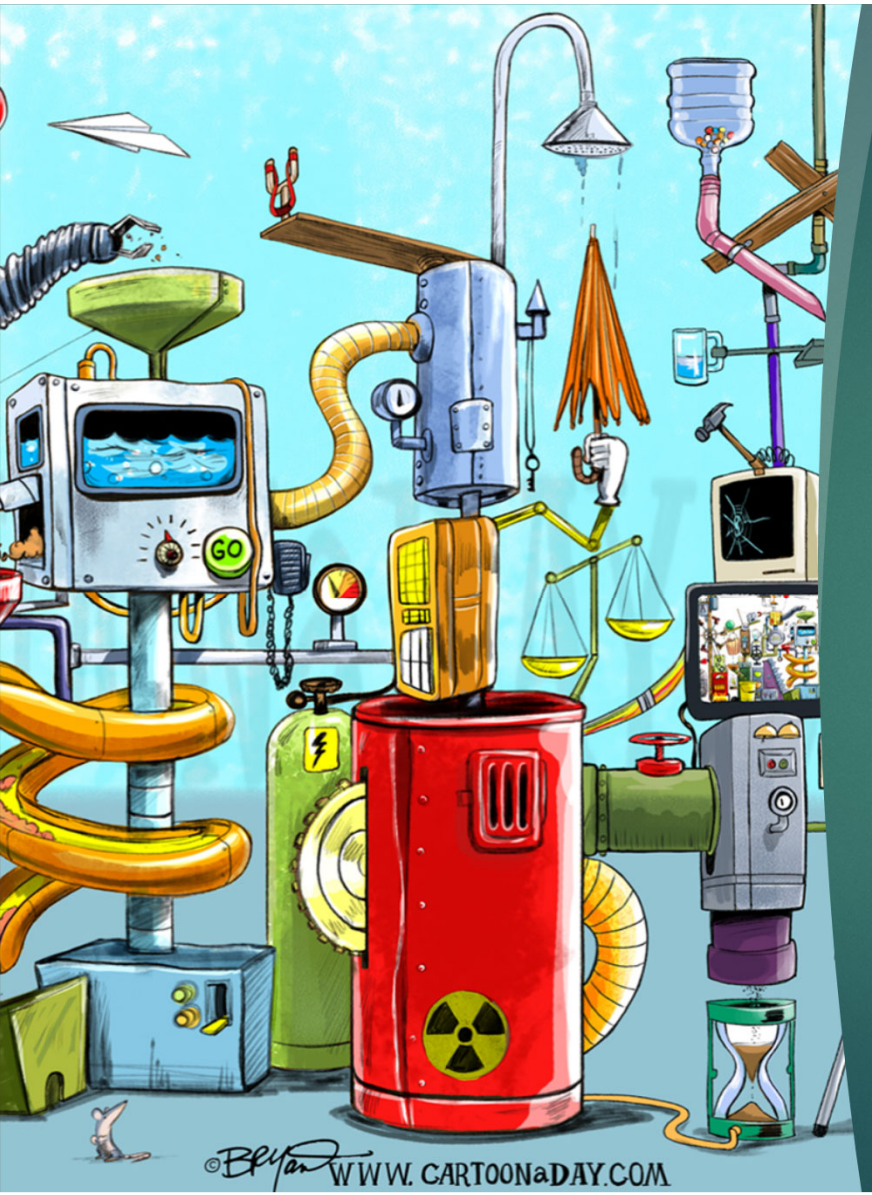
Overview of Today's Presentation

- How CEQA Decisions are Made
- Streamlining
- Setting & Baseline
- Project Description
- Thresholds of Significance
- Project Impacts
- Mitigation Measures
- Findings
- Statements of Overriding Consideration
- Testimony at Hearing(s)

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



Project Description

Whole of the project

- Onsite changes
- Off-site changes
- Operational Characteristics
- Mitigation Measures

What Type of CEQA Analysis?

Substantial Evidence

- Exemptions
  - Statutory
  - Categorical
- Environmental Impact Reports
  - Subsequent
  - Supplement
  - Master
  - Program
  - Project
- Addendum to an EIR

Fair Argument

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

Baseline / Setting

- Often the existing conditions
- “Frozen” at the start of the process
- Can also be a future condition
- Includes regional context

Baseline Example

- Large regional mall redevelopment
  - Essentially closed for the last decade
  - Area streets sized to accommodate fully occupied mall
  - New uses include residential, office
  - Overall trips are less than mall's heyday
- What is the baseline?
  - Compare traffic to fully occupied mall
  - Measure against existing traffic
- Why does it matter?
  - Changed circumstances
  - Not reward past bad behavior
  - Limits analysis and mitigation

Study Methodology

- Scope of the analysis
  - Geographic area
  - Not limited to agency boundaries
  - Focused on environmental topic
- Times & days matter
  - Is school in session
  - Is it spring or winter
  - Wet or dry year
- Models
  - Generally blunt instruments
  - Four decimal places is absurd
  - Results based on assumptions

Technical Studies

A	B	C
Aesthetics	Biological Resources	Air Quality
Agriculture & Forestry Resources	Cultural Resources	Energy
Geology/Soils	Population/Housing	Greenhouse Gas Emissions
Hazards & Hazardous Materials	Public Services	Noise
Hydrology/Water Quality	Recreation	Cumulative Analysis
Land Use/Planning	Transportation	Alternatives
Mineral Resources	Tribal Cultural Resources	
	Utilities / Service Systems	
	Wildfire	

Technical Studies

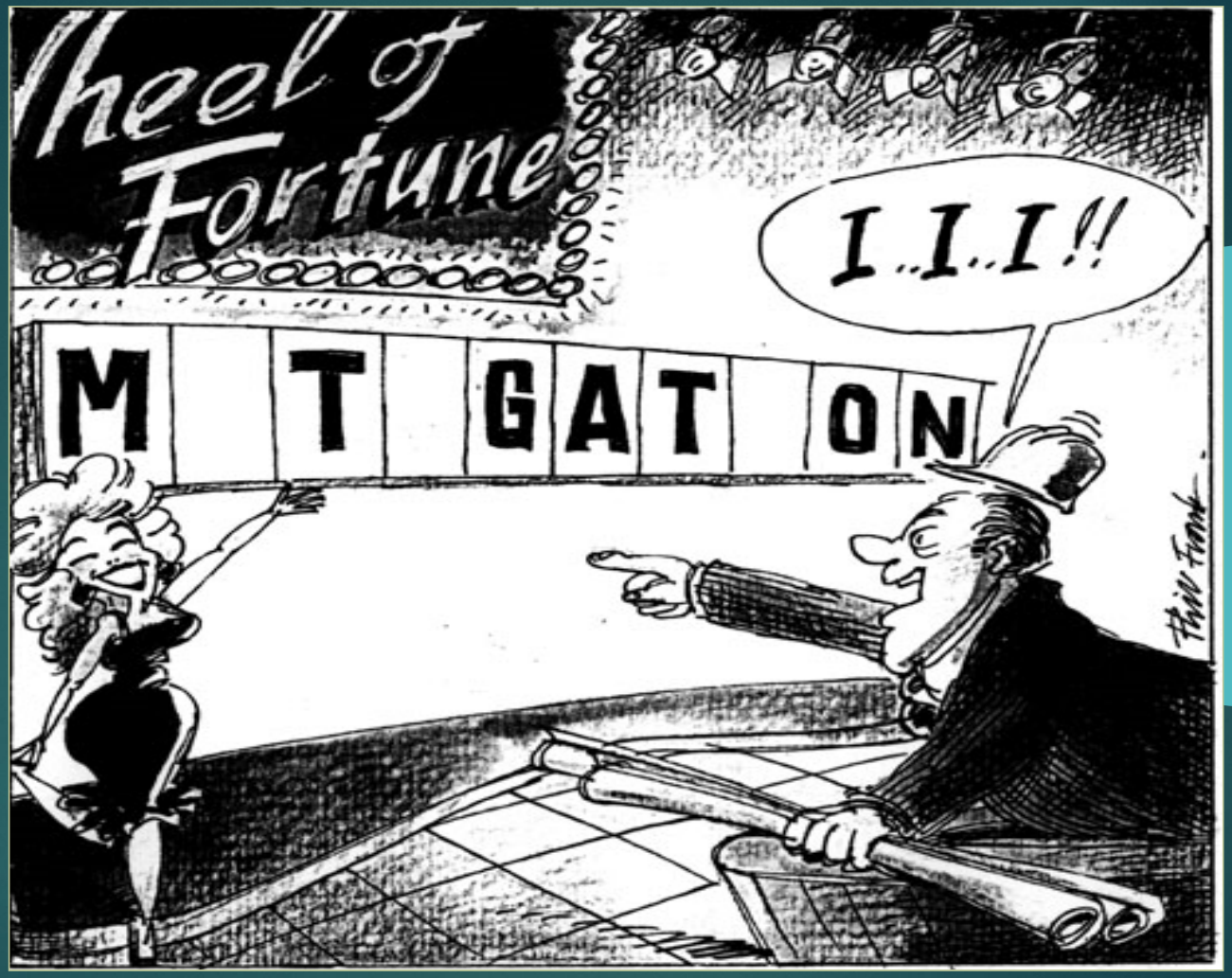
- Usually very narrow scope
- Check the baseline information
- Before you ask for more study, what is it you hope to find out?
- Expensive and time consuming
- Results dependent upon the assumptions

Thresholds of Significance

- Roots in Appendix G of CEQA Guidelines
- Also included in:
  - General Plan
  - Municipal Code
  - Adopted Development Standards
- Varies by Agency
- Can vary by location

Threshold Example: Scenic Vista

- **Custom Threshold (Gilroy)**
  - a) Have a substantial adverse effect on a scenic vista or degrade the existing visual character in the Hecker Pass Specific Plan Area (GP Policy 1.07) or the hillside areas (GP Policy 1.16, GP Policy 12.04)?
- **Custom Threshold (San Diego)**
  - A substantial obstruction of any vista or scenic view from a public viewing area as identified in the community plan?
  - The creation of a negative aesthetic site or project?
  - Project bulk, scale, materials, or style which would be incompatible with surrounding development?
  - Substantial alteration to the existing or planned character of the area, such as could occur with the construction of a subdivision in a previously undeveloped area? Note: for substantial alteration to occur, new development would have to be of a size, scale, or design that would markedly contrast with the character of the surrounding area.
  - The loss of any distinctive or landmark tree(s), or stand of mature trees as identified in the community plan? (Normally, the removal of non-native trees within a wetland as part of a restoration project would not be considered significant).


Wheel of Fortune
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Mitigation Measures

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

What are "Mitigation Measures" Supposed to Do?

Changes required of the project to:

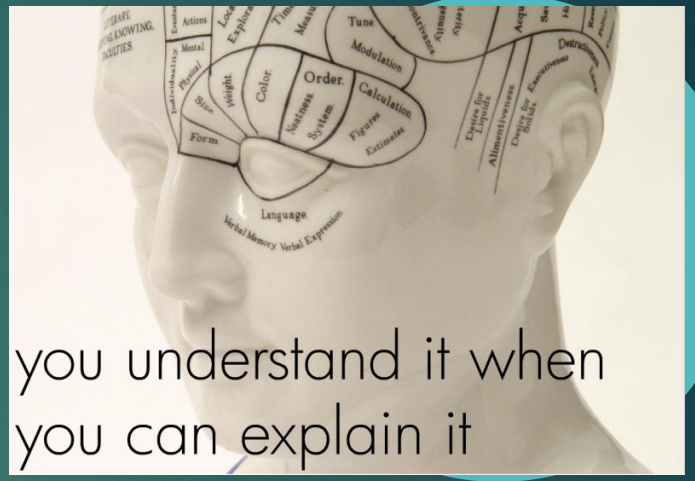
- Avoid the impact altogether
- Minimize the degree of magnitude of impact
- Rectify the impact through restoration
- Reduce or eliminate the impact through preservation
- Compensate for the impact

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

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.



Adequacy of Mitigation

Adequate

- Avoid
- Minimize
- Rectify
- Reduce over time
- Compensate

Questionable

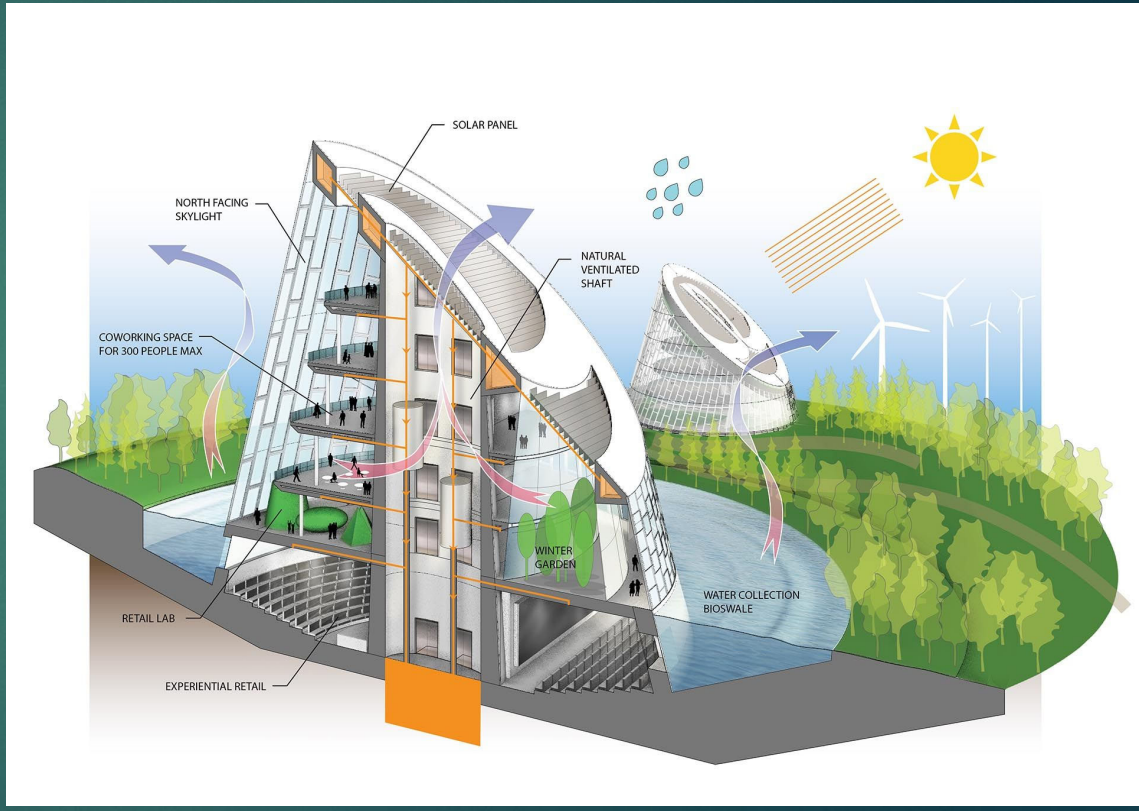
- Provide funding for
- Hire staff
- Monitor or report
- Comply with existing regulations or ordinances
- Preserve already existing natural area

Inadequate

- Consult with
- Submit for review
- Coordinate with
- Study further
- Inform
- Encourage/discourage
- Facilitate
- Strive to

Project Design Features

- Elements of the project designed to reduce environmental impact
- Included in the project description
- Shown on site plans
- Should be reflected in the approvals



Example of Project Design Feature

- Project includes a 6-foot masonry wall on property at adjacent street
- All windows facing adjacent street are Sound Transmission Classification (STC) of 50
- Hours of operation are from 7:00 AM through 7:00 PM, Monday through Saturday

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 impact after mitigation**

Not So Good Mitigation

- Prior to ground disturbance a qualified archaeologist shall meet with the construction personnel and inform them on what cultural artifacts may look like, and the importance of notifying the City if any artifacts are uncovered during excavation. If artifacts are discovered, all work shall stop within 50-feet of the discovery, and the City shall be notified.

Better Mitigation

- Prior to ground disturbance a qualified archaeologist shall be retained to monitor all excavation below 3-feet. The archaeologist shall meet with the construction personnel and inform them on what cultural artifacts may look like, and that the archaeologist may stop excavation if artifacts are uncovered. If artifacts are discovered, all work shall stop within 50-feet of the discovery site, and the City shall be notified.

Other CEQA Pieces – For EIR

- **Cumulative Analysis**
  - Not necessarily 'build out'
  - Two methods: project list or regional model
  - May have different setting than project
  - Not the worse case
- **Alternatives**
  - Must avoid or lessen an environmental impact
  - Project alternatives may not be CEQA alternatives
  - Not discussed at same level as project
  - Compared against project applicant's project objectives
  - Only the no-project alternative is required

Mitigation Monitoring & Reporting

- Required of every project that has mitigation
- Indicates who is responsible for implementing the measure
- Shows when the measure is supposed to be implemented
- Includes date(s) of when the measure was completed
- Is not technically part of the environmental process, but part of the project approval
- Is a public document and should be part of the project file

Findings

- Showing your work
- Explaining your reasoning
- Information other than the EIR/IS/MND
- Drafted by Staff, Approved by Council or Commission

Example of a Finding

The project will result in a significant increase in noise on adjacent road.

Compliance with the noise mitigation measure will construct a wall of sufficient density to reduce the noise level by 5 dBA.

With completion of the mitigation measure, the resulting noise level is below the 65 dBA threshold and therefore less than significant.

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

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 override

Testimony at Hearings

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

Streamlining

- Eliminate discretion and CEQA no longer applies
- Project conditions based on existing ordinances
- Objective Design Standards
- The safety net of CEQA is unavailable here

Streamlining § 15183

- § 15183 (a) CEQA mandates that projects which are consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified shall not require additional environmental review, except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site. This streamlines the review of such projects and reduces the need to prepare repetitive environmental studies.

Infill Exemption § 15183.5

CEQA does not apply to the effects of an eligible infill project under two circumstances.

- First, if an effect was addressed as a significant effect in a prior EIR for a planning level decision, then, with some exceptions, that effect need not be analyzed again for an individual infill project even when that effect was not reduced to a less than significant level in the prior EIR.
- Second, an effect need not be analyzed, even if it was not analyzed in a prior EIR or is more significant than previously analyzed, if the lead agency makes a finding that uniformly applicable development policies or standards, adopted by the lead agency or a city or county, apply to the infill project and would substantially mitigate that effect.
- The EIR must have been certified.

Thank You

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